

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a meeting of the Development Determination Panel will be held via teleconference on

WEDNESDAY 6 DECEMBER 2023

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 6 December 2023
via teleconference
Commencing at 10:00 AM**

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ACKNOWLEDGEMENT OF COUNTRY

As a sign of respect, the Northern Beaches Development Determination Panel acknowledges the traditional custodians of these lands on which we gather and pays respect to Elders past and present.

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD ON 22 NOVEMBER 2023

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 22 November 2023 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2023/0805 - 5 BIRDWOOD AVENUE COLLAROY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE AND SECONDARY DWELLING
REPORTING MANAGER	Steve Findlay
TRIM FILE REF	2023/786109
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

To refer the attached application for determination by the discretion of the Executive Manager Development Assessment.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2023/0805 for alterations and additions to a dwelling house and secondary dwelling on land at Lot 3 DP 9667, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0805
Responsible Officer:	GAT & Associates (Melissa Rodrigues) - External Planning Consultant
Land to be developed (Address):	Lot 3 DP 9667, 5 Birdwood Avenue, Collaroy
Proposed Development:	Alterations and additions to a dwelling house and secondary dwelling
Zoning:	R2 – Low Density Residential
Development Permissible:	Yes – Dwelling house and secondary dwelling
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Christopher Douglas Hunt Kristine Mary Hunt
Applicant:	JJ Drafting Australia Pty. Ltd.
Application Lodged:	28/06/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	03/07/2023 – 17/07/2023
Advertised:	No
Submissions Received:	Yes
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$464,600

EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of a Development Application (DA2023/0805) for alterations and additions to a dwelling house and secondary dwelling.

The application was lodged with Council on 28 June 2023.

The application was notified to surrounding properties in accordance with the Environmental Planning and Assessment Act 1979, the Environmental Planning and Assessment Regulation 2021, and Council's Community Participation Plan between 03/07/2023 to 17/07/2023 with a total of three (3) submissions received during this time. One (1) additional submission was also received in support of the proposal.

A site inspection of the subject site was undertaken on 22 August 2023.

A site inspection was also carried out with respect to the residential unit of one of the objectors, located at 1/3 Birdwood Avenue, Collaroy which adjoins the subject site to the west. The owners of the property, Mr.



Neville and Mrs. Gillian Stanford provided access to their unit. Also in attendance was their town planning representative Mr. Denis Smith of Tomasy Planning and a second objector, Mr. Paul Byrne of 2/7 Birdwood Avenue. Whilst Mr. Byrne was offered an opportunity for a walk-through of his dwelling to understand his concerns, he declined, however did engage in conversation outside of his property to voice his objections.

Following the site inspection, a request for additional information was sent to the applicant on 31 August 2023. In particular, concern was raised with respect to potential view loss and access to sunlight. Clarification was also sought with respect to how the rear private open space to the secondary dwelling is accessed, whether the proposed roof garden over the garage will be trafficable, schedule of finishes and lift overrun details.

The applicant provided a formal response to the above items on 26 September 2023 which included installing height poles at the subject site to demonstrate potential view loss from neighbouring sites, specifically 1/3 Birdwood Avenue. A second site inspection, which included access to 1/3 Birdwood Avenue was carried out on 26 September 2023. The items raised are considered to be resolved, with appropriate conditions detailed in this report.

Accordingly, it is recommended that the application be approved, subject to conditions of consent.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks alterations and additions to an existing dwelling and detached secondary dwelling, including a new garage. A detailed description of the works is provided below:

- **Primary Dwelling:**
 - Existing elevated deck to be enclosed and made good by engineer to form living room addition with enclosed sub floor below,
 - New entry portico at front of dwelling and new internal staircase and lift shaft to provide accessibility to all levels of primary dwelling.
 - New single car garage located behind existing car stand with additional storage space for bikes and watersports whilst retaining accessibility corridor to lift shaft. Internal lift in garage to provide wheelchair access to entry level of primary dwelling.
 - New green rooftop terrace is proposed over the garage to retain dominant landscaping to the visible streetscape and to provide additional levelled areas of soft open space to residents – at a similar ground level as existing terraces.
 - The existing rear deck is to be removed, allowing lawn to be reinstated for usable private open space.
- **Secondary Dwelling:**
 - Addition proposed to existing secondary dwelling, to convert it from a studio to 1 bedroom dwelling with front verandah. New gross floor area does not exceed 60sqm.
 - New deck with privacy screen and timber steps at the rear of the addition to allow clothes drying and direct access to private open space at ground level behind the secondary dwelling.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;



- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

- Warringah Development Control Plan – B3 Side Boundary Envelope
- Warringah Development Control Plan – B7 Front Boundary Setbacks
- Warringah Development Control Plan – C3 Parking Facilities
- Warringah Development Control Plan – D6 Access to Sunlight
- Warringah Development Control Plan – D7 Views

SITE DESCRIPTION

Property Description:	5 Birdwood Avenue, Collaroy Lot 3 DP 9667
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Birdwood Avenue.</p> <p>The site is regular in shape with a frontage of 12.19m along Birdwood Avenue and a depth of 40.24m. The site has a surveyed area of 490.5m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates an existing part one, part two storey primary dwelling and single storey secondary dwelling on the site. A hardstand car space is located in the north eastern corner of the site.</p> <p>The site enjoys views of the coastline and ocean to the north and east,</p> <p>The site slopes steeply from the rear to the street, with a fall of approximately 6.28m. In response to this slope, the existing primary dwelling is elevated above a subfloor with a series of stairs in the front setback providing access to the ground floor which is elevated above street level. The secondary dwelling is notably located forward of the primary dwelling and is level with the street.</p> <p>Landscaping on the site includes terraced gardens within the front setback and turfed and landscaped areas to the rear of the property.</p>

Map:



The subject site as viewed from the street



Development opposite the subject site



The adjoining development to the east, No. 7 Birdwood Avenue



The adjoining development to the west, No. 3 Birdwood Avenue

Detailed Description of Adjoining/Surrounding Development

The character of the immediate locality is predominantly residential in nature however is mixed in terms of density, notwithstanding that the site is located within an R2 Low Density Residential Zone. The immediately adjoining development to the east, being No. 7 Birdwood Avenue is a two (2) storey dual occupancy development that is elevated above garages at ground level. Adjoining the site to the west at No. 3 Birdwood Avenue is a two (2) storey residential flat building comprising of five (5) units and also elevated above garages at ground level. At the time of a site inspection, a seniors housing development was under construction at Nos. 9 – 11 Birdwood Avenue. Immediately opposite the site is Collaroy Beach and Playground.

SITE HISTORY

A search of Council's records has revealed the following site history:

- **BC2020/0149:** Building Information Certificate (149D Unauthorised) Front building & rear addition & attached shed & internal fit outs. Driveway & car stand & integrated side paths. Site terracing & retaining works. Relocated window in upper NW corner of main building – CERTIFICATE ISSUED.
- **REV2020/0012:** Section 8.2(1A) Review of Determination - Review of determination to DA2019/0616 proposed to regularise the use of a building as a Secondary dwelling, with car parking and front fence – REFUSED.
- **DA2019/0616:** Change of Use - Regularisation of the use of an existing building as a secondary dwelling, carparking and front fence – APPEAL UPHOLD WITH AMENDED PLANS.
- **DA2014/0159:** Removal/Pruning of 1-2 Trees – APPROVED.
- **DA2007/0649:** Timber Deck & Stairs – APPROVED.



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

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Northern Beaches Community Participation Plan 2019.

As a result of the public exhibition process council is in receipt of three (3) submission/s from:

Name:	Address:
Paul & Judy Byrne	• 2/7 Birdwood Avenue.
Tomasy Planning on behalf of Neville and Gillian Stanford	• 1/3 Birdwood Avenue.
Neville and Gillian Stanford	• 1/3 Birdwood Avenue.

The following concerns were raised as part of the submissions:

- **Reference is made to Land and Environment Court Appeal 2020/174830 dated 16.11.20.**

Planner's comment:

It is noted that a Building Certificate has been issued in addition to an approval by the Land and Environment Court with respect to unauthorised works previously undertaken on the site. A Final Occupation Certificate was issued for this Development Application on 24 May 2023.

- **No. 5 has the potential for heritage significance.**

Planner's comment:

As part of this application, an internal referral was made to Council's Heritage Officer who raised no concerns with respect to the proposal.

- **Landscaped area is non-compliant.**

Planner's comment:

A detailed assessment of landscaped area has been undertaken. Whilst the proposed area of landscaping is non-compliant, it is noted that the current circumstance is also non-compliant with the proposal in fact providing for a small increase in landscaping.

- **Proposed front setback is non-compliant.**

Planner's comment:

Conditions of consent have been included to delete the overhang of the roof garden over the garage and the proposed covered verandah to the secondary dwelling to enable compliance with the front setback control.

- **Shadows are incorrectly drawn.**

Planner's comment:

As part of a request for additional information, updated shadow diagrams were requested and provided by the applicant. An assessment of the amended diagrams illustrates that the private open space to the primary dwelling and the adjoining sites will not be impacted by the proposed works. The proposal includes a new area of private open space to the secondary dwelling that is located to its rear and is partly overshadowed as a result of its southern orientation. Notwithstanding this, the dwelling currently



provides for an area of private open space within its front setback which is retained under the proposal. This area is orientated to the north and is immediately accessible from a living room.

- **Loss of views – height poles/view sharing assessment requested.**

Planner's comment:

As part of a request for additional information, height poles were erected on the site and a view sharing assessment provided. An assessment of View Sharing is also provided in this report in accordance with the Planning Principle with the proposed development considered to result in a satisfactory outcome.

- **Illegal works were carried out to the original garage to create the now approved secondary dwelling.**

Planner's comment:

It is noted that a Building Certificate has been issued in addition to an approval by the Land and Environment Court with respect to unauthorised works previously undertaken on the site.

- **Earlier works by the applicant resulted in the bin area of 2/7 Birdwood Avenue being destabilised.**

Planner's comment:

As this item falls outside the scope of the proposed works, it is considered to be a separate compliance matter. A condition however has been included as part of this application advising that no works are to be undertaken on the adjoining land and that a dilapidation report be prepared

- **DA2019/0616 was approved by the Court but the owners have not complied with all conditions.**

Planner's comment:

It is noted that a Building Certificate has been issued with respect to unauthorised works previously undertaken on the site. It is the role of the Principal Certifying Authority to ensure all works are carried out in accordance with conditions of consent.

- **The boundary fence encroaches onto No. 7 by 170mm and it is requested that the fence be repositioned.**

Planner's comment:

This item falls outside the scope of proposed works and is a separate civil matter. Matters relating to dividing fences are governed by the Dividing Fences Act 1991.

- **Applicant's SEE incorrectly describes neighbouring development.**

Planner's comment:

An assessment of neighbouring development has been independently conducted by Council as part of this report.

- **Approved landscape plan has not been complied with.**

Planner's comment:

An assessment of landscaped area has been carried out as part of this report and it is considered the areas shown as existing landscaping are consistent with the previously LEC approved plan. It is however the role of the Principal Certifying Authority to ensure all works are carried out in accordance with approved plans and conditions of consent. A condition of consent has been included to ensure that as part of any proposed works that where the landscape plan says "existing garden" that this must be inline with the previous consent.

- **Bulk and scale.**



Planner's comment:

Conditions of consent have been included to delete the overhang of the roof garden over the garage and the proposed covered verandah to the secondary dwelling to enable compliance with the front setback control. The resultant built form is considered to present an acceptable bulk and scale noting compliance with key controls including building height, setbacks (subject to conditions) and building envelope. The proposal will result in a highly articulated form that responds to the steep topography of the site.

- **Bamboo along shared boundary restricts solar access.**

Planner's comment:

Vegetation does not form a consideration in the assessment of solar access. The bamboo screen planning notably an existing element which is being retained.

- **Current lack of sunlight causes moss at entry of No. 3 Birdwood Avenue creating a slip hazard.**

Planner's comment:

Overshadowing to this element is existing and will not be increased by the proposed works.

In addition to the three (3) submission received against the proposal, one (1) submission was also received in support of the proposal.

REFERRALS

Internal Referral Body	Comments
Building Assessment	<p>Supported</p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p><i>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</i></p>
Engineering	<p>Supported</p> <p>The site can drain to the site by gravity. OSD is not required. Conditions of consent provided including that the recommendations of the Geotechnical Report form part of the conditions.</p>
Environmental Health – Acid Sulphate Soils	<p>Supported</p> <p>Environmental Health have reviewed the AscentGEO Geotechnical Assessment including the Preliminary Acid Sulfate Soils Assessment.</p> <p>The Preliminary Acid Sulfate Soils Assessment does not recommend the need for an Acid Sulfate Soils Management Plan.</p> <p>There are no objections to approval of the development.</p>
Aboriginal Heritage	<p>Supported</p> <p>There are no objections to approval of the development.</p>

Internal Referral Body	Comments
Heritage	<p>Supported</p> <p>The proposal has been referred to Heritage as the subject property is within the vicinity of a heritage item</p> <p>Item I17 - Street Trees and Plaque - Pittwater Road, near Birdwood Avenue</p> <p>The proposal seeks consent for alterations and additions to an existing dwelling. This includes a new garage and extensions to the main dwelling and secondary dwelling. The heritage items are located across Birdwood Avenue within the park. Given the physical separation afforded by the road carriageway, the proposal is considered to not impact the heritage items or their significance.</p> <p>Therefore Heritage raises no objections and requires no conditions.</p>
Landscape	<p>Supported</p> <p>Landscape Referral have assessed the Landscape Plan drawing number DA.18 under the development application. The Landscape Plan includes documentation of existing garden planting to be retained and includes planting for the proposed additions that includes a rooftop garden and at grade planting.</p> <p>No concerns are raised by Landscape Referral subject to imposed conditions.</p>
Natural Environment – Coastal	<p>Supported</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021 <p>Coastal Management Act 2016</p> <p>The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to this DA. The proposed development is considered to be consistent with the objects, as set out under Part 1 Section 3 of the Coastal Management Act 2016.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP). Hence, Clauses 2.10, 2.11 and 2.12 apply for this DA. On internal assessment the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP. As such, it is considered that the application does comply with</p>

Internal Referral Body	Comments
	<p>the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>There are no objections to approval of the development.</p>

External Referral Body	Comments
Ausgrid	<p>Supported</p> <p>Ausgrid has no objection to this development application, however the design submissions must comply with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice for construction works near existing electrical assets.</p> <p>The “as constructed” minimum clearance to Ausgrid’s infrastructure must not be encroached by the building development. It also remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.</p>

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 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 regulations	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider “Prescribed conditions” of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>Additional information was requested on 31 August 2023 in relation to potential view loss and access to sunlight. Clarification was also sought with respect to how the rear private open space to the secondary dwelling is accessed, whether the proposed roof garden over the garage will be trafficable, schedule of finishes and lift overrun details.</p> <p>The applicant provided a formal response to the above items on 26 September 2023 which included installing height poles at the subject site to demonstrate potential view loss from neighbouring sites, specifically 1/3 Birdwood Avenue. A second site inspection, which included access to 1/3 Birdwood Avenue was carried out on 26 September 2023. The items raised are considered to be resolved, with appropriate conditions detailed in this report.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact</p> <p>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact</p> <p>The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

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)

STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021 relates to coastal management. Clauses 2.10, 2.11 and 2.12 consider development on land within the coastal environment area, within the coastal use area and development in the coastal zone generally – development not to increase the risk of coastal hazards.

The application has been reviewed by Council's Natural Environment Referral Response – Coastal with no objections raised or conditions required. The Referral also considers the Coastal Management Act 2016 and similarly does not raise any objection or conditions.

Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021 relates to the remediation of land. Clause 4.6 states that a consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated and, if it is contaminated, the consent authority is satisfied that the land is suitable for the purpose. If the land requires remediation to be undertaken to make the land suitable for the proposed use, Council must be satisfied that the land will be remediated before the land is used for that purpose.

Council records indicate that the subject site has been used for residential purposes for a significant period 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 and the land is considered to be suitable for the proposed land use.

SEPP (BIODIVERSITY AND CONSERVATION) 2021



Chapter 2 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 relates to the clearing of vegetation in non-rural areas. The proposal does not involve the removal of any trees from the site.

SEPP (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

The proposal has been assessed against the provisions of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. Separate BASIX Certificates have been submitted for the proposed alterations and additions to the primary and secondary dwellings. The proposal satisfies the targets set by the Policy in relation to water, thermal and energy.

SEPP (HOUSING) 2021

Part 1 – Secondary Dwellings

In accordance with Clause 52 of the SEPP, the proposal will not result in any other dwelling other than the principal and secondary dwellings on the land. The Warringah Local Environmental Plan 2011 does not provide for a floor space ratio control. The total floor area of the principal dwelling has not been detailed on the plans. As Clause 5.4 of the WLEP11 permits the greater of 60m² or 11% of the total floor area of the principal dwelling, at 56.62m² the proposal is compliant.

Clause 53 of the SEPP provides for non-discretionary development standards. The proposal accords with the provisions outlined in (2) noting that the subject site is 490.5m², exceeding the minimum 450m² required. Whilst not required by the SEPP, the proposal includes an additional car space in the form of a single garage.

WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

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

Compliance Assessment

Clause	Compliance with Requirements
Land Zoning/Permissibility: R2 – Low Density Residential	Yes
Clause 4.3 Height of Buildings: 8.5m	Yes 8.05m to primary dwelling 6.05m to secondary dwelling
Clause 5.4 Controls Relating to Miscellaneous Permissible Uses: Secondary dwellings on land other than land in a rural zone: If development for the purposes of a secondary dwelling is permitted under this Plan on land other than land in a rural zone, the total floor area of the dwelling, excluding any area used for parking, must not exceed whichever of the following is the greater— <ul style="list-style-type: none"> 60 square metres, 11% of the total floor area of the principal dwelling. 	Yes The total floor area of the principal dwelling has not been detailed on the plans. As the control permits the greater of 60m ² or 11% of the total floor area of the principal dwelling, at 56.62m ² the proposal is compliant.

Clause	Compliance with Requirements
<p>Clause 5.10 Heritage Conservation:</p> <ul style="list-style-type: none"> The site is <u>not</u> identified as an item of heritage. The site is <u>not</u> identified as being within a heritage conservation area. The site <u>is</u> located in proximity to an item of heritage being Item I17 - Street Trees and Plaque – Pittwater Road, near Birdwood Avenue. 	<p>Yes</p> <p>Supported by Heritage referral, with no objections raised or conditions required.</p>
Clause 6.1 Acid Sulphate Soils: Class 4	<p>Yes</p> <p>Supported by Environmental Health – Acid Sulphate Soils Referral, with no objections raised or conditions required.</p>
Clause 6.2 Earthworks	<p>Yes</p> <p>Conditions of consent included.</p>
Clause 6.4 – Development on Sloping Land - The site has been identified on land mapped as Area A and Area D on the Landslip Risk Map.	<p>Yes</p> <p>Conditions of consent included.</p>
Clause 6.10 - Development for the Purposes of Secondary Dwellings in Zones R2 and R3	<p>N/A.</p> <p>Refer to Clause 5.4.</p>

WARRINGAH DEVELOPMENT CONTROL PLAN

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
<p>B1 Wall Heights</p> <ul style="list-style-type: none"> 7.2m from ground level (existing) to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas wholly located within a roof space). This control may be varied on sites with slopes greater than 20% within the building footprint (measured at the base of the external walls), provided the building: <ul style="list-style-type: none"> does not exceed the 8.5 metre height development standard; is designed and located to minimise bulk and scale; and has a minimal visual impact when viewed from the downslope sides of the land. 	<p>Yes</p> <p>Primary dwelling: 5.41m.</p> <p>Secondary dwelling: 5.71m.</p>	<p>Yes</p>

Clause	Compliance with Requirements	Consistency Aims/Objectives
B2 Number of Storeys <ul style="list-style-type: none"> The site is <u>not</u> identified on the Number of Storeys Map. 	N/A	N/A
B3 Side Boundary Envelope <ul style="list-style-type: none"> Building envelope determined by projecting planes at 45 degrees from a height of 4m above ground level (existing) at the side boundaries as identified on the Side Boundary Envelope Map. 	Yes – as the control allows for an exception for eaves to extend beyond the envelope	Yes
B4 Site Coverage <ul style="list-style-type: none"> The site is <u>not</u> identified on the Site Coverage Map. 	N/A	N/A
B5 Side Boundary Setbacks <ul style="list-style-type: none"> The site is identified as having a 900mm side setback requirement. Exception to Land Zoned R2 All development: Screens or sunblinds, light fittings, electricity or gas meters, or other services infrastructure and structures not more than 1 metre above ground level (existing) such as unroofed terraces, balconies, landings, steps or ramps may encroach beyond the minimum side setback Ancillary to a dwelling house: Consent may be granted to allow a single storey outbuilding, carport, pergola or the like that to a minor extent does not comply with the requirements of this clause. 	Complies. Garage: 900mm to east Primary dwelling: Lower ground floor – 900mm to east and 4.29m to west Secondary dwelling: First floor – 3.8m to east and 900mm to west It is noted that the existing ground floor of the main dwelling and the existing ground floor of the secondary dwelling are non-compliant at 390-500mm to the western side boundary, however, these were previously approved and no change to these setbacks are propose.	Yes
B7 Front Boundary Setbacks <ul style="list-style-type: none"> The site is identified as having a 6.5m front setback requirement. Exceptions to Land Zoned R2 or R3 <ul style="list-style-type: none"> On corner allotments or sites with a double street frontage, where the minimum front building setback is 6.5 metres to both frontages, the front building setback may be reduced to a minimum of 3.5 	No – See discussion below. Conditions of consent included.	Yes (subject to conditions)

Clause	Compliance with Requirements	Consistency Aims/Objectives
<p>metres for the secondary frontage, but secondary street variations must consider the character of the secondary street and the predominant setbacks existing to that street.</p> <ul style="list-style-type: none"> ○ Lot 2677 DP752038; Lot2783 DP46992; Lot 2610 DP752038; Lot 2615 DP 752038; Lot 1 DP 822212; Lot 2676 DP752038 10 metres. • Exception – All Zones <ul style="list-style-type: none"> ○ Where the minimum front building setback is 30 metres, ground level carparking may encroach into the setback area, provided that: ○ the first 15 metres (measured from the road frontage) is densely landscaped using locally occurring species of canopy trees and shrubs; and the carparking is screened from view from the road. 		
<p>B9 Rear Boundary Setbacks</p> <ul style="list-style-type: none"> • The site is identified as having a 6m rear setback requirement. • Exceptions – Land Zoned R2 and Land Zoned RU4 with frontage to The Greenway <ul style="list-style-type: none"> ○ On land zoned R2 Low Density Residential, and land zoned RU4 Rural Small Holdings that has frontage to "The Greenway", Duffy's Forest, where the minimum rear building setback is 6 metres, exempt development, swimming pools and outbuildings that, in total, do not exceed 50% of the rear setback area, provided that the objectives of this provision are met. <p>Corner Allotments on Land Zoned R2 or R3:</p>	Yes – no change to existing.	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
On corner allotments for land zoned R2 Low Density Residential or R3 Medium Density Residential, where the minimum rear building setback is 6 metres, the rear building setback does not apply.		
B11 Foreshore Building Setback <ul style="list-style-type: none"> The site is <u>not</u> identified on the Special Setbacks Map. 	N/A	N/A
B12 National Park Setback <ul style="list-style-type: none"> The site is <u>not</u> identified on the Special Setbacks Map. 	N/A	N/A
B13 Coastal Cliffs Setback <ul style="list-style-type: none"> The site is <u>not</u> identified on the Setback to Coastal Cliffs Map. 	N/A	N/A
B14 Main Roads Setback <ul style="list-style-type: none"> The site is <u>not</u> identified on the Main Roads Setbacks Map. 	N/A	N/A
C2 Traffic, Access and Safety <ul style="list-style-type: none"> Applicants shall demonstrate that the location of vehicular and pedestrian access meets the objectives. Vehicle access is to be obtained from minor streets and lanes where available and practical. Vehicle crossing construction and design is to be in accordance with Council's Minor works specification. 	Yes The proposed single garage will utilise the existing vehicular crossing.	Yes
C3 Parking Facilities <ul style="list-style-type: none"> The following design principles shall be met: <ul style="list-style-type: none"> Garage doors and carports are to be integrated into the house design and to not dominate the façade. Parking is to be located within buildings or on site.; Parking is to be located so that views of the street from front windows are not obscured; and Where garages and carports face the street, ensure that the garage or carport opening does not exceed 6 metres or 50% of the building width, whichever is the lesser. 	No – See discussion below.	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
<ul style="list-style-type: none"> Carparking is to be provided in accordance with Appendix 1 which details the rate of car parking for various land uses – 2 spaces per dwelling. 		
C4 Stormwater <ul style="list-style-type: none"> Objectives <ul style="list-style-type: none"> To help meet the transport needs of the Warringah community To encourage healthy active lifestyles and help reduce reliance on private motor vehicles To provide convenience and safety for bicycle users 	Yes Supported by Engineering Referral.	Yes
C7 Excavation and Landfill <ul style="list-style-type: none"> All landfill must be clean and not contain any materials that are contaminated and must comply with the relevant legislation. Excavation and landfill works must not result in any adverse impact on adjoining land. Excavated and landfill areas shall be constructed to ensure the geological stability of the work. Excavation and landfill shall not create siltation or pollution of waterways and drainage lines, or degrade or destroy the natural environment. Rehabilitation and revegetation techniques shall be applied to the fill. Where landfill is necessary, it is to be minimal and shall have no adverse effect on the visual and natural environment or adjoining and surrounding properties. 	Yes Council's Development Engineers have reviewed the proposal and submitted Geotechnical Report and have raised no objection subject to recommended conditions. In order to ensure that there are no adverse impacts on the adjoining neighbours, conditions have been imposed which: <ul style="list-style-type: none"> Ensure structural adequacy of landfill and excavation work and retaining walls; Require dilapidation reports for adjoining properties; Ensure the recommendations of the Geotechnical report is adhered to; Ensure the proper installation and maintenance of sediment and erosion control; Ensure the adherence of a Waste Management Plan; Ensure topsoil is stockpiled on site and stabilised during construction works; 	Yes
C9 Waste Management	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
<ul style="list-style-type: none"> All development that is, or includes, demolition and/or construction, must comply with the appropriate sections of the Waste Management Guidelines and all relevant Development Applications must be accompanied by a Waste Management Plan. 		
D1 Landscaped Open Space and Bushland Setting <ul style="list-style-type: none"> 40% landscaped open space required. 	No Variation is sought: 34.5%. While non-compliant, the proposal does improve upon the existing circumstance with an additional 4.2m ² proposed and is considered reasonable.	Yes
D2 Private Open Space <ul style="list-style-type: none"> Dwelling houses with 1 or 2 bedrooms: 35m², 3m. Dwelling houses with 3+ bedrooms: 60m², 5m. 	Yes Primary dwelling: no change Secondary dwelling: 45m ²	Yes
D6 Access to Sunlight <ul style="list-style-type: none"> Development should avoid unreasonable overshadowing any public open space. At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21. 	No – See discussion below	Yes
D7 Views <ul style="list-style-type: none"> Development shall provide for the reasonable sharing of views. 	Yes – See discussion below	Yes
D8 Privacy <ul style="list-style-type: none"> Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties. Orientate living areas, habitable rooms and windows to private open space areas or to the street to limit overlooking. The effective location of doors, windows and balconies to avoid overlooking is preferred to the 	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
<p>use of screening devices, high sills or obscured glass.</p> <ul style="list-style-type: none"> The windows of one dwelling are to be located so they do not provide direct or close views (ie from less than 9 metres away) into the windows of other dwellings. Planter boxes, louvre screens, pergolas, balcony design and the like are to be used to screen a minimum of 50% of the principal private open space of a lower apartment from overlooking from an upper apartment. 		
<p>D9 Building Bulk</p> <ul style="list-style-type: none"> Side and rear setbacks are to be progressively increased as wall height increases. Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief. On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular: <ul style="list-style-type: none"> The amount of fill is not to exceed one metre in depth. Fill is not to spread beyond the footprint of the building. Excavation of the landform is to be minimised. Building height and scale needs to relate to topography and site conditions. Orientate development to address the street. Use colour, materials and surface treatment to reduce building bulk. Landscape plantings are to be provided to reduce the visual bulk of new building and works. 	<p>Yes</p> <p>The proposal (subject to conditions) will result in an acceptably building bulk. Whilst the current proposal seeks new works forward of the existing primary dwelling, the siting of this dwelling is uncharacteristic of the streetscape being considerably setback from the street. Conditions of consent have been included to ensure that the proposed front setback is both compliant with the front setback numeric control and enables the building line of the first floor to the secondary dwelling to sit between the existing building alignments of the immediately adjoining sites creating a consistent streetscape.</p> <p>The proposal does not result in any adverse overshadowing impacts to the adjoining sites as a result of the additional floor area sought and is balanced by an increase in landscaped area.</p> <p>A detailed assessment of view sharing is provided in this assessment, and the impact of the proposal is considered to be reasonable given the availability of views to the north.</p>	<p>Yes</p>

