

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a Meeting of the Development Determination Panel will be held in the Walamai Room, Civic Centre, Dee Why

WEDNESDAY 30 JANUARY 2019



Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 30 January 2019
in the Walamai Room, Civic Centre, Dee Why**

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 12 DECEMBER 2018

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 12 December 2018 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2018/1703 - 2 PANORAMA PARADE, SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	STEVE FINDLAY
TRIM FILE REF	2019/037943
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

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.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant Development Consent to DA2018/1703 for alterations and additions to a dwelling house on land at Lot 1 DP 1221902, 2 Panorama Parade, Seaforth subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1703
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 1 DP 1221902, 2 Panorama Parade SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Rui Li Cheng Chen
Applicant:	Cheng Chen
Application lodged:	18/10/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	25/10/2018 to 12/11/2018
Advertised:	Not Advertised
Submissions Received:	0
Recommendation:	Approval
Estimated Cost of Works:	\$ 301,600.00

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;

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- 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 Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 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 - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 1 DP 1221902 , 2 Panorama Parade SEAFORTH NSW 2092
Detailed Site Description:	<p>The subject site consists of an allotment located on the eastern side of Panorama Parade.</p> <p>The site is irregular in shape with a frontage of 15.24m along Panorama Parade and a depth of 46.54m. The site has an area of 803m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house on site.</p> <p>The site has a slope of 2-3m from the front of the site to the rear and includes an existing swimming pool and landscaped area to the rear.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by dwelling houses to the north and aged and disabled housing directly to the south.</p>

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- DA239/2015- Consolidation of 2, 4 & 6 Panorama Parade, demolition of dwelling houses on 4 and 6 Panorama Parade, retention of existing dwelling house on 2 Panorama Parade, construction of three (3) dwelling houses with double garages, decks, landscaping and subdivision into 4 lots was approved by DAU (Development Assessment Unit) on 3 February 2016.
- DA239/2015- Part 2- Section 96 application involving removal of a tree and changes to conditions was approved under delegated authority on 14 June 2016.

A subdivision certificate (SC4641/S) was issued on 21 May 2018. This resulted in 4 lots at being formed. These lots include the subject site at 2 Panorama Parade as well as the neighbours at 2A Panorama Parade, 6 Panorama Parade and 6A Panorama Parade.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for alterations and additions to the existing 2 storey dwelling including the following:

- Extension of first floor level living room over an existing balcony
- Pop-out roof extension over kitchen on first floor level
- New lift from lower ground floor (garage) to first floor level
- Extension to the entrance with landscaping and planter boxes
- New deck and extension to existing deck on lower ground floor level adjacent the existing pool

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	None applicable.
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 Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</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 suitable for the proposed development.
Section 4.15 (1) (d) – any submissions DA2018/1703	See discussion on "Notification & Submissions Received"



Section 4.15 Matters for Consideration'	Comments
made in accordance with the EPA Act or EPA Regs	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 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types.</p> <p>The landscape component of the proposal is acceptable subject to the protection of existing trees and vegetation, and the completion of landscaping.</p>
Strategic and Place Planning (Heritage Officer)	<p>Further to a review of available documents and a site visit:</p> <p>The site of proposed development is not heritage listed, however, it is in the vicinity of listed item, the complex at 14 Ross Street. Given the nature of the proposal, the separation between sites, favourable topography and the nature of significance of the item, it is assessed that impact on heritage values will be within acceptable limits.</p> <p>Based on the above, I have no objection to this proposal from heritage perspective and deem heritage conditions not required.</p> <p>Kind Regards Zoran Popovic Heritage Adviser</p>



External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A327691_02).

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

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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



power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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	10m	18.7%	No (see comments)
Floor Space Ratio Site area: 803m ²	FSR: 0.45:1 (361.35m ²)	FSR: 0.445:1 (357.7m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	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- Height of Buildings:

Requirement:	8.5m
Proposed:	10m
Is the planning control in question a development standard?	YES
If numerical enter a % variation to requirement	18.7%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 - Height of Buildings development standard has

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taken into consideration the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 and an assessment of the request to vary the development standard in accordance with the requirements of Clause 4.6 is provided below:

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.

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

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the



objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)f

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.

Applicants justification on Environmental Planning Grounds

The Applicant's written request has demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. The Applicant's written request submits that the proposal provides extensions that will have a negligible amenity impact and are below the existing roof ridge and within the existing site coverage (building envelope). As a result, the development



provides a similar outcome in terms of impact as is provided by the existing dwelling and complies with the relevant objectives under the Manly LEP to provide a desirable outcome.

In doing so, 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 building is of a good design and will protect the amenity of the surrounding built environment therefore satisfying cl 1.3(c)(g) of the EPA Act.

In this regard, the applicants 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).

cl 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 building 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 cl 4.3 Height of Buildings development standard are:

(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 proposal maintains the style of roof at the front of the dwelling and adds extensions to the roof at the rear. As these extensions are at or below the building height and to the rear, the proposal will be consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality.

The development satisfies this objective.

(b) to control the bulk and scale of buildings

Comment:

As a result of the additions being within the existing building footprint and being predominantly to one side setback and the rear, the addition of bulk will provide a reasonable presentation to the street and would not have any unreasonable amenity impact. This is also shown by the maintenance of a compliant floor space ratio.



The development satisfies this objective.

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

Comment:

The subject site is located in an area in which there are harbour views available to the south of the site. As a result of the works being predominantly maintained within the existing building footprint and within the rear setback, the proposal would not have an unreasonable impact on these views. As further discussed in the "Maintenance of Views" section of this report the additions are in an area in which a view corridor will be impacted to a minor extent. Additionally, the more substantial view corridor to the rear will be retained.

The development satisfies this objective.

(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 proposal is compliant with the controls for Sunlight Access and Overshadowing under the Manly DCP 2013, which ensures the development will provide reasonable solar access. The maintenance of the additions within the existing footprint along with the compliant floor space ratio also provides a situation in which potential environmental impacts are adequately minimised.

The development satisfies this objective.

(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. o 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 subject site is not in a recreation or environmental protection zone.

Conclusion:

The proposed development satisfies the underlying objectives of the Height of Buildings development standard.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone

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



Comment:

The proposal involves alterations and additions to an existing dwelling which maintains the low density residential development on the site.

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

Comment:

Not applicable.

Conclusion:

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

cl 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 PS 18-003 dated 21 February 2018, 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 Development Determination Panel.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 803m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	North: 7m (based on gradient 1:12)	7.2m	2.9%	No (see comments)
	South: 6.9m (based on gradient 1:15)	6-8m	N/A	No (see comments)
4.1.2.2 Number of Storeys	2	2-3	N/A	No (see comments)
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	0m-4.7m (Planter box to Bay window roof)	N/A	No (see comments)
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 2.4m (based on wall height)	2m	16.6%	No (see comments)
	South: 2.3m	4.3m	N/A	Yes
	Windows: 3m	2m	N/A	No (see comments)
4.1.4.4 Rear Setbacks DA2018/1703	8m	0.45m (bbq area)	N/A	No (see comments)



		1.6m (deck)		comments)
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (441.65m ²)	65% (525m ²)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	39% (206m ²)	N/A	Yes
4.1.5.3 Private Open Space	18m ²	160m ²	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m to curtilage/concourse	0.8m-2.5m	N/A	No (see comments)
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces (existing)	N/A	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
3.4 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
3.5 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
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	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	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	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes

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3.4.2 Privacy and Security

Description of issue

The proposal involves the addition of windows to the side elevations as result of the additions. This includes highlight windows on the northern elevation (2m from the side boundary) as well as new windows (3m from the boundary) at the southern elevation.

The proposal also involves an extension of the pool concourse (decking) and the addition of a large permeable deck in the south-eastern corner of the site.

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 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 proposed new windows on the northern elevation are all highlight windows which ensures that there would be no unreasonable opportunity for overlooking to the neighbouring property. The addition of the windows on the southern elevation are compliant with the control for new windows (3m from the boundary) and are designed so as to sufficiently minimise overlooking impact.

The additional decking areas to the rear of the site have adequate landscaped screening and physical separation from any neighbouring living spaces to ensure these areas would provide a suitable outcome for privacy.

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:

The proposal provides an appropriate outcome for privacy through landscaped screening, suitable locations for windows and decks, and adequate separation from living spaces. As a result, further built form screening would not be required to provide an appropriate privacy outcome and there would be an appropriate balance between providing privacy and maintaining other amenity.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal maintains entrance areas and openings at both levels so as to provide opportunity for awareness of neighbourhood security.

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.

3.4.3 Maintenance of Views

Description of issue

The subject site and neighbouring property at 6 Panorama Parade has water views toward the harbour to the south.

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 for view sharing for both existing and proposed development and existing and future Manly residents.

Comment:

The proposal involves the additions to the first floor level to the rear of the existing dwelling. In this location there will be some impact on water views to the harbour and some impact on views toward the city skyline 6 Panorama Parade. However, the corridor of view to be impacted by the proposal is minor in nature when compared to the view corridor that will remain over the existing ground floor level to the rear. As a result of the expansive view corridor being maintained to the rear of the site and the partial nature of the view to be impacted, the development with views in the same direction will provide a reasonable outcome for view sharing.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

An assessment of view sharing has also been undertaken with reference to the Views Principle established by the NSW Land and Environment Court as follows:

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example 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, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Comment:

The proposed development would affect some partial long distance harbour water views of the harbour and have a minor impact on the distant city skyline view from 6 Panorama Parade (see Photo 1 below).



Photo 1: View from first floor level of neighbouring property at 6 Panorama Parade

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.

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Comment:

The views are obtained from bedrooms at a first floor level over a side boundary. The views are obtained from a standing and sitting position. The photo below shows a water view from the rear bedroom that will be unaffected by the proposed development.



Photo 2: View from standing position at bedroom to the rear of 6 Panorama Parade
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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 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Comment:

Given the extent of views maintained (see photo 2), the fact that the impact is to a distant and partial view, and the view being over a side boundary, the impact is assessed as being minor.

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.

Comment:

The impact on water view is caused by a section of the dwelling that is compliant with the height standard for height of building and the standard for floor space ratio. As a result of the minor impact and the compliance with relevant controls causing the impact, the outcome for view sharing is reasonable.

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

Comment:

The maintenance of a compliant rear setback provides an outcome in which the proposal will minimise the loss of views through this corridor.

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.

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

Description of non-compliance

The proposal does not comply with the control for wall height at the northern boundary (7m). In this regard, the proposal provides a wall height of 7.2m.



The proposal does not comply with the control for wall height at the southern boundary (6.9m). In this regard, the proposal provides a wall height of 6-8m.

The proposal does not comply with the 2 storey control. In this regard, the proposal is part 2 part 3 storeys.

Merit consideration:

With regard to the consideration for the variations, the development is considered against the underlying Objectives Height of building for the Manly LEP (as are stated are particularly relevant) of the controls 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 proposal maintains the existing style of roof at the front of the dwelling and adds extensions to the roof at the rear. As these extensions are at or below the current building height and to the rear, the proposal will be 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,

Comment:

As a result of the additions being within the existing building footprint and being predominantly to one side setback and the rear, the additional bulk will provide a reasonable presentation to the street and would not have any unreasonable amenity impact. This is also demonstrated by the maintenance of a compliant floor space ratio.

(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 subject site is located in an area in which there are harbour views available to the south of the site. As a result of the works being predominantly maintained within the existing building footprint and within the rear setback, the proposal would not have an unreasonable impact on these views. As further discussed under Maintenance of views, the additions are in an area in which a view corridor will be impacted to a minor extent. Additionally, the more substantial view corridor to the rear will be retained.

(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 proposal is compliant with the controls for Sunlight Access and Overshadowing under the Manly DCP 2013, which ensures the development will provide reasonable solar access.

(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 subject site is not in a recreation or environmental protection zone.

The proposed development satisfies the underlying objectives of the clause.

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

Description of non-compliance

The proposal does not comply with the side setback control on the northern side being 2m setback where the control requires 2.4m.

The proposal also does not comply with the control for new windows of 3m from the side boundary, being 2m.

The additions to the existing pool area also do not comply with the numerical control of 8m for the rear setback, being 0.45m (BBQ area) to 1.6m (deck).

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 maintains landscaping to the front of the site and involves extensions which are generally located to the rear of the site. Along with sufficient modulation to the side elevations, this provides an outcome in which the spatial proportions in the streetscape will be reasonably maintained and presented.