Clause	Compliance with Requirements	Consistency Aims/Objectives
<ul style="list-style-type: none"> Articulate walls to reduce building mass. 		
D10 Building Colours and Materials <ul style="list-style-type: none"> In highly visible areas, the visual impact of new development (including any structures required to retain land) is to be minimized through the use of appropriate colours and materials and landscaping. The colours and materials of development on sites adjoining, or in close proximity to, bushland areas, waterways or the beach must blend in to the natural landscape. The colours and materials used for alterations and additions to an existing structure shall complement the existing external building façade. The holiday/fisherman shack character of the waterfront of Cottage Point is to be enhanced by the use of building materials which are sympathetic to the small timber and fibro cottages currently in existence on the waterfront. All buildings visible from the water are to utilise materials such as weatherboard, fibre cement, corrugated steel and timber. The use of masonry is discouraged. 	Yes	Yes
D11 Roofs <ul style="list-style-type: none"> Lift overruns, plant and other mechanical equipment are not to detract from the appearance of roofs. Roofs should complement the roof pitch and forms of the existing buildings in the streetscape. Articulate the roof with elements such as dormers, gables, balconies, verandahs and pergolas. Roofs shall incorporate eaves for shading. Roofing materials should not cause excessive glare and reflection. 	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
<ul style="list-style-type: none"> Service equipment, lift overruns, plant and other mechanical equipment on the roof shall be minimised by integrating as many services, etc as possible into the building. 		
D14 Site Facilities <ul style="list-style-type: none"> Site facilities including garbage and recycling enclosures, mail boxes and clothes drying facilities are to be adequate and convenient for users and services and are to have minimal visual impact from public places. In particular: <ul style="list-style-type: none"> Waste and recycling bin enclosures are to be durable, integrated with the building design and site landscaping, suitably screened from public places or streets and located for convenient access for collection; All dwellings which are required to have landscaped open space are to be provided with adequate open air clothes drying facilities which are suitably screened from public places or streets; Garbage areas are to be designed to avoid common problems such as smell, noise from collection vehicles and the visibility of containers; Landscaping is to be provided to reduce the impact of all garbage and recycling enclosures. They are to be located away from habitable rooms, bedrooms or living areas that may detract from the amenity of occupants; and Mail boxes are to be incorporated into the front fence or landscaping 	N/A No change to existing.	N/A

Clause	Compliance with Requirements	Consistency Aims/Objectives
design. They are to be easily accessible and clearly identifiable.		
D21 Provision and Location of Utility Services <ul style="list-style-type: none"> If a proposed development will involve a need for them, utility services must be provided, including provision of the supply of water, gas, telecommunications and electricity and the satisfactory management of sewage and drainage. Service structures, plant and equipment are to be located below ground or be designed to be an integral part of the development and suitably screened from public places or streets. 	Yes <p>Services are available to the site.</p> <p>Ausgrid have reviewed the proposal and raised no objections subject to conditions.</p>	Yes
E10 Landslip Risk <ul style="list-style-type: none"> The applicant must demonstrate that: <ul style="list-style-type: none"> The proposed development is justified in terms of geotechnical stability; and The proposed development will be carried out in accordance with good engineering practice. 	Yes <p>Conditions of consent have been included acknowledging the applicant has submitted a geotechnical report in support of the proposal.</p>	Yes

B7 – Front Boundary Setbacks

The proposed garage wall will be setback 6.5m from the front boundary and as such is compliant however the green roof over will have a 5.5m setback. A condition of consent has been included to reduce the extent of the green roof over to match the alignment of the garage wall to enable compliance.

Similarly, the first floor addition to the secondary dwelling will be setback 6.5m however the covered verandah will have a 4.6m setback. A condition of consent has been included to delete the covered verandah to the secondary dwelling as it is considered to be contrary to the objectives of the control in that it creates excessive bulk to the street and disrupts the visual continuity and pattern of buildings in the street.

It is noted that the existing ground floor of the secondary dwelling is non-compliant at 2.45m, however was previously approved.

C3 – Parking Facilities

The proposed single garage is located forward of the primary dwelling and as such is contrary to Council's controls which require garage doors to be integrated in the house design. In view of the topography of the site and the prevalence of garage doors in the immediate streetscape, a variation is considered to be reasonable in this instance.



The proposed single garage further contradicts Council's controls in that the garage opening comprises 54% (5.95m/10.95m). The variation is equivalent to 475mm and it is understood the additional width is to facilitate an accessible corridor leading to the lift. As the garage remains compliant with the relevant side setback controls and the proposal results in an overall increase in landscaping, the variation is considered to have minimal visual impact on the street frontage and is accordingly considered to be consistent with the objectives of the control.

D6 – Access to Sunlight

The proposal will not alter the extent of solar access received by the private open space of the primary dwelling.

The proposal seeks to create a new area of private open space to the secondary dwelling, located to the rear of the dwelling. Whilst the area is consistent with the requirements of private open space in that it is located to the rear of the dwelling and in terms of its size, its southern orientation results in considerable overshadowing. Notwithstanding this, it is acknowledged that the existing private open space to the secondary dwelling is located to the front of the dwelling and is provided with a northern orientation. This space will continue to be immediately accessible from the living room and provides for ample solar access. The proposal is therefore considered to meet the intent of the control.

As part of a request for additional information, updated shadow diagrams were provided by the applicant to demonstrate the impact of the proposed development to the neighbouring sites. In view of the extent of overshadowing cast by the existing fences, the proposed works pose a negligible impact to adjoining sites.

D7 – Views

The subject site is located along the coastline of Collaroy. The subject site and neighbouring developments have access to view lines to the interface between water and sand of Collaroy Beach and the adjoining Collaroy rock pool. Part D7 of the WDCP states that development shall provide for the reasonable sharing of views. Given that alterations and additions are proposed to a dwelling in a location with high-value views, an assessment of the planning principles established under *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* has been carried out below.

In regard to the proposed works and the configuration of adjoining development, it is considered that the only property that may be impacted in regard to view loss is the neighbouring development to the west, being Unit 1/3 Birdwood Avenue. Specifically, its northern and eastern elevations. This neighbour has also raised an objection in relation to view loss.

Step One

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

The subject site and adjoining properties along the southern side of Birdwood Avenue enjoy filtered water views of Collaroy Beach through the existing Norfolk Island Pines and shade sails over Collaroy Beach Playground located on the northern side of Birdwood Avenue.



Looking north from the balcony (private open space) of 1/3 Birdwood Avenue



Looking east from the balcony (private open space) of 1/3 Birdwood Avenue



Looking east from the living room of 1/3 Birdwood Avenue

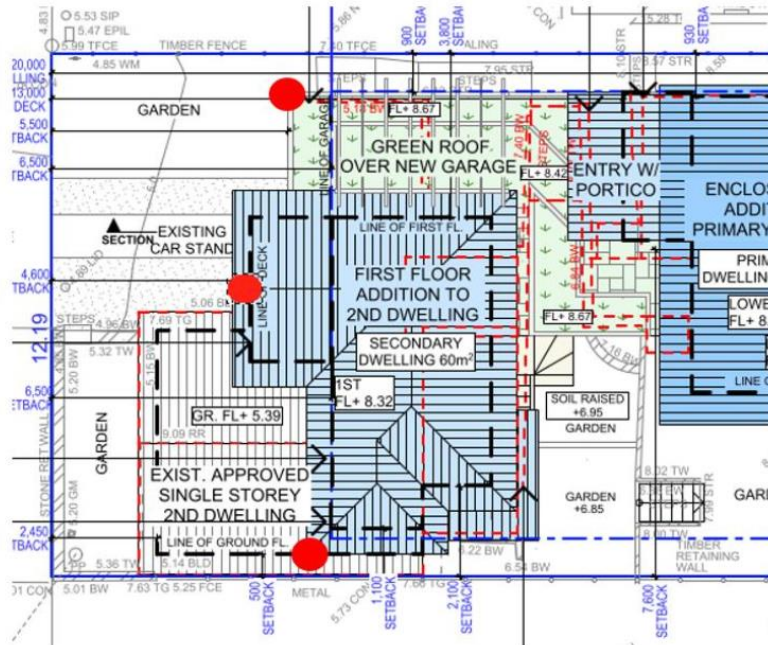
As demonstrated in the images above, a partial and highly obstructed view is attainable from the private open space and living room of 1/3 Birdwood Avenue, and is accordingly considered to be of less value than a whole and unobstructed view.

Step Two

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

View lines are attainable most notably immediately to the north of 1/3 Birdwood Avenue across the front boundary and also to the east, across the side boundary shared with the subject site. As detailed in the submissions filed by the owner's and town planning representative of 1/3 Birdwood Avenue and as discussed during an on site inspection, the view in question is obtained from both a sitting and standing position from the unit's principal living area and private open space (balcony) that adjoins the principal living area.

As part of a request for additional information, three height poles were erected across the subject site, the location of which is outlined in the image below.



Whilst the works proposed will sit forward of the primary dwelling's building line, as demonstrated in the photographs above, views across the eastern side boundary of 1/3 Birdwood Avenue are limited by the dense vegetation which exists both within the subject site, in the form of bamboo, and as a result of the Norfolk Island Pines located on the northern side of Birdwood Avenue. Whilst a small break in the trees, allows for partially unobstructed view to the water line, the Planning Principle accepts that views across a side boundary are more difficult to protect than those across a front or rear boundary. In this regard, it is acknowledged that views across the front of 1/3 Birdwood Avenue will not be altered by the proposal.

In addition to the comments above, whilst it is acknowledged that the areas in question relate to the private open space and principal living room of the unit, the Planning Principle acknowledges that sitting views are more difficult to protect than standing views. In a similar vein, it is noted that both sitting and standing views will be maintained to the north following the proposed works.

Step Three

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

Although the view in question is obtained from the private open space (balcony) and principal living areas of 1/3 Birdwood Avenue, when considered on balance with the views which are retained across the front boundary, the loss of an obstructed view obtained across a side boundary is considered to be reasonable.

Step Four

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches



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

Having regard to the comments above, the proposal is considered to be reasonable. The proposed works are consistent with the relevant height and setback controls and where a variation is proposed to the front setback controls, conditions of consent have been included to delete these elements. Notwithstanding this, the elements conditioned for removal relate to the covered verandah to the secondary dwelling and the overhang of the roof garden over the garage. These elements do not impact upon potential view lines noting that the location of the first floor to the secondary dwelling sits would result in the loss of eastern views however is notably compliant with the relevant front setback control. The deletion of these elements instead seeks to address bulk and scale within the streetscape character rather than view loss acknowledging the comments made under Step Two of this assessment.

Of particular consideration in this assessment is that direct view lines from the principal living area and private open space to the water view remain unaffected by the proposal.

The above assessment has appropriately considered the proposed development in line with the general planning principles pertaining to views established in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* ('Tenacity').

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022. A monetary contribution of \$4,646 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$464,600.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

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

RECOMMENDATION

THAT Northern Beaches Council as the consent authority grant Development Consent to DA2023/0805 for alterations and additions to a dwelling house and secondary dwelling at 5 Birdwood Avenue, Collaroy.

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA.01	A	SITE ANALYSIS PLAN	JJ Drafting	19/09/2023
DA.07	A	PROPOSED GARAGE FLOOR PLAN	JJ Drafting	19/09/2023
DA.08	A	PROPOSED LOWER GROUND FLOOR PLAN	JJ Drafting	19/09/2023
DA.09	A	PROPOSED GROUND FLOOR PLAN	JJ Drafting	19/09/2023
DA.10	A	PROPOSED FIRST FLOOR PLAN	JJ Drafting	19/09/2023
DA.11	A	ELEVATION SHEET 1	JJ Drafting	19/09/2023
DA.12	A	ELEVATIONS SHEET 2	JJ Drafting	19/09/2023
DA.13	A	ELEVATIONS SHEET 4	JJ Drafting	19/09/2023
DA.14	A	ELEVATIONS SHEET 3	JJ Drafting	19/09/2023
DA.15	A	SECTION	JJ Drafting	19/09/2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate (A487935)		JJ Drafting	01/06/2023
BASIX Certificate (A487941)		JJ Drafting	01/06/2023



Geotechnical Assessment	AG 23165	AscentGeo	04/05/2023
Waste Management Plan		JJ Drafting	01/06/2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

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	Response Ausgrid Referral	25 August 2021

(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. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a Dwelling House and Secondary Dwelling.

A dwelling house is defined as

"a building containing only one dwelling."

(development is defined by the Warringah Local Environment Plan 2011 (as amended) Dictionary)

A secondary dwelling is defined as:

"a self-contained dwelling that—

(a) is established in conjunction with another dwelling (the principal dwelling), and

(b) is on the same lot of land as the principal dwelling, and

(c) is located within, or is attached to, or is separate from, the principal dwelling. Note—See clause 5.4 for controls relating to the total floor area of secondary dwellings." (development is defined by the Warringah Local Environment Plan 2011 (as amended) Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

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

4. **No Works on adjoining land**

No approval is granted under this consent for any works on adjoining privately owned land or on property boundaries.

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

5. **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.

6. General Requirements

- (a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

 - 8.00 am to 5.00 pm Monday to Friday only.



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

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

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



building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

7. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$4,646.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$464,600.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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

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 Certifier prior to the issue of the Construction Certificate.

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

9. Fire Separation - Class 1 Buildings

The external walls of the proposed secondary dwelling where less than 900mm from an allotment boundary or less than 1.8 m from another building on the same allotment other than a Class 10 building associated with the Class 1 building or a detached part of the same Class 1 building and any openings within these walls is required to comply with Part 9.2.1 of the National Construction Code – Housing Provisions – 'External walls of a Class 1 building'.

A separating wall between Class 1 buildings, or a wall that separates a Class 1 building from a Class 10a building which is not associated with the Class 1 building is required to comply with Part 9.3 of the National Construction Code – Housing Provisions – 'Fire Protection of Separating Walls and Floors'.

A separating floor or ceiling is required to comply with Part 9.3 of the National Construction Code – Housing Provisions – 'Fire Protection of Separating Walls and Floors'.

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

Reason: To ensure adequate provision is made for fire safety and for building occupant safety.

10. On Slab Rooftop Landscape Works

Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided. Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections. The following soil depths are required to support landscaping: 300mm for groundcovers, perennials, grasses and lawn; and 600mm for shrubs.

Design certification shall be submitted to the Certifier by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and ensure waterproofing and drainage is installed.

11. Stormwater Disposal

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy. Stormwater shall be conveyed from the site to the street. Details by an appropriately qualified and practicing Civil or Hydraulic Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with Council's policy are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.



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

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

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

13. Amendments to the approved plans

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

- The overhang of the roof garden over the garage is to be deleted. The northern edge of the roof garden is to align with the wall of the garage below.
- The proposed covered verandah to the secondary dwelling which addresses Birdwood Avenue is to be deleted.
- Areas nominated as "existing garden" on Drawing No. DA.18 Landscape Concept Plan Issue A dated 19/09/2023 and prepared by JJ Drafting must be maintained in line with the previous approval issued by the Land and Environment Court in relation to DA2019/0616.

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

14. Boundary Identification Survey

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

15. Installation and Maintenance of Sediment Control

Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).



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 ensure no substance other than rainwater enters the stormwater system and waterways.

16. Compliance with Standards

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

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

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

17. External Finishes to Roof

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

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

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

18. Sydney Water "Tap In"

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

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

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

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

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

19. Construction site management plan

Before the issue of a construction certificate, the applicant must ensure a construction site management plan is prepared before it is provided to and approved by the certifier. The plan must include the following matters:

- location and materials for protective fencing and hoardings to the perimeter on the site provisions for public safety
- pedestrian and vehicular site access points and construction activity zones
- details of construction traffic management, including proposed truck movements to and from the site and estimated frequency of those movements, and measures to preserve pedestrian safety in the vicinity of the site
- protective measures for on-site tree preservation (including in accordance with AS
- 4970- 2009 Protection of trees on development sites and Council's DCP, if applicable) and trees in adjoining public domain (if applicable)
- details of any bulk earthworks to be carried out location of site storage areas and sheds equipment used to carry out all works



- a garbage container with a tight-fitting lid dust, noise and vibration control measures location of temporary toilets.

The applicant must ensure a copy of the approved construction site management plan is kept on-site at all times during construction.

Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.

20. 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 Certifier prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

21. Pre-Construction Dilapidation Report

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

- 3 Birdwood Avenue, Collaroy
- 7 Birdwood Avenue, Collaroy

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage arising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

DURING BUILDING WORK

22. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees within the site, including trees and vegetation nominated for retention on the approved Plans,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all trees and vegetation within the road reserve.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project 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/Project 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/Project 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/Project 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/Project 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/Project Arborist to the Principal Certifier,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
 - ix) the activities listed in section 4.2 of AS4970-2009 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 AS4373-2007 Pruning of amenity trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

- c) The arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

23. 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.



24. Removing, Handling and Disposing of Asbestos

- Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)];
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

25. Geotechnical Requirements

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

Reason: To ensure geotechnical risk is mitigated appropriately.

26. Demolition Works - Asbestos

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

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

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

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

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

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 Certifier.



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

28. Property Boundary Levels

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To maintain the existing profile of the nature strip/road reserve.

29. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

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 Planning and Environment.

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 Department of Planning and Environment.

Reason: Aboriginal Heritage Protection.

31. Stockpiling of Topsoil

During site excavation, topsoil which is to be used in later landscape works is to be stockpiled on site and stabilised during construction works. Stockpiles are to be stored outside of hazard areas and not located within the dripline of existing trees which are to be retained.

Reason: To ensure protection and retention of the Urban Forest/Natural Environment.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

32. Landscape Completion

Landscape works are to be implemented in accordance with the approved Landscape Plan(s) (DA.18 Rev.A, dated 19/09/2023 prepared by JJ Drafting), and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries, and planting shall be installed as indicated on the approved Landscape Plan,
- b) mass planting shall be installed at minimum 900mm intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for other planting of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a planter bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch.
- c) Areas nominated as "existing garden" on Drawing No. DA.18 Landscape Concept Plan Issue A dated 19/09/2023 and prepared by JJ Drafting must be maintained in line with the previous approval issued by the Land and Environment Court in relation to DA2019/0616



Prior to the issue of an Occupation Certificate, details (from a landscape architect, landscape designer or qualified horticulturalist) shall be submitted to the Principal Certifier, 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 Certifier prior to the issue of an Occupation Certificate.

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

34. Post-Construction Dilapidation Report

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

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

Reason: To maintain proper records in relation to the proposed development.

35. Geotechnical Certification Prior to Occupation Certificate

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

36. Retaining wall

The retaining wall 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

37. Removal of All Temporary Structures/Material and Construction Rubbish

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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



Reason: To ensure bushland management.

38. **House / Building Number**

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

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

Reason: Proper identification of buildings.

39. **Waste Management Confirmation**

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

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

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

40. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

The approved landscape planted areas consisting of lawn on structure, planting at grade, planting on structure shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

41. **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.

42. **Retention of Natural Features**

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

Reason: To ensure the retention of natural features.

43. **Plant Noise**

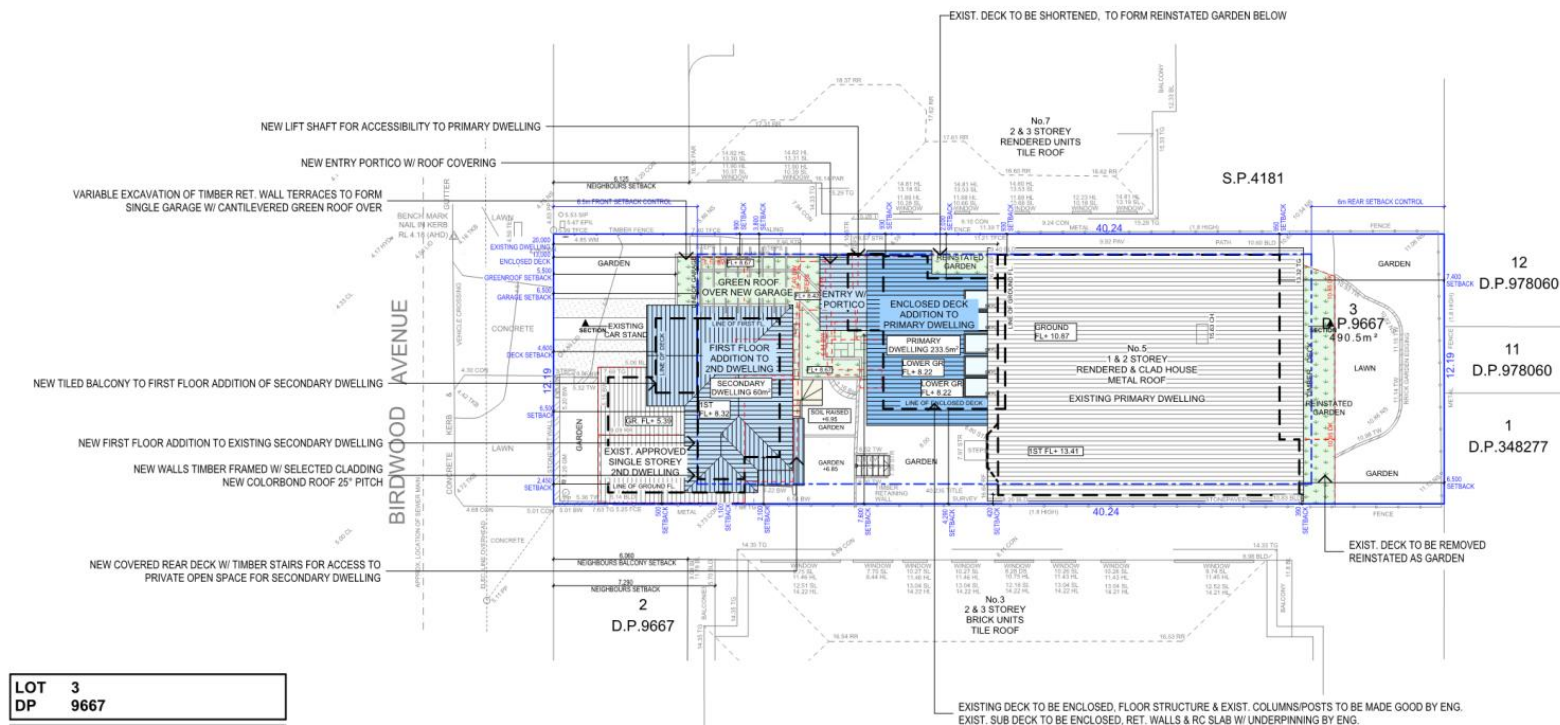
Any plant equipment associated with the development, including the passenger lift, must be installed and operated at times so as not to cause 'offensive noise'. It must be demonstrated that the noise level will not exceed 5dBA above background noise when measured from the nearest property boundary, as defined by the Protection of the Environments Operation Act 1997.

Reason: To ensure compliance with legislation and to protect the acoustic amenity of neighbouring properties.

**FINAL DECLARATION**

Consultant Name: Melissa Rodrigues, GAT & Associates.


In submitting this report to Council, I declare that I do not have a conflict of interest in making this recommendation.

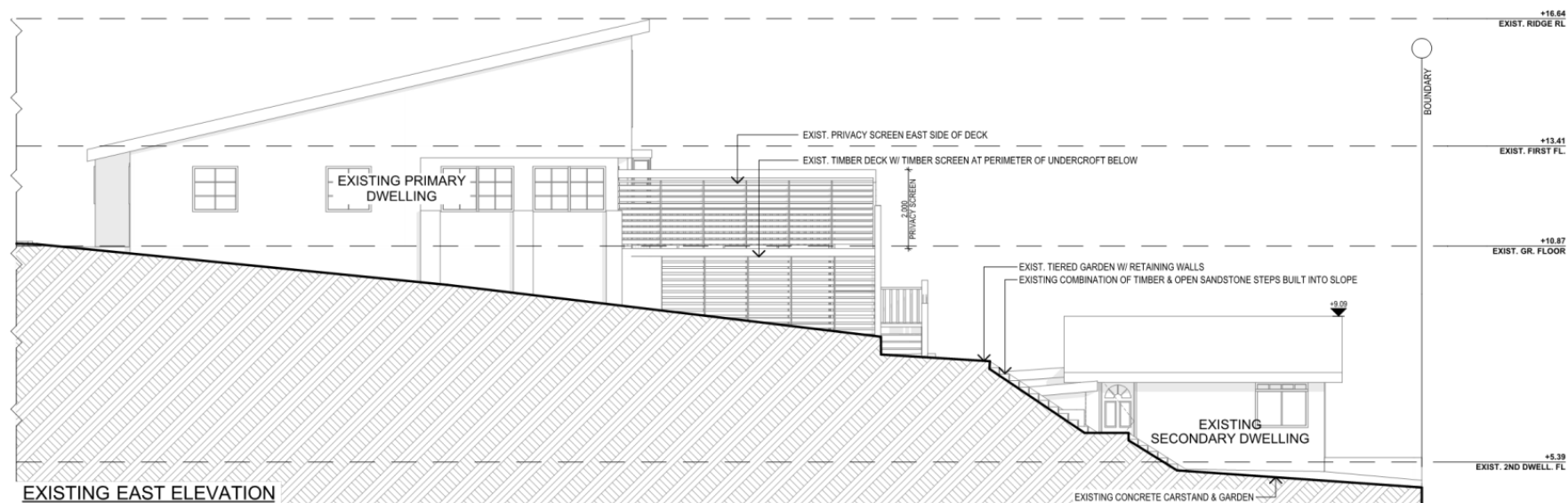
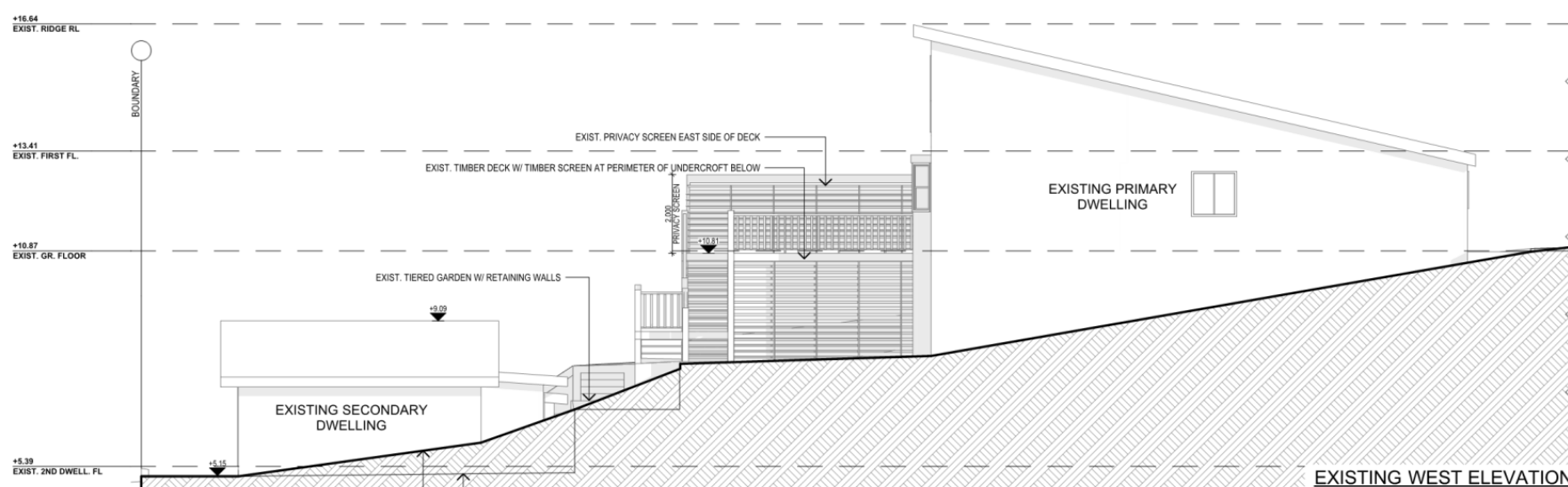


LOT	3
DP	9667
SITE AREA	= 490.5 m²
GROSS FLOOR AREA - PRIMARY	
APPROX. EXISTING GROSS FLOOR AREA	180m ²
PROPOSED NEW GROSS FLOOR AREA	73m ²
GARAGE/STORAGE FLOOR AREA	47m ²
TOTAL NEW GROSS FLOOR AREA	253m²
GROSS FLOOR AREA - SECONDARY	
EXISTING GROSS FLOOR AREA	39m ²
PROPOSED NEW FLOOR AREA	21m ²
GARAGE/STORAGE FLOOR AREA	0m ²
TOTAL NEW GROSS FLOOR AREA	60m²

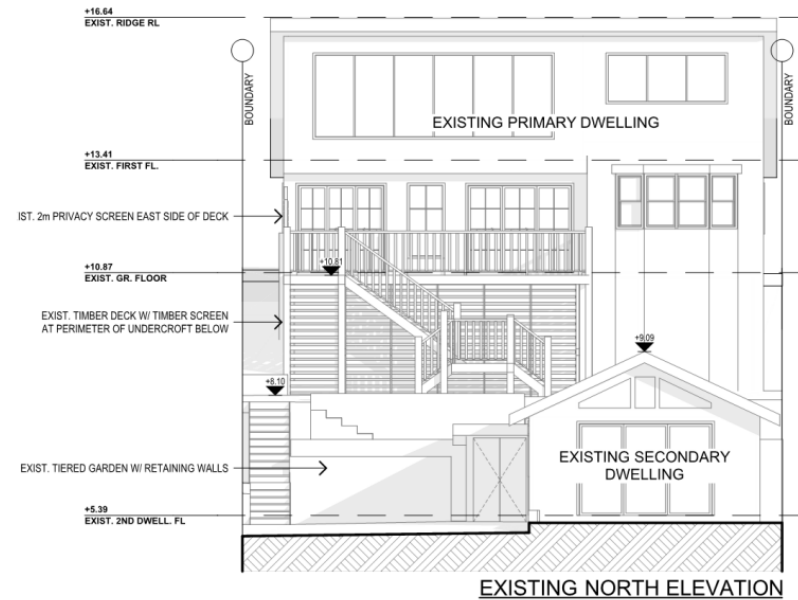
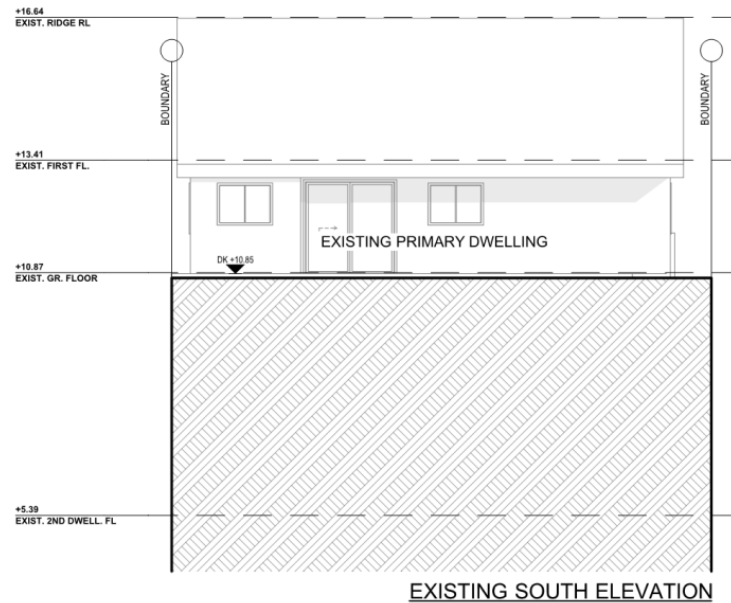
SITE PLAN

Existing Front Building has DA approval for Secondary Dwelling (DA 2019/616)

<div>TRUE NORTH:</div> <div></div>	<div>NOTES (E & OE)</div> <div><ul style="list-style-type: none">• All structures including stormwater & drainage to engineer's details.• Do not obtain dimensions by scaling drawings.• All dimensions are to be checked on site prior to starting work.• These drawings are to be read in conjunction with all other consultant's drawings and specifications.• All workmanship & materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards & local council requirements.• New materials are to be used throughout unless otherwise noted.• Concrete footings, slab, structural beams or any other structural members are to be designed by a practicing engineer.</div>	<div>JJ Drafting</div> <div>Australia P/L</div> <div>26/90 Mona Vale Road, Mona Vale, NSW, 2103</div> <div>PO Box 687, Dee Why, NSW, 2099</div> <div>Mob. 0414 717 541 Email: jdraft@jjp.com.au</div> <div>www.jjdrafting.com.au</div>	<div>REV:</div> <div>DATE:</div> <div>A19/09/23</div>	<div>DESCRIPTION:</div> <div>ADDITIONAL INFO. PROVIDED</div>	<div>PROPOSED ALTERATIONS AND ADDITIONS</div> <div>5 BIRDWOOD AVENUE, COLLAROY 2097</div> <div>CLIENT:</div> <div>CHRIS & KRISTINE</div> <div>DRAWING TITLE:</div> <div>SITE ANALYSIS PLAN</div>	<div>DATE:</div> <div>DEC/22</div>	<div>DRAWN BY:</div> <div>AN</div>	<div>SCALE:</div> <div>1:200 @ A3</div>
			<div>JOB No:</div> <div>1104/22</div>	<div>CHECKED BY:</div> <div>JJ</div>		<div>DRAWING No:</div> <div>DA.01</div>		



	<div>NOTES (E & OE)</div> <ul style="list-style-type: none">• All structures including stormwater & drainage to engineer's details.• Do not obtain dimensions by scaling drawings.• All dimensions are to be checked on site prior to starting work.• These drawings are to be read in conjunction with all other consultant's drawings and specifications.• All workmanship & materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards & local council requirements.• New materials are to be used throughout unless otherwise noted.• Concrete footings, slab, structural beams or any other structural members are to be designed by a practicing engineer.	<div>JJ Drafting</div> <div>Australia P/L</div> <div>26/90 Mona Vale Road, Mona Vale, NSW, 2103</div> <div>PO Box 687, Dee Why, NSW, 2099</div> <div>Mob. 0414 717 541 Email: jdraft@tpg.com.au</div> <div>www.jdrafting.com.au</div>	<div>REV: DATE: DESCRIPTION:</div> <div>A 19/09/23 ADDITIONAL INFO. PROVIDED</div>	<div>PROPOSED ALTERATIONS AND ADDITIONS</div> <div>5 BIRDWOOD AVENUE, COLLARROY 2097</div> <div>CLIENT:</div> <div>CHRIS & KRISTINE</div>	<div>DATE:</div> <div>DEC/22</div>	<div>DRAWN BY:</div> <div>AN</div>	<div>SCALE:</div> <div>1:100 @ A3</div>
			<div>JOB No:</div> <div>1104/22</div>	<div>CHECKED BY:</div> <div>JJ</div>	<div>DRAWING No:</div> <div>DA.05</div>		



	<div>NOTES (E & OE)</div> <div><div><div>All structures including stormwater & drainage to engineer's details.</div><div>Do not obtain dimensions by scaling drawings.</div><div>All dimensions are to be checked on site prior to starting work.</div><div>These drawings are to be read in conjunction with all other consultant's drawings and specifications.</div></div><div><div>All workmanship & materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards & local council requirements.</div><div>New materials are to be used throughout unless otherwise noted.</div><div>Concrete footings, slab, structural beams or any other structural members are to be designed by a practicing engineer.</div></div></div>	<div>JJ Drafting</div> <div>Australia P/L</div> <div>26/90 Mona Vale Road, Mona Vale, NSW, 2103</div> <div>PO Box 687, Dee Why, NSW, 2099</div> <div>Mob. 0414 717 541 Email: jdraft@tpg.com.au</div> <div>www.jdrafting.com.au</div>	<div>REV: DATE: DESCRIPTION:</div> <div>A 19/09/23 ADDITIONAL INFO. PROVIDED</div>	<div>PROPOSED ALTERATIONS AND ADDITIONS</div> <div>5 BIRDWOOD AVENUE, COLLAROY 2097</div> <div>CLIENT:</div> <div>CHRIS & KRISTINE</div>	<div>DATE:</div> <div>DEC/22</div>	<div>DRAWN BY:</div> <div>AN</div>	<div>SCALE:</div> <div>1:100 @ A3</div>
				<div>JOB No:</div> <div>1104/22</div>	<div>CHECKED BY:</div> <div>JJ</div>	<div>DRAWING No:</div> <div>DA.06</div>	

ITEM 3.2**DA2023/0500 - 52 GOLF PARADE MANLY - DEMOLITION
WORKS AND CONSTRUCTION OF A DWELLING HOUSE
INCLUDING SWIMMING POOL****REPORTING MANAGER**

Adam Richardson

TRIM FILE REF

2023/787640

ATTACHMENTS

- 1 [↓](#)Assessment Report
- 2 [↓](#)Site Plans and Elevations
- 3 [↓](#)Clause 4.6 - Building Height
- 4 [↓](#)Clause 4.6 - Floor Space

PURPOSE

To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the building height standard and floor space ratio.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 and Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants 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.
- B. THAT Council as the consent authority **refuses** Development Consent to DA2023/0500 for demolition works and construction of a dwelling house including swimming pool on land at Lot 2 DP 309719, 52 Golf Parade MANLY, for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0500
Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 2 DP 309719, 52 Golf Parade MANLY NSW 2095
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Clinton John Ogier Laura Cellene Ogier
Applicant:	Simon Rosewell Pty Ltd
Application Lodged:	19/05/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	29/05/2023 to 12/06/2023
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	4.3 Height of buildings: 5.6% 4.4 Floor space ratio: 15.3%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 963,600.00

EXECUTIVE SUMMARY

This development application seeks consent for demolition of the existing dwelling and construction of a new dwelling and swimming pool.

The application is referred to the Development Determination Panel (DDP) as the proposed development exceeds the FSR development standard by more than 10%. It is noted a variation to the Height of Buildings is also to be considered, however this variation is less than 10%.

Concerns raised in the objections predominantly relate to height of building, FSR, flooding,

landscaping, streetscape, heritage, privacy and built form non-compliances with both the Manly Local Environmental Plan 2013 (MLEP 2013) and Manly Development Control Plan (MDCP).

Council's Heritage Officer has reviewed the amended plans and is not supportive of the development due to the pronounced built form impacts on the streetscape and adjoining and surrounding heritage items. Furthermore Council's Floodplain Engineer does not support the development due to the proposed enclosed plant room with a flood proof access door below the FPL is not accepted. For such an arrangement to be considered, the plant room would need to be permanently tanked and have no access points below the FPL of 3.66m AHD. Lastly, Council Landscape Officer does not support the proposal as the Landscape Plan is not able to support tree planting to satisfy 4.1.5.2 (c) of the DCP due poor site planning and layout.

This report concludes with a recommendation that the DDP refuse the development application, for the reasons outlined at the end of this assessment report.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the demolition of the existing flood damaged dwelling and associated structures and the construction of a new detached single residentially dwelling including a plunge pool.

Lower Ground Floor (RL2.13)

- Single carport with bin enclosure
- Entry stairs
- Plant room
- Open foundation space

Ground Floor (RL4.75)

- Foyer
- Lounge with front balcony
- Laundry
- Water closest
- Stairs
- Kitchen/dining/living
- Rear elevated deck with stairs

First Floor (RL7.77)

- Three (3) bedrooms
- Stairs
- Bathroom
- Water closest
- Linen
- Master bedroom with walk-in-robe and ensuite

Roof Level (RL11.105)

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

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 5.10 Heritage conservation
 Manly Local Environmental Plan 2013 - 5.21 Flood planning
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 3.3.1 Landscaping Design
 Manly Development Control Plan - 3.3.2 Preservation of Trees or Bushland Vegetation
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features
 Manly Development Control Plan - 5.4.3 Flood Prone Land

SITE DESCRIPTION

Property Description:	Lot 2 DP 309719 , 52 Golf Parade MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Golf Parade.</p> <p>The site is regular in shape with a frontage of 6.705m along Golf Parade and a depth of 39.645m. The site has a surveyed area of 267.1m².</p>

The site is located within the R1 General Residential zone and accommodates a single storey dwelling house and detached outbuildings in the rear yard. The house, outbuilding and subject site were flooded during last years storm event in March 2022.

The site is generally flat.

The site has a mix of native and exotic species of plants and trees located within the rear yard.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by the recently completed dwellings on either side of the subject site which have been elevated above the Floodplain Level (FPL). Additionally, to the rear of the site is Item I214 - Former tram depot complex and associated buildings (now Harris Farm) and across the road is Item I158 - Sewerage Pumping Station No 36 which are both identified as heritage item under the Manly Local Environmental Plan 2013 (MLEP 2013). Golf Parade has a mix of different types of residential dwelling types.

Map:



SITE HISTORY

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

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

Application History:

The application was lodged with Council on 28 April 2023.

The application was notified on 23 May 2023 for a period of 14 days. During the notification, a total of four (4) submissions were received.

A request for information letter was issued to the applicant on 28 August 2023 raising the following issues:

- Heritage impacts;
- Flooding impacts;
- Landscape impacts
- Built form issues including height, overshadowing, privacy, excessive wall heights, inadequate setbacks and car parking issues.

The applicant responded with an amended application that was lodged on the NSW Planning Portal on 23 October 2023.

The applicant was advised on 21 November 2023 of the remaining issues with the development and that on the balance of these issues the application would be reported to the the DDP for determination, by way of recommended refusal.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly 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	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider “Prescribed conditions” of development consent. These matters are capable of being addressed via a condition of consent, should the development be approved.

Section 4.15 Matters for Consideration	Comments
Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Heritage, Flooding and Landscape from Council's Referral Departments with additional planning matters such as Clause 4.3 Height of Buildings, Clause 4.6 Exceptions to development standards, Clause 3.4.1 Sunlight Access and Overshadowing, Clause 3.4.2 Privacy, Clause 4.1.2.1 Wall height, Clause 4.1.4 Setbacks (front, side and rear) and Building Separation, Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities).</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter is capable of being addressed via a condition of consent, should the development be approved.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter is capable of being addressed via a condition of consent, should the development be approved.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter is capable of being addressed via a condition of consent, should the development be approved.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(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.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Clause 4.3 Height of Buildings, Clause 5.10 Heritage Conservation, Clause 5.21 Flood Planning of MLEP 2013 and Clause 3.1.1 Streetscape (Residential areas) and Clause 4.1.2

Section 4.15 Matters for Consideration	Comments
	Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be 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 29/05/2023 to 12/06/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Bill Tulloch	Po Box 440 MONA VALE NSW 1660
Ms Michele Terese Kaye	403 Pittwater Road NORTH MANLY NSW 2100
Mr Peter Robert Jansen	18 Forestville Avenue FORESTVILLE NSW 2087
Mr Christopher John Collard	50 Golf Parade MANLY NSW 2095

The following issues were raised in the submissions:

- Survey fails to display dwelling and existing structures at 1 Balgowlah Road
- Non compliance with the height of building (bulk and scale)
- Non compliance with the floor space ratio
- Clause 3.1 Streetscape
- Clause 3.4 Amenity (Views, Overshadowing, Overlooking/Privacy, Noise)
- Clause 4.1.2.1 Wall heights
- Clause 4.1.4 Setback (front, side and rear)
- Clause 4.1.9 Swimming Pools and impacts of swimming pool with the tree protection zone of the Lemon Scented Gum tree at 50 Golf Parade
- *"Essentially, nothing has been materially changed or resolved as a result of the latest amendments / modifications for this DA."*
- Contrary to zone objectives
- Inadequate Clause 4.6 variation
- Public interest
- Heritage items
- Insufficient landscape areas

- Poor garage design
- Excessive excavation and geotechnical concerns
- Stormwater concerns
- Flood concerns
- Precedent
- Dilapidation reports

The above issues are addressed as follows:

- ***Survey fails to display dwelling and existing structures at 1 Balgowlah Road***

Comment: Issues were raised by the owner of 1 Balgowlah Road that the original survey and amended plans failed to demonstrate the existing dwelling and associated structures on that property. A number of site inspections were completed during the assessment of this application and it is considered that sufficient information both these inspections and spatial/aerial information/photos to make an adequate assessment of possible impacts on 1 Balgowlah Road.

- ***Non compliance with the height of building (bulk and scale) and number of storeys***

Comment: Issues were raised by a number of submissions over the non compliance with the building height and bulk and scale associated with this non-compliance. A written clause 4.6 variation was submitted with this application by the applicant and considered during the assessment under Clause 4.6 of this assessment report. In short it is considered that the proposed dwelling is excessive in building height due to the number of storeys and the nominated floor to ceiling heights (in particularly the lower ground floor). It is considered that a more skillful design is achievable to the dwelling to ensure compliance with Clause 4.3 Height of Building, ensuring that the habitable floor levels would be above the FPL.

This issue will form one of the reasons for reason.

- ***Non compliance with the floor space ratio***

Comment: Issues were raised by a number of submissions over the non compliance with the floor space ratio. Under Clause 4.6 of this assessment report the variation submitted by the applicant was considered and assessed. It is noted that recent consent issued at 54 Golf Parade via DA2019/1284 for Construction of a dwelling house allowed for a variation over 10%, similar to this proposed dwelling. In short, the variation the FSR is supported and a full assessment has been completed under Clause 4.6 of this assessment report.

- ***Clause 3.1 Streetscape***

Comment: Issues were raised over the streetscape and the manner in which the dwelling presents to Golf Parade as a three (3) storey dwelling due to the excessive lower ground floor (floor to ceiling height). An assessment under Clause 3.1.1 Streetscape (Residential areas) of the Manly Development Control Plan 2013 has determined that the current proposal is inconsistent with the provisions of this clause and this matter will form another reason for refusal.

- **Clause 3.4 Amenity (Views, Overshadowing, Overlooking/Privacy, Noise)**

Comment: An assessment of the above issues has been completed and it is considered that amenity in relation to views, overshadowing and noise are reasonable and/or could be suitable conditioned if this application was to be recommended for approval. The amended plans has added some privacy treatments to the western elevations however has failed to address this clause completely and hence it is considered that the proposed development is inconsistent with the provisions of Clause 3.4.2 Privacy and Security of the Manly Development Control Plan and this matter will form another reason for refusal.

- **Clause 4.1.2.1 Wall heights**

Comment: Issue were raised over the wall heights and an assessment was completed under Clause 4.1.2.1 Wall heights. In short, the proposed development is inconsistent with the provisions of Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) of the Manly Development Control Plan. In particular, the excess of the wall height control creates streetscape impacts and the proposal is also up to three (3) stories whilst exceeding the wall height control and this matter will form another reason for refusal.

It is noted that this site is only 6.705m in width and some concessions must be given to any future a application/review.

- **Clause 4.1.4 Setback (front, side and rear)**

Comment: Issues were raised over the front, side and rear setbacks by a number of submissions during the assessment of this application. The front setback to the dwelling and carport is considered to be adequate. It is noted there was a reduction in the size of front balcony with the increased width of the planter boxes at the sides and front of the balcony via the amended plans and it is considered that this small balcony would not create excessive amenity and/or privacy concerns. However support could not be granted for the proposed side setbacks particularly to the western side boundary and the proposed swimming pool in the rear yard. In short, the proposed development is inconsistent with the provisions of Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan and this matter will form another reason for refusal.

- **Clause 4.1.9 Swimming Pools and impacts of swimming pool with the tree protection zone of the Lemon Scented Gum tree at 50 Golf Parade**

Comment: Issues were raised over the swimming pool located in the rear yard adjacent to the rear boundary. It is noted that Council's Landscape Officer also has concerns over the excavation of this pool within the vicinity of the Lemon Scented Gum tree at 50 Golf Parade. In short, the proposed development is inconsistent with the provisions of Clause 4.1.9 Swimming Pools, Spas and Water Features of the Manly Development Control Plan and this matter will form another reason for refusal.

- **"Essentially, nothing has been materially changed or resolved as a result of the latest amendments / modifications for this DA."**

Comment: It is noted that some matters have been addressed by the applicant via the amended information and plans, however there are still too many outstanding matters which have not been properly addressed and thus this current application has been recommended for refusal.

- **Contrary to zone objectives**

***'To provide for the housing needs of the community.
To provide for a variety of housing types and densities.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.'***

Comment: Issues was raised that the proposal was contrary to zone objectives of the Zone R1 General Residential. An assessment has been completed and it is considered that the dwelling house satisfies these zone objectives.

- **Inadequate Clause 4.6 variation**

Comment: A review of the Clause 4.6 variations submitted by the applicant for height of building and FSR of MLEP 2013 have been both assessed. However, the variation to the height of building was not supported and will form a reason for refusal.

- **Public interest**

Comment: A submission raised that the proposal was not in the public interest and this is concurred with and will form another reason for refusal.

- **Heritage items**

Comment: A submission raised concerns about the size of the dwelling and possible impacts on the existing heritage items notably Item I214 - Former tram depot complex and associated buildings - Corner Pittwater Road and Balgowlah Road (now Harris Farm Markets Manly) and Item I158 - Sewerage Pumping Station No 36 - Corner Golf Parade and Balgowlah Road located at the rear and across the road from the subject site.

Council's Heritage Officer is unsupportive of the amended proposal and this is reflected in the referral section of this assessment report. The proposed development is inconsistent with the provisions of Clause 5.10 Heritage conservation of the Manly Local Environmental Plan 2013 and will form a reason for refusal.

- **Insufficient landscape areas**

Comment: Issue was raised over the lack of landscape areas for the proposed dwelling. Assessment under Clause 4.1.5 Open Space and Landscaping of the Manly Development Control Plan has been completed and it is considered that the proposal does not provide a suitable amount of open space and this will form a reason for refusal.

- **Poor garage design**

Comment: A review of the carport and tandem car space has considered to be satisfactory.

- **Excessive excavation and geotechnical concerns**

Comment: Issues were raised over the excavation and geotechnical requirements for the dwelling and swimming pool. A review was completed by Council's Development Engineer who raised no concerns over these matters subject to suitable condition(s), in the event that the development is approved.

- **Stormwater concerns**

Comment: Issues were raised over stormwater requirements for the dwelling. A review was completed by Council's Development Engineer who raised no concerns over these matters subject to suitable condition(s).

- **Flood concerns**

Comment: Issues were raised over flooding requirements for the dwelling and associated structures. A review was completed by Council's Floodplain Engineer who raised initial concerns about the original proposal and subsequent concerns over the amended design. Hence the proposed development is inconsistent with the provisions of Clause 5.21 Flood Planning of the Manly Local Environmental Plan 2013 and Clause 5.4.3 Flood Prone Land of the Manly Development Control Plan and these matters will form a reason(s) for refusal.

- **Precedent**

Comment: Concerns that this dwelling would create a precedent within Golf Parade were raised within the submissions received by Council, however the proposal has been recommended for refusal for a number of reasons and therefore the proposal (in its current form) will not become a precedent.