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:

The proposed extensions to the rear of the dwelling are of a reasonable extent and in an appropriate location so as to provide spacing to maintain adequate amenity. This includes spacing between the new living spaces and the adjoining dwellings (for privacy) and the maintenance of a corridor at the rear of



the dwelling (for views). Additionally, the control of the bulk ensures that the proposal is compliant with the controls for Sunlight Access and Overshadowing under the Manly DCP.

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

Comment:

The proposed siting of the additions to the dwelling are within the existing footprint, extending toward the rear of the dwelling. This results in an outcome in which the proposal would have no unreasonable amenity impact and would provide an appropriate visual presentation in the street.

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 maintains a compliant amount of open space and landscaped area under the Manly DCP and maintains landscaped features including trees on site. As a result, the proposal will provide an appropriate outcome for natural features.

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

Comment:

Not applicable.

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.

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

The proposal does not comply with the 1m control for the setback to the swimming pool concourse being 0.8m-2.5m.

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 be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;



Comment:

The proposal provides landscaped screening to the deck connected to the swimming pool area and also provides the extension to the existing deck area in a location that is well separated from neighbouring living areas. As a result the proposed new deck areas along with the existing swimming pool are located to maintain reasonable privacy.

Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;

Comment:

The proposed extensions are to the rear of the dwelling and would not be easily visible from the streetscape.

Objective 3) To integrate landscaping; and

Comment:

The proposal provides for landscaping to surround the new deck and maintains a compliant landscaped area on site. This results in an appropriate integration of landscaping.

Objective 4) To become an emergency water resource in bush fire prone areas.

Comment:

Not applicable (no swimming pool is proposed).

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.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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

Mainly Section 94 Development Contributions Plan

S94 Contributions are not applicable to this application.

CONCLUSION

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



- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1703 for Alterations and additions to a dwelling house on land at Lot 1 DP 1221902, 2 Panorama Parade, SEAFORTH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A4001- Site Plan and Site Analysis	October 2018	Mark Hurcum Design Practice
A4101- Lower Ground Floor Plan	September 2018	Mark Hurcum Design Practice
A4102- Ground Floor Plan	September 2018	Mark Hurcum Design Practice

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A4103- First Floor Plan	September 2018	Mark Hurcum Design Practice
A4104- Roof Plan	September 2018	Mark Hurcum Design Practice
A4201- South & West Elevation	September 2018	Mark Hurcum Design Practice
A4202- North & East Elevation	September 2018	Mark Hurcum Design Practice
A4221- Section A-A & B-B & C-C	September 2018	Mark Hurcum Design Practice

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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

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

2. 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 (DACPLB09)

3. **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) 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.
- (c) 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.



- (d) 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.
- (e) 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.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) 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.
- (j) 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.

- (k) 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 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.



- (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. (DACPLB10)

FEES / CHARGES / CONTRIBUTIONS

4. **Security Bond**

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security 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, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

5. **Waste Management Plan**

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK



6. Tree and vegetation protection

A) Existing trees and vegetation shall be retained as follows:

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

B) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4,
- ii) any tree roots exposed during excavation with a diameter greater than 25mm within the TPZ must be assessed by an Arborist. Details including photographic evidence of works undertaken shall be submitted by an AQF Level 5 Arborist to the Certifying Authority,
- iii) to minimise the impact on trees and vegetation to be retained and protected, 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,
- iv) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorized by the Project Arborist on site,
- v) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
- vi) should either or both iv) and v) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures provided. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority.

Reason: to retain and protect significant planting on development and adjoining sites.

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

8. Environmental and priority weed control

All weeds are to be removed and controlled in accordance with the Biodiversity Conservation Act 2016.

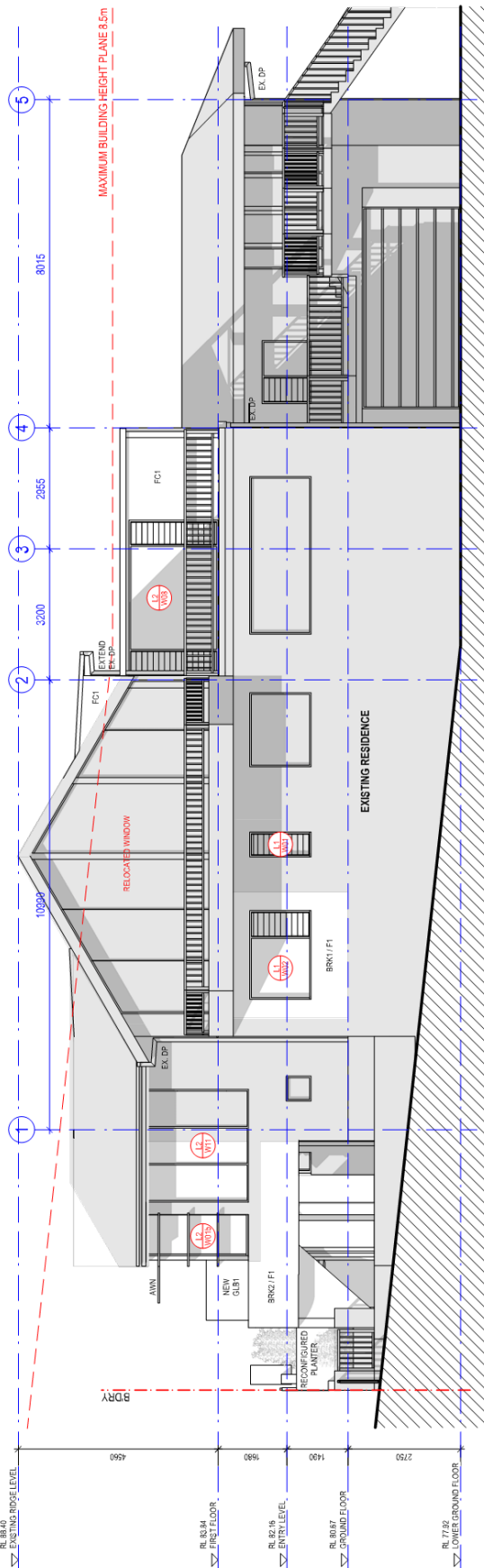
Reason: preservation of environmental amenity.

9. Landscape maintenance

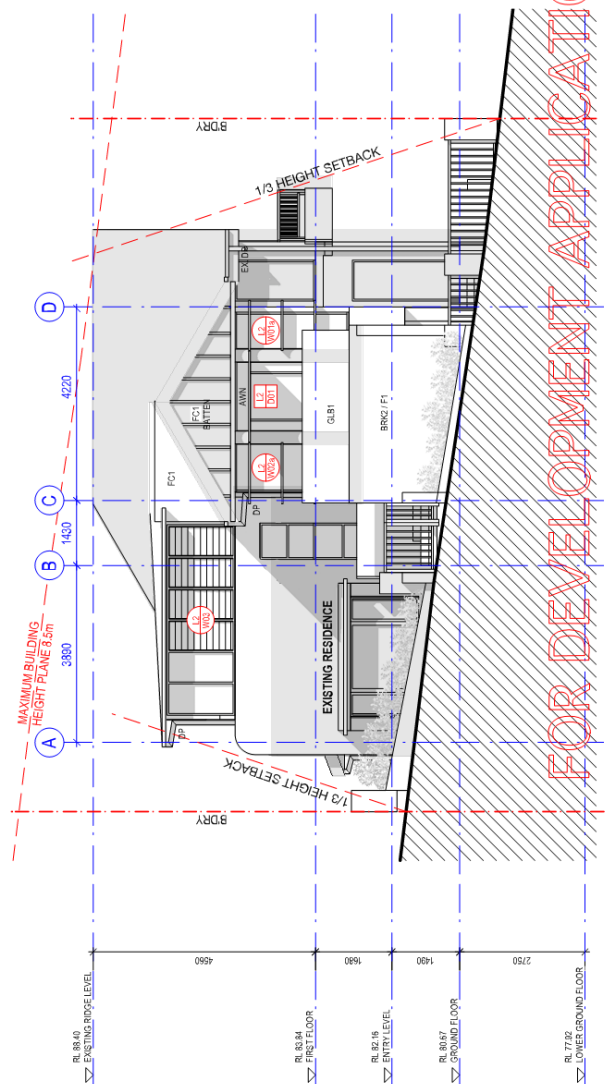
All landscape components are to be maintained for the life of the development. A maintenance program is to be established. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components and species to maintain the landscape theme and be generally in accordance with the Site Plan.

Reason: to maintain local environmental amenity and ensure landscaping continues to soften the built form.





1 SOUTH ELEVATION
Scale 1:100



2 WEST ELEVATION
Scale 1:100

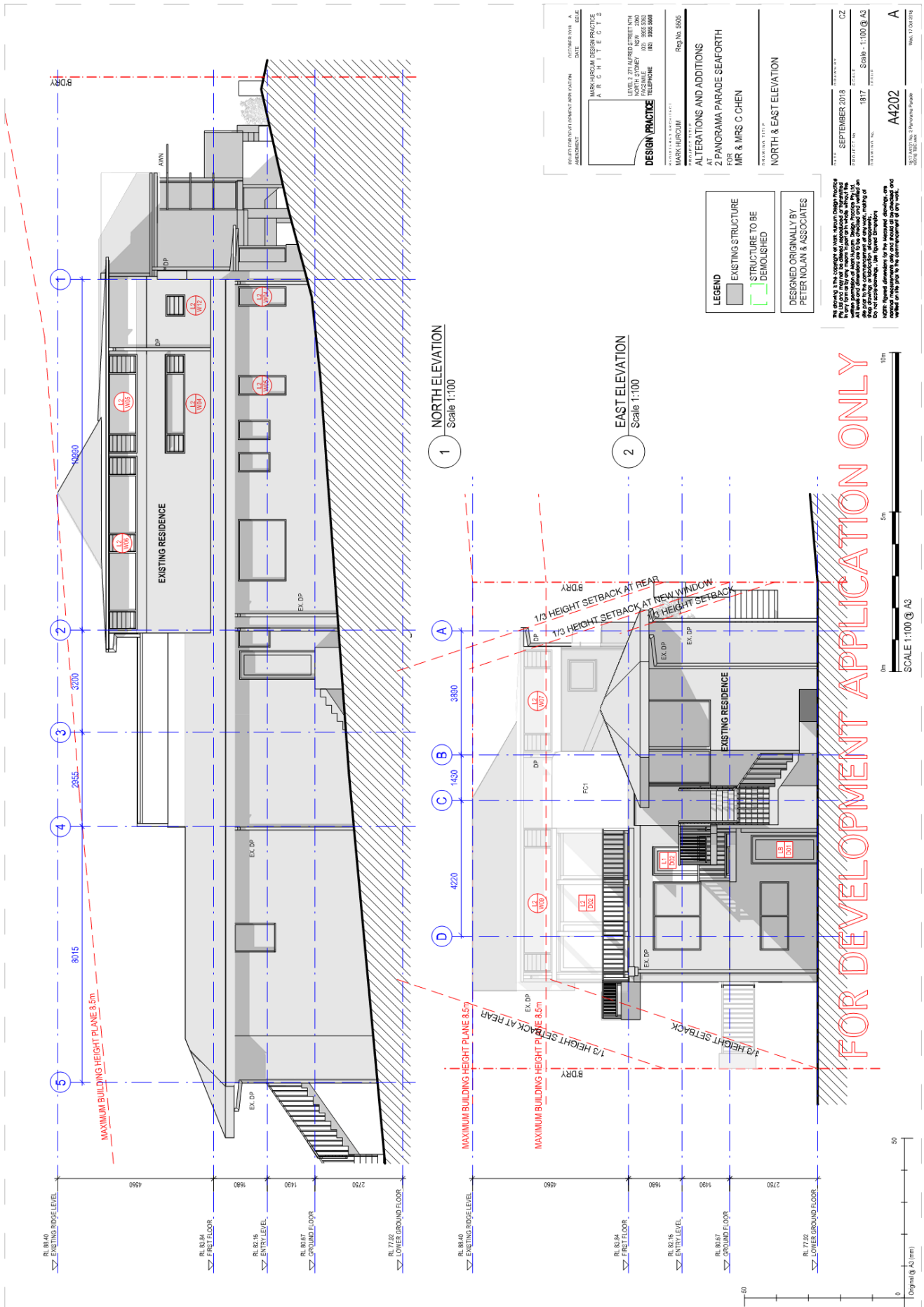
<p>DESIGN PRACTICE</p> <p>MARK HURCUM DESIGN PRACTICE ARCHITECTS</p> <p>LEVEL 3, 271 ALBERT STREET NORTH SYDNEY NSW 2060</p> <p>PHONE (02) 9550 8888</p> <p>TELEPHONE (02) 9550 8888</p>	<p>PROJECT NO. 1817</p> <p>DATE: SEPTEMBER 2018</p> <p>SCALE: 1:100 @ A3</p> <p>PROJECT NAME: 2 PANORAMA PARADE SEAFORTH</p> <p>CLIENT: MR & MRS C CHEN</p> <p>DESIGNED BY: PETER NOLAN & ASSOCIATES</p>	<p>REGISTERED ARCHITECT</p> <p>MARK HURCUM</p> <p>Reg No. 2605</p> <p>ALTERATIONS AND ADDITIONS</p> <p>FOR MR & MRS C CHEN</p> <p>SOUTH & WEST ELEVATION</p>	<p>PROJECT NO. 1817</p> <p>DATE: SEPTEMBER 2018</p> <p>SCALE: 1:100 @ A3</p> <p>PROJECT NAME: 2 PANORAMA PARADE SEAFORTH</p> <p>CLIENT: MR & MRS C CHEN</p> <p>DESIGNED BY: PETER NOLAN & ASSOCIATES</p>
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LEGEND

- EXISTING STRUCTURE
- STRUCTURE TO BE DEMOLISHED

DESIGNED ORIGINALLY BY
PETER NOLAN & ASSOCIATES

The drawings are the property of Mark Hurcum Design Practice and are not to be used for any other purpose without the written consent of Mark Hurcum Design Practice. All work and dimensions are to the finished and building on the ground. The drawings are not to be used for any other purpose without the written consent of Mark Hurcum Design Practice. The drawings are not to be used for any other purpose without the written consent of Mark Hurcum Design Practice. The drawings are not to be used for any other purpose without the written consent of Mark Hurcum Design Practice.



ITEM 3.2	MOD2018/0506 - 7 FLORIDA ROAD, PALM BEACH - MODIFICATION OF DEVELOPMENT CONSENT N0417/15 GRANTED FOR DEMOLITION OF EXISTING DWELLING AND PROPOSED NEW DWELLING
REPORTING MANAGER	LUKE PERRY
TRIM FILE REF	2019/037623
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

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 grant Development Consent to Mod2018/0506 for Modification of Development Consent N0417/15 granted for demolition of existing dwelling and proposed new dwelling on land at Lot 2 DP 633579, 7 Florida Road, Palm Beach subject to the conditions outlined in the Assessment Report.



APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0506
Responsible Officer:	David Auster
Land to be developed (Address):	Lot 2 DP 633579, 7 Florida Road PALM BEACH NSW 2108
Proposed Development:	Modification of Development Consent N0417/15 granted for demolition of existing dwelling and proposed new dwelling
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Karel Gardiner Wheen
Applicant:	Livistudio Pty Ltd
Application lodged:	19/09/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	26/09/2018 to 12/10/2018
Advertised:	Not Advertised
Submissions Received:	0
Recommendation:	Approval

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 MOD2018/0506)



- determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - D12.8 Building envelope

SITE DESCRIPTION

Property Description:	Lot 2 DP 633579 , 7 Florida Road PALM BEACH NSW 2108
Detailed Site Description:	<p>The site is known as 7 Florida Road, Palm Beach and has a legal description of Lot 2 in Deposited Plan 633579. The site is irregular in shape and has a total area of 1008m².</p> <p>Vehicular and pedestrian access is gained via the 19.81m wide frontage of Florida Road, with additional vehicle access provided to the rear of the site via a right of carriageway. The site is located on the south-eastern side of Florida Road.</p> <p>The site experiences a fall of 20.42m from the rear south-eastern boundary of the site, down towards the front north-western boundary of the site, with a slope of approximately 44.78%.</p> <p>The site is currently occupied by a single dwelling, elevated swimming pool, detached carport to the rear and hard stand space to the front of the site.</p> <p>There are several canopy trees within the front of the site and within Council's road reserve.</p> <p>The property is surrounded by residential properties to the north, south, east and west. The subject site currently obtains ocean views of Palm Beach, which is located to the far north-west of the site.</p>

Map:



SITE HISTORY

On 8 October 2015, a Development Application (NO417/15) was lodged with the former Pittwater Council for the demolition of an existing 4 storey dwelling and construction of a new 4 storey concrete and timber clad dwelling with additional garage and storage level off Florida Road.

On 28 July 2016 approval was granted by Council subject to conditions. The application was determined by the former Development Determination Panel (DDP) equivalent at Pittwater Council. As such, this current modification application is required to be determined by the DDP.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves internal modifications throughout the building. These include the deletion of the proposed pool and the retention of the existing pool, as well as the reduction of the pool terrace and first floor terrace, and the removal of the lower ground floor terrace. The approved garage and associated excavation will also be deleted, and the existing carport replaced. The GFA proposed is a reduction of 102m² compared to the approved GFA of 499m²

These changes are also intended to satisfy the existing conditions of consent placed on the original approval C.5(1), (2), (3), (4) and (5) and Condition C.6 (see below).

C. Matters to be satisfied prior to the issue of the Construction Certificate:

5. *Prior to the issue of a Construction Certificate, the architectural drawings are to be amended to reflect the following:*
 1. *The most upper level roof eave (above the First Floor level terrace) is to be reduced in width and is not to exceed a maximum height of 10 metres above the existing ground level;*
 2. *The First Floor level terrace is to have a maximum width of 2.4 metres;*
 3. *The Pool terrace is to be reduced in width by 2.9 metres, and is to not extend north of the red line as shown on architectural drawing "00.03 (Proposed Plans - Pool/Lower Guest Level)" dated 08/04/2016;*



4. The Lower Ground Floor terrace (adjoining Bedroom 5) is to be deleted. The northern external wall of Bedroom 5 is to be relocated to the south in alignment with the Pool terrace above, as shown on architectural drawing "00.03 (Proposed Plans - Pool/Lower Guest Level" dated 08/04/2016;

5. The finished surface of the upper level concrete roof is to be amended from gravel to pebbles in order to soften the visual impact of the roof as viewed from the properties to the rear of the subject site.

6. Prior to the issue of a Construction Certificate, the Landscape Plan is to be updated to reflect the following:

1. The area above the garage is to be replaced with landscaped area, and is to incorporate a variety of native trees and shrubs in order to screen the built form of the development;
2. The Lower Ground level terrace is to be deleted and the Pool terrace reduced in width in accordance with condition C5. Landscaping is to be implemented in these areas to enhance landscaping on site and screen the built form of the development.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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 and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for N0417/15, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under N0417/15.



Section 4.55 (2) - Other Modifications	Comments
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application N0417/15 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environmental Plan 2011 and Pittwater 21 Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of 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	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.



Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 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 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 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 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</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 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 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</p>



Section 4.15 'Matters for Consideration'	Comments
	of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received.
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 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The landscape component of the modification proposal is acceptable subject to the protection of existing trees and vegetation, and the completion of landscaping .as nominated in the modification application</p> <p>Council's Landscape section has assessed the proposal against the following Pittwater 21 DCP 2014 Controls:</p> <p>B4.22 Preservation of Trees or Bushland Vegetation</p> <p>C1.1 Landscaping</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is



External Referral Body	Comments
	assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 940916S).

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

Commitment	Required Target	Proposed
Water	40	42
Thermal Comfort	Pass	Pass
Energy	40	97

A condition has been included in the original consent requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:



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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10m (by condition of consent)	11.17m	N/A	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

Description of Non-compliance:

The proposed upper level roof at the south eastern corner will be up to 11.17m high. The non-compliant element of the proposal is a relatively minor part of the overall development, being confined to the south



eastern corner of the upper level eave.

The applicant has lodged a Clause 4.6 statement with the original application, but has not lodged an updated Clause 4.6 statement with the application.

Merit Assessment:

In 'Gann v Sutherland Shire Council [2008] NSWLEC 157', the Court was prepared to distinguish an earlier line of authority, and hold that, since Section 96 was a "free-standing" provision, it could be utilised to modify a consent even where (in that case) no SEPP 1 or Clause 4.6 Objection could be lodged.

By application of that case in the context of this application, the Council can consider (and approve) a modification that still results in a breach of the height control, without reference to SEPP 1 or Clause 4.6, relying instead on the "free-standing" power of Section 4.55 (previously Section 96).

In this regard, the matters for consideration under SEPP 1 or Clause 4.6 provide a reasonable and consistent means of assessing any Section 4.55 that is beyond the provisions of the planning controls.

Whilst this modification application will result in a height that exceeds the maximum permitted by Clause 4.3 of the PLEP, the application does not strictly need to address the requirements of Clause 4.6. This application has been made under section 4.55 of the EP&A Act, which is a free-standing provision which in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant s.79C matters) and does not rely upon having a Clause 4.6 variation objection in order to determine the modification.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 96 modification applications. Notwithstanding that Clause 4.6 does not apply to modification applications, the merits of the departure have been assessed and found that the development satisfies the underlying objectives of Clause 4.3 Height of Buildings under PLEP 2014 and the variation can be supported on its merit. See merit assessment against the zone objectives and Clause 4.3 objectives below:

The underlying objectives of the E4 Environmental Living zone:

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
Comment: The proposed modifications generally reduce the extent of development by deletion of the garage and substantial reduction in the extent of the lower levels. The development will generally be lower impact than what was originally approved. The proposal is considered to be consistent with this objective.
- To ensure that residential development does not have an adverse effect on those values.
Comment: As discussed above, the extent of development will be generally reduced by the modifications. The proposal is considered to be consistent with this objective.
- To provide for residential development of a low density and scale integrated with the landform and landscape.
Comment: The proposal generally reduces the extent of development at the lower levels, which will help to maintain the landform and landscape, particularly with regard to the deletion of the large amount of excavation for the previously approved garage. The proposal will remain generally integrated with the landform and landscape.



- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.
Comment: The proposal will generally reduce the extent of development, and maintain more of the existing landform and vegetation than previously approved. The proposal is considered to be consistent with this objective.

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

- to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,
Comment: The proposal will make small changes in the order of 140mm - 200mm to the floor levels and overall height of the dwelling. However, overall the extent of development is generally reduced, particularly at the lower levels. The proposal will maintain consistency with the desired future character, and the height and scale of the building will be generally acceptable. The non-compliance with the height control is confined to the south eastern corner of the upper level eaves, and the proposed modifications will not be noticeable to the naked eye compared to the original approval. The proposal is considered to be consistent with this objective.
- to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
Comment: The proposed modifications are very similar in height to the previous approval. A condition of consent was applied to the original approval requiring reduction in the width of the upper level eaves, to attempt to comply with the height limit (due to the slope of the land). However, measurement of the plans indicate compliance with this condition, and by implication the height control, is not possible without alterations to more elements than just the upper level eave.

The proposed modifications generally maintain the overall height, bulk and scale of the original approval, and the non-compliance in the south eastern corner of the upper level eave is generally attributable to the topography on site. The building will remain generally compatible with surrounding development, despite the minor non-compliance. The proposal is considered to be consistent with this objective.

- to minimise any overshadowing of neighbouring properties,
Comment: The proposed modifications make only minor changes to the approved plans in terms of bulk and scale at the upper levels. There will be no significant or unreasonable changes to overshadowing of neighbouring properties.
- to allow for the reasonable sharing of views,
Comment: The proposal will increase the overall height of the dwelling by 140mm, but will pull back the front (southern) edge of the roof by 1.8m. This will result in a smaller impact on views than originally approved (see discussion under view sharing in this report). A reasonable sharing of views will be maintained.
- to encourage buildings that are designed to respond sensitively to the natural topography,
Comment: The proposed modifications generally maintain the bulk and scale of the original approval at the upper levels. The height non-compliance is due in the main to the topography of the site, which falls steeply. The building continues to generally step back up the slope in response to the topography, and the proposed modifications are considered to remain sensitive to the topography in this regard.



- to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.
Comment: The proposed modifications make only small differences to the bulk and scale of the the development at the upper levels. The proposed change to the overall height is minimal, and will not be readily visible to the naked eye. The proposed modifications will not substantially alter the visual impact of the development at the upper levels, and will generally reduce the bulk and scale at the lower levels. The proposal is considered to be consistent with this objective.

Given the consistency of the variation to the objectives of the zone, and the objectives of Clause 4.3 of the PLEP, the proposed variation to the Height of buildings Development Standard is considered acceptable in the circumstances. (See also discussion with regard to 'Conditions of Consent' in this report').