- **Dilapidation reports**

Comment: A request was for dilapidation reports for adjoining dwellings and associated structures are not necessary as the proposal has been recommended for refusal.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Not supported</p> <p>Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to):</p> <ul style="list-style-type: none"> • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable <p>Updated plans and reports are submitted to address Landscape Referral concerns. It is noted that the 'Statement of proposed modification to development application' includes the following comments: the existing native Coast Banksia is to be retained; the existing street tree is recommended for removal; and the statement suggests the existing Gum located within adjoining property will not be impacted detrimentally.</p> <p>It is Landscape Referral's opinion that the Landscape Plan is not able to support tree planting to satisfy 4.1.5.2 (c) due to the site planning</p>

Internal Referral Body	Comments
	<p>locating the landscape lawn area between a pool and outdoor living areas, such that any tree planting will impact upon areas to be utilised for outdoor living and pool use that are not conducive to retention of a tree.</p> <p>The Landscape Plan submitted at development application remains unaltered, and consists of low height planting to perimeter boundaries and on structure planters, that provide minimal landscape softening of the built form. The Landscape Plan does not reference the retention of the existing Coast Banksia. Landscape Referral are of the opinion that the existing Coast Banksia is not likely to survive construction works in close proximity, and additionally the tree is within two metres of an existing approved dwelling (adjoining property) and will be within two metres of the new dwelling upon the development property, and thus the 2 metre exempt provision can be applied for removal of the Coast Banksia without Council consent.</p> <p>Contrary to the 'Statement of proposed modification to development application' that nominates the existing Coast Banksia to be retained, the AIA report recommends removal of the Coast Banksia identified as tree 3.</p> <p>An Arboricultural Impact Statement (AIA) report is submitted and the AIA report is inconclusive in providing recommendations to allow Council to be satisfied on the retention of the existing Lemon Scented Gum identified as tree 2 in the AIA report that is located within adjoining property number 50. Recommendations for tree 2 in the AIA report is not conclusive as the AIA report comments as follows: <i>"Tree root investigations are recommended to identify the condition of roots & encroachment within the site as the swimming pool proposal is located within the SRZ. Minor fill is also proposed within the SRZ & TPZ as shown within Elevation Plan 201 & Figure 2 below. Should roots be identified as compromised by excavation to accommodate the boundary wall the additional of fill may likely be minimal or negligible"</i>. This does not provide Council with any assurance for preservation of tree 2 and rather a tree root investigation should be conducted along the extent of excavations for the plunge pool to allow for a definitive assessment of any tree root impacts and any applicable tree protection measures, and as such Landscape Referral are unable to support the application as it is not known if the proposed works will or will not impact upon tree 2.</p> <p>The street tree identified as tree 1 is in decline with canopy reduction and deadwood evident, and replacement with a smaller tree adaptable to the limited soil area is more practicable in establishing canopy coverage along the streetscape.</p>
NECC (Coast and Catchments)	<p>Supported, subject to Conditions</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016;

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.10 & 2.12); • Relevant LEP and DCP clauses. <p>State Environmental Planning Policy (Resilience & Hazards) 2021</p> <p>The subject land has been included on the 'Coastal Environment Area' and maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10 and 2.12 of the CM (R & H) apply for this DA.</p> <p>Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Simon Rosewell dated April 2023, the DA satisfies requirements under clauses 2.10 and 2.12 of the SEPP R&H.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Manly LEP 2013 and Manly DCP</p> <p>No coastal related issues identified.</p> <p>As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Manly LEP 2013 and Manly DCP.</p>
NECC (Development Engineering)	<p><i>Supported, subject to Conditions</i></p> <p>The proposed development is in Zone 1 of Region 3 where on site detention is usually required. Given that the site is affected by the 1% AEP flood, on site detention is not seen as beneficial and hence will not be required. The site is very flat but survey information indicates that it has some fall to Golf Parade. Vehicle crossing construction is proposed. It is noted that the proposed development is not supported by Natural Environment - Flood. Subject to successful resolution of the concerns raised by Natural Environment - Flood, there are no objections to the proposal.</p>
NECC (Flooding)	<p><i>Not supported</i></p> <p>The proposed Development Application seeks consent for demolition of an existing dwelling and construction of a new two storey dwelling with a lower ground floor plant room, garage, storage area and in ground pool.</p> <p>The property is affected by the 1% AEP Flood, PMF Flood, Medium - High Flood Risk Precinct, Flood Storage Area and a H5 Flood Life Hazard Category.</p>

Internal Referral Body	Comments
	<p>The proposed development does not meet the following flood related controls:</p> <p>Section 5.4.3 Flood Prone Land from the Manly DCP 2013</p> <ul style="list-style-type: none"> C1: The proposed enclosed plant room with a flood proof access door below the FPL is not accepted. To be considered the plant room would need to be permanently tanked and have no access points below the FPL of 3.66m AHD. Council flood referral body would consider supporting a smaller flood-proofed room (maximum internal floor area of 10m²) accessible below the flood planning level with a self-actuating flood door/barrier (not requiring the resident to close the door or allowing the door to be “choked” open) to store water damage susceptible plant equipment only (batteries, AC Unit, switch board and not allowing space for rainwater tank, etc.). Note that the above allowance would not strictly meet councils DCP. However, consideration is being given as a result of the sites size. <p>Clause 5.21 of the Manly LEP 2013</p> <ul style="list-style-type: none"> (2a): Is compatible with the flood function and behaviour on the land.
Strategic and Place Planning (Heritage Officer)	<p>Not supported</p> <p>The proposal has been referred to Heritage as the subject site adjoins a heritage item and is located within proximity of another:</p> <p>Item I214 - Former tram depot complex and associated buildings - Cnr Pittwater Road and Balgowlah Road</p> <p>Item I158 - Sewerage Pumping Station No 36 - Cnr Golf Parade and Balgowlah Road</p> <p>Details of heritage items affected</p> <p>Details of the items as contained within the Manly inventory is as follows:</p> <p>Item I214 - Former tram depot complex and associated buildings <u>Statement of significance</u> Listed as a major significance due to its association with the development of trams/transport in Manly, the complex demonstrates the scale and facilities required in small tram depots. One of two sites remaining associated with trams. <u>Physical description</u></p>

Internal Referral Body	Comments																					
	<p>The remaining buildings on site are those constructed in 1911 as the office block and tram shed. The single storey brick office building on the east side of the depot has been substantially altered and partly re-roofed. The original roof with ridge tiles survives along the wing at the rear. The tram shed has been substantially altered - its northern and western walls and roof have been replaced, although the steel structure and other brick walls survive.</p> <p>Item I158 - Sewerage Pumping Station No 36 (SP0036)</p> <p><u>Statement of significance</u></p> <p>SP0036 Manly is of historic, aesthetic and technical/research significance. Commissioned in 1916, it was among a small group of low level sewage pumping stations which served the Manly Sewerage System and later Northern Suburbs Ocean Outfall Sewer (NSOOS). The station along with the construction of the NSOOS formed a part of the major advance in the development of municipal services in the Manly district in the early part of the 20th century.</p> <p><u>Physical description</u></p> <p>SP0036 Manly is a low level sewage pumping station located adjacent to Manly Golf Course. It consists of two distinct parts: a superstructure comprising a small single storey load bearing brick building; and a substructure constructed of flanged cast iron plate which houses machinery and sewage chambers. Architecturally, the building was designed in a utilitarian version of the Federation Free Style.</p> <table><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>SEPP (Biodiversity and Conservation) 2021</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>N/A</td><td></td></tr></table> <p>Consideration of Application</p> <p>The proposal seeks consent for the demolition of the existing single storey dwelling and the construction of a new dwelling and a plunge pool on the subject site. The proposed dwelling has an elevated ground floor, a first floor and a lower ground floor which contains a garage, plant room and undercroft area that has 2.4m floor to ceiling height. The overall building height is above the permissible height limit and the form of the proposed building is not</p>	Other relevant heritage listings			SEPP (Biodiversity and Conservation) 2021	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of Significance	No		Other	N/A	
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Other	N/A																					

Internal Referral Body	Comments
	<p>considered to be sympathetic to the existing streetscape or the heritage items within the vicinity.</p> <p>The proposal is not consistent with the heritage objectives of Manly Local Environmental Plan 2013, and the guidelines of Manly Development Control Plan 2013 - Heritage considerations - 3.2.1.1 Development in the vicinity of heritage items, or conservation areas. The bulk and scale should be reduced and the roof form should be sympathetic to the character of the local area.</p> <p>Revised comments - 26 October 2023</p> <p>Amended documents, received on 23 October 2023, provide a minor reduction to the overall building height, which is considered insufficient as the building height is still above the permissible height limit. The proposed building still presents a three storey appearance and its bulk and scale is still not sympathetic to the heritage listed Pumping Station across the road. The statement submitted for the amended documents states that: "<i>The heritage items do not form a tenable influence on the composition of the streetscape or housing typology.</i>" This statement is not agreed with as the surrounding buildings are considered to be sympathetic in scale, form and character by emulating the envelope and form and responding to the character of the heritage item through the use of the materials, scale, detailing and proportions. It is considered that the proposed height could be further reduced and the three storey appearance could be removed to respond to the character the heritage item and the streetscape.</p> <p>Therefore, Heritage require amendment to the proposal.</p> <p><u>Consider against the provisions of CL5.10 of MLEP.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p>
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>Supported, subject to Conditions</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council

Policies have been considered in the merit assessment of this application.

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1382007S dated 27 April 2023).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	50	100

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

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

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

Comment:

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

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

The proposed development is not considered likely to cause an adverse impact on safe access to and along the foreshore, overshadowing, wind funnelling and the loss of views from public places to foreshores, the visual amenity and scenic qualities of the coast, including coastal headlands, or cultural and built environment heritage.

Division 5 General

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

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

Coastal Management Act 2016

The subject site identified as Coastal use area under the Coastal Management Act 2016.
The management objectives for the coastal use area are as follows:

*"(a) to protect and enhance the scenic, social and cultural values of the coast by ensuring that:
(i) the type, bulk, scale and size of development is appropriate for the location and natural scenic quality of the coast, and*

- (ii) adverse impacts of development on cultural and built environment heritage are avoided or mitigated, and
(iii) urban design, including water sensitive urban design, is supported and incorporated into development activities, and
(iv) adequate public open space is provided, including for recreational activities and associated infrastructure, and
(v) the use of the surf zone is considered,
(b) to accommodate both urbanised and natural stretches of coastline."

Comment:

The visual amenity from private and public space is not adversely effected. In addition, the surrounding area consists of examples of similar developments.

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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	8.975m	5.6%	No
Floor Space Ratio	0.6:1 (160.3m ²)	0.69:1 (184.9m ²)	15.3%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
Part 5 Miscellaneous provisions	Yes
5.10 Heritage conservation	No
5.21 Flood planning	No

Clause	Compliance with Requirements
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings and Floor space ratio
Requirement:	8.5m / 0.60:1 (160.3m ²)
Proposed:	8.975m / 0.69:1 (184.9m ²)
Percentage variation to requirement:	5.6% / 15.3%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings and Clause 4.4 - Floor space ratio 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 and Clause 4.4 - Floor space ratio 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 for the variation to Clause 4.4 - Floor space ratio has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard. It is considered that in the case of the variation proposed to Clause 4.3 - Height of Buildings, it is not unreasonable or unnecessary to comply with the development standard as a more skillful design is available which provides for a suitable built form above the FPL.

The Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case, in the case of FSR as required by cl 4.6(3)(a). It has failed in the case of building height.

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

Height of Buildings

The portion of the proposed works which exceeds the development standard is the centrally located roof ridge and the western parapet, which breaches the limit. The environmental planning grounds that justify the exceedance of the development standard are as follows:

"The proposed works have been carefully designed to create an appropriate family dwelling on the small lot with a high level of amenity, architectural quality and environmental performance. The dwelling would ordinarily be compliant with this control; it is however the designation of the site as being 'Flood Prone Land' and the current Flood Planning Policy that requires significant artificial raising of Ground Floor Levels, and the prevalent breach to this control for new dwellings in this flood affected area. The flood management modelling has stipulated the ground floor level be 1.37m higher than existing, which is appropriate given the flood damaged nature of the property now rendered uninhabitable. Of further resultant effect is the preference to minimise site excavation and the creation of below ground levels, whilst also requiring flood protected plant for the dwelling.

There is a clear and natural priority for this fundamental planning policy to be implemented to ensure dwellings in flood affected areas are safe and will be appropriately designed to withstand flood events. When looking at the new dwellings in this flood prone area that have been designed to satisfy the new flood modelling and management policy it is evident that many naturally breach this control as a direct correlation. (Clause 5.21 in effect requires development to satisfy Flood Planning requirements if consent is to be granted.)

Strict compliance with this development standard is unreasonable and inappropriate for dwellings in this flood affected area. (It is appropriate that such flood affected areas will be provided with development dispensation to height controls in due course, whether an amendment to Clause 4.3A or via a revision to the HOB mapping or via Clause 5.22)."

Floor Space Ratio

The proposed dwelling exceeds the development standard and the environmental planning grounds that justify the exceedance of the development standard are as follows:

"The proposed works have been carefully designed to create an appropriate family dwelling on the small lot with a high level of amenity, architectural quality and environmental performance.

The proposed form, siting and scale are consistent and commensurate with neighbouring developments within the precinct.

The stated objectives are satisfied and there is minimal impact.

The works retain and enhance the landscaped setting and positively contribute to the streetscape, which an FSR control seeks to facilitate.

The benefits of providing for a compact family dwelling of only 187m² far outweigh the inability to create a modest family dwelling on this small lot, particularly in light of the current dwelling being deemed uninhabitable following recent flood events.

Strict compliance is not necessary or reasonable to achieve the objectives as stated;

- *variation is necessary to create expected and appropriate housing needs of the community for small lots and lots with specific constraints. (FSR is not the best mechanism to ensure normal sized family dwelling are capable of being constructed on small lots)*
- *variation is required to facilitate a variety of housing types and densities that accommodate dwellings small lots.*

Such a variation is common in this precinct; this variation was recently permitted to the neighbouring dwelling at 54 Golf Parade."

Council has reviewed the applicants written request and agrees that the applicant has made the following valid justifications for variation for the floor space ratio control:

- The proposed works are compatible with the existing character of the surrounding locality and is generally a lesser bulk and scale than the existing development within the immediate vicinity.
- The works are not expected to have unreasonable amenity impacts given the context of the site within a residential environment.

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

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

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

It is noted that Council does not support the variation to the Clause 4.3 Height of Buildings as it is considered compliance can be achieved through good design. The environmental planning grounds

advanced rightly state that the building as is necessary is above the FPL, however it is the preferred architecture of the building which drives much of the variation. Whilst there is a requirement to locate habitable floor areas above the FPL, there are design alternatives available which does not necessitate a building of the height proposed - the lower level can be reduced to a height of 2.1m and provide for a compliant arrangement at that level. Furthermore, internal room height can be lowered. Such such, the height breach cannot be attributed solely to the flood affectation of the site.

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 Floor Space Ratio development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

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

a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment:

The proposed height of buildings fails to appropriately address this merit objective and it is considered inconsistent with the prevailing building height and does not adequately address the streetscape.

b) to control the bulk and scale of buildings,

Comment:

The proposed dwelling is considered to demonstrate a bulk and scale that is inconsistent with adjoining and surrounding buildings.

c) to minimise disruption to the following:

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

(iii) views between public spaces (including the harbour and foreshores),

Comment:

The site is located a significant distance from the harbour and foreshore area and the new roof form will be unobtrusive in the visual catchment. However it is considered that the dwelling will have an adverse impact on the streetscape (public spaces).

d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment:

Due to the south - north alignment of the site shadows arising from the proposal will predominately fall on Golf Parade. The neighbouring dwellings to the east and west ensuring they are not unreasonably affected by overshadowing despite the height breach.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

The site is located within the R1 General Residential zone which is not an environmental protection zone and strictly this objective is not relevant.

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

Comment:

The site does not fall within a heritage conservation area however is located with the vicinity and adjacent to heritage items (Item I214 - Former tram depot complex and associated buildings and Item I158 - Sewerage Pumping Station No 36) and Council Heritage Officer is non supportive of the proposed development as follows:-

"The proposal is not consistent with the heritage objectives of Manly Local Environmental Plan 2013, and the guidelines of Manly Development Control Plan 2013 - Heritage considerations - 3.2.1.1 Development in the vicinity of heritage items, or conservation areas. The bulk and scale should be reduced and the roof form should be sympathetic to the character of the local area."

Additionally, Council's Landscape Officer has issues relating to the possible impacts to vegetation as follows:-

"Updated plans and reports are submitted to address Landscape Referral concerns. It is noted that the 'Statement of proposed modification to development application' includes the following comments: the existing native Coast Banksia is to be retained; the existing street tree is recommended for removal; and the statement suggests the existing Gum located within adjoining property will not be impacted detrimentally."

It is Landscape Referral's opinion that the Landscape Plan is not able to support tree planting to satisfy 4.1.5.2 (c) due to the site planning locating the landscape lawn area between a pool and outdoor living areas, such that any tree planting will impact upon areas to be utilised for outdoor living and pool use that are not conducive to retention of a tree."

The Landscape Plan submitted at development application remains unaltered, and consists of

low height planting to perimeter boundaries and on structure planters, that provide minimal landscape softening of the built form. The Landscape Plan does not reference the retention of the existing Coast Banksia. Landscape Referral are of the opinion that the existing Coast Banksia is not likely to survive construction works in close proximity, and additionally the tree is within two metres of an existing approved dwelling (adjoining property) and will be within two metres of the new dwelling upon the development property, and thus the 2 metre exempt provision can be applied for removal of the Coast Banksia without Council consent."

Given the above it is considered that the adverse visual impact on any heritage values as a result of the proposal and potential impacts on the existing vegetation and lack of substantial plantings on the landscape plans are reasons for refusal.

Zone objectives

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

Comment:

The proposal will be inconsistent with the existing character of adjoining and nearby single dwellings. The proposed dwelling will sit at similar building height as dwellings adjoining the site and is complimentary to the character of this locality. The bulk of the dwelling as viewed from the street is minimal as verandahs at both ground floor levels have been incorporated into the design.

b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

Comment:

The supported variation to the permitted FSR does not result in unacceptable bulk on the site, and the density will not change. There are no landscape or townscape features that will be obscured by the proposed dwelling.

c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

Comment:

The proposed dwelling represents an in appropriate visual relationship between new development and the existing character and landscape of the area.

d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

Comment:

The proposal does not unreasonably affect the amenity of neighbours as it will not interrupt view lines or result in unreasonable additional shadow impacts. The works will ensure that the dwelling continues to fit comfortably into the architectural style that is characteristic of this pocket of Manly and will have no adverse impact upon the public domain.

e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment:

The works will extend the economic and functional like of the dwelling for a family and contribute to support the nearby neighbourhood and business zones.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

- To provide for the housing needs of the community
- To provide for a variety of housing types and densities
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Comment:

The proposal will continue to provide for the housing needs of the general residential zone. The land use remains unchanged and the works are considered to be compatible with the surrounding zone.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

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

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

The development is recommended for refusal.

5.10 Heritage conservation

The proposal has been referred to Council's Heritage Officer as the subject site adjoins a heritage item and is located within proximity of another:

"Item I214 - Former tram depot complex and associated buildings - Corner Pittwater Road and Balgowlah Road

Item I158 - Sewerage Pumping Station No 36 - Corner Golf Parade and Balgowlah Road

The proposal seeks consent for the demolition of the existing single storey dwelling and

the construction of a new dwelling and a plunge pool on the subject site. The proposed dwelling has an elevated ground floor, a first floor and a lower ground floor which contains a garage, plant room and undercroft area that has 2.4m floor to ceiling height. The overall building height is above the permissible height limit and the form of the proposed building is not considered to be sympathetic to the existing streetscape or the heritage items within the vicinity.

The proposal is not consistent with the heritage objectives of Manly Local Environmental Plan 2013, and the guidelines of Manly Development Control Plan 2013 - Heritage considerations - 3.2.1.1 Development in the vicinity of heritage items, or conservation areas. The bulk and scale should be reduced and the roof form should be sympathetic to the character of the local area.

Revised comments - 26 October 2023

Amended documents, received on 23 October 2023, provide a minor reduction to the overall building height, which is considered insufficient as the building height is still above the permissible height limit. The proposed building still presents a three storey appearance and its bulk and scale is still not sympathetic to the heritage listed Pumping Station across the road. The statement submitted for the amended documents states that: "The heritage items do not form a tenable influence on the composition of the streetscape or housing typology." This statement is not agreed with as the surrounding buildings are considered to be sympathetic in scale, form and character by emulating the envelope and form and responding to the character of the heritage item through the use of the materials, scale, detailing and proportions. It is considered that the proposed height could be further reduced and the three storey appearance could be removed to respond to the character of the heritage item and the streetscape."

With regard to the above comments, the proposed development is considered to fail the considerations prescribed by Section 5.10(4) of the Manly LEP.

5.21 Flood planning

Under this clause, development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development:

- (a) is compatible with the flood function and behaviour on the land, and*
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

Comment: The proposal development is unsupported by Council's Floodplain Engineer please see comments under referral section of this assessment.

In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters:

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) the intended design and scale of buildings resulting from the development,*

- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,
(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.

Comment: The proposal development is unsupported by Council's Floodplain Engineer please see comments under referral section of this assessment.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 436.3m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	E: 6.6m (based on gradient 1:60)	8.4m	27.3%	No
	W: 6.6m (based on gradient 1:60)	8.3m	25.8%	No
4.1.2.3 Roof Height	Height: 2.5m	0.6m	-	Yes
	Parapet Height: 0.6m	0.6m	-	Yes
	Pitch: maximum 35 degrees	<35 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line: 4.8m	4.835m (dwelling) 0.72m (planter box - ground floor balcony and carport on lower ground floor)	- 85%	Yes No
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 2.2m (based on wall height)	0.9m (ground and first floor) 1m (lower ground floor)	59.1% 54.5%	No No
	W: 2.2m (based on wall height)	0.3m - 0.975m (ground and first floor) 1.069m (lower ground floor)	55.7%- 86.4% 51.4%	No No
	Windows: 3m	0.9m - 0.975m*	67.5% - 70%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (146.9m ²)	56.6% (83.2m ²)	43.4%	No
	Open space above ground 25% (36.7m ²) of total open space	90.5% (33.2m ²)	9.5%	No
4.1.5.2 Landscaped Area	Landscaped area 35% (51.4m ²) of open space	211.3% (108.6m ²)	-	Yes
	2 native trees	2 trees	-	Yes
4.1.5.3 Private Open Space	18sqm	<18sqm	N/A	Yes

4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	59.6% (3.995m)	19.3%	No
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

* Window for the living room on the western elevation on the ground floor would be conditioned (if approval was recommended).

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part 3	Yes	Yes
3.1 Streetscapes and Townscapes	No	No
3.1.1 Streetscape (Residential areas)	No	No
3.3 Landscaping	Yes	Yes
3.3.1 Landscaping Design	No	No
3.3.2 Preservation of Trees or Bushland Vegetation	No	No
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	No	No
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
Part 4	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	No
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
4.1.5 Open Space and Landscaping	No	No
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	No
4.4 Other Development (all LEP Zones)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
Part 5	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4 Environmentally Sensitive Lands	Yes	Yes
5.4.3 Flood Prone Land	No	No
Schedules	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

A consideration of the relevant Objectives and Requirements of Part 3.1.1 Streetscape (Residential Areas) is provided below:

Objective 2) To ensure development generally viewed from the street complements the identified streetscape.

Comment: The majority of the built form in Golf Parade, particularly on the western end where the site is situated, is typified by two (2) storey dwellings. The proposed development presents as an excessive bulk and scale in contrast to the predominant character of the area. In the context of the development being inconsistent with both the Height of Buildings development standard and the Number of Storeys development control, the application clearly fails this objective, by not providing a built form that will compliment the streetscape.

3.1.1.1 Complementary Design and Visual Improvement

a) Development in the streetscape (including buildings, fences and landscaping) should be designed to:

iii) maintain building heights at a compatible scale with adjacent development particularly at the street frontage and building alignment, whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys;

Comment: As stated in the discussion on the objective above, the bulk and scale of the proposed dwelling is excessive, relative to the existing character of development in Golf Parade. The proposed development is not compliant with the Height of Buildings development standard of MLEP 2013 and the Number of Storeys development control of MDCP 2013 and this respect has no adequate regard to the standard and the control.

v) address and compliment the built form and style any heritage property in the vicinity to preserve the integrity of the item and its setting. See also paragraph 3.2 Heritage Considerations;

Comment: The amended dwelling presents a three (3) storey appearance and its bulk and scale is still not sympathetic to the heritage listed Pumping Station across the road. The statement submitted for the amended documents states that: "The heritage items do not form a tenable influence on the composition of the streetscape or housing typology." This statement is not agreed with as the surrounding buildings are considered to be sympathetic in scale, form and character by emulating the

envelope and form and responding to the character of the heritage item through the use of the materials, scale, detailing and proportions. It is considered that the proposed height could be further reduced and the three (3) storey appearance could be removed to respond to the character the heritage item and the streetscape.

The application is therefore inconsistent with Part 3.1.1.1(a)(iii) and (v) of MDCP 2013.

3.3.1 Landscaping Design

Please refer to Referral Section of this assessment report - Landscape Officer for reasons for refusal.

3.3.2 Preservation of Trees or Bushland Vegetation

Please refer to Referral Section of this assessment report - Landscape Officer for reasons for refusal.

3.4.2 Privacy and Security

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

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and
- mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.

Comment:

The assessment of the amended plans has identified that some of the privacy concerns identified in the RFI have been addressed with acceptable privacy measures being applied, however windows along the western elevation particularly for the hall/kitchen/dining area remain untreated and will create privacy issues for both parties (subject dwelling and 54 Golf Parade). Proposed landscaping is proposed to along the western side of the dwelling however this will take time to adequately establish and it is considered to be a permanent privacy treatment.

Additionally windows along the ground and first floor of the eastern elevation have not been treated with privacy measures nor the eastern edge of the rear terrace and it is considered that would be potential privacy implications for both parties (subject dwelling and 50 Golf Parade).

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

It is noted that some privacy concerns have been addressed particularly on the western side of the dwelling, however as stated above there windows on both the western and eastern sides including the eastern edge of the rear terrace which have not been treated appropriately. It is considered if these were treated that increased privacy could be achieved without comprising access to light and air to the subject dwelling/property and the adjoining properties/dwellings.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

Neighbourhood security has been encouraged through the design and provision of a front balcony.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

The proposal is inconsistent with the following controls:

4.1.2.1 Wall Height

Based on a site gradient of 1 in 60, the maximum wall height for the eastern elevation is 8.4m and 8.3m for the western elevation.

Comment: The wall height non-compliance has a direct implication for the streetscape and heritage impacts, as discussed earlier in this report. The non-compliance results in a wall that is visually excessive and the non-compliance forms a reason for refusal.

4.1.2.2 Number of Storeys

The control for number of stories reads as follows:

- a) Buildings must not exceed 2 storeys, except on land in areas 'L' and 'N1' on the LEP Height of Building Map and notwithstanding the wall and roof height controls in this plan.*
- c) Variation to the maximum number of storeys may be considered:*
- i) where specific physical site constraints warrant an exception to this requirement. In these circumstances the development must still fully comply with other numeric height controls and development standards; and*
 - ii) to allow an additional understorey where that storey satisfies the meaning of basements in the LEP.*

Comment: The building is three (3) stories as the basement level protrudes more than 1m above the ground level and as such, is not a 'basement'. The proposal is non-compliant with wall height and as such, does not meet the variation for a third storey to be considered.

Merit Consideration

The non-compliance is considered against the outcomes of the control as follows (the same objectives are used for 4.3 Building Height under the MLEP 2013:

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

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

Comment: The wall height is not consistent with the prevailing heights in the area. The lack of landscaping within the front setback due to the driveway and carport design does not assist in screening the visual bulk of the building which has a three (3) story presentation to the street.

- (b) to control the bulk and scale of buildings,*

Comment: The failure to meet the wall height control signifies that the development is of a scale that is not consistent with the desired character set by the DCP. The bulk and height of the western and eastern façades has a visual impact and view impact for surrounding properties.

(c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Comment: As discussed previously in the report, the non-compliance has a direct impact on streetscape.

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment: Due to the orientation of the buildings south to north the private open space for the properties are to the north meaning that solar access is maintained for these properties. The proposal is compliant with solar access to the surrounding sites.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment: Not relevant to this proposal.

Overall, the proposal does not meet the outcomes of the DCP control and therefore is unable to be supported based on the current design. Therefore, the proposal is recommended for refusal for this reason.

4.1.3 Floor Space Ratio (FSR)

The proposal presents a Floor Space Ratio of 0.69:1 (184.9m²) which represents a variation of 15.3% to the 0.6:1 (160.3m²) FSR requirement.

A detailed assessment of the FSR variation has been undertaken within the section of this report relating to Clause 4.6 of the Manly LEP 2013. In conclusion, the applicant has adequately justified that compliance with the FSR Development Standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the variation.

4.1.4 Setbacks (front, side and rear) and Building Separation

Description of non-compliance

4.1.4.2 Side Setbacks and Secondary Street Frontages

This control requires development to be setback from the side boundary at a distance calculated from one third of the proposed wall height.

Based on these requirements, the proposed wall height is as follows:

- Eastern elevation: 6.6m
- Western elevation: 6.6m

Therefore, the required side setback is:

- Eastern elevation: 2.2m
- Western elevation: 2.2m

The proposed side setback is:

- Eastern elevation (lower, ground and first floor): - 0.9m - 1m (presents a maximum variation of 59.1% to the control)
- Western elevation (lower, ground and first floor): 0.3m - 0.975m (presents a maximum variation of 86.4% to the control).

Comment:

The proposed side setbacks on the western side of 0.3m on the ground floor and 0.6m on the first floor levels are not supported and a minimum side setback of 0.9m would have been supportable. Council raised this issue with the applicant in an RFI letter dated 28 August 2023 sent to the applicant, however these elements remain and will form another reason for refusal.

Windows

This control requires windows to be setback 3m from the side boundaries. Due to the proximity of the proposed dwelling and non compliant setbacks to the adjoining dwelling houses to the east and west, any proposed windows will result in a numerical non-compliance to this requirement. The windows on the western ground floor adjacent to the hall and the kitchen/dining area given their elevated position are considered to create privacy issues for the dwelling and associated private open space at 54 Golf Parade. It is noted that a privacy screen has been fitted to the western elevation of the rear terrace on the ground floor and the first floor windows on the western elevation have been treated with external privacy screens. However, on the eastern elevation for the ground and first floor these privacy treatments have not been adequately addressed nor a privacy screen fitted to the rear terrace on the eastern elevation and therefore it is considered that the proposal fails to provide sufficient privacy treatments and relief to maintain reasonable amenity for 50 Golf Parade.