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	6m	14.5m (garage deleted)	Yes
Rear building line	6.5m	7m	unaltered	Yes
Side building line	2.5m	2.35m NE	unaltered (length of non-compliant setback reduced)	Yes
	1m	1.2m SW	2m	Yes
Building envelope	3.5m	Minor breach NE (Breach was considered 'minor' due to being confined to upper level)	Generally similar to previous approval	Yes
	3.5m	Substantial breach SW (considered 'substantial' due to being on all levels, and particularly at pool terrace level)	Generally similar to previous approval, but significantly reduced non-compliance at pool terrace level	Yes
Landscaped area	60%	44.3% (446.5m ²)	46.1% (464m ²) (improved)	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes

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Clause	Compliance with Requirements	Consistency Aims/Objectives
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B5.9 Stormwater Management - Water Quality - Other than Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C5.1 Landscaping	Yes	Yes
C5.18 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment



C1.3 View Sharing

No objections were received to notification of the modification application. Concerns were raised by neighbours regarding the original approval. However, the view impacts were found to be 'minor to negligible', and the proposal was considered to result in a reasonable sharing of views, consistent with the Tenacity principles of view sharing. The modified plans have raised the level of the upper roof by approximately 140mm, but have also pulled back the front edge of the roof by 1.8m. Given the minor to negligible nature of the view impacts, and that the modifications are likely to further reduce impacts, the proposal is considered to maintain a reasonable sharing of views.

C1.5 Visual Privacy

The proposed modifications include measures to comply with conditions to delete the lower level terrace and reduce the extent of the pool terrace. These conditions were included in part to ensure a reasonable level of privacy was maintained. No objections have been received to the modification application. Given that the modifications have generally complied with the conditions of consent in this regard, and given that the modifications generally reduce the size of the development, the proposal is considered to maintain a reasonable level of privacy.

D12.8 Building envelope

The proposed modifications generally raise the roof levels by approximately 200mm, but also pull back the extent of the upper level roof, and have significantly reduced the extent of the pool terrace level. This means that although the building is slightly higher on each level, it has been generally pulled back slightly into the slope, meaning that the overall extent of building envelope non-compliance is generally similar, or, in places significantly reduced compared to the original approval. The proposed modifications are considered acceptable in this regard, and are considered to remain consistent with the outcomes of the control, as assessed below. It is noted that the assessment report for the original approval also found that the development was consistent with the outcomes of the control, but imposed conditions to amend the plans at various places to bring the proposal further into compliance with the control for the sake of numerical compliance. This is discussed in detail in this report under 'Conditions of Consent'. In summary, the conditions are considered to be reasonably satisfied and are recommended for deletion.

Merit Assessment

To achieve the desired future character of the Locality.

Comment: The proposed modified works are generally similar to the original approval in terms of bulk and scale, and visual impacts. The large non-compliance caused by the pool terrace level has been significantly reduced by the modifications, and this will help to minimise the visual impact of the development. The proposed modifications will not cause it to become inconsistent with the desired future character.

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

Comment: The proposed overall height of the development is slightly higher than originally approved (approximately 140mm higher). This will make no noticeable difference to the visual impact of the development to the naked eye. The development is on a steep slope, not at the ridge line, and as such will remain set into the general tree canopy.

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

Comment: The proposed modifications are generally relatively minor in that they generally reduce the extent of development. In particular, the large amount of excavation required for the previously



approved garage is to be deleted, and this area is to be maintained as landscaped area. In this way the proposal does not significantly worsen the overall impacts of the development, and generally responds to and reinforces the spatial characteristics of the existing natural environment.

The bulk and scale of the built form is minimised.

Comment: The proposal is generally similar in bulk and scale to the previous approval, with the exception of the lower levels where the development has been significantly reduced. The proposal achieves this outcome in this regard.

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

Comment: The proposal results in a very minor increase in overall height (140mm). This will not have any significant or unreasonable impacts on views.

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

Comment: The proposed modifications include amendments to comply with conditions of consent intended to ensure a reasonable level of privacy to neighbours. Overall, the impacts of the development from the upper levels in terms of privacy, amenity and solar access will not be significantly altered. Privacy will be improved by the reduction and deletion of the elements at the lower levels.

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

Comment: The proposal includes an amended landscape plan which has been assessed and found to be satisfactory by Council's Landscape Officer. Conditions of consent have been provided to ensure canopy trees remain on site to visually reduce the built form.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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.

Consistency with Conditions of Consent

The current consent contains the following conditions. The application states that the proposed modifications are meant to comply with these conditions. Assessment against the conditions of consent is carried out below:

C. Matters to be satisfied prior to the issue of the Construction Certificate:

5. *Prior to the issue of a Construction Certificate, the architectural drawings are to be amended to reflect the following:*

1. *The most upper level roof eave (above the First Floor level terrace) is to be reduced in width and is not to exceed a maximum height of 10 metres above the existing ground level;*

Comment: The most upper level roof eave has been reduced in width (or pulled back to the north) by 1.8m. This has not brought the roof eave into compliance with the 10m height limit, resulting in a maximum height of approximately 11.17m. This is as a result of the topography of the site, which includes a steep fall from rear to front, and a cross fall from west to east, meaning the south eastern corner of the upper level remains outside a 10m height plane. The roof eave could be reduced further so that there was no overhang of the upper level southern wall. However, this



would still not comply with the 10m height limit, as the minimum height of the dwelling at the upper level southern wall is approximately 10.67m. This would leave the southern upper level with no eave, and is not considered to be a particularly good design outcome.

It is noted that the southern upper level wall has been moved approximately 400mm further south. However, even with this additional 400mm, compliance with the condition would still not be possible. Overall, the proposed modifications to the upper level roof eave are considered to be consistent with the intent of the condition in that they have pulled the eave back to the north, and the condition is not reasonably possible to comply with. The proposal is therefore considered acceptable in this regard, and the condition is recommended for deletion. (See also discussion under clause 4.6 in this report).

2. The First Floor level terrace is to have a maximum width of 2.4 metres;

Comment: The assessment report for the original application indicates that this condition was intended to increase compliance with the building envelope control. The report stated that the proposal was considered to achieve the outcomes of the clause, but there was no specific applicable circumstances why compliance should not be achievable.

The modification application states that the first floor terrace has been reduced in width to comply with this condition. However, the plans indicate the the extent of the terrace is approximately equivalent to the original plans. The width has been reduced slightly not so much by pulling the terrace back to the north, but by the southern wall moving approximately 400mm to the south. The terrace is measured to be approximately the same width as is shown on the approved plans.

The proposed modifications are not therefore considered to be consistent with the intent of the condition, which in the assessment report was intended to make the development more compliant with the building envelope control. It is noted that the condition did not make adequately clear what was required in terms of intending the terrace to be pulled back to the north. Given that the proposal was originally considered to be consistent with the outcomes of the building envelope clause, and the proposed modifications are considered to remain consistent with the outcomes, the proposed non-compliance is considered acceptable in this case. Noting that the original assessment concluded that the outcomes of the control were met notwithstanding the non compliance, and that the assessment of this modification application concludes the same, the imposition of this condition is considered to be unnecessary. It is recommended that this condition be deleted.

3. The Pool terrace is to be reduced in width by 2.9 metres, and is to not extend north of the red line as shown on architectural drawing "00.03 (Proposed Plans - Pool/Lower Guest Level" dated 08/04/2016;

Comment: The pool terrace has been reduced by approximately 1m more than the red line shown on the approved plans. The proposed modifications therefore easily comply with this condition.

4. The Lower Ground Floor terrace (adjoining Bedroom 5) is to be deleted. The northern external wall of Bedroom 5 is to be relocated to the south in alignment with the Pool terrace above, as shown on architectural drawing "00.03 (Proposed Plans - Pool/Lower Guest Level" dated 08/04/2016;

Comment: The lower ground floor terrace adjoining bedroom 5 has been deleted. The bedroom 5 southern wall is further to the north than the pool terrace above. (It is assumed that the requirement to relocate the 'northern' bedroom wall to the 'south' was meant to read 'southern' bedroom wall to the 'north'). The modifications comply with these requirements.



5. *The finished surface of the upper level concrete roof is to be amended from gravel to pebbles in order to soften the visual impact of the roof as viewed from the properties to the rear of the subject site.*

Comment: The proposed modified plans indicate 'Pebbles to surface of upper level roof'. This is considered to comply with the condition.

6. *Prior to the issue of a Construction Certificate, the Landscape Plan is to be updated to reflect the following:*

1. *The area above the garage is to be replaced with landscaped area, and is to incorporate a variety of native trees and shrubs in order to screen the built form of the development;*

Comment: The garage has been deleted from the plans, and the area is now deep soil landscaped area. The landscape plan provided with the modification application has been assessed by Council's Landscape Officer, and found to be acceptable. The condition is considered to be reasonably satisfied.

2. *The Lower Ground level terrace is to be deleted and the Pool terrace reduced in width in accordance with condition C5. Landscaping is to be implemented in these areas to enhance landscaping on site and screen the built form of the development.*

Comment: The landscape plan provided with the modification application includes these areas. As discussed, the landscape plan assessed by Council's Landscape Officer, and found to be acceptable. The condition is considered to be reasonably satisfied.

As discussed above, the proposed modified plans are considered to achieve some of these conditions, and in the case of the upper level eave, are considered to be consistent with the general intent of the condition. The exception to this is the condition requiring the upper level terrace to be reduced in width to 2.4m. This has not been complied with, and neither has any genuine attempt to comply appear to have been made. Notwithstanding, the proposal was previously considered to achieve the outcomes of the building envelope control (as originally assessed) including in relation to the upper level terrace, and that remains the case. The condition is considered unnecessary in this regard. It is recommended that these conditions be deleted from the consent, subject to the modified plans being approved.

CONCLUSION

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

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

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

In consideration of the proposal and the merit consideration of the development, the proposal is



considered to be:

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2018/0506 for Modification of Development Consent N0417/15 granted for demolition of existing dwelling and proposed new dwelling on land at Lot 2 DP 633579,7 Florida Road, PALM BEACH, subject to the conditions printed below:

A. Modify the Approved Plans and supporting Documentation as follows:

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
01.01	17.09.18	George Livissianis
01.02	07.09.18	George Livissianis
01.03	07.09.18	George Livissianis
02.01	03.09.18	George Livissianis
02.02	17.09.18	George Livissianis
03.01	03.09.18	George Livissianis
03.02	03.09.18	George Livissianis

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report Project No.: 2014-015.3	September 2018	Crozier Geotechnical Consultants

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:



Landscape Plans		
Drawing No.	Dated	Prepared By
LA-DA-01 to LA-DA-07 inclusive, Issue S96 Revision B	30/08/2018	360 degrees

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

B. Delete Condition C.5.

C. Delete Condition C.6.

D. Add Condition 6.7 Tree and Vegetation Protection to read as follows:

A) Existing trees and vegetation shall be retained as follows:

i) all trees and vegetation within the site, as shown on the modified landscape plan LA-DA-01, Issue S96 Revision B, titled 'Existing Tree Plan' and prepared by 360degrees, shall be protected during all construction stages, excluding exempt trees under the relevant planning instruments or legislation,

ii) all other trees and vegetation located on adjoining properties,

iii) all road reserve trees and vegetation.

B) Tree protection shall be generally undertaken as follows:

i) all tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, with particular attention to section 4,

ii) any tree roots exposed during excavation with a diameter greater than 25mm within the TPZ must be assessed by an Arborist,

iii) to minimise the impact on trees and vegetation to be retained and protected, 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,

iv) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorized by the Project Arborist on site,

v) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,

vi) should either or both iv) and v) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations and shall report on the tree protection action undertaken, including photographic evidence,

vi) 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, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009.

Reason: to retain and protect significant planting on development sites.

**E. Add Condition E.12 Landscape Works to read as follows:**

a) Landscaping is to be implemented in accordance with the landscape plans prepared by 360degrees, including drawing numbers LA-DA-01 to LA-DA-07 inclusive, Issue S96 Revision B, and the Indicative Plant Schedule and Irrigation Notes,

b) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the landscape plan and inclusive of any conditions of consent.

Reason: to ensure that the landscape treatments are installed to provide landscape amenity.