Merit consideration:

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

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:

The amended proposal fails to maintain and enhance the existing streetscape under this development application. It is considered that the limited spatial separations particularly on the west elevation does not satisfy this merit objective and the proposal when viewed from the streetscape would demonstrate

incompatible setbacks with the the adjoining sites and will not maintain the existing streetscape.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

As detailed above, the lack of privacy treatments would result in unreasonable privacy impact between properties and hence does not satisfy this merit objective. The proposal will result in some overshadowing of adjoining dwellings and associated private open spaces however the assessment of the proposal against the requirements of control 3.4.1 Sunlight Access and Overshadowing found that the proposal results in a reasonable level of overshadowing, with consideration of the site constraints and orientation of the subject site and adjoining allotments. Finally, the proposal does not result in any view loss.

Objective 3) To promote flexibility in the siting of buildings.

Comment:

The proposed non-compliances does not demonstrate sufficient flexibility in siting on this building and therefore fails to meet this merit objective.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposal fails to demonstrate sufficient deep soils zones to accommodate native trees given the proposed swimming pool in the rear yard and limit width of the allotment and therefore fails to demonstrate compliance with this merit objective.

Objective 5) To assist in appropriate bush fire asset protection zones.

Comment:

The subject site is not located within bushfire zone. Therefore, this objective is not applicable.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is unsupported, in this particular circumstance.

4.1.5 Open Space and Landscaping

Description of non-compliance

The proposed development requires 55% (146.9m²) of the site area to consist of Total Open Space (TOS). Taking into consideration the minimum 3m dimensions required for Total Open Space (and the elevated balconies which may be included in the calculation), the proposal provides the following:

TOS - 83.2m² or 31.1% (includes ground floor balconies). When including all dimensions (including <3m) the proposal would have 53.1% (141.8m²)

LOS - 211.3% (108.6m²)

Merit consideration:

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

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The 'Statement of proposed modification to development application' includes the following comments: *"the existing native Coast Banksia is to be retained; the existing street tree is recommended for removal; and the statement suggests the existing Gum located within adjoining property will not be impacted detrimentally."*

The following referral comments have been received from Council's Landscape Officer:-

"Contrary to the 'Statement of proposed modification to development application' that nominates the existing Coast Banksia to be retained, the AIA report recommends removal of the Coast Banksia identified as tree 3.

An Arboricultural Impact Statement (AIA) report is submitted and the AIA report is inconclusive in providing recommendations to allow Council to be satisfied on the retention of the existing Lemon Scented Gum identified as tree 2 in the AIA report that is located within adjoining property number 50.

Recommendations for tree 2 in the AIA report is not conclusive as the AIA report comments as follows: "Tree root investigations are recommended to identify the condition of roots & encroachment within the site as the swimming pool proposal is located within the SRZ. Minor fill is also proposed within the SRZ & TPZ as shown within Elevation Plan 201 & Figure 2 below. Should roots be identified as compromised by excavation to accommodate the boundary wall the additional of fill may likely be minimal or negligible".

This does not provide Council with any assurance for preservation of tree 2 and rather a tree root investigation should be conducted along the extent of excavations for the plunge pool to allow for a

definitive assessment of any tree root impacts and any applicable tree protection measures, and as such Landscape Referral are unable to support the application as it is not known if the proposed works will or will not impact upon tree 2."

Given the above it is considered that the proposal based on the information before Council fails this merit consideration.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

The following referral comments have been received from Council's Landscape Officer:-

"It is Landscape Referral's opinion that the Landscape Plan is not able to support tree planting to satisfy 4.1.5.2 (c) due to the site planning locating the landscape lawn area between a pool and outdoor living areas, such that any tree planting will impact upon areas to be utilised for outdoor living and pool use that are not conducive to retention of a tree.

The Landscape Plan submitted at development application remains unaltered, and consists of low height planting to perimeter boundaries and on structure planters, that provide minimal landscape softening of the built form. The Landscape Plan does not reference the retention of the existing Coast Banksia. Landscape Referral are of the opinion that the existing Coast Banksia is not likely to survive construction works in close proximity, and additionally the tree is within two metres of an existing approved dwelling (adjoining property) and will be within two metres of the new dwelling upon the development property, and thus the 2 metre exempt provision can be applied for removal of the Coast Banksia without Council consent."

Given the above it is considered that the proposal based on the information before Council fails this merit consideration.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Comment:

The following referral comments have been received from Council's Landscape Officer:-

"The Landscape Plan submitted at development application remains unaltered, and consists of low height planting to perimeter boundaries and on structure planters, that provide minimal landscape softening of the built form."

Given the above it is considered that the proposal based on the information before Council fails this merit consideration.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Comment:

Council's engineers is satisfied with the method of stormwater drainage and therefore it is considered that the proposal satisfy this merit consideration.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment:

This could be dealt with via condition with all new species required to be native.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

N/A for this site not a wildlife corridor.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

4.1.9 Swimming Pools, Spas and Water Features

Relevant DCP objectives to be met in relation to these paragraphs include:

- Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbour properties;
- Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the est
- Objective 3) To integrate landscaping; and
- Objective 4) To become an emergency water resource in bush fire prone areas.

Council's Landscape Officer stated the following:-

"It is Landscape Referral's opinion that the Landscape Plan is not able to support tree planting to satisfy 4.1.5.2 (c) due to the site planning locating the landscape lawn area between a pool and outdoor living areas, such that any tree planting will impact upon areas to be utilised for outdoor living and pool use that are not conducive to retention of a tree."

Given the above it is considered the proposed swimming pool is not supported and fails to meet this clause.

5.4.3 Flood Prone Land

Merit Consideration

The development is considered under the objective of the control below:

Protection of:

- people;
- the natural environment; and
- private and public infrastructure and assets.

Comment:

The application has been assessed by Councils Floodplain Engineering Team and found to be of an inappropriate design that is inconsistent with the provisions of this clause. See assessment below:

"The property is affected by the 1% AEP Flood, PMF Flood, Medium - High Flood Risk Precinct, Flood Storage Area and a H5 Flood Life Hazard Category.

The proposed development does not meet the following flood related controls:
Section 5.4.3 Flood Prone Land from the Manly DCP 2013

- *C1: The proposed enclosed plant room with a flood proof access door below the FPL is not accepted. To be considered the plant room would need to be permanently tanked and have no access points below the FPL of 3.66m AHD. Council flood referral body would consider supporting a smaller flood-proofed room (maximum internal floor area of 10m²) accessible below the flood planning level with a self-actuating flood door/barrier (not requiring the resident to close the door or allowing the door to be "choked" open) to store water damage susceptible plant equipment only (batteries, AC Unit, switch board and not allowing space for rainwater tank, etc.).*
- *Note that the above allowance would not strictly meet councils DCP. However, consideration is being given as a result of the sites size."*

The proposal is not adequately designed to protect people, the natural environment and public/private infrastructure. The proposal is inconsistent with this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accord

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$9,636 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$963,600.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly 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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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 Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio 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.

Council is not satisfied that:

3) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings has not been adequately addressed and fails to demonstrate 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.

PLANNING CONCLUSION

This proposal for demolition works and construction of a dwelling house including swimming pool has been referred to the Development Determination Panel (DDP) due to the proposal having a FSR breach of more than 10%.

There are valid concerns which have been raised in the objections with regard to height of building, flooding, landscaping, streetscape, heritage, privacy and built form non-compliances and the assessment has also found that issues remain with the impacts of the built form created by the proposal. For these reasons, the application cannot be supported in the current form.

The critical assessment issues are in relation to the height of buildings, the dwelling design and layout, non-compliance with built form controls of the MDCP, streetscape, privacy, flooding, heritage and landscaping in particular impacts on trees on an adjoining property.

Overall, given a number of critical issues are unresolved and extent of non-compliances with the built form controls and applicable clauses of both the MLEP 2013 and MDCP it is considered that the proposal is unable to be supported in the current form. Therefore, the application is recommended for refusal to the DDP for the reasons outlined below.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2023/0500 for the Demolition works and construction of a dwelling house including swimming pool on land at Lot 2 DP 309719,52 Golf Parade, MANLY, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is contrary to the provisions of Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013.

Particulars:

Clause 4.3 specifies that the height of building is not to exceed 8.5m. The proposed development has maximum height of 8.95m. Consequently:

a) the proposed development, by virtue of its bulk and height, will not be consistent with the desired character of the locality.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Manly Local Environmental Plan 2013.

Particulars:

Council is not satisfied that:

a) the applicant's written requests under clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of the clause 4.3(Height of Buildings) MLEP development standard has adequately addressed and demonstrated that:

- i. compliance with the standards is unreasonable or unnecessary in the circumstances of the case; and
- ii. there are sufficient environmental planning grounds to justify the contraventions.

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

3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 5.10 Heritage conservation of the Manly Local Environmental Plan 2013.

Particulars:

The proposed development is considered to be of a built form and design which is not considered to be sympathetic to the character of the local area and heritage items in the vicinity of the subject site, contrary to the requirements of Clause 5.10(4) of the Manly Local Environmental Plan 2013.

4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 5.21 Flood Planning of the Manly Local Environmental Plan 2013 and the proposed development is inconsistent with the provisions of Clause 5.4.3 Flood Prone Land of the Manly Development Control Plan.

Particulars:

The proposed development has not been designed or arranged in a way in which it is compatible with the flood function and behavior of the land, contrary to subclause 2(a) of Clause 5.21 of the Manly Local Environmental Plan 2013.

5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.1.1 Streetscape (Residential areas) of the Manly Development Control Plan 2013.

Particulars:

The proposed development is not complimentary to the existing streetscape and has no adequate regard to the relevant standards and controls.

6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.3.1 Landscaping

Design of the Manly Development Control Plan.

7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.3.2 Preservation of Trees or Bushland Vegetation of the Manly Development Control Plan.

Particulars:

- i. The Landscape Plan is not able to support tree planting to satisfy 4.1.5.2 (c) due to the site planning locating the landscape lawn area between a pool and outdoor living areas, such that any tree planting will impact upon areas to be utilised for outdoor living and pool use that are not conducive to retention of a tree.
 - ii. The existing Coast Banksia is not likely to survive construction works in close proximity, and additionally the tree is within two metres of an existing approved dwelling (adjoining property) and will be within two metres of the new dwelling upon the development property, and thus the 2 metre exempt provision can be applied for removal of the Coast Banksia without Council consent, resulting in the unacceptable loss of the tree.
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.2 Privacy and Security of the Manly Development Control Plan.
 9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) of the Manly Development Control Plan.

Particulars:

The proposed dwelling has an excess of wall height which breaches the wall height control and creates streetscape impacts and the proposal is also up to three (3) stories whilst exceeding the wall height control.

10. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan.
11. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.5 Open Space and Landscaping of the Manly Development Control Plan.

Particulars:

The proposal does not provide a compliant area of open space within the proposed lot.

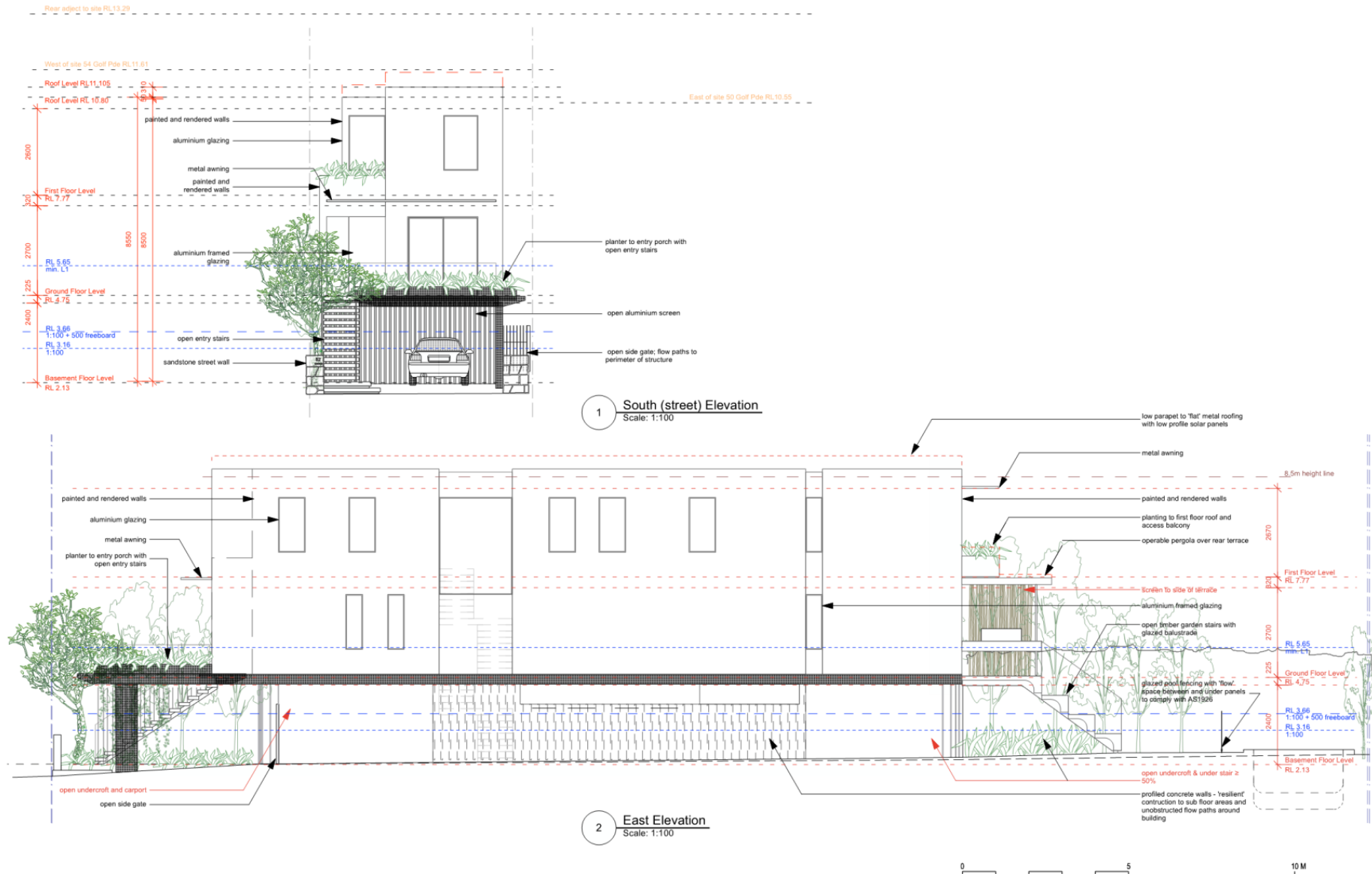
12. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.9 Swimming Pools, Spas and Water Features of the Manly Development Control Plan.

13. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 for the reasons listed from 1 to 12 thereto, the site is not considered to be suitable for the proposed development.



Comply with relevant Authorities requirements
Comply with the Building Code of Australia
Comply with all relevant Australian Standards

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52 GOLF PARADE
C & L OGIER

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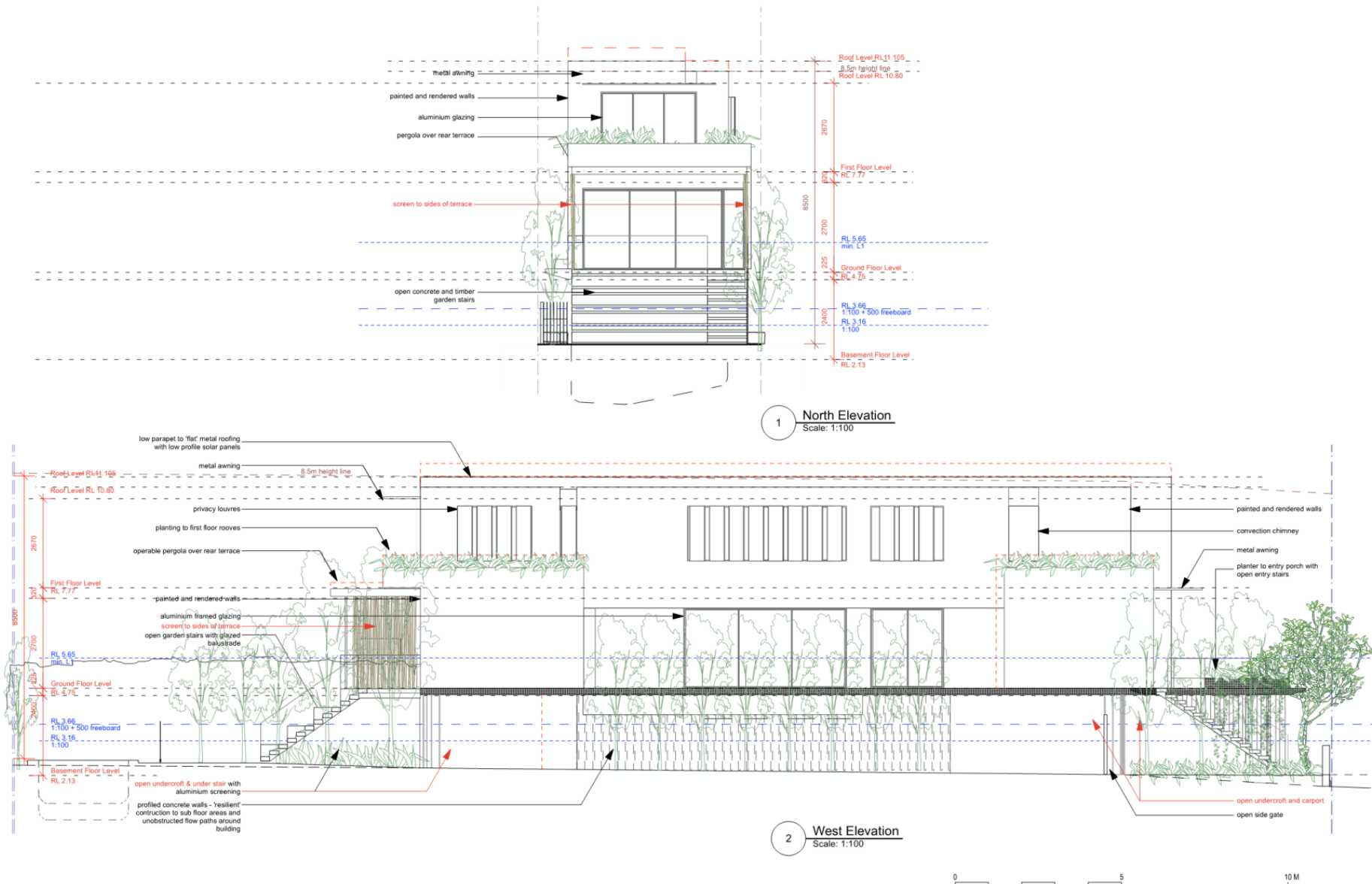
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52 GOLF PARADE MANLY

LEP CLAUSE 4.6 - APPLICATION TO VARY A DEVELOPMENT STANDARD (HOB)

Rev A

This application is to be read in conjunction with the Development Application for alterations and additions to this property as per EP&A Regulation 2000

Item 1 What is the name of the environmental planning instrument that applies to the land?

Manly LEP 2013

Item 2 What is the zoning of the land?

the site is zoned R1 General Residential

item 3 what are the objectives of the zone?

Objectives of zone:

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents

Item 4 what is the development standards being varied?

Height of Buildings

Item 5 under what clause is the development standard listed in the environmental planning instrument.

4.3

Item 6 what are the objectives of the development standard?

The objectives of the respective clause are as follows:

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality
- (b) to control the bulk and scale of buildings
- (c) to minimise disruption to the following—

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),
- (iii) views between public spaces (including the harbour and foreshores)
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Item 7 what is the numeric value of the development standard in environmental planning instrument?

Height of Buildings are prescribed at 8.5m for structures in this area.

Item 8 what is the numeric value of the development standard in your development application?

8.95m

Item 9 what is the percentage variation?

the proposal applies for a 5% variation to the 'broad area' HOB designation

Item 10 How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The proposed works have been carefully designed to create an appropriate family dwelling on the small lot with a high level of amenity, architectural quality and environmental performance. The dwelling would ordinarily be compliant with this control; it is however the designation of the site as being 'Flood Prone Land' and the current Flood Planning Policy that requires significant artificial raising of Ground Floor Levels, and the prevalent breach to this control for new dwellings in this flood affected area. The flood management modelling has stipulated the ground floor level be 1.37m higher than existing, which is appropriate given the flood damaged nature of the property now rendered uninhabitable. Of further resultant effect is the preference to minimise site excavation and the creation of below ground levels, whilst also requiring flood protected plant for the dwelling.

There is a clear and natural priority for this fundamental planning policy to be implemented to ensure dwellings in flood affected areas are safe and will be appropriately designed to withstand flood events. When looking at the new dwellings in this flood prone area that have been designed to satisfy the new flood modelling and management policy it is evident that many naturally breach this control as a direct correlation. (Clause 5.21 in effect requires development to satisfy Flood Planning requirements if consent is to be granted.)

Strict compliance with this development standard is unreasonable and inappropriate for dwellings in this flood affected area. (It is appropriate that such flood affected areas will be provided with development dispensation to height controls in due course, whether an amendment to Clause 4.3A or via a revision to the HOB mapping or via Clause 5.22).

Item 11 how would strict compliance hinder the attainment of the objects specified in Section 3 above

Strict compliance will seriously impact the very nature of this dwelling, as well as the performance, quality and enjoyable utility of what is a compact 187m² family home that is consistent with the desired future

character of the neighbourhood and relevant planning controls. The legislated requirement for significantly raised floor levels and construction and arrangement prescription to satisfy flood requirements naturally has a direct correlation on the dwelling height and subsequent need to seek variation to this planning control.

Strict compliance of the height limit would:

- not provide for the housing needs of the community, particularly those affected by flooding
- not provide for a variety of housing types and densities that importantly are required to respond to and facilitate on-going housing utility on flood affected residential lots and the new flood planning policies.

As noted, the dwelling would ordinarily be compliant.

Item 12 is the development standard a performance based control?

No, the control is numerical. Nonetheless the objectives can be assessed on their performance and effect, however, primary consideration needs to be applied to the designation of the site as 'Flood Prone Land' and the current Flood Planning Policy that requires significant artificial raising of Ground Floor Levels with a direct causal effect leading to a necessary breach to this control for new dwellings in this flood affected area.

Item 13 Would strict compliance with the standard, in your particular case, would be unreasonable or unnecessary? Why?

As articulated in Item 10 and 11 above, the dwelling is deemed appropriate and consistent with the context, more specifically the prevailing height of all new buildings with a similar flood impact and required elevation of ground floor levels.

Strict compliance is not necessary or reasonable to achieve; the HOB objectives are satisfied as noted below and the proposed dwelling has incorporates elements of the design that reduce the height variation to an amount less than the required rise in elevation – the dwelling would ordinarily be compliant.

- (a) the desired future character of the neighbourhood is achieved; the proposed height, architectural form, composition, setting, landscaping and street engagement are consistent with the streetscape and 'prevailing building height'
- (b) local amenity is unaffected
- (c) solar access to existing buildings and open space is unaffected
- (d) there is no resultant impact on adjoining or nearby properties or a disruption of views, loss of privacy, overshadowing or visual intrusion from this minor and integrated variation
- (e) there is no impact to the amenity of the public domain in providing public views of the harbour and surrounding areas.

Further;

- the variation is of critical importance to maintain site utility and actual ability to construct a dwelling of appropriate amenity and scale
- The design carefully mitigates any perceived impact or effect from this variation
- the variation is less than the required addition to the building height (450mm variation v 1370mm required rise in elevation)
- There is no resultant impact from this variation; the proposed dwelling satisfies the objectives of the clause
- Such variation is commonplace in this precinct for dwellings with similar imposed additional height requirements in response to flood planning policy (for example, the new dwellings on each side

have been granted variation to Clause 4.3)

**Item 14 Are there sufficient environmental planning grounds to justify contravening the development standard?
Give Details?**

Yes; please refer to items 10, 11 & 13 above.

There are further grounds in addition to those described above:

- the stated objectives are satisfied
- The variation sought is reasonable as described above
- the variation is typical and of a commensurate amount to similar new dwellings with similar flood planning impacts to the establishment of ground levels – there exists numerous precedent
- there is no resultant impact from the variation sought
- appropriate design responses have been employed for the specific constraints of site and dwelling
- the public domain is unaffected
- The variation is considered to be in the public interest and represents appropriate, responsive planning

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52 GOLF PARADE MANLY

LEP CLAUSE 4.6 - APPLICATION TO VARY A DEVELOPMENT STANDARD (FSR)

This application is to be read in conjunction with the Development Application for alterations and additions to this property as per EP&A Regulation 2000

Item 1 What is the name of the environmental planning instrument that applies to the land?

Manly LEP 2013

Item 2 What is the zoning of the land?

the site is zoned R1 General Residential

item 3 what are the objectives of the zone?

Objectives of zone:

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents

Item 4 what is the development standards being varied?

Floor Space Ratio

Item 5 under what clause is the development standard listed in the environmental planning instrument.

4.4

Item 6 what are the objectives of the development standard?

The objectives of the respective clause are as follows:

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Item 7 what is the numeric value of the development standard in environmental planning instrument?

Floor Space Ratio is prescribed at 0.6:1 for this area.

Item 8 what is the numeric value of the development standard in your development application?

0.7:1

Item 9 what is the percentage variation?

the proposal applies for a 16.9% variation to the 'broad area' FSR designation

Item 10 How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The proposed works have been carefully designed to create an appropriate family dwelling on the small lot with a high level of amenity, architectural quality and environmental performance.

The proposed form, siting and scale are consistent and commensurate with neighbouring developments within the precinct.

The stated objectives are satisfied and there is negligible impact.

The works retain and enhance the landscaped setting and positively contribute to the streetscape, which an FSR control seeks to facilitate

The benefits of providing for a compact family dwelling of only 187m² far outweigh the inability to create a modest family dwelling on this small lot, particularly in light of the current dwelling being deemed uninhabitable following recent flood events.

Item 11 how would strict compliance hinder the attainment of the objects specified in Section 3 above

Strict compliance will seriously impact the very nature of the proposed dwelling, as well as the performance, quality and enjoyable utility of what is a compact 187m² family home that is consistent with the desired future character of the neighbourhood and relevant planning controls.

Strict compliance is not necessary or reasonable to achieve the objectives as stated;

- variation is necessary to create expected and appropriate housing needs of the community for small lots and lots with specific constraints. (FSR is not the best mechanism to ensure normal sized family dwelling are capable of being constructed on small lots)
- variation is required to facilitate a variety of housing types and densities that accommodate dwellings small lots

Item 12 is the development standard a performance based control?

No, the control is numerical. Nonetheless the objectives can be assessed on their performance or effect; the objectives are all clearly satisfied. The additional amenity sought is fundamental to the ability to construct a modest family dwelling of only 183m² and thus of profound importance, and as noted again, is without impact.

Item 13 Would strict compliance with the standard, in your particular case, would be unreasonable or unnecessary? Why?

As articulated in Item 10 and 11 above, the dwelling is deemed appropriate and consistent with the context. Consideration is appropriate and necessary to be given to small lots such as the subject lot, which are required to provide for family housing needs now and into the future, but naturally require variation to the broad application of FSR over areas; given the control fails in the more fundamental intent of providing for appropriate housing requirements on small lots.

Hence, strict compliance is not necessary, appropriate or reasonable. The variation sought is necessary and critical to the creation of a modest family dwelling on this lot.

The design carefully mitigates any impact or effect from this variation; open space and landscaped areas exceed respective controls and the articulated form has been tailored to the site, flood requirements and with a view to minimise any perceived impact to neighbouring dwellings.

There is no resultant impact from this minor variation; on balance and performance the proposed dwelling satisfies the clause.

Such a variation is common in this precinct; this variation was recently permitted to the neighbouring dwelling at 54 Golf Parade.

All of the objectives are satisfied and the variation sought has no bearing on the public or private amenity of adjacent areas; the amenity afforded by these modifications is appreciable and of critical importance for the owners of this property.

Item 14 Are there sufficient environmental planning grounds to justify contravening the development standard? Give Details?

Yes; please refer to items 10,11 & 13 above.

There are further grounds in addition to those described above:

- the LEP allows for variation to FSR in certain circumstances and this clause allows for such a variation provided the objectives are satisfied and the variation is reasonable as described in cl4.6(3)
- the stated objectives are satisfied
- The variation sought is deemed necessary for the construction of a modest 187m² family dwelling on a small lot and deemed reasonable as described above
- the variation is typical in this precinct and occurs on neighbouring dwellings
- there is no resultant impact from the minor variation sought
- Landscaped area and a consistent landscape setting are achieved
- appropriate design responses have been employed for the specific constraints of site and to satisfy the objectives of this clause
- there exists precedent for such variation
- the public domain is unaffected
- The variation is considered to be in the public interest

ITEM 3.3

**DA2023/0243 - 86 GRIFFITHS STREET FAIRLIGHT -
DEMOLITION OF EXISTING DWELLING HOUSE AND
CONSTRUCTION OF A SEMI-DETACHED DWELLING,
INCLUDING SWIMMING POOLS, ASSOCIATED
LANDSCAPING AND TORRENS TITLE SUBDIVISION**

REPORTING MANAGER**Rod Piggott****TRIM FILE REF****2023/787785****ATTACHMENTS**

- 1** [↓ Assessment Report](#)
- 2** [↓ Site Plan and Elevations](#)
- 3** [↓ Clause 4.6](#)

PURPOSE

To refer the attached application for determination as required under adopted delegations of the Charter.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2023/0243 for Demolition of Existing Dwelling House and Construction of a Semi-Detached Dwelling, including Swimming Pools, Associated Landscaping and Torrens Title Subdivision on land at Lot 1796 DP 752038, 86 Griffiths Street FAIRLIGHT, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0243
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 1796 DP 752038, 86 Griffiths Street FAIRLIGHT NSW 2094
Proposed Development:	Demolition of Existing Dwelling House and Construction of a Semi-Detached Dwelling, including Swimming Pools, Associated Landscaping and Torrens Title Subdivision
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Frajo Investments Pty Ltd Fraser John Doak Joanna Doak
Applicant:	Angus Doak
Application Lodged:	23/03/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	29/03/2023 to 12/04/2023
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	4.3 Height of buildings: 9.17%
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,485,000.00

EXECUTIVE SUMMARY

The application seeks consent for demolition works, subdivision of one lot into two and the construction of two semi-detached dwelling houses at 86 Griffiths Street, Fairlight.

The application is referred to the Development Determination Panel (DDP) for determination as the development application has received 5 objections. Councils charter mandates that application with 5 or more objections are referred to the DDP.

The application proposes a variation to the Height of Buildings development standard under clause 4.3 of Manly Local Environmental Plan (MLEP) 2013. A variation of 9.17% (0.78m) is proposed. The written clause 4.6 variation request to the Height of Buildings development standard is based on the development being reasonable given the significant slope of the site and minor portion of non-compliance. The resultant bulk and scale are consistent with the height and bulk and scale of other buildings along Griffiths Street.

As noted above, as a result of the public exhibition of the development application, 5 objections were received. Concerns raised in the objections predominantly relate to the exceedance of the LEP building height, parking concerns, geotechnical risks, view impacts, overshadowing and privacy impacts upon adjoining private properties.

A detailed assessment has been undertaken within this report regarding the amenity impacts on the immediately adjoining dwellings to the north, east and west and the assessment finds the reasonable retention of amenity for these properties. The applicant has provided sufficient information from a qualified geotechnical engineer to address geotechnical risk for the excavation and general works during construction. The recommendations of the geotechnical report will be referenced in the proposed conditions.

On the balance, the assessment finds that the proposal is acceptable for the site and concludes with a recommendation that the DDP, as the consent authority, grant approval to the development application, subject to conditions

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for demolition works, subdivision of one lot into two and the construction of two semi-detached dwelling houses. Specifically consent is sought for:

- Demolition of the existing dwelling house and associated structures;
- Torrens title subdivision of the existing single lot into two lots;
- Construction of two semi-detached dwelling houses, comprising:
 - Garage;
 - Swimming pool

- 3 Bedrooms dwellings
- Tree removal;
- Associated landscaping;
- New driveway and crossover.

The proposed semi-detached dwellings will be referred to 86A (eastern dwelling) and 86B (western dwelling) throughout the report.

AMENDED PLANS

Following a preliminary assessment of the application Council wrote to the applicant on 1 June 2023 outlining concerns that would not allow for Council to support the application in its current form.

The issues raised included:

- Building Height and Floor Space Ratio non-compliance
- Privacy
- Extent of Excavation/Setback of the lower ground floor
- Outstanding internal referral (landscaping).

The applicant lodged amended plans and additional information to address concerns on 14 September 2023 and 1 November 2023

The amended plans incorporated the following changes:

- Alteration of the first floor to reduce height of building non-compliance and bulk and scale.
- Lower floor alterations
- Driveway alterations.
- Landscape alterations.

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

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 1796 DP 752038 , 86 Griffiths Street FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of 86 Griffiths Street, Fairlight.</p> <p>The site is regular in shape with a frontage of 14.02m along Griffiths Street and a depth of 38m. The site has a surveyed area of 532.2m².</p> <p>The site is located within the R1 General Residential zone and accommodates a dwelling house.</p>

	<p>The site has a cross fall of approximately 5m from the rear to the front of the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential development typically detached dwelling houses.</p>
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Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 29/03/2023 to 12/04/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Withheld	FAIRLIGHT NSW 2094
Mr Mark Andrew Terei	5 / 51 Griffiths Street FAIRLIGHT NSW 2094
Ms Brodee Jan Cooke	111 Cook Street FORESTVILLE NSW 2087
Bill Tulloch	Po Box 440 MONA VALE NSW 1660
Ms Maureen Therese Curry	41 Jamieson Avenue FAIRLIGHT NSW 2094

The following issues were raised in the submissions:

- **Building Height non-compliance**
- **Floor Space Ratio non-compliance**
- **Built-form non-compliance (bulk and scale)**
- **Streetscape**
- **Parking**
- **Privacy**
- **Solar access**
- **Views**
- **Excessive excavation**
- **Stormwater**
- **Precedent**
- **Landscaping**
- **Bus stop**

The above issues are addressed as follows:

- **Building Height non-compliance**

The submissions raised concerns with the building height of the proposed development.

Comment:

The application proposed a maximum height of 9.28 metres, representing of a 9.17% departure from the 8.5 metre maximum building control. The non-compliant portion of the development does not result in any unreasonable impacts upon the amenity of adjoining properties and the height of the development as a whole is compatible with surrounding built form. The non-compliant height the proposal is supported in this instance. The matter of non-compliance with the Height of Buildings Development Standard is addressed in detail elsewhere in this report (refer to Clause 4.6 Exceptions to Development Standards under the MLEP 2013 section of this report).

- **Floor space ratio non-compliance**

The submissions raised concerns with the extent of gross floor area proposed

Comment:

The amended proposal is compliant with the Floor space ratio development standard under clause 4.4 of the MLEP 2013.

- **Built-form non-compliance (Bulk and scale)**

Concern is raised in regard to the overall bulk of the two semi detached dwellings

Comment:

The bulk and scale of the proposal is satisfactory given the sloping topography of the site, the level of impact on adjoining properties and size and scale of neighbouring properties. The proposed built form non-compliance and resultant bulk and scale are appropriate in this residential context and satisfy the requirements and objectives of the MLEP and Manly Development Control Plan (MDCP) 2013. All relevant provisions of MLEP and MDCP 2013 have been assessed in this report, with the bulk and scale of the proposed building deemed satisfactory.

- **Streetscape**

The submissions raised concerns that the proposed development will have a unreasonable impacts upon the streetscape.

Comment:

The proposed setbacks to the front boundary are consistent with the prevailing building line and recessed at ground and upper floor level to ensure continuity of the street pattern.

- **Parking/Garage**

The submissions raised concern with the extent of the proposed garage and on-site parking.

Comment:

The amended plans reduce the overall size and scale of the lower ground floor to limit excavation to side boundaries. With regard to on site parking the each dwelling has a single vehicle parking space with at grade parking within the front setback, meeting the minimum of two parking spaces for a semi-detached dwelling. The proposed tandem parking arrangement is satisfactory in this instance, noting the width of the proposed sites.

- **Privacy**

The submissions raised concern with the potential privacy impacts from the proposed windows and living areas on private open space of adjoining dwellings.

Comment:

The proposal has been assessed against the privacy provisions under Clause 3.4.2 of the MDCP 2013 in this report. In summary, the proposal complies with the relevant provisions and underlying objectives under Clause 3.4.2 of the MDCP 2013, subject to conditions.

- **Solar Access**

The submissions raised concern with the extent of overshadowing from the proposed development.

Comment:

The subject site and adjoining properties have a north-south orientation. The proposed development does not reduce more than one third of the existing sunlight accessing the private open space of adjacent properties. The proposed development allows for solar access be retained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June). The proposal complies with the requisite provisions of Cl 3.4.1 of the MDCP 2013.

- **Outlook**

The submissions raised concerns that proposal results in an unacceptable visual impact, which detracts from the southerly outlook obtained from two adjoining properties.

Comment:

The affected outlook resulting from the proposed development is best described as an aspect over adjoining properties. Consequently, altering the design isn't considered reasonable, given that the buildings largely is of a reasonable bulk and scale, effectively mitigating any undue visual impacts.

- **Excessive excavation**

Concern was raised in regard to the extent of the proposed basement and the potential impacts from excavation.

Comment:

These matters have been considered under Clause 4.4.5 of the MDCP 2013- Earthworks (Excavation and Filling). In summary, the amended proposal is consistent with the relevant underlying objectives, subject to conditions. Further, Conditions of consent are recommended to require the preparation of pre and post construction dilapidation reports for adjoining buildings to the east and west.

- **Stormwater**

The submissions raised concerns with the management of stormwater.

Comment:

The application was referred to Council's Development Engineers for comment in regard to stormwater management. Suitable conditions have been recommended to ensure adequate stormwater management for the residential flat building and adjoining properties if the application is to be approved.

• **Precedent**

The submissions raised concern about potential precedent that would result if the application was to be approved.

Comment:

While recent determinations are considered as part of the assessment of a development application, each individual development application and assessed on its merits. This does not warrant the refusal of the application.

• **Landscaping**

The submission raises concern with the level of landscaping proposed on site.

Comment:

The amended landscape plan was referred to the Council's landscape officer, who supported the scheme subject to conditions. The level of landscaping within the rear setback will help offset visual and acoustic privacy issues to adjoining properties.

• **Bus stop**

The submission raised concern with regard to the removal of the bus stop to the front of the site.

Comment:

The power pole to the front of the site with the hop, skip and jump bus stop sign is not proposed for removal.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	Supported, no conditions
Landscape Officer	<p>Supported, subject to conditions</p> <p>Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly Development Control Plan controls (but not limited to):</p> <ul style="list-style-type: none"> • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable <p>The amended Stormwater Plans are updated in consideration of previous Landscape Referral comments regarding the impact to existing street trees and the proposed stormwater lines are relocated to minimise impact and this is supported by the Arboricultural Impact Assessment, and Landscape Referral raise no further issues with the stormwater design subject to imposed conditions for tree protection measures.</p> <p>The submitted Landscape Plans include hard and soft landscape components upon both natural ground and on structure, and the compliance with control 4.1.5 under Manly Development Control Plan of the total open space and the landscape area, including the numeric requirements and dimensions under 4.1.5.1, shall be assessed and determined by the Assessing Planning Officer.</p> <p>The submitted Landscape Plans raise no concerns by Landscape Referral subject to imposed conditions and the completion of landscape works as documented.</p> <p>As reported in the Arboricultural Impact Assessment, T1 (Paperbark) within the property is impacted by development and should the application be approved, no design alternative is available for retention and thus no objection is raised. All street trees and those in proximity, reported as T2 (Peppercorn) and T3 (Peppercorn) shall be protected without any detrimental impacts, and construction of the driveway in proximity shall be designed and constructed to protect both T2 and T3.</p>
NECC (Development Engineering)	<p>Supported, subject to conditions</p> <p>The proposal is for demolition works and the construction of semi-detached dwellings and Torrens Title Subdivision.</p> <p>The proposal involves a combined vehicular crossing for both dwellings with a proposed width of 6m at the layback and 8m at the boundary which is not acceptable. As the garages have sufficient setback within the property and the proposed location of the driveway is adjacent to a bus zone the proposed width of the crossing seems excessive. It is recommended that a tapered crossing with the maximum width for the layback of 4m widening to 5m at the boundary be considered and plans amended to suit.</p>

Internal Referral Body	Comments
	Additional Information Provided on 14/9/2023 The proposed width of the vehicular crossing is acceptable as the applicant has indicated that the bus stop has been relocated and there will be no loss of on-street parking. The submitted stormwater plan is acceptable subject to conditions. No objections to approval subject to conditions as recommended.
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	Supported, subject to conditions The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1370750M_02 dated 13 September 2023).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	56

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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
Minimum subdivision lot size:	250sqm	Lot 1: 266.1sqm	-	Yes
		Lot 2: 266.1sqm		
Height of Buildings:	8.5m	9.28m	9.17%	No
Floor Space Ratio	FSR: 0.6:1 160sqm	FSR: 0.59:1 157qm	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes
2.7 Demolition requires development consent	Yes
4.1 Minimum subdivision lot size	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.28m
Percentage variation to requirement:	9.17%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

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

within cl 4.6(3) and these are addressed as follows:

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

"Sufficient environmental planning grounds

1.First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard"

Comment: Sufficient environmental planning grounds exist to justify the height of buildings variation namely the topography of the land which makes strict compliance difficult to achieve whilst appropriately distributing height, in the form of legitimate dwelling, on this particular site. Further justification to support the proposed variation is provided below

- The LEC planning principles on Height of Building relating to the height, bulk and scale, including compatibility between subject buildings and its surrounding context to ensure the proposal is compatible with its context. The planning principle seeks qualification of the following:

'Planning principle: assessment of height and bulk

• The appropriateness of a proposal's height and bulk is most usefully assessed against planning controls related to these attributes, such as maximum height, floor space ratio, site coverage and setbacks. The questions to be asked are:

Are the impacts consistent with impacts that may be reasonably expected under the controls? (For complying proposals this question relates to whether the massing has been distributed so as to reduce impacts, rather than to increase them. For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.) How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?

• Where the planning controls are aimed at preserving the existing character of an area, additional questions to be asked are:

Does the area have a predominant existing character and are the planning controls likely to maintain it? Does the proposal fit into the existing character of the area?

• Where the planning controls are aimed at creating a new character, the existing character is of less relevance. The controls then indicate the nature of the new character desired. The question to be asked is:

Is the proposal consistent with the bulk and character intended by the planning controls?

• Where there is an absence of planning controls related to bulk and character, the assessment of a proposal should be based on whether the planning intent for the area appears to be the preservation of the existing character or the creation of a new one. In cases where even this question cannot be answered, reliance on subjective opinion cannot be avoided. The question then is:

Does the proposal look appropriate in its context?

Note: the above questions are not exhaustive; other questions may also be asked.'

In addressing the above planning principals, the benefits of the proposal, represents a new functional dwelling through the construction of a new semi-detached dwelling which enhances the site and blends in with the natural landscape.

From a planning perspective, there is sufficient environmental planning grounds to justify the variation to the Height of Building development standard for the following reasons:

- The objectives of the MLEP2013 Height of Building control are achieved notwithstanding the technical non-compliance.
- The objectives of the MLEP2013 R1 General Residential zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary given the adjoining developments on either side of the subject lot.
- There are sufficient environmental planning grounds to support the proposed variation.
- The site has a sloping topography and slopes from the rear to the front of the site. The resulting constraints from the topography of the site contribute the variation in the building height.
- The proposal is consistent with the existing bulk and scale of the area.
- The breach relates to a small portion of the dwelling.
- The proposal has no adverse impacts to views or view corridors, as redevelopment of the site is permissible.
- The proposal does not adversely impact existing solar access to private and public places.
- The breach in building height will not be noticeable and will have no adverse impacts on neighbouring properties. The proposal will not result in a building of an unacceptable bulk and scale.

The non-compliance does not result in any unacceptable environmental consequences in terms streetscape, or residential amenity. In this regard, I consider the proposal to be of a skilful design which responds appropriately to the topography and constraints on the site. Such an outcome is achieved whilst realising the reasonable development potential of the land.

2. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31]

Comment: This report demonstrates that there is sufficient environmental planning grounds to justify contravening the development standard for Clause 4.3(2). The proposal has assessed the relevant impacts (if any) and has assessed the bulk, scale and mass of the proposed dwelling which will breach the development standard. This report finds that a merit assessment is applicable and determines that there is sufficient grounds to justify the breach to the Height of Buildings. The proposal has been skilfully designed and strategically located to not have an adverse impact to neighbouring properties. Therefore, the development as proposed is sufficiently justified to contravene the development standard."

Planner's Comment:

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

- The development promotes the orderly and economic use and development of the land, in so far as the proposed development has been designed to achieve a high performance, low environmental semi-detached dwelling houses.
- The development promotes good design and amenity of the built environment. It is agreed that steep and irregular topography of the site makes a significant contribution to the minor variation to the building plane through the centre of the site.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

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

- a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment:

The overall height and scale of the development is not found to be inconsistent with other surrounding developments. The quality of the architecture, efforts to retain trees and the uniqueness of the proposal all contribute to the developments ability to achieve consistency with the desired character of the locality.

b) to control the bulk and scale of buildings,

Comment:

In consideration of the proportions of a building, it is relevant to consider the proportions of the site. To that extent, the proposal is considered to be compatible with the heights and scale of nearby development.

c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Comment:

The development is not found to result in any unreasonable view loss from either the public or private domain.

d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment:

The development is not found to result in any unreasonable or non-compliant overshadowing of neighbouring properties.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

The development is not found to have any unreasonable or adverse visual impacts on the natural environment.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

- *To provide for the housing needs of the community.*

Comment:

The proposed development retains the residential use of the site.

It is considered that the development satisfies this objective.

- *To provide for a variety of housing types and densities.*

Comment:

The semi-detached dwelling promotes a variety of housing types and variety. It is considered that the development satisfies this objective.

It is considered that the development satisfies this objective.

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

Comment:

Not applicable.

It is considered that the development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

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

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

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

6.1 Acid sulfate soils

Clause 6.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map.

Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land is required to be assessed to determine if any impact will occur.

The development proposes to excavate the site to approximately 4m below the natural ground level. As such, no further action is required.

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

(a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and
(b) to allow earthworks of a minor nature without requiring separate development consent.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

(b) the effect of the proposed development on the likely future use or redevelopment of the land

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

(c) the quality of the fill or the soil to be excavated, or both

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

(e) the source of any fill material and the destination of any excavated material

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

Comment:

The development was referred to the Aboriginal Heritage Office who provided comments and conditions that have been included in the consent.

(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment: Conditions are included in the recommendation of this report that will minimise the impacts of the development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDOP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 532.2sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: minimum 250sqm	266.1sqm	-	Yes
	Dwelling Size: 90sqm	160sqm	-	Yes
4.1.2.1 Wall Height	West - 7m	West - 8.7m	24.28%	No
	East - 7m	East - 7.9m	12.86%	No
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	1.1m	-	Yes
4.1.4.1 Street Front Setbacks	6m	86B: 5.4m - 9.7m Tandem carspace: nil	10% 100%	No
		86A: 5.4m - 9.7m Tandem carspace: nil	10% 100%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	West (86B) - 2.9m (based on wall height)	0.9m - 3.11m	up to 49%	No

	East (86A) - 2.63m (based on wall height)	0.9m - 3.11m	up to 49%	No
	Windows: 3m	0.9m - 1.85m	up to 70%	No
4.1.4.4 Rear Setbacks	8m	86B Terrace - 7.1m Building - 9.7m	11.25% -	No Yes
		86A Terrace - 7.1m Building - 9.7m	11.25% -	No Yes
		86B 30.3% (80.7sqm)	45%	No
		86A 30.3% (80.7sqm)		
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (146.35sqm) of site area	86B <25% (15.9sqm)	-	Yes
		86A <25% (15.9sqm)	-	Yes
	Open space above ground 25% of total open space	86B <25% (15.9sqm)	-	Yes
		86A <25% (15.9sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% (24.21sqm) of open space	86B (61.1sqm)	-	Yes
		86A (61.1sqm)	-	Yes
	3 native trees	3	-	Yes
		>18sqm	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.5m (78%)	56%	No
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	86B 0m	-	Yes
		86A 0m	-	Yes
	1m curtilage/1.5m water side/rear setback	86B 1m, 1.9m	-	Yes
		86A 1m, 1.9m	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.1.2 Residential Land Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.4.1 Demolition	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.5 Earthworks (Excavation and Filling)	No	Yes
4.4.8 Subdivision	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Concern is raised from the neighbouring property to the west with regard to western facing windows along the ground and first floor. Any potential visual impact arising from the western facing ground floor windows and living areas to the rear would be offset by the physical separation and a 1.8m boundary fence that separates the two properties. With regard to the first floor windows, while it is accepted that there is sufficient physical separation to offset visual impacts between window 9 and No 88 Griffiths Street a condition be imposed for this window louvres to be constructed (with a maximum spacing of 20mm), or be either high sil (i.e. containing a sil height of 1.65m from the FFL) or obscure glazed. The remaining windows on the western elevation are not anticipated to give rise to unreasonable privacy impacts.

4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Description of non-compliance

Description of non-compliance

Wall Height

The maximum wall height of the proposed development is as follows:

West elevation: 8.7 metres - does not comply with numeric requirement of 7 metres.
East elevation: 7.9 metres - does not comply with numeric requirement of 7 metres.

Number of Storeys

The control stipulates that development shall be limited to a maximum of 2 storeys. The proposed development results in 3 storey development, which conflicts with this requirement.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. The proposal has been assessed against these objectives under clause 4.6, above in this report. In summary, the proposal is considered to be consistent with the objectives particularly to control the bulk and scale of the development.

4.1.4 Setbacks (front, side and rear) and Building Separation

Description of non-compliance

Clause 4.1.4.1 of the MDCP requires development be setback at least 6m from the front property boundary if there is no prevailing building line. The proposed dwellings are setback 5.54m - 9.7m from the front boundary. However the tandem parking spaces would result in a nil setback to the front property boundary, representing a 100% variation to the numeric control.

Clause 4.1.4.2 of the MDCP requires development be setback at least one third of the adjoining wall height. The development proposes multiple variations to the numeric requirement at the ground and first floor along both the eastern and western elevations. The clause requires the first floor western wall be setback 2.9m at the highest point. The application proposes a setback of 0.9m - 3.11m, non-compliant with the numeric control. The clause requires the first floor eastern wall be setback 2.63m. The application proposes a setback of 0.9m - 3.11m, non-compliant with the numeric control. This represents a variation up to 49%.

Clause 4.1.4.2 of the MDCP requires windows from habitable dwellings of dwellings that face the side boundary are to be setback at least 3m from side boundaries. The proposed windows along the eastern and western elevation as setback 0.9m- 1.85m from the side property boundary, non-compliant with the numeric control.

Clause 4.1.4.4 of the MDCP requires any part of the building to be setback 8m from the rear property boundary. The proposed ground floor terraces for both dwelling is setback 7.1m, while the rear wall is setback 9.7m. The non-compliant terrace represents a 11.25% variation to the numeric control.

Merit consideration:

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

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:

The proposal has maintained the existing streetscape by the amended design, including the desired spatial residential proportions of the street, including the street edge and the landscape character of the street for Griffiths Street, to which the property is addressed, and will have pedestrian access from Griffiths Street. The non-compliance to front setbacks for the position of the hard stand tandem spaces being a variation to the 6.0m setback control. One fully compliant car space for each dwelling is within the garages for each dwellings/

Objective 2) To ensure and enhance local amenity by:

- providing privacy;

- providing equitable access to light, sunshine and air movement; and
- facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.
- defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and
- facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.

Comment:

As discussed earlier within this report, the proposed development does not result in unreasonable amenity impacts to neighbouring properties or the public domain, specifically with regard to view sharing, privacy, solar access and visual amenity

Objective 3) To promote flexibility in the siting of buildings.

Comment:

Flexibility is afforded in this circumstance as the technical side setback non-compliance does not prompt any unreasonable streetscape or amenity impacts.

Objective 4) To enhance and maintain natural features by:

- accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;
- ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and
- ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.

Comment:

Adequate side setbacks have been proposed to maintain natural features of landscaping including deep soil zones and appropriate planting to the front and rear setbacks. The proposed setbacks allow for compliance with the Building Code of Australia for maintenance, access, drainage work and emergency requirements (fire safety). The nature of development does not unduly detract from the context of the site, street character and particularly in relation to street frontages and front and side setbacks,

Objective 5) To assist in appropriate bush fire asset protection zones.

Comment:

The subject site is not located in a bush fire asset protection zone.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5.1 of the MDCP requires at 55% (146.35sqm) of the site being total open space. The application proposes 30.3% (80.7sqm) of the site as total open space, non-compliant with the numeric control. This represents a 45% variation to the numeric control.

Merit consideration:

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

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The site currently contains a modified landscape arrangement that is typical for a suburban semi-detached dwellings

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

The proposed works proposes a suitable level of landscaped open space, given the sloping nature of the site.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Comment:

Amenity considerations including sunlight access, privacy and views have all been considered as part of this application, with no unreasonable impacts upon the subject site or neighbouring properties. The established streetscape character is not likely to be impacted by the proposed works.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Comment:

The proposed development provides ample soft open spaces for the purpose of onsite water infiltration to minimise stormwater runoff.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment:

The proposal is not likely to lead to a significant spread of weeds.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

The development will not affect any existing wildlife habitat and potential for wildlife corridors.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Description of non-compliance

Clause 4.1.6.1 of MDCP 2013, requires that the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m.

The proposed garages have a width of 5.5m or 78% of the frontage. This represents a 56% variation to the control.

Merit consideration:

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

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

The proposed development will allow for two (2) spaces for the dwellings, consistent with the numeric control.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

Adequate on-site parking is provided, consistent with the numeric control.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

The proposal's design adequately provides two off-street parking spaces for each dwelling that promotes efficient, safe, and convenient vehicular access.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment:

Subject to conditions of consent, imposed by Council's Development Engineer, the proposal is consistent with this control. The parking proposed to the front portion of the site limits excavation across the site

Objective 5) To ensure the width and number of footpath crossings is minimised.

Comment:

The property will use a single driveway and cross over to reduce the disruption to the existing footpaths.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

The driveway is limited to single width to allow for minimum parking requirements.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

The subject site is not located within a established town centre noted within the Manly DCP.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.4.5 Earthworks (Excavation and Filling)

Description of non-compliance

The proposal involves excavation within 0.9m of the eastern and western side boundary to accommodate for the garage, which does not comply with the prerequisite.

Merit consideration

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

Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- Limiting excavation, "cut and fill" and other earthworks;
- Discouraging the alteration of the natural flow of ground and surface water;
- Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and
- Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.

Comment:

The excavation works are not considered to be excessive and are reasonable within the R1 General Density Residential zone. The excavation works do not significantly alter the site topography or compromise the ability to establish the proposed landscape treatment within the front yard. The application has been accompanied by a Geotechnical Report (prepared by Morrow Geotechnics, dated September 2023) which states that the proposal will achieve an acceptable level of risk, subject to adherence to the recommendations stipulated within the report. A condition has been included with this consent to ensure compliance with the recommendations within the Geotechnical Report.