F. Add Condition B.32 Landscape Maintenance to read as follows:

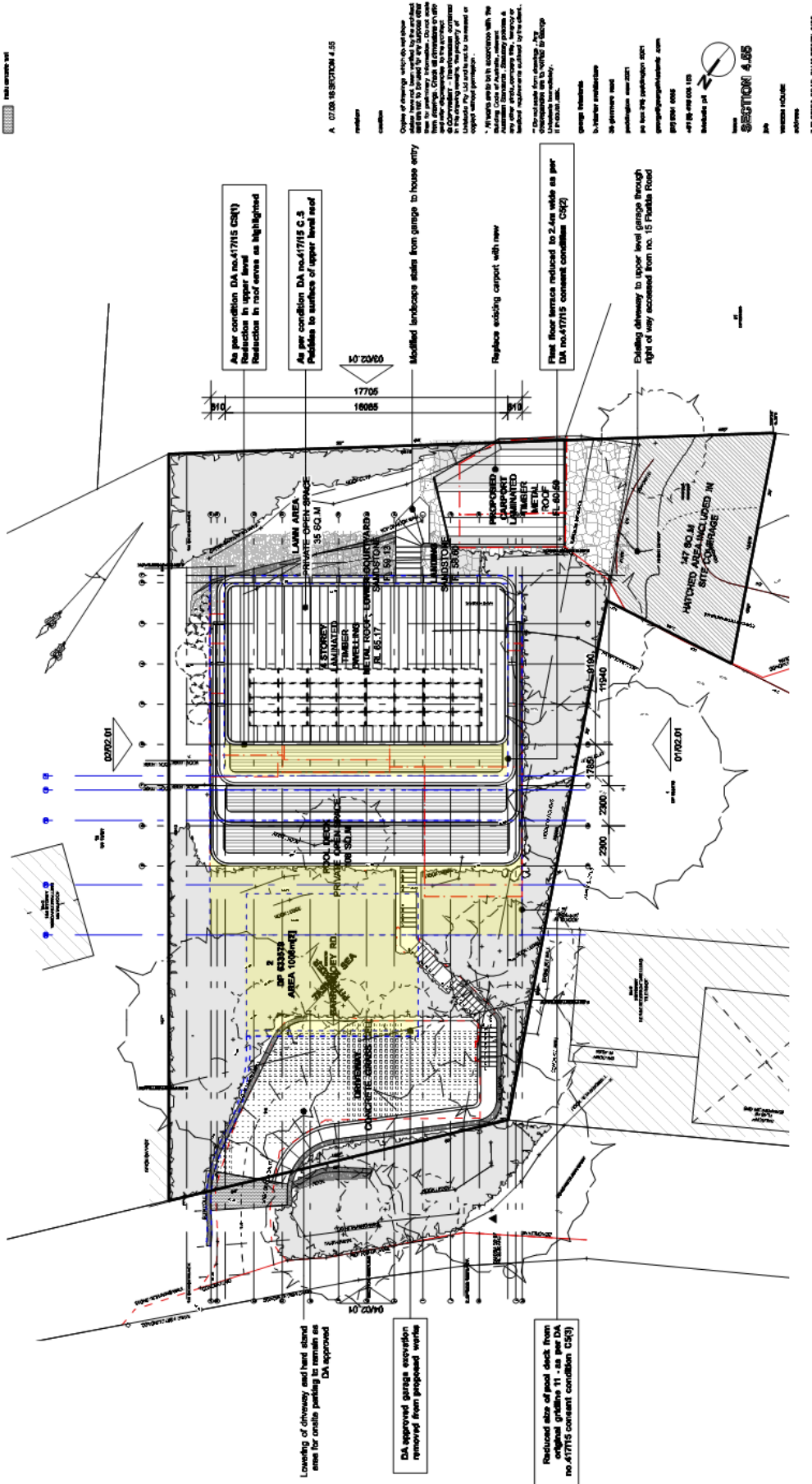
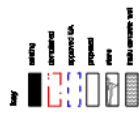
All landscape components are to be maintained for the life of the development. A maintenance program is to be established. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components and species to maintain the landscape theme and be generally in accordance with the Landscape Plans.

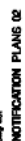
Reason: to maintain local environmental amenity and ensure landscaping continues to soften the built form.

G. Add Condition B.33 Environmental and priority weed control to read as follows:

All weeds are to be removed and controlled in accordance with the Biodiversity Conservation Act 2016.

Reason: preservation of environmental amenity.





ITEM 3.3

**MOD2018/0388 - 204 WHALE BEACH ROAD, WHALE BEACH -
MODIFICATION OF DEVELOPMENT CONSENT N0280/15
GRANTED FOR ALTERATIONS AND ADDITIONS TO DWELLING
INCLUDING FIRST FLOOR ADDITION RENOVATIONS TO
EXISTING GROUND FLOOR AREA AND ALTERATIONS TO THE
EXISTING FOUN**

REPORTING MANAGER**LUKE PERRY****TRIM FILE REF****2019/035344****ATTACHMENTS**

- 1** [↓](#) **Assessment Report**
- 2** [↓](#) **Site Plan**

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 grant Development Consent to Mod2018/0388 for Modification of Development Consent N0280/15 granted for alterations and additions to dwelling including first floor addition renovations to existing ground floor area and alterations to the existing foundation area on land at Lot 57 DP 11067, 204 Whale Beach Road, Whale Beach subject to the conditions outlined in the Assessment Report.



APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0388
Responsible Officer:	David Auster
Land to be developed (Address):	Lot 57 DP 11067, 204 Whale Beach Road WHALE BEACH NSW 2107
Proposed Development:	Modification of Development Consent N0280/15 granted for alterations and additions to dwelling including first floor addition renovations to existing ground floor area and alterations to the existing foundation area
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Hugh David Malcolm
Applicant:	Hugh David Malcolm
Application lodged:	25/07/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	06/08/2018 to 20/08/2018
Advertised:	Not Advertised
Submissions Received:	2
Recommendation:	Approval

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;
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- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater 21 Development Control Plan - D12.6 Side and rear building line

Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 57 DP 11067 , 204 Whale Beach Road WHALE BEACH NSW 2107
Detailed Site Description:	<p>The site is known as 204 Whale Beach Road, Whale Beach and has a legal description of Lot 57 in Deposited Plan 11067. The site is regular in shape, with an angled frontage to Whale Beach Road, and has a total area of 853.6m². Vehicular and pedestrian access is gained via the 19.385m wide frontage of Whale Beach Road. The site is located on the western side of Whale Beach Road. The site falls 9.45m from the western rear boundary of the site, down towards the eastern front boundary of the site, with a slope of approximately 21.9%. The site is currently occupied by a single one-two storey dwelling. The property is surrounded by residential properties to the north, south and west with Surf Road located adjacent to the subject site to the east and Whale Beach located to the far east of the site.</p> <p>The site is zoned E4 – Environmental Living under the provisions of the Pittwater LEP 2014 and the proposed development being alterations and additions to a dwelling would be permissible with consent pursuant to the Pittwater Local Environmental Plan 2014.</p>

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

Application N0280/15 for Alterations and additions to dwelling including first floor addition, renovations to existing ground floor area and alterations to the existing foundation area was approved by Council on 11 February 2016. It involved:

Alterations and additions to the existing dwelling including:

- Extension of the Ground Floor subfloor to create a new Rumpus Room, Powder Room and Formal Entry;
- Alterations and Internal reconfiguration of the Ground Floor level and new en-suite to the west (rear);
- A new first floor level comprising of one (1) Bedroom, one (1) bathroom, Walk-in Robe, Study, Lobby and balcony to the east

Application N0280/15/S96/1 was to modify the above consent, and was approved by Council on 6 October 2016. The modifications approved were:

- Amendment to condition B1 to allow for a maximum building height of RL32.5;
- Amendment to condition C2(c) to allow for a Ground Floor Level floor ceiling height of 2.7m and a First Floor Level floor ceiling height of 2.7m;
- Amendment to condition C2(d) to allow for a high silled window on the southern elevation to bedroom 1 instead of deletion of the window.

The current modification application assessed in this report is the second modification of N0280/15.



PROPOSED DEVELOPMENT IN DETAIL

The proposed modifications involve the addition of a pergola roof structure, paving and spa pool in the rear yard area, and a 1.8m retaining wall. A small cabana is also proposed towards the rear boundary.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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 and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for NO280/15, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The proposed modifications are works to the rear private open space of the dwelling. The original alterations and additions included works to the lower subfloor level, the existing ground level (including to the rear of the ground level), and a new upper level. As such, the proposed awning, paved area and spa coming directly off the rear of the ground level is considered to be within the definition and scope of works of the alterations and additions to the dwelling previously approved. However, the proposed cabana at the very rear of the site, is a new element, not attached to any of the previously approved works, and is considered to be beyond the scope of works which could be approved under the proposed modification. As such, a condition of consent is recommended deleting the cabana from the approved plans.</p> <p>Subject to deletion of the cabana at the rear of the site from the plans, the development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under</p>



Section 4.55 (2) - Other Modifications	Comments
	NO280/15.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application NO280/15 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environmental Plan 2011 and Pittwater 21 Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of 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.

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Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p>Clause 50(1A) of the EP&A Regulation 2000 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>Clauses 54 and 109 of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p>Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p>Clauses 93 and/or 94 of the EP&A Regulation 2000 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>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built MOD2018/0388	<p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed development on the natural and built environment are</p> <p style="text-align: right;">Page 6 of 16</p>



Section 4.15 'Matters for Consideration'	Comments
environment and social and economic impacts in the locality	<p>addressed under the Warringah 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 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 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mrs Barbara Lyle Dowe	17 Morella Road WHALE BEACH NSW 2107
Mrs Anita Lee Nolan	72 Windsor Street PADDINGTON NSW 2021

The following issues were raised in the submissions and each have been addressed below:

- **Views**
- **Privacy**
- **Plans**
- **Roof colour**
- **Planting**



The matters raised within the submissions are addressed as follows:

- **Views**

Comment: One of the properties to the rear of the site raised concerns with possible view impacts. This report recommends deletion of the cabana proposed at the rear of the site, at the highest part of the site (see discussion under EP&A Act section of this report). The other proposed works are at the ground level, well below the overall height of the building approved in the original DA. Those works will not have any impacts on views. Subject to deletion of the cabana, the submission is considered to be reasonably satisfied in this regard.

- **Privacy**

Comment: Concerns were raised with privacy impacts from the proposed cabana at the rear of the property. This element is recommended for deletion by condition of consent (see discussion under EP&A Act section of this report), and as such the submission is considered to be reasonably satisfied in this regard. The other proposed works, attached to the dwelling are at or below the existing ground level, and will not have any unreasonable privacy impacts on any neighbours.

- **Plans**

Comment: Concerns were raised that the proposed modifications are not shown on the plans originally approved and that they could not be understood properly. This contention is not supported. The proposed modifications are clear in their location at the rear of the dwelling, at ground level. The proposed awning shown on the plans will extend from the existing ground level roof, and the paving and spa pool will also extend out from the existing ground level. The plans are considered to be sufficiently clear to make a full and complete assessment of the modifications. The submission is not supported in this regard.

- **Roof colour**

Comment: Concerns were raised with the proposed awning, and a possible white roof causing reflectivity impacts on neighbours. The information submitted with the application does not make the proposed colour clear. However, there is an existing condition of the consent stating the following: *19. Roofs to all structures are to be of dark or mid grey, brown and/or green tones only. "Shale Grey" is too light and the roof is to be "Windspray" or darker. No white or light coloured roofs are permitted.* This condition will remain on the consent, and is considered to reasonably satisfy the submission in this regard.

- **Planting**

Comment: Concerns were raised that the modified plans showed some planting that no longer exists. Council's Bushland & Biodiversity division has assessed the proposal and is satisfied with the proposal. They have recommended a condition requiring planting of at least 2 locally native canopy trees that reach a mature height of 10 metres. Subject to this condition, planting on the site is considered to be acceptable. The proposed modifications are relatively minor works to the rear private open space, at or below ground level, and will have no significant or unreasonable visual impacts on neighbours.

MEDIATION

No requests for mediation have been made in relation to this application.

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REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	Council's Bushland & Biodiversity division has assessed the proposal against Pittwater LEP 2014 Control 7.6 Biodiversity Protection & Pittwater 21 DCP 2014 Control B1.4 Aboriginal Heritage Significance, B4.6 Wildlife Corridors and believes the proposed development complies subject to conditions, as recommended. All previous Natural Environment conditions are to be upheld.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).