Conclusion

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$24,850 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,485,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly 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 Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

PLANNING CONCLUSION

This application is referred to the Development Determination Panel (DDP) for determination as the development application has received 5 submissions.

The concerns raised in the objections have been addressed and suitable conditions of consent have been included to protect acoustic amenity and any dilapidation impacts resulting from the proposed construction works.

The critical assessment issues including building height non-compliance, amenity, streetscape character and street front setback have been addressed within this report.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment.

Therefore, the application is recommended for APPROVAL.

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 permits a contravention of clause 4.3 Height of Building development standard pursuant to clause 4.6 of the MLEP 2013 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 DA2023/0243 for Demolition of Existing Dwelling House and Construction of a Semi-Detached Dwelling, including Swimming Pools, Associated Landscaping and Torrens Title Subdivision on land at Lot 1796 DP 752038, 86 Griffiths Street, FAIRLIGHT, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA002	2	Demolition Plan	Platform Architects	4 September 2023
DA003	2	Elevation Section	Platform Architects	4 September 2023
DA100	2	Lower Ground Floor	Platform Architects	4 September 2023
DA101	2	Driveway Design	Platform Architects	4 September 2023
DA102	2	Upper Ground Floor	Platform Architects	4 September 2023
DA103	3	First Floor	Platform Architects	27 October 2023
DA200	3	South Elevation	Platform Architects	27 October 2023
DA201	2	North Elevation	Platform Architects	4 September 2023
DA202	3	West Elevation	Platform Architects	27 October 2023
DA203	3	East Elevation	Platform Architects	27 October 2023
DA300	3	Section A	Platform Architects	27 October 2023
DA301	3	Section B	Platform Architects	27 October 2023
DA303	2	Section C	Platform Architects	4 September 2023
DA5002	2	Window Schedule	Platform Architects	4 September 2023
DA5006	2	External Finishing	Platform Architects	4 September 2023
N/A	N/A	PLAN OF SUBDIVISION OF LOT 1796 IN DP752038	LTS	20 February 2023
LO5	5	Lower Ground Floor	LOCI	11 September 2023

LO6	5	Upper Ground Floor	LOCI	11 September 2023
LO7	5	First Floor	LOCI	11 September 2023
LO8	5	Planting	LOCI	11 September 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. 1370750M_02	2	Eco Certificates	13 September 2023
Geotechnical Investigation	P2830_01 rev1	Morrow Geotechnics	5 September 2023
Arboricultural Impact Assessment	2	Heartwood Tree Consulting	5 September 2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

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	N/A

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

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

3. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a **semi-detached dwelling**, in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

semi-detached dwelling means a dwelling that is on its own lot of land and is attached to only one other dwelling.

Any variation to the approved land use and occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

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

4. **Prescribed Conditions**

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- 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);
- 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:
 - showing the name, address and telephone number of the Principal Certifier for the work, and
 - 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
 - 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.
- Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - in the case of work for which a principal contractor is required to be appointed:
 - the name and licence number of the principal contractor, and
 - the name of the insurer by which the work is insured under Part 6 of that Act,
 - in the case of work to be done by an owner-builder:
 - the name of the owner-builder, and
 - if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- 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:
 - protect and support the adjoining premises from possible damage from the excavation, and
 - 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.

5. General Requirements

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

Demolition and excavation works are restricted to:

 - 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (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.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or 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 sewer areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$24,850.00 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 (as amended).

The monetary contribution is based on a development cost of \$2,485,000.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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

7. Security Bond

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. On slab landscape planters

Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab as nominated in the approved Landscape Plans, over which soil and planting is being provided. Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections. The following soil depths are required to support landscaping: as documented on landscape plan L09 - typical detail planting on structure.

Design certification shall be submitted to the Certifier by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and ensure waterproofing and drainage is installed.

9. On-Site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by SGC Consultants, project number 20220281, drawing number SW200, SW201, SW202, SW300, SW301, SW302, dated 7/9/2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

10. Vehicle Crossings Application

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 6.0 metres wide at the kerb and 8.0

meters wide at the boundary in accordance with Northern Beaches Council Standard Drawing Normal in accordance with Section 138 of the Roads Act 1993. The landscaping in the middle of the shared driveway within the site is to be extended up to the back of the footpath in road reserve.

Note, driveways are to be in plain concrete only.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

A Council approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

11. Amendments to the approved plans

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

- The proposed dividing wall forward of the proposed garages is to be reduced in height to be no higher than 1.5m above ground level.
- First Floor Windows (W9) - Privacy louvers are to be installed on the "first floor" western windows to W9 as shown on the approved plans. The louvers shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development. Alternatively, these windows shall be fitted with obscured glazing or have a minimum sill height of 1.65m above the Finished Floor Level

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

12. 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 referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

13. Dividing Fence

No approval is given for any boundary fence. No consent has been provided by the owners of the common boundary.

Reason: To ensure compliance with the Dividing Fences Act 1991

14. Compliance with Standards

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

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

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

15. External Finishes to Roof

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

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

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

16. Sydney Water "Tap In"

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. Project Arborist

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:

- a) section 4. Specifications,
- b) appendix 2 Tree Protection Plan (tree protection fencing, trunk protection, ground protection, excavations, underground services, site inspections, and schedule of work).

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifier that all tree protection measures under AS4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:

Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

18. Tree Removal Within the Property

This consent approves the removal of existing trees on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:

- a) tree 1,
- b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

19. Pre-Construction Dilapidation Report

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Properties: 84 and 88 Griffiths Street

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

DURING BUILDING WORK

20. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all trees and vegetation within the road reserve.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project 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/Project 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/Project 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/Project 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/Project 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/Project Arborist to the Principal Certifier,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
 - ix) the activities listed in section 4.2 of AS4970-2009 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 AS4373-2007 Pruning of amenity trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

c) The arboricultural works listed in a) and b) are undertaken as complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment and/or Project Arborist as applicable.

Reason: Tree and vegetation protection.

21. **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.

22. **Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

23. **Demolition Works - Asbestos**

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

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

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

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

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

24. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plans L01 to L11 inclusive prepared by LOCI Design Collective, and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plans.

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

Reason: Environmental amenity.

25. **Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment (T2 and T3), including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

26. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- o Compare the post-construction report with the pre-construction report,
- o Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- o Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

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

Reason: To maintain proper records in relation to the proposed development.

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

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

28. Landscape Maintenance

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan(s) and any conditions of consent.

A maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

The approved landscape planted areas consisting of lawn, planting at grade, and planting on structure, shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

29. 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.

30. 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.

BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

31. Easement Creation

The Applicant shall create an easement for services (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all utility services are located within the appropriate easement(s).

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

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

32. Positive Covenant for On-site Stormwater Detention

A positive covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the final plan of subdivision and accompanying 88B instrument, requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements, which are available from Northern Beaches Council. Northern Beaches Council shall be nominated as the sole authority empowered to release, vary or modify such covenant.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate

Reason: To ensure ongoing maintenance of the on-site detention system.

33. Provision of Services for Subdivision

The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan of subdivision.

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

Reason: To ensure that utility services have been provided to the newly created lots.

34. Right of Carriageway

The Applicant shall create a right of carriageway (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument, to include all vehicular access and manoeuvring areas.

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

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

35. Restriction as to User (On-site Stormwater Detention)

The Applicant shall create a restriction as to user (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument for the on-site stormwater detention system, restricting any alteration or additions to the system. The terms of such restriction are to be prepared to Council's standard requirements. Council shall be nominated as the party to release, vary or modify such restriction.

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

Reason: To ensure no modification to the on-site stormwater detention structure without Council's approval.

36. Sydney Water Compliance Certification

The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application

must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and fees to be paid. Please make early contact with the coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

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

37. **Release of Subdivision Certificate**

The final plan of subdivision will not be issued by Council until the development has been completed in accordance with terms and conditions of the development consent.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

38. **Subdivision Certificate Application**

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, four copies of the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

39. **Title Encumbrances**

The Applicant shall ensure all easements, rights of carriageway, positive covenants and restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

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

Reason: To ensure proper management of land.



NATHERS Thermal Performance Specifications (BASIX Thermal Comfort)
These are the Specifications upon which the Certified Assessment is based. If details included in these Specifications vary from other drawings or written specifications, these Specifications shall take precedence. If only one specification option is detailed for a building element, that specification must apply to all instances of that element for the project.

Description	Type	U value	SHGC
All louvre windows on garage level of both dwellings	Aluminium Frame Double Glazed Clear	6.7	0.7
All pivot and bi-fold glazing of dwelling 1	Aluminium Frame Double Glazed Clear	4.3	0.47
All other windows and glazed doors of dwelling 1	Aluminium Frame Double Glazed Clear	4.3	0.53
All other windows and glazed doors of dwelling 2	Aluminium Frame Double Glazed Clear	2.7	0.51

Description	Type	Insulation	Colour (over roofspace)
All external walls of garage level	Brick Veneer, Weatherboard	None	Light (over 25)
All other external walls	Brick Veneer, Weatherboard	R 2.5	N/A
All internal walls	Plasterboard on Studs	None	N/A
All party walls	Cavity Brick A/F's Wall System	R 1.5	N/A

Description	Type	Insulation	Colour (over roofspace)
All floors above garage level and all floors above outside air of dwelling 1	Concrete	R 1.5	Not Specified (check against)
All floors above garage level and all floors above outside air of dwelling 2	Concrete	R 2.5	Not Specified (check against)
All other floors of both dwellings	Concrete	None	Not Specified (check against)

Description	Type	Insulation	Colour (over roofspace)
All ceilings under roof areas excluding garage level	Plasterboard	R 0.5	N/A
All roofs	Metal Cladding, Concrete	None	Light (over 15)

Other Requirements
All exhaust fans and downlights (if installed) to be sealed to prevent air infiltration

IMPORTANT NOTES:
Do not scale from drawings, use figured dimensions only. Ensure that the drawings used cover the latest revision no. Read in conjunction with consultant engineers drawings - refer contract drawing list.
All dimensions to be checked on site before commencement of work.
All discrepancies to be brought to the attention of the Architect.
Larger scale drawings and certain elements may be available.
The BASIX Planning Level is min 3.1m AHD. All levels to AHD.
This drawing is copyright and the property of the author, and must not be retained, copied or used without the express authority of Platform Architects Pty Ltd.

Rev	Date	Description	By
DA	20/02/2023	Issue for DA	OE/FS
DA2	04/09/2023	Amended DA	BA/FS
DA3	27/10/2023	Amended DA	RS/FS

LEGEND
BAISED BRICKWORK
CONCRETE REMOVED
PROPOSED FLOOR
FLOOR TILES 1
FLOOR TILES 2
FLOOR TILES 3
FLOOR TILES 4
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19_GSF
86 Griffiths Street, Fiallight, 2094



DRAWING TITLE
SITE PLAN

SCALE STATUS
1:500 DA

NUMBER
DA001

PROJECT
19_GSF
REVISION
DA3

- Reduction in bulk height by lowering the roof over Slope D from RL 32.30 to 31.60 and changing the roof pitch to follow the direction of the slope of the site
- Upper Ground Floor and Level 1 will be set back 10m from the rear to reduce the bulk at the front of the building and set back level 1 further from the rear to reduce the bulk at the rear of the building
- Bedroom 3 on level 1 reduced in size by 1160mm to increase the setback of the upper level further, resulting in an overall reduced setback of 1.1m
- Laundry moved to upper ground floor and other minor changes to reduce FSR to 0.6:1
- External entry stair to upper ground floor shifted to the side boundaries to reduce excavation and reduce the ground level along the side boundaries with subsequent minor internal changes in the front of the building
- Planter walls to affresco lowered to reduce bulk and maintain proportion after design changes above ground level. The planters to be located to the rear of the building as a result of the council request to extend planter adjacent to the driveway to the footpath
- Brick screens added to the front at fence areas for increased privacy for neighbours

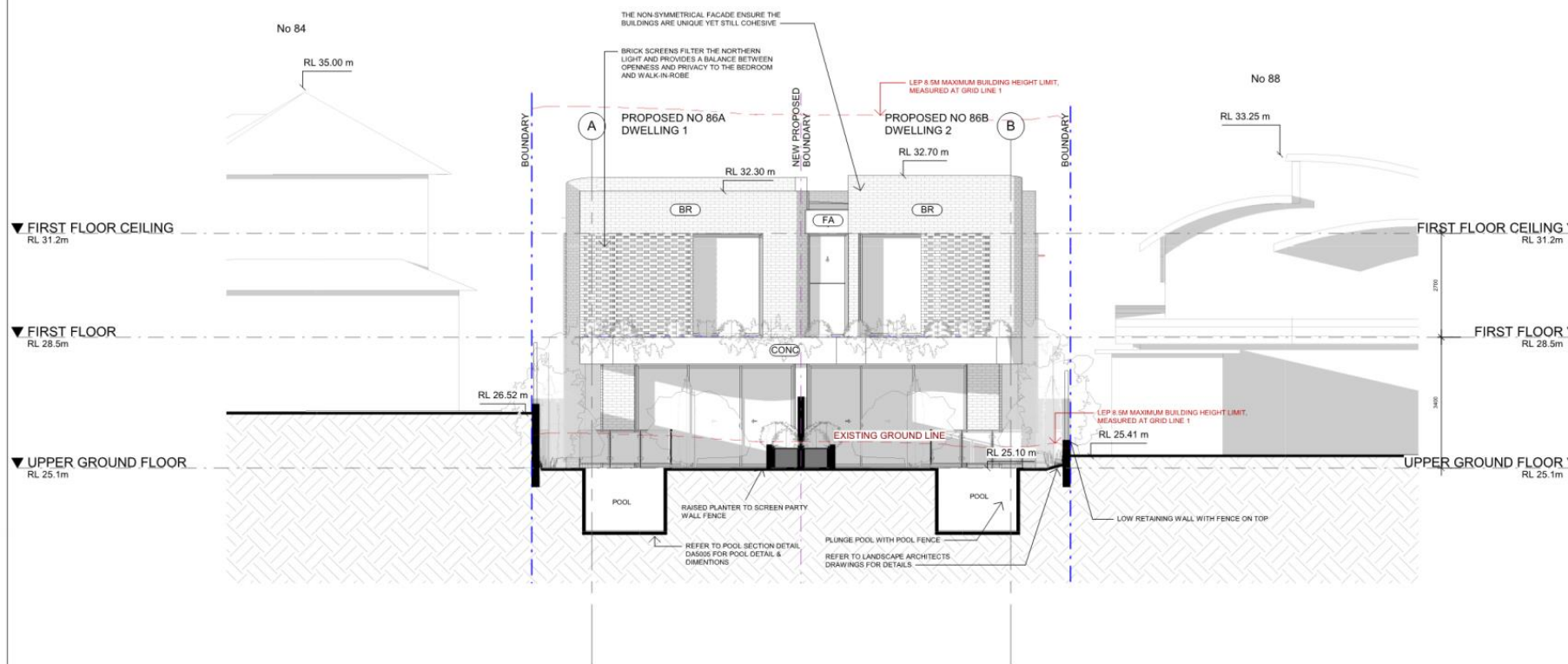
① SOUTH ELEVATION
1 : 100

PROJECT	19_GSF
REVISION	DA3

Other Requirements
All exhaust fans and downlights (if installed) to be sealed to prevent air-infiltration

LIST OF AMENDMENTS:

1. Reduction in bulk and height by lowering the roof over Bedroom 3 from RL 32.30 to 31.60 and changing the roof pitch to follow the direction of the slope of the site
2. Upper Ground Floor and Level 1 shifted 800mm to the rear to reduce the bulk at the front of the building and set back level 1 further from the street
3. Bedroom 3 on level 1 reduced in size by 300mm to increase the setback of the upper level further
4. Laundry moved to upper ground floor and other minor changes to reduce FSR to 0.6:1
5. External entry stair to upper ground floor shifted to the side boundaries to reduce excavation and retain natural ground level along the side boundaries with subsequent minor internal changes to the front of the building
6. Planter walls to affresco lowered to reduce bulk and maintain proportion after design changes above
7. Slight amendments to landscaping as a result of the above and council request to extend planter adjacent to the driveway to the footpath
8. Brick screens added to the front of affresco areas for increased privacy to neighbours



IMPORTANT NOTES:
Do not scale from drawings: use figured dimensions only. Ensure that the drawings used comply with the latest version of the Building Code of Australia (BCA) and the Building Code of Australia (BCA) and the Building Code of Australia (BCA).
All dimensions to be checked on site before commencement of work.
All dimensions to be brought to the attention of the Architect.
Large scale drawings and smaller dimensions take precedence.
The Building Planning Level is min 3.1m AHD. All levels to AHD.
This drawing is copyright and the property of the author, and must not be retained, copied or used without the express authority of Platform Architects Pty Ltd.

Rev	Date	Description	By
DA	20/02/2023	Issue for DA	OE/PB
DA2	04/09/2023	Amended DA	BM/PB

Legend
BRICK SCREENS
CONCRETE RENEWED
PROPOSED POOL
FLOOR RULE 1
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Legend
BRICK SCREENS
CONCRETE RENEWED
PROPOSED POOL
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19_GSF
86 Griffiths Street, Fairlight, 2094

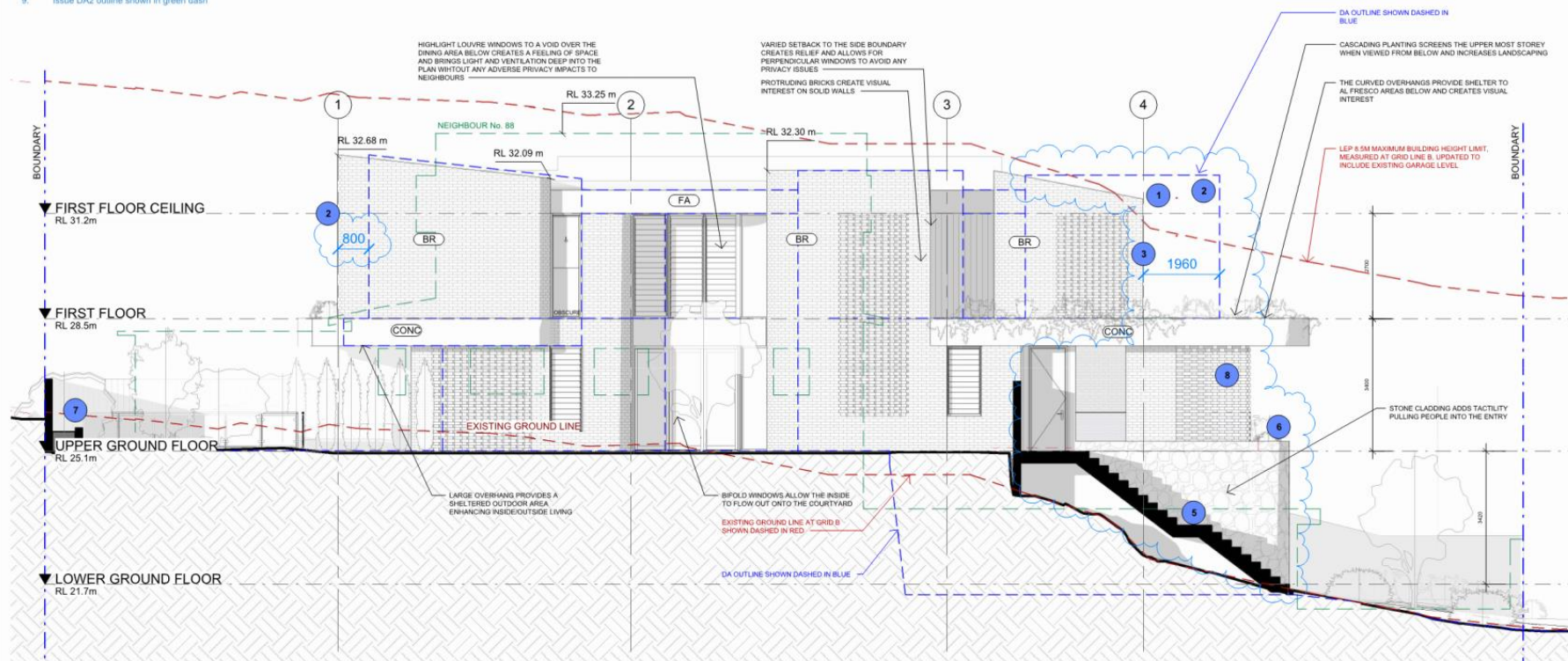
DRAWING TITLE
NORTH ELEVATION
SCALE
1:100

PROJECT
19_GSF

REVISION
DA201
DA2

LIST OF AMENDMENTS:

1. Reduction in bulk and height by lowering the roof over Bedroom 3 from RL 32.30 to 31.60 and changing the roof pitch to follow the direction of the slope of the site
2. Upper Ground Floor and Level 1 shifted 800mm to the rear to reduce the bulk at the front of the building and set back level 1 further from the street
3. Bedroom 3 on level 1 reduced in size by 1160mm to increase the setback of the upper level further, resulting in an overall reduced setback by 1960mm
4. Laundry moved to upper ground floor and other minor changes to reduce FSR to 0.6:1
5. External entry stair to upper ground floor shifted to the side boundaries to reduce excavation and retain natural ground level along the side boundaries with subsequent minor internal changes to the front of the building
6. Planter walls to alfresco lowered to reduce bulk and maintain proportion after design changes above
7. Slight amendments to landscaping as a result of the above and council request to extend planter adjacent to the driveway to the footpath
8. Brick screens added to the front alfresco areas for increased privacy to neighbours
9. Issue DA2 outline shown in green dash



WEST ELEVATION

1:100

IMPORTANT NOTES:

Do not scale from drawings, use figured dimensions only. Ensure that the drawings used are the latest revision only. Read in conjunction with consultant engineers drawings - refer contract drawing list.
All dimensions to be checked on site before commencement of work.
All discrepancies to be brought to the attention of the Architect.
Upper and lower ground levels are shown in green dash.
The Elevation Planning Level is min 3.1m AHD. All levels to AHD.
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Rev	Date	Description	By
DA	20/02/2023	Issue for DA	OE/FB
A	20/04/2023	RI - Response	FB
B	30/04/2023	For comment	FB
C	14/08/2023	For comment	FB
DA2	04/09/2023	Amended DA	BM/FB
DA3	27/10/2023	Amended DA	BS/FB

LEGEND:

CONCRETE	BRICKWORK	STONE CLADDING	STONE CLADDING
CONCRETE	CONCRETE	STONE CLADDING	STONE CLADDING
CONCRETE	CONCRETE	STONE CLADDING	STONE CLADDING
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CLIENT:

Angus Dook

platform
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Phone: (02) 8955 7739

Non-registered Architect - Breda Gough 8080
Platformarchitects.com.au

19_GSF

86 Griffiths Street, Fairlight, 2094

DRAWING TITLE:

WEST ELEVATION

SCALE: STATUS: DA

1:100

PROJECT:

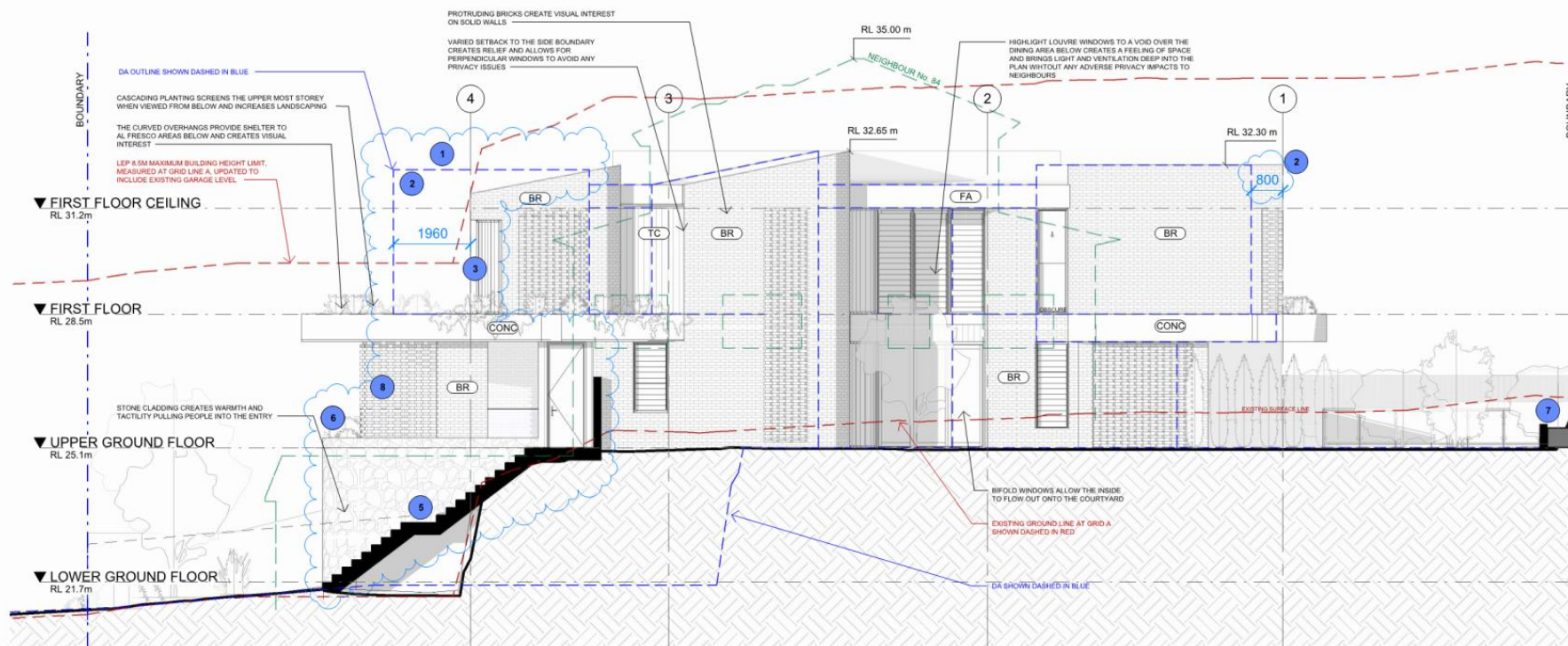
19_GSF

NUMBER: DA202

REVISION: DA3

LIST OF AMENDMENTS:

1. Reduction in bulk and height by lowering the roof over Bedroom 3 from RL 32.30 to 31.60 and changing the roof pitch to follow the direction of the slope of the site
2. Upper Ground Floor and Level 1 shifted 800mm to the rear to reduce the bulk at the front of the building and set back level 1 further from the street
3. Bedroom 3 on level 1 reduced in size by 1160mm to increase the setback of the upper level further, resulting in an overall reduced setback by 1960mm
4. Laundry moved to upper ground floor and other minor changes to reduce FSR to 0.6:1
5. External entry stair to upper ground floor shifted to the side boundaries to reduce excavation and retain natural ground level along the side boundaries with subsequent minor internal changes to the front of the building
6. Planter walls to alfresco lowered to reduce bulk and maintain proportion after design changes above
7. Slight amendments to landscaping as a result of the above and council request to extend planter adjacent to the driveway to the footpath
8. Brick screens added to the front alfresco areas for increased privacy to neighbours
9. Issue DA2 outline shown in green dash



**EAST ELEVATION
1 : 100**

IMPORTANT NOTES:
Do not scale from drawings, use figured dimensions only. Ensure that the drawings used cover the entire elevation. Read in conjunction with consultant engineers drawings - refer contract drawing 11.
All dimensions to be checked on site before commencement of work. All discrepancies to be brought to the attention of the Architect.
Larger scale drawings will be issued for the DA2.
The Elevation Planning Level is min 3.1m AHD. All levels to AHD.
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Rev	Date	Description	By
DA	20/02/2023	Issue for DA	OE/FB
A	20/04/2023	RFI - Response	FB
B	30/04/2023	For comment	FB
C	14/08/2023	For comment	FB
DA2	04/09/2023	Amended DA	BM/FB
DA3	27/10/2023	Amended DA	BS/FB

LEGEND	SYMBOL
SHARED BACKSPOUR	SHARED BACKSPOUR
CONCRETE RETAINED	CONCRETE RETAINED
PROPOSED FASIA	PROPOSED FASIA
FLOOR TILES 1	FLOOR TILES 1
FLOOR TILES 2	FLOOR TILES 2
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19_GSF
86 Griffiths Street, Fairlight, 2094

DRAWING TITLE
EAST ELEVATION
SCALE STATUS
1:100 DA

PROJECT
19_GSF
NUMBER
DA203
REVISION
DA3



**REVISED WRITTEN REQUEST PURSUANT
TO CLAUSE 4.6 OF MANLY LOCAL
ENVIRONMENTAL PLAN 2013**

**VARIATION OF A DEVELOPMENT
STANDARD REGARDING THE HEIGHT OF
BUILDINGS AS DETAILED IN CLAUSE 4.3
OF MANLY LOCAL ENVIRONMENTAL
PLAN 2013**

**Demolition of existing dwelling house
and construction of a semi-detached
dwelling, swimming pools, associated
landscaping and Torrens Title
subdivision at 86 Griffiths Street,
Fairlight NSW 2094**

✉ mathew@fourtowns.com.au

☎ 0425232018

www.fourtowns.com.au

PO Box 361, Balgowlah NSW 2093

Demolition Works and Construction of a Semi-Detached Dwelling, Swimming Pool, Associated
Landscaping and Torrens Title Subdivision

This report has been prepared to support a Development Application under the *Environmental Planning and Assessment Act 1979*.

Report prepared by:
Mathew Quattroville
Director – Four Towns Pty Ltd

Report prepared for:
Angus Doak

1 November 2023

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Demolition Works and Construction of a Semi-Detached Dwelling, Swimming Pool, Associated Landscaping and Torrens Title Subdivision

Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard, it is requested Council support a variation with respect to compliance with the maximum building height of a building as described in Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP 2013). It is noted that this request is made for the proposed construction of a semi-detached dwelling, swimming pools, associated landscaping and Torrens Title subdivision at 86 Griffiths Street, Fairlight.

The following assessment of the variation to Clause 4.3 – Building Height development standard, has taken into consideration the recent judgement contained within Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582, 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.

Requirement	8.5m
Proposed	9.28m
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a numerical/or performance based variation?	Numerical
If numerical enter a % variation to requirement	9.18%

The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The proposal is consistent with surrounding developments and the proposed variation is compatible with the locality and complies with other relevant controls which determine the built form of the site.

A variation to the strict application of the Height of Building standard is considered appropriate for the subject site and is supportable for the following reasons:

- The objectives of the MLEP2013 Height of Building control are achieved notwithstanding the technical non-compliance.
- The objectives of the MLEP2013 R1 General Residential zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary given the adjoining developments on either side of the subject lot.
- There are sufficient environmental planning grounds to support the proposed variation.
- The site has a sloping topography and slopes from the rear to the front of the site. The resulting constraints from the topography of the site contribute the variation in the building height.
- The proposal is consistent with the existing bulk and scale of the area.
- The breach relates to a small portion of the dwelling.
- The proposal has no adverse impacts to views or view corridors, as redevelopment of the site is permissible.
- The proposal does not adversely impact existing solar access to private and public places.
- The breach in building height will not be noticeable and will have no adverse impacts on neighbouring properties. The proposal will not result in a building of an unacceptable bulk and scale.

Demolition Works and Construction of a Semi-Detached Dwelling, Swimming Pool, Associated
Landscaping and Torrens Title Subdivision

Clause 4.6 Variation Requirements

The grounds of objection are based upon the various tests of the recent judgements in the *NSW Land and Environment Court Case 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* and review the following:

Compliance being unreasonable or unnecessary

1. Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: *Wehbe v Pittwater Council at [42] and [43]*.
2. The underlying objective or purpose of Clause 4.3(2) is not relevant to the development with the consequence that compliance is unnecessary. *Wehbe v Pittwater Council at [45]*
3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. *Wehbe v Pittwater Council at [46]*
4. The development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the stand is unnecessary and unreasonable: *Wehbe v Pittwater Council at [47]*.
5. The relevance of the zoning provisions of the land to which the development is proposed.

Sufficient environmental planning grounds

1. First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard"
2. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* at [31]

Is the proposed development in the public interest?

The Consent Authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of:

- a. the particular development standard;
- b. the zone in which the development is proposed to be carried out.

Secretary's Concurrence

Under clause 4.6(5), in deciding whether to grant concurrence, the Secretary must consider the following matters:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Demolition Works and Construction of a Semi-Detached Dwelling, Swimming Pool, Associated
Landscaping and Torrens Title Subdivision**General Provisions Relating to Clause 4.6 which will be applicable to Clause 4.3(2) Height of Building****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.*
- (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 Planning Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Planning Secretary must consider—*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—*
- (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- Note—** *When this Plan was made it did not include all of these zones.*
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*
- (a) *a development standard for complying development,*

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- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) clause 5.4.*

Comment: As detailed previously in this request, Clause 4.6 of MLEP2013 is applicable to enable a variation to the Height of Building to permit Northern Beaches Council power to grant development consent to the subject development.

This proposal involves a departure from the Height of Building control of MLEP2013, a formal variation to this standard is required under *Clause 4.6 – Exceptions to Development Standards*. This provision allows consent to be granted for a development even though it would contravene a development standard imposed by this or any other planning instrument.

The provisions of Clause 4.6, which the consent authority must have regard to in determining whether a development that contravenes a development standard should be supported, includes the following:

- *That compliance with the development standard is unreasonable and unnecessary in the circumstances of the case; Cl 4.6 (3)(a)*
- *That there is sufficient environmental planning grounds to justify contravening the development standard; Cl 4.6 (3) (b)*
- *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: Cl 4.6 (4)(a)(ii)*
- *The public benefit of maintaining the development standard, and Cl 4.6 (5)(b)*
- *Any other matters required to be taken into consideration by the Planning Secretary before granting concurrence Cl 4.6 (5)(c)*

4.3 Height of buildings

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

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) to control the bulk and scale of buildings,*
- (c) to minimise disruption to the following—*
- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) views between public spaces (including the harbour and foreshores),*
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

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Comment: It is acknowledged that the proposed development does not comply with clause 4.3 (2) and accordingly there is a requirement to submit a Clause 4.6 Variation. This Clause 4.6 seeks an exemption to the development standard as prescribed under the MLEP2013 and demonstrates that compliance with the provisions of clause 4.3 (2) is both unreasonable and unnecessary and the proposed development meets the required steps that are set out in the relevant NSW Land and Environment Court decisions to justify that the standard can be varied to achieve the subject proposal.

The development standard in Clause 4.3 (2) of the MLEP2013, is amendable to variation. The purpose of this Clause 4.6 is to vary the Height of Building as a building height referable to the building to give Council the power to grant development consent to the non-compliant purposes. This proposition is reinforced by the following:

Clause 4.3 (2) states:

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The Height of Building Map sets a maximum Height of Building control of 8.5m. For the purpose of calculating Height of Building, the MLEP2013 provides the following definition:

Building height is defined as follows:

building height (or height of building) means—

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*
including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

ground level (existing) means the existing level of a site at any point.

It is noted that Northern Beaches Council now refers to the leading case authority which considers the definition of “ground level (existing) *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, which insists that the ground level (existing) is measured from the **excavated** ground level (within the footprint of the existing building) to the highest point of the proposal directly above. It is noted that the Court accepted (at [74]) that there is an ‘environmental planning ground’ that may justify the contravention of the height standard under ‘clause 4.6’ when the prior excavation of the site (within the footprint of the existing building) distorts the maximum building height plane. This falls hand in hand with the original leading case *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070.

The Height of Building in clause 4.3(2) of the MLEP2013 is a development standard in accordance with the definition set out below:

Development standards’ is defined in section 1.4 of the EP&A Act 1979 as:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which **requirements are specified or standards are fixed** in respect of any aspect of that development,

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including, but without limiting the generality of the foregoing, requirements or standards in respect of:

(c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

Despite the variation to the Height of Building control which occurs as a result of the topography of the land, the proposed development is considered to be in keeping with the desired future character of the locality. The proposal has been strategically designed to minimise the impact and bulk and scale of the project. The project architects have worked tirelessly to design a new modern high-end semi-detached dwelling that meet the sites constraints and the existing bulk and scale of the area; therefore, the proposal will not result in any unreasonable visual impact on the Griffiths Street streetscape.

The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing. Therefore, this written submission is considered to be compliant with the Statutory Provisions prescribed both under MLEP2013 and the provisions of Clause 4.6 which permit a variation to a development standard. It is noted it is consistent with the approval granted through the case *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 is that the distorted height plane creates reasonable environmental planning ground that justifies the contravention of the height standard.

Objection to Development Standard – Height of Building (Clause 4.3(2))

Compliance being unreasonable or unnecessary

1. Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the stand: *Wehbe v Pittwater Council* at [42] and [43].

Comment: Clause 4.6(3)(a) of the MLEP2013 states that the proposed variation to the development standard must demonstrate that compliance with the development standard is ‘*unreasonable or unnecessary in the circumstances of the case*’.

In determining a merits-based assessment for the Height of Building of the development due consideration has been given to the above objectives and the planning principles set by the Land and Environment Court of NSW, Planning Principle – *Veloshin v Randwick Council* [2007] NSWLEC 428.

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the Height of Building of the site should be assessed on a greater numerical figure, noting the sites constraints and the unique nature of the locality in a varying degree of development types. Given the proposed application is consistent with similar approvals granted in the area, Council’s assessment should be focused on this numerical allowance as opposed to the variation to the specific standard. By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for residential needs within the Northern Beaches LGA in particularly the Fairlight precinct. As noted under the review of Clause 4.3 within the Statement of Environmental Effects, the proposal is consistent with the objectives of Clause 4.3, as outlined below:

- The objectives of the MLEP2013 Height of Building control are achieved notwithstanding the technical non-compliance.

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- The objectives of the MLEP2013 R1 General Residential zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary given the adjoining developments on either side of the subject lot.
- There are sufficient environmental planning grounds to support the proposed variation.
- The site has a sloping topography and slopes from the rear to the front of the site. The resulting constraints from the topography of the site contribute the variation in the building height.
- The proposal is consistent with the existing bulk and scale of the area.
- The breach relates to a small portion of the dwelling.
- The proposal has no adverse impacts to views or view corridors, as redevelopment of the site is permissible.
- The proposal does not adversely impact existing solar access to private and public places.
- The breach in building height will not be noticeable and will have no adverse impacts on neighbouring properties. The proposal will not result in a building of an unacceptable bulk and scale.

As outlined above, the proposed development is consistent with the underlying objectives of the Height of Building standard, notwithstanding the proposed variation. Given the modified state of the site, through this application the permissible Height of Building control does not align with the permissible height on the site, nor several built form controls of the MDCP. This essentially limits any redevelopment potential of the site without varying Council's standard. Further, the proposal is consistent with the merit based approval granted for 62 Griffiths Street, Fairlight, which was approved with a variation to the building height based on the natural ground level and not ground level (existing).

2. The underlying objective or purpose of Clause 4.3 is not relevant to the development with the consequence that compliance is unnecessary. *Wehbe v Pittwater Council* at [45]

Comment: In determining the building heights of the development, it is important to understand the definitions of building height and ground level (existing) and also relevant case law from the NSW Land and Environmental Court. The following is pertinent to the assessment of the proposed building heights for this development:

Building height is defined as follows:

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

Ground level existing is defined as follows:

ground level (existing) means the existing level of a site at any point.

The court now considers the definition of "ground level (existing)" *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, which insists that the ground level (existing) is measured from the **excavated** ground level (within the footprint of the existing building) to the highest point of the proposal directly above. It is noted that the Court accepted (at [74]) that there is an 'environmental planning ground' that may justify the contravention of the height standard under 'clause 4.6' when the prior excavation of the site (within the footprint of the existing building) distorts the maximum building height plane. This falls hand in hand with the original leading cases

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Bettar v Council of the City of Sydney [2014] NSWLEC 1070 and Stamford Property Services Pty Ltd v City of Sydney & Anor [2015] NSWLEC 1189.

It is noted that common-sense should prevail from the new court case “Merman Investments Pty Ltd” with the fact that many height planes are now going to be distorted creating an argument which goes hand in hand with the original court cases relating to the extrapolated levels of a site through ‘Bettar’.

As a result of the above, it is determined that the maximum building above ground level (existing) is 9.28m for the proposed development. This results in a 0.78m variation or 9.17%. The proposed breach relates to the front portion of the dwelling only. It is noted that the building height flows from 7m at the rear of the site to the maximum 9.28m which is consistent with the topography of the northern side of Griffiths Street. It is noted that the breach is the result of the sloping nature of the site, several steep drop offs which distort the existing ground level and the existing man-made changes. If the natural ground level was applied, the proposed variation would be consistent with other approvals granted in the area, such as 62 Griffiths Street. It is noted that if the natural ground level was applied, the proposal would have a maximum building height of 8.5m for the south-western corner down to 7.3m for the south-eastern corner. Regardless of the natural topography, due to the steep drop at this portion of the site, it makes compliance with the building height impractical, impossible and therefore unreasonable for Council to enforce. The proposal is supported and in our opinion is consistent with the objectives of the Clause, as outlined below:

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality, This objective relates to streetscape character and in this regard the proposed semi-detached dwelling has been designed to be consistent with the three storey bulk and scale of Griffiths Street. The height, bulk, scale of the development, as reflected by floor space, are entirely consistent with the built form characteristics established by the enclave of surrounding development in this precinct noting the topography of the northern side of Griffiths Street. It is noted that 62 Griffiths Street, was approved recently with a three-four storey appearance and a variation to the building height. It is important to acknowledge that the variation was based off the natural ground level and not ground level (existing). It is our considered opinion that the proposal for 86 Griffiths Street is consistent with the intent and approval granted for 62 Griffiths Street, therefore confirming that the proposal is consistent with the prevailing building height, roof forms and the future streetscape of the locality.

The proposed breach relates to the front portion of the dwelling, noting that the rear façade is 6.4m. The resulting variation is due to the natural topography and a sharp drop off which hinders the development when assessed with the ground level (existing) definition. If the merits of the ‘Bettar’ Court Case are utilised, the natural ground level enables a variation with that consistent with and approved at 62 Griffiths Street. The proposal is consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, in that I have formed the considered opinion that most observers would not find the proposed development by virtue of its roof form and building height, and in particular the non-compliant building height elements, offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment. The proposal is consistent with this objective notwithstanding the variation to the building height.

(b) to control the bulk and scale of buildings,
The proposal has been strategically designed to minimise the impact and bulk and scale of the project. The project architect has worked tirelessly to design a modern high-end dwelling that meet the sites constraints and the existing bulk and scale of the area. The proposal has been designed to

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be compatible with the existing streetscape (noting the maximum building height of the adjoining neighbours and approval granted at 62 Griffiths Street) while accommodating a bulk and scale that is complementary to the natural environment. The first floor has been designed with varying and large side setbacks which reduces the bulk and scale and accommodates a dwelling that blends in with the streetscape. As assessed within objective (a) the proposal is consistent with the streetscape of Griffiths Street, which therefore dictates the bulk and scale for the locality.

(c) to minimise disruption to the following—

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

Having inspected the site and its surrounds I am of the opinion that the building form and height of the proposed development, in particular that associated with the building height breaching elements, has been appropriately located within the site to minimise disruption of views to nearby residential development and from surrounding public spaces. The proposal is consistent with this objective notwithstanding the proposal variation to the building height.

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

Having regard to the view sharing principles established by the Land and Environment Court of NSW in the matter of Tenacity Consulting v Warringah [2004] NSWLEC 140 as they relate to an assessment of view impacts, I am satisfied that the proposed building height variation will not give rise to any unacceptable public or private view affectation. Whilst the proposal seeks a variation to the building height standard, view impacts have been minimised and a view sharing outcome achieved. The proposal is consistent with this objective notwithstanding the proposed building height variation.

(iii) views between public spaces (including the harbour and foreshores),

The building form and height has been appropriately distributed across the site such that the proposed variation to the building height will have no impact on views between public spaces. The proposal is consistent with this objective notwithstanding the proposed variation to the building height.

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

The application is accompanied by shadow diagrams drawings DA404-406 which depict the impact of shadowing on the neighbouring properties. The shadow diagrams demonstrate that the proposed development, in particular the non-compliant building height elements, will not cast shadows on the adjoining neighbours living room windows and private open space areas with compliant levels of solar access maintained between 9am and 3pm on 21st June. The proposal is consistent with this objective notwithstanding the building height breaching elements proposed.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Not applicable – the site is not located within a recreation or environmental protection zone.

It is our professional opinion that the building by virtue of its height, bulk and scale, is consistent with the locality and desired character of the area. We have formed the considered opinion that the project is a sympathetic design and development with a bulk and scale consistent with the existing

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and future character of the area. It The proposal is not offensive, or unsympathetic in a streetscape context nor the context from Griffiths Street, and therefore the variation can be supported by Northern Beaches Council.

3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. *Wehbe v Pittwater Council at [46]*

Comment: It would indeed be unreasonable for Council to refuse the development that is proposed by way of a variation as the proposal does not have any adverse impacts on the immediate amenity of the area. The development has been designed with the necessary sensitivity to complement existing buildings and the natural landform of the area. There is no adverse visual impact associated with the form and structures proposed.

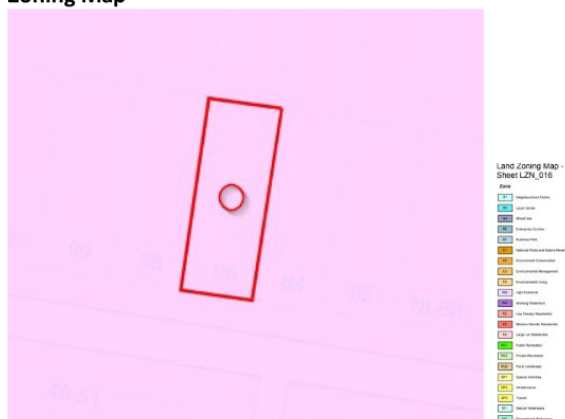
4. The development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the stand is unnecessary and unreasonable: *Wehbe v Pittwater Council at [47]*.

Comment: Whilst the proposal seeks a variation to Councils numerical Height of Building standard, it is consistent with the relevant objectives (as outlined previously in this report).

A review of other developments within the immediate area and approvals granted show that the development standard for Height of Buildings has been virtually abandoned or destroyed by Council's own decisions in granting development consents, hence compliance with this development standard is unnecessary and unreasonable.

5. The relevance of the zoning provisions of the land to which the development is proposed.

Zoning Map



Zone R1 General Residential

1 Objectives of zone

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.

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

2 Permitted without consent

Home-based child care; Home occupations

3 Permitted with consent

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Boat launching ramps; Boat sheds; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Emergency services facilities; Environmental protection works; Flood mitigation works; Group homes; Health consulting rooms; Home businesses; Home industries; Hostels; Information and education facilities; Jetties; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; Recreation facilities (indoor); Residential flat buildings; Respite day care centres; Roads; Secondary dwellings; Semi-detached dwellings; Seniors housing; Shop top housing; Signage; Tank-based aquaculture; Water recreation structures; Water recycling facilities; Water supply systems

4 Prohibited

Advertising structures; Water treatment facilities; Any other development not specified in item 2 or 3

The proposed use is defined as follows under MLEP2013:

semi-detached dwelling means a dwelling that is on its own lot of land and is attached to only one other dwelling.

Note— *Semi-detached dwellings are a type of residential accommodation—see the definition of that term in this Dictionary.*

Comment: The relevance of the zone objectives are assessed below:

Clause 4.6(4)(a)(ii) states that a request for exemption from a development standard must establish that the proposed variation is consistent with both the objectives of the zone and standard.

The site is zoned R1 General Residential. The site is zoned R1 General Residential. A Semi-detached dwelling is a permissible land use with Council's consent. The proposal is consistent with the objectives of the zone, as supported below:

- The proposal provides for the housing needs of the community.
- The proposal provides a variety of housing types and densities in line with the Fairlight area.
- There are multiple semi-detached dwellings within the immediate vicinity as outlined in the site analysis.
-

Sufficient environmental planning grounds

1. First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard"

Comment: Sufficient environmental planning grounds exist to justify the height of buildings variation namely the topography of the land which makes strict compliance difficult to achieve whilst appropriately distributing height, in the form of legitimate dwelling, on this particular site. Further justification to support the proposed variation is provided below:

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- The LEC planning principles on Height of Building relating to the height, bulk and scale, including compatibility between subject buildings and its surrounding context to ensure the proposal is compatible with its context. The planning principle seeks qualification of the following:

Planning principle: assessment of height and bulk

• The appropriateness of a proposal's height and bulk is most usefully assessed against planning controls related to these attributes, such as maximum height, floor space ratio, site coverage and setbacks. The questions to be asked are:

Are the impacts consistent with impacts that may be reasonably expected under the controls? (For complying proposals this question relates to whether the massing has been distributed so as to reduce impacts, rather than to increase them. For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.)

How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?

• Where the planning controls are aimed at preserving the existing character of an area, additional questions to be asked are:

Does the area have a predominant existing character and are the planning controls likely to maintain it?

Does the proposal fit into the existing character of the area?

• Where the planning controls are aimed at creating a new character, the existing character is of less relevance. The controls then indicate the nature of the new character desired. The question to be asked is:

Is the proposal consistent with the bulk and character intended by the planning controls?

• Where there is an absence of planning controls related to bulk and character, the assessment of a proposal should be based on whether the planning intent for the area appears to be the preservation of the existing character or the creation of a new one. In cases where even this question cannot be answered, reliance on subjective opinion cannot be avoided. The question then is:

Does the proposal look appropriate in its context?

Note: the above questions are not exhaustive; other questions may also be asked.

In addressing the above planning principals, the benefits of the proposal, represents a new functional dwelling through the construction of a new semi-detached dwelling which enhances the site and blends in with the natural landscape.

From a planning perspective, there is sufficient environmental planning grounds to justify the variation to the Height of Building development standard for the following reasons:

- The objectives of the MLEP2013 Height of Building control are achieved notwithstanding the technical non-compliance.
- The objectives of the MLEP2013 R1 General Residential zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary given the adjoining developments on either side of the subject lot.
- There are sufficient environmental planning grounds to support the proposed variation.
- The site has a sloping topography and slopes from the rear to the front of the site. The resulting constraints from the topography of the site contribute the variation in the building height.
- The proposal is consistent with the existing bulk and scale of the area.
- The breach relates to a small portion of the dwelling.

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- The proposal has no adverse impacts to views or view corridors, as redevelopment of the site is permissible.
- The proposal does not adversely impact existing solar access to private and public places.
- The breach in building height will not be noticeable and will have no adverse impacts on neighbouring properties. The proposal will not result in a building of an unacceptable bulk and scale.

The non-compliance does not result in any unacceptable environmental consequences in terms streetscape, or residential amenity. In this regard, I consider the proposal to be of a skilful design which responds appropriately to the topography and constraints on the site. Such an outcome is achieved whilst realising the reasonable development potential of the land.

2. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31]

Comment: This report demonstrates that there is sufficient environmental planning grounds to justify contravening the development standard for Clause 4.3(2). The proposal has assessed the relevant impacts (if any) and has assessed the bulk, scale and mass of the proposed dwelling which will breach the development standard. This report finds that a merit assessment is applicable and determines that there is sufficient grounds to justify the breach to the Height of Buildings. The proposal has been skilfully designed and strategically located to not have an adverse impact to neighbouring properties. Therefore, the development as proposed is sufficiently justified to contravene the development standard.

Is the proposed development in the public interest?

The Consent Authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of:

- a. the particular development standard;
- b. the zone in which the development is proposed to be carried out.

Comment: As demonstrated in this request, the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. The proposal is in the public's interest as there is very little public benefit in maintaining the development standard of Height of Building applicable to this site. Additionally, the building improvements add significant social and healthy benefits through a new functional dwelling. Council should encourage such developments via support of positive intention to upgrade sites within the Northern Beaches LGA.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Secretary's Concurrence

Under clause 4.6(5), in deciding whether to grant concurrence, the Secretary must consider the following matters:

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- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
(b) the public benefit of maintaining the development standard, and
(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

Comment: The contravention of the development standard will not result in any consequences for State or regional environmental planning.

There would be no public benefit in maintaining the development standard in this instance for the following reasons:

- The variation to the Height of Building development standard does not give rise to any adverse environmental impacts. As such, the maintenance of the development standard in this specific instance would not provide any public benefit and would hinder the orderly and economic development of the site.
- Maintaining the development standard, in the context of this site, would be inconsistent with the objectives of the zone, and the Act, as it would be inconsistent with the surrounding developments.

By Planning Circular dated 5th May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determinations are subject to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case. There are no other relevant matters required to be taken into account by the Secretary.

Demolition Works and Construction of a Semi-Detached Dwelling, Swimming Pool, Associated
Landscaping and Torrens Title Subdivision**Summary and Conclusion**

It is therefore submitted that Clause 4.6 is applicable to the subject development in respect to the variation to clause 4.3(2) Height of Building and this statement verifies that compliance with the provisions of clause 4.3(2) would be both unreasonable and unnecessary in the circumstances of this case. The development is consistent with the objectives of Clause 4.6 as per below:

1(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

1(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

A variation to the strict application of Council's Height of Buildings development standard is considered appropriate for the site at 86 Griffiths Street, Fairlight.

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the Height of Building of the site should be assessed on a greater numerical figure, noting the sites constraints and the unique nature of the locality in a varying degree of development types. Given the proposed application is consistent with similar approvals granted in the area, Council's assessment should be focused on this numerical allowance as opposed to the variation to the specific standard. By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for residential needs within the Northern Beaches LGA in particular the Fairlight precinct. As noted under the review of Clause 4.3 within the Statement of Environmental Effects, the proposal is consistent with the objectives of Clause 4.3. From a planning perspective, there is sufficient environmental planning grounds to justify the variation to the Height of Building development standard for the following reasons:

- The objectives of the MLEP2013 Height of Building control are achieved notwithstanding the technical non-compliance.
- The objectives of the MLEP2013 R1 General Residential zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary given the adjoining developments on either side of the subject lot.
- There are sufficient environmental planning grounds to support the proposed variation.
- The site has a sloping topography and slopes from the rear to the front of the site. The resulting constraints from the topography of the site contribute the variation in the building height.
- The proposal is consistent with the existing bulk and scale of the area.
- The breach relates to a small portion of the dwelling.
- The proposal has no adverse impacts to views or view corridors, as redevelopment of the site is permissible.
- The proposal does not adversely impact existing solar access to private and public places.
- The breach in building height will not be noticeable and will have no adverse impacts on neighbouring properties. The proposal will not result in a building of an unacceptable bulk and scale.

As outlined above, the proposed development is consistent with the underlying objectives of the Height of Building standard, notwithstanding the proposed variation. The permissible Height of

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Building control does not align with the permissible height on the site, nor several built form controls of the MDCP2013. This essentially limits any redevelopment potential of the site without varying Council's standards.

In addition to the above justification, the proposal is considered to meet the intent of Council's controls relating to Height of Building, the R1 General Residential zone objectives and the desired future character of this precinct. It is therefore submitted that the non-compliance with the Height of Building Clause 4.3(2) is acceptable, and flexibility should be exercised by Council as a better outcome is achieved for the site and the immediate locality. It is noted the assessment has been undertaken in relation to the most recent court case *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582. The variation under Clause 4.6 is to vary the Height of Building control to give Northern Beaches Council the power to grant development consent to the proposed development.