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- 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. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.2m	No change - mod works at ground level	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	6.095m	unaltered	Yes
Rear building line	6.5m	Greater than 20m	1.4m cabana 16.5m (other modifications)	No Yes

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Side building line	2.5m	N 3.08m	1.5m (spa)	No
	1m	S 1.18m	4.2m (new awning)	Yes
Building envelope	3.5m	Outside envelope both sides	Modification elements within envelope	Yes
Landscaped area	50%	60.1%	55%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	Yes	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
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Clause	Compliance with Requirements	Consistency Aims/Objectives
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

D12.6 Side and rear building line

The proposed cabana is 1.4m from the rear boundary. As discussed under the EP&A Act section of this report, the cabana is not supported and is recommended for deletion by condition of consent, meaning that the proposal will comply with the rear boundary setback (the other works are a minimum of 16.5m from the rear boundary). The proposed spa is 1.5m from the northern side boundary. The control allows that:

For swimming pools and spas a 1 metre minimum setback from the boundary to the pool coping may be permitted subject to the following:

satisfactory landscaping within the setback from the pool or spa coping to the side or rear boundary, and Council is satisfied that the adjoining properties will not be adversely affected, and the pool or spa is not more than 1 metre above ground level (existing), and that the outcomes of this clause are achieved without strict adherence to the standards, and where the site constraints make strict adherence to the setback impractical, and where strict compliance with these requirements will adversely impact on the views of adjoining residential properties.

The proposed spa generally achieves those requirements. There is no significant landscaping proposed between the spa and the pool. However, given that the spa is below the existing ground level and well below the level of the existing side boundary fence, it is not considered to cause any significant adverse impacts. A merit assessment against the outcomes of the clause is carried out below.

Merit Assessment

To achieve the desired future character of the Locality.

Comment: The proposed works are in the rear yard, and will not cause the overall development to become inconsistent with the desired future character. The works will not be readily visible from any public area, and will not have a high level of visual impact on neighbours. The spa in particular is below the existing ground level, and will not be readily visible from either public or private adjoining land.

The bulk and scale of the built form is minimised.

Comment: The proposed works are generally minor works to the rear private open space of the dwelling. The spa (being the element close to the side boundary) is below existing ground level and will not have any significant impacts on bulk and scale.

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

Comment: The proposed works are at ground level and will have no unreasonable impacts on views. As discussed in this report, the proposed cabana at the rear of the site is to be deleted by condition of consent. Subject to this condition there will be no significant impacts on any views as a result of the modifications.

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

Comment: The proposed modifications are at ground level, and will maintain view sharing as previously approved under the original DA.

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

Comment: The proposed spa and paved area to the rear is cut into the existing slope, and as such will not cause any unreasonable overlooking of neighbouring properties, given the private open space will essentially be lower than the existing private open space in the rear yard of the site. The works are generally to improve the amenity of the rear private open space area, and are standard residential works. They will have no unreasonable impacts on the amenity of neighbours. The proposed pergola roof is 4.2m from the southern side boundary and will not cause any significant shading of the southern neighbour.

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

Comment: Council's Bushland & Biodiversity division has assessed the proposal and is satisfied with the proposal. They have recommended a condition requiring planting of at least 2 locally native canopy trees that reach a mature height of 10 metres. Subject to this condition, the proposal is considered to achieve this objective.

Flexibility in the siting of buildings and access.

Comment: The location of the spa pool is acceptable as it does not cause any unreasonable impacts on neighbours.

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

Comment: The proposed modifications are generally below the existing ground level, and will not create any unreasonable visual impacts. Council's Bushland & Biodiversity division have recommended a condition requiring planting of at least 2 locally native canopy trees that reach a mature height of 10 metres. Subject to this condition, the proposal is considered to achieve this objective.

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

Comment: N/A

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PDCA and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D12.10 Landscaped Area - Environmentally Sensitive Land

The proposal results in landscaped open space of approximately 55%, including the 6% of site area permitted by the control as hard surface recreational area.

Merit assessment:

Achieve the desired future character of the Locality.

Comment: The proposed works are in the rear yard, and will not significantly alter the character of the building or site as viewed from public areas. The works are in the rear yard at ground level, and will increase the amenity of the dwelling without having any unreasonable impacts on neighbours. The proposal remains consistent with the desired future character.

The bulk and scale of the built form is minimised.

Comment: The proposed works are at ground level, and in the case of the spa and paving are cut into the ground level. The proposal will not result in any unreasonable bulk and scale being added to the overall development.



A reasonable level of amenity and solar access is provided and maintained.

Comment: The proposal will not create any unreasonable overshadowing given the proposed modifications are at the ground level, with the new pergola roof situated in the middle of the site a minimum of 4.2m from the southern boundary and generally to the north of the existing lower level roof. The works will also not have any unreasonable impacts on the amenity of neighbours, given they are generally standard residential recreational area works, to improve the amenity of the private open space of the dwelling. The spa and paving are generally below the existing ground level, and so will not have any unreasonable privacy impacts.

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

Comment: Council's Bushland & Biodiversity division has assessed the proposal and is satisfied with the proposal. They have recommended a condition requiring planting of at least 2 locally native canopy trees that reach a mature height of 10 metres. Subject to this condition, the proposal is considered to achieve this objective.

Conservation of natural vegetation and biodiversity.

Comment: Council's Bushland & Biodiversity division has assessed the proposal and is satisfied with the impacts on natural vegetation and biodiversity.

Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.

Comment: Hard surface area will be increased, however the site drains to the public drainage system in the street, and the stormwater will continue to drain there.

To preserve and enhance the rural and bushland character of the area.

Comment: The proposed works are in the rear yard, and will not have any significant or unreasonable negative impacts on the rural and bushland character of the area. The immediate area is generally highly urbanised and developed, and the minor non-compliance caused by paving of part of the rear private open space will not have any unreasonable impacts on the character of the area.

Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.

Comment: Part of the non-compliance is caused by the proposed spa pool, which will collect water and direct it to the sewerage system. The site drains to the street, and the public drainage system, and the minor non-compliance will not have major impacts on the ability of water to infiltrate on site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PDCA and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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.

CONCLUSION

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



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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2018/0388 for Modification of Development Consent N0280/15 granted for alterations and additions to dwelling including first floor addition renovations to existing ground floor area and alterations to the existing foundation area on land at Lot 57 DP 11067,204 Whale Beach Road, WHALE BEACH, subject to the conditions printed below:

A. The existing approved plans are further modified by the following approved Plans and supporting documentation:

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
M-11-266343-1A Amendment A	10/07/2018	Civil & Structural Engineering Design Services
M-11-266343-2A Amendment A MOD2018/0388	10/07/2018	Civil & Structural Engineering



		Design Services
A-11-266343 Issue 01 Amendment A	10/07/2018	Civil & Structural Engineering Design Services

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Risk Analysis and Management MQ30139B	20 July 2018	Jack Hodgson Consultants

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

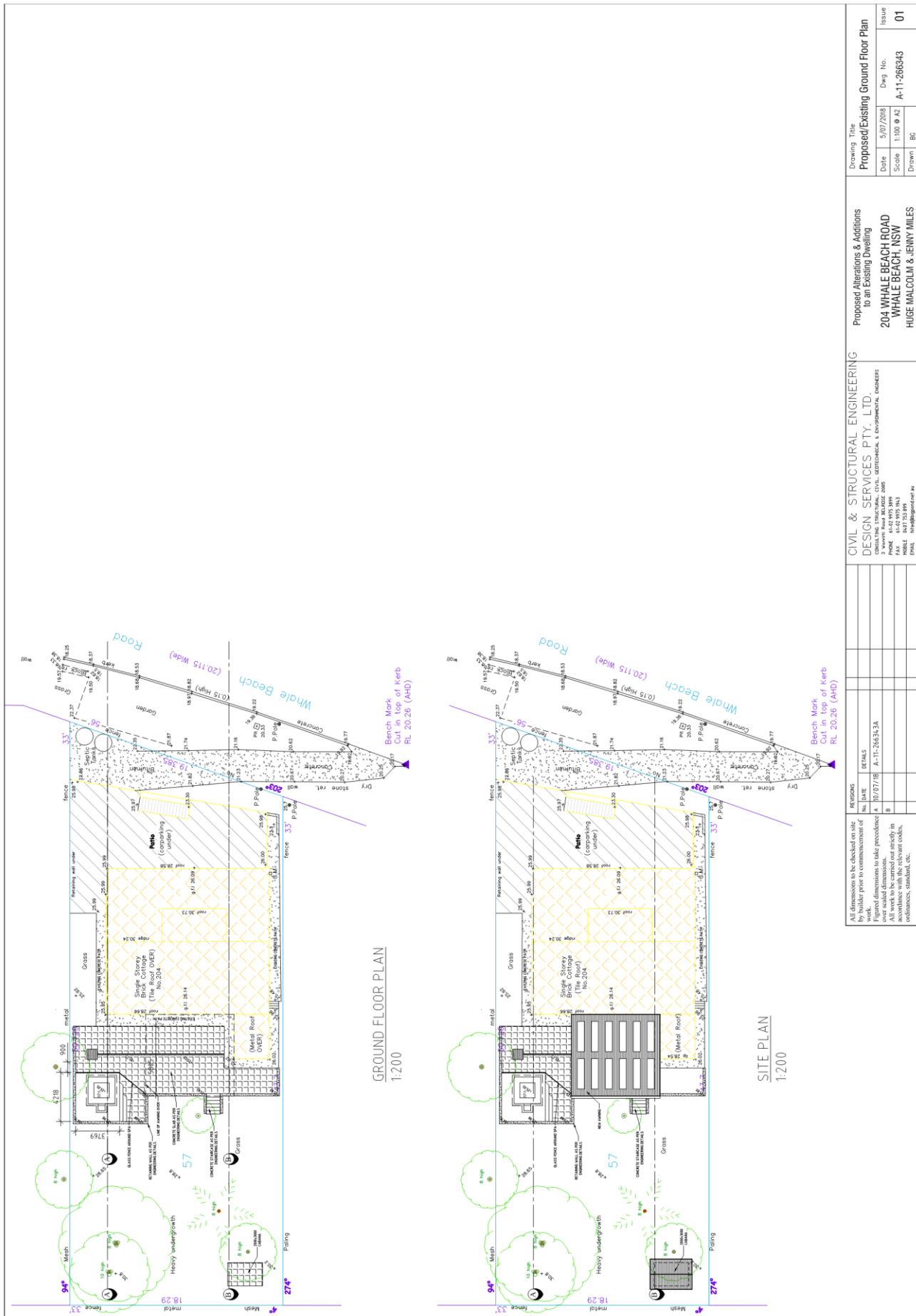
Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

B. Cabana

The '2000x3000 Cabana' shown on the above approved plans in the southwestern corner of the property is not approved and is to be deleted from the approved plans.

Updated plans complying with the above are to be submitted to the Principle Certifier prior to issue of any updated/amended construction certificate.

Reason: Consistency with clause 4.55 of the EP&A Act.



ITEM 3.4	DA2018/1615 - 30 ALMA STREET, CLONTARF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	ANNA WILLIAMS
TRIM FILE REF	2019/030614
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

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.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant Development Consent to DA2018/1615 for alterations and additions to a dwelling house on land at Lot 26 DP 2610, 30 Alma Street, Clontarf subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1615
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 26 DP 2610, 30 Alma Street CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Christopher Paul Haughton Lilia Carmen Cajar Robinson
Applicant:	Christopher Paul Haughton
Application lodged:	02/10/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	11/10/2018 to 29/10/2018
Advertised:	Not Advertised
Submissions Received:	1
Recommendation:	Approval
Estimated Cost of Works:	\$ 248,500.00

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 DA2018/1615)



- 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 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.3.2 Preservation of Trees or Bushland Vegetation
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 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 - 4.1.10 Fencing
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)
 Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area

SITE DESCRIPTION

Property Description:	Lot 26 DP 2610 , 30 Alma Street CLONTARF NSW 2093
Detailed Site Description:	<p>The subject site consists of one allotment located on the northern side of Alma Street.</p> <p>The site is regular in shape with a frontage of 12.19m along Alma Street and a depth of 42.67m. The site has a surveyed area of 520.2m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates an existing dwelling house.</p> <p>The site slopes 10.2m from rear (north) to front (south).</p> <p>The site includes planted vegetation and several significant trees within the front setback, and a large rock outcrop under the existing dwelling.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by detached dwellings.</p>

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.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes works as follows:

Ground floor:

- Demolition of internal, front and rear walls
- Demolition of existing front deck
- New rear addition
- New front deck
- Internal alterations
- Changes to windows and doors

Lower level:

- Demolition of existing hardstand area
- New driveway, carport and pedestrian entry
- New bin area
- Landscaping and retaining wall works
- New front fence/wall

Note: Amended plans were submitted on 4/12/2018 in response to the referral comments received from Council's Landscape Officer in relation to the original DA plans.



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	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 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 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 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 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the</p>



Section 4.15 Matters for Consideration'	Comments
	submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
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 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 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

Name:	Address:
Dr Geoffrey David Riisfeldt	28 Alma Street CLONTARF NSW 2093

The following issues were raised in the submissions and each have been addressed below:

- Concerns relating to proposed tree removal
DA2018/1615



The matters raised within the submissions are addressed as follows:

- Concerns relating to proposed tree removal
Comment:
The proposal has been amended in order to retain the trees initially proposed to be removed.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><u>Landscape Comments</u></p> <p>The below comment was received in relation to the initially submitted DA Plans:</p> <p>The landscape component is not supported due to:</p> <p>(i) inconsistent information as reported in the Arboricultural Impact Appraisal and Method Statement, and as contained within the Landscape Plan, and</p> <p>(ii) the impact to medium to high significance native trees, that subject to design change, would be able to be retained.</p> <p>The Arboricultural Impact Appraisal and Method Statement proposes removal of four trees: T3, T4, T5, and T7. The Landscape Plan proposes to retain T3 and T7.</p> <p>Support is not provided for the removal of T4, T5, and T7 - all <i>Angophora costata</i> species, as recommended in the Arboricultural Impact Appraisal and Method Statement, requiring removal due to proximity to the proposed works and changes in levels. These trees are reported as providing moderate to high significance and displaying good health and condition. As such, there is no valid justification to remove these trees for development, and their landscape amenity is not easily replaced.</p> <p>A more considered design is required, where the development proposal incorporates the retention of the trees, to satisfy 3.3.2 Landscape / Tree Preservation and 4.1.5 Open Space and Landscaping. The following suggestions will ensure retention of significant trees and reduce tree impact:</p> <p>T4 - relocate access and stairs further west away from the tree protection zones.</p> <p>T5 - delete planters and utilize natural ground levels.</p> <p>T7 - relocate path and utilize natural ground levels.</p> <p>Amendments to the proposal were requested in response to the</p>



Internal Referral Body	Comments
	<p>above comments. Council's Landscape Officer commented on the amended proposal as follows:</p> <p>The landscape component of the proposal is acceptable subject to the protection of existing trees and vegetation, and the completion of landscaping.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types.</p>
NECC (Development Engineering)	Development Engineer has no objection to the application subject to the following conditions of consent.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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)

Nil

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
DA2018/1615				



Height of Buildings:	8.5m	9.628m	13.27%	No
Floor Space Ratio	0.4:1 208.08m ²	0.29:1 150.2m ²	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
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
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Requirement:	8.5m
Proposed:	9.628m
Is the planning control in question a development standard?	Yes
If numerical enter a % variation to requirement	13.27%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 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 and an assessment of the request to vary the development standard in accordance with the requirements of Clause 4.6 is provided below:

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:

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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.

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

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

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

Comment:

The applicant's written request (attached to this report as an Appendix) has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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



s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The Applicant's written request (attached to this report as an Appendix) has demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

In doing so, the applicant's written request has demonstrated that the proposed development satisfies cl 1.3(c)(g) of the EPA Act.

In this regard, the applicants written request has adequately demonstrated the 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).

cl 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 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 proposed building height is generally consistent with the landscape, prevailing building height and desired streetscape character. The area of non-compliance is limited to the front of the proposed balcony roof and occurs as a result of the steep topography and significant geographical feature below the existing dwelling.

b) to control the bulk and scale of buildings,

Comment:

The proposed non-compliance relates to the proposed unenclosed balcony and will not result in any unreasonable bulk.

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 proposal will not unreasonably impact views to, from or between residential development and 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:

The proposal will result in minimal additional overshadowing of private open spaces or habitable rooms of adjacent properties. The majority of the additional shadow will fall within the front setbacks of the subject site and adjacent sites adjoining the road reserve.

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:

N/A



Conclusion:

The proposed development satisfies the underlying objectives of the Height of buildings development standard.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone

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

Comment:

The proposal retains the existing residential use.

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

Comment:

N/A

Conclusion:

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

cl 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 PS 18-003 dated 21 February 2018, 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 where the variation to a numerical standard is not greater than 10%. Following the release of PS 18-003, Council received correspondence from a delegate of the Secretary which granted Council staff, for a period of 12 months from 1 March 2018, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary a development standard by more than 10%.

As the application seeks to vary the development standard by more than 10%, the concurrence of the Secretary is assumed, subject to determination by Council's Development Determination Panel.

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.

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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.

No significant excavation is proposed.

6.9 Foreshore scenic protection area

The proposal is for works to an existing dwelling and will result in no unreasonable impact on visual aesthetic amenity or views to and from Sydney Harbour.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 520.2m ²	Requirement	Proposed	Complies
4.1.2.1 Wall Height	East: 7.9m	3.6m (Carport)	Yes
		8.1m (Dwelling)	No
	West: 8m	3.6m (Carport)	Yes
		7.66m (Dwelling)	Yes
4.1.2.2 Number of Storeys	2	2	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.5m	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	3.374m (Carport)	No
		21.3m (Dwelling)	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East (Carport): 0.6m	5.3m	Yes
	East (Dwelling): 2.7m	1.436m	No
	West (Carport): 0.6m	0.6m	Yes
	West (Dwelling): 2.55m	1.038m	No
4.1.4.4 Rear Setbacks	8m	0.96m	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space 60% of site area 312.12m ²	60.4% 314.1m ²	Yes
	Open space above ground 25% of total open space 78.5m ²	11.8% 37.2m ²	Yes
4.1.5.2 Landscaped Area	Landscaped area 40 % of open space 125.64m ²	61.3% 192.5m ²	Yes
	3 native trees	0 trees	No
4.1.5.3 Private Open Space	18m ² per dwelling	>18m ²	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	6m	Yes



Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	Yes
4.1.10 Fencing	1m / 1.5m with transparency	0.878m - 1.426m	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	No	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
3.7 Stormwater Management	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.10 Fencing	No	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.3.2 Preservation of Trees or Bushland Vegetation

The proposal, as amended, does not include the removal of any significant trees or vegetation.

3.4.1 Sunlight Access and Overshadowing

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 equitable access to light and sunshine.

Comment:

The proposal maintains equitable access to light and sunshine.



Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

Comment:

The proposal allows adequate sunlight to private open spaces and habitable rooms of the subject site and adjoining properties.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

The proposed works result in only a minor increase to the existing building envelope and will not unreasonably impacts sunlight access.

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.

3.4.2 Privacy and Security

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 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 proposal is designed to minimise privacy impacts between the subject site and adjoining properties. The proposed changes to windows will not result in any unreasonable privacy impacts and the front balcony includes privacy screens to mitigate overlooking overlooking of the adjoining properties.



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:

The proposed development provides sufficient privacy and sunlight access to the subject site and adjoining properties.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal retains opportunities for passive surveillance.

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.

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

The proposed 2.6m high privacy screen to the eastern side of the front balcony results in a non-compliant wall height. The proposed screen causes unnecessary visual bulk and is considered to be excessive in height to provide sufficient privacy to the subject site and adjoining property. As such, a condition of consent is included requiring this screen to be a maximum height of 1.8m above the finished floor level of the balcony. The proposed eastern wall height, as altered by this condition, is compliant.

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

Description of non-compliance

The proposed carport front setback is non-compliant. The proposed eastern and western side setbacks and rear setback to the dwelling are non-compliant.

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 proposed carport design is unenclosed and low profile to minimise visual impact on the streetscape. The carport location is consistent with a number of existing parking structures within the streetscape and is also constrained by the location of existing significant trees on the subject site. The existing dwelling and proposed non-compliant works are set back significantly from the street frontage and will not unreasonably impact the character of the streetscape.

Objective 2) To ensure and enhance local amenity by:

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- *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:

The proposed setbacks are sufficient to mitigate any unreasonable impacts in relation to privacy, sunlight access, views, streetscape character and traffic conditions.

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

Comment:

The siting of the dwelling at the rear extent of the site is consistent with a number of dwellings in the vicinity of the subject site on both Alma Street and Adelaide Street to the north. The proposed carport front setback is consistent with existing examples of car parking structures in the surrounding area. The proposed non-compliant balcony is only partially enclosed by privacy screening and is generally a reconstruction of the existing balcony. The Kids Retreat is also a reconstruction of the existing sunroom. The proposed Bedroom 3 setbacks are consistent with those of the directly adjoining properties, and will not result in any unreasonable 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:

The proposed setback non-compliances do not impact landscaping on the site.

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

Comment:

N/A

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.



4.1.10 Fencing

The proposed front fence height is not excessive and is generally consistent with the fencing characteristics of the surrounding area. Further, the pedestrian entry and partially transparent gate break up the fence line and reduce its visual impact.

4.4.5 Earthworks (Excavation and Filling)

The proposal, as revised, includes relatively minor excavation or changes to existing ground levels. A geotechnical report prepared by Ascent Geotechnical Consulting was submitted with the application.

5.4.1 Foreshore Scenic Protection Area

The proposal is for works to an existing dwelling and will result in no unreasonable impact on visual aesthetic amenity or views to and from Sydney Harbour.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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

Manly Section 94 Development Contributions Plan

S94 Contributions are not applicable to this application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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

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- 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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1615 for Alterations and additions to a dwelling house on land at Lot 26 DP 2610, 30 Alma Street, CLONTARF, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA02 Site/Roof Plan	4 December 2018	Action Plans
DA05 Proposed Entry Floor Plan	4 December 2018	Action Plans
DA06 Proposed Ground Floor Plan	4 December 2018	Action Plans
DA07 North / South Elevation	4 December 2018	Action Plans
DA08 East Elevation	4 December 2018	Action Plans
DA09 West Elevation	4 December 2018	Action Plans
DA10 Long Section	4 December 2018	Action Plans
DA11 Cross / Entry Stair Section	4 December 2018	Action Plans
DA12 Carport - South Elevations	4 December 2018	Action Plans
DA13 Carport East / West Elevations	4 December 2018	Action Plans
DA14 Carport Long / Cross Sections	4 December 2018	Action Plans
DA20 Driveway Plan & Section	4 December 2018	Action Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A321733	5 July 2018	Action Plans
Geotechnical Inspection Report	7 August 2018	Ascent Geotechnical Consulting
Arboricultural Impact Appraisal	6 December	Naturally Trees

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b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

c) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

d) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
L/01 Landscape Plan	9 August 2018	ATC

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

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

2. **Prescribed conditions (Demolition):**

(a) 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 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
- (ii) 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.

(b) 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.

(c) 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.

Reason: Legislative Requirement (DACPLB09)

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such



- damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative Requirement (DACPLB09)

4. **General requirements (Demolition):**

(a) Unless authorised by Council:

Demolition and excavation works are restricted to:

- o 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) At all times after the submission a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. The consent shall be available for perusal of any Authorised Officer.

(c) 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.

(d) 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.

(e) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

(i) 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.



Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

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) 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) 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.
- (j) Prior to the commencement of any development onsite for:

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- 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.

- (k) 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 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (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. (DACPLB10)

FEES / CHARGES / CONTRIBUTIONS

6. Security Bond

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security 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, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

7. **Stormwater Disposal**

Stormwater shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003.

A certificate is to be provided to the Principal Certifying Authority by a qualified experienced practicing Civil Engineer that the existing approved system can accommodate the additional flows or provide drainage plans demonstrating compliance with Council's requirements.

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

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

8. **Structural Adequacy and Excavation Work**

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

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

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

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

Reason: To provide public and private safety.

9. **Vehicle Crossings Application**

A Driveway Levels and Formwork Inspections Application shall be made with Council subject to the payment of the fee in accordance with Council's Fees and Charges. The fee includes all Council inspections relating to the driveway construction and must be paid.

Approval of the application by Council is to be submitted to the Principal Certifying Authority
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prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

10. **Privacy screen**

The privacy screen proposed to the eastern side of the front balcony is to be a maximum height of 1.8m above the finished floor level (FFL).

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

Reason: To minimise the visual bulk of the development while providing sufficient privacy to the subject site and adjoining property.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

11. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

12. **Project Arborist**

- i) a Project Arborist with minimum qualification AQF Level 5 is to be appointed prior to commencement of works,
- ii) the Project Arborist is to oversee all tree protection measures and works adjacent to protected trees as outlined in the Arboricultural Impact Appraisal and Method Statement dated 6 December 2018, prepared by Naturally Trees, and AS4970-2009 Protection of trees on development sites,
- iii) the Project Arborist shall be in attendance and supervise all works in the vicinity of T04 - Sydney Red Gum and T05 - Sydney Red Gum, with specific attention to Appendix 7 - Schedule of Works and Responsibilities of the Arboricultural Impact Appraisal and Method Statement,
- iv) all other existing trees to be retained and protected shall be in accordance with the Arboricultural Impact Appraisal and Method Statement, including T01, T02, T06, T07 and T8,
- v) the Project Arborist is to ensure compliance as relevant with any other environmental requirements conditioned under this consent.

Reason: to ensure protection of vegetation proposed for retention on the site.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

13. **Road Reserve**

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety.

14. **Vehicle Crossings**

DA2018/1615

Page 26 of 28



The provision of one vehicle crossing 4 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/6 MH and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

15. **Tree and vegetation protection**

A) Existing trees and vegetation shall be retained as follows:

- i) all trees and vegetation within the site (T04, T05 and T07), nominated for retention, excluding exempt trees under the relevant planning instruments of legislation,
- ii) all other trees and vegetation located on adjoining properties (T02, T06, and T08),
- iii) all road reserve trees and vegetation (T01),

B) Existing tree as nominated for removal (T03) is permitted based on the assessment of significance and the recommendations of the Arboricultural Impact Appraisal and Method Statement dated 8 August 2018, prepared by Naturally Trees,

C) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4, and according to the Arboricultural Impact Appraisal and Method Statement,
- ii) any tree roots exposed during excavation with a diameter greater than 25mm within the TPZ must be assessed by an Arborist. Details including photographic evidence of works undertaken shall be submitted by an AQF Level 5 Arborist to the Certifying Authority,
- iii) to minimise the impact on trees and vegetation to be retained and protected, 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,
- iv) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorized by the Project Arborist on site,
- v) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
- vi) should either or both iv) and v) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures provided. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority.

Reason: to retain and protect significant planting on development and adjoining sites.

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

16. **Landscape works**

Landscaping is to be implemented in accordance with the Landscape Plan L/01, prepared by ATC Landscape Architects, revision A, dated 06/12/2018.

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the landscape plan and inclusive of any conditions of consent.



Reason: to ensure that the landscape treatments are installed to provide landscape amenity.

17. **Condition of retained vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an AQF Level 5 Arborist (or equivalent), shall be submitted to the Certifying Authority, assessing the health and impact of trees and vegetation required to be retained (T01, T02, T04, T05, T06, T07, and T08) as a result of the proposed development, including the following information:

- a) Compliance to Arborist recommendations for tree protection and 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: to ensure compliance with the requirement to retain and protect significant planting on development sites.

18. **Reinstatement of Kerb**

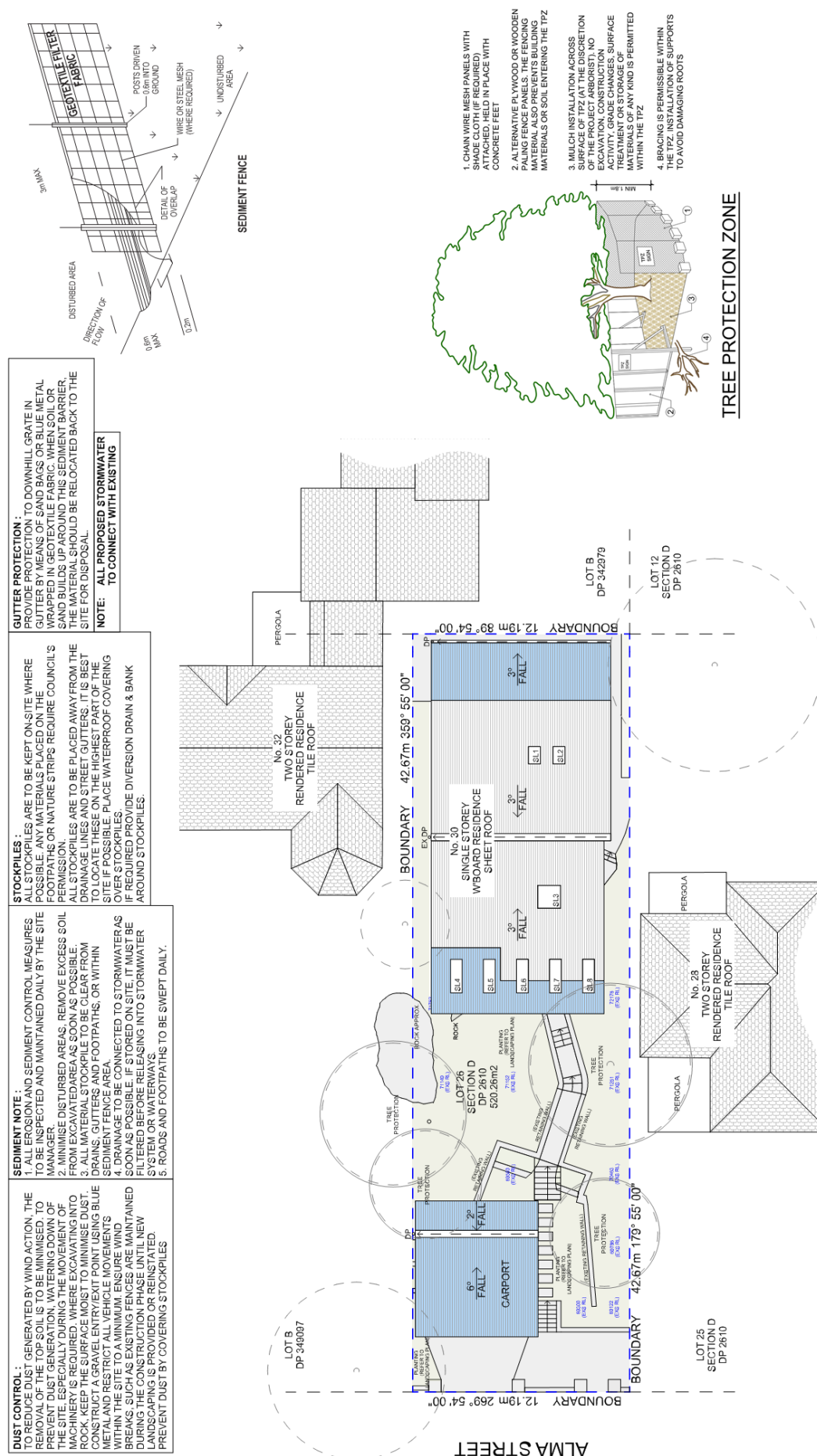
All redundant laybacks and vehicular crossings shall be reinstated to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To facilitate the preservation of on street parking spaces

19. **Stormwater Disposal**

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

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



Note:
This plan is to be read in conjunction with Landscape plant prepared by A Total Concept.



DRAWING NAME
SITE / ROOF / SEDIMENT
EROSION / WASTE
MANAGEMENT / STORMWATER
CONCEPT PLAN

SCALE
1:200 @A3

<p>CLIENT</p> <p>CHRIS & LILIA HAUGHTON</p>	<p>PROJECT ADDRESS</p> <p>30 ALMA STREET, CLONTARF NSW 2033</p>	<p>DRAWING NO.</p> <p>DA02</p>	<p>DATE</p> <p>06 December 20</p>
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CONCRETE
BRICKWORK
METAL
EXISTING
DEMOLISHED

LEGEND

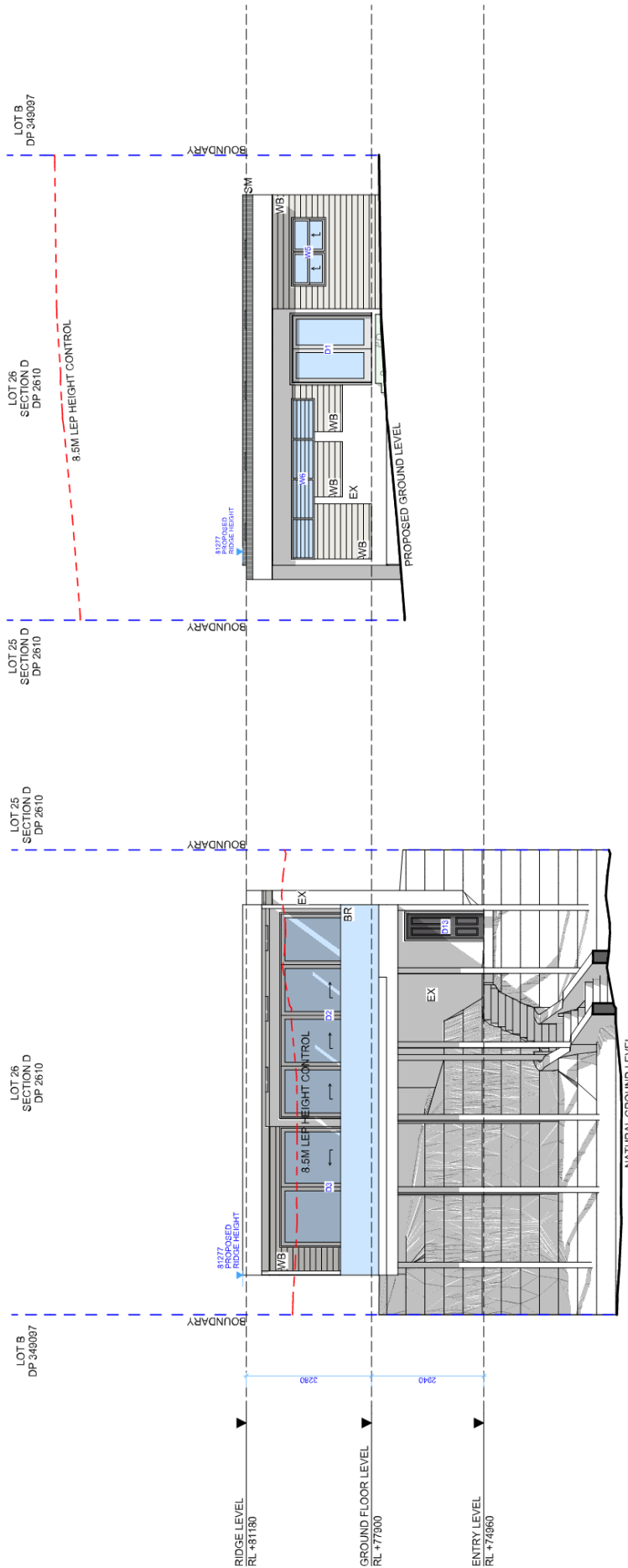
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work, making
components
Do not scale

REV.	DATE	COMMENTS	DRWN
A	15/03/18	INITIAL DESIGN PLAN	AL
B	22/03/18	FIRST DESIGN-AMENDMENT	AL
C	04/07/18	DA REVIEW SET	RVA
D	08/12/18	DA - SUBMISSION REV A	AF


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1 SOUTH ELEVATION
1:100 @ A3

2 NORTH ELEVATION
1:100 @ A3

<div><div><div><div>ACTION PLANS</div><div>m: 0426 957 518 e: operations@actionplans.com.au w: www.actionplans.com.au</div></div></div></div>				<div><div>REV.</div><div>DATE</div><div>COMMENTS</div><div>DRWN</div></div> <table><tr><td>A</td><td>16/02/19</td><td>INITIAL DESIGN PLAN</td><td>AL</td></tr><tr><td>B</td><td>22/03/19</td><td>FIRST DESIGN AMENDMENT</td><td>AL</td></tr><tr><td>C</td><td>04/07/19</td><td>DA REVIEW SET</td><td>RVA</td></tr><tr><td>D</td><td>06/12/18</td><td>DA - SUBMISSION REV A</td><td>AF</td></tr></table>				A	16/02/19	INITIAL DESIGN PLAN	AL	B	22/03/19	FIRST DESIGN AMENDMENT	AL	C	04/07/19	DA REVIEW SET	RVA	D	06/12/18	DA - SUBMISSION REV A	AF	<div><div>NOTES</div><div><p>This drawing is the copyright of Action Plans and shall not be reproduced, stored in a retrieval system, or transmitted in any form or by any means, in print or in whole with the written permission of Action Plans.</p><p>All levels and dimensions are to be checked and confirmed on site prior to construction. Components, materials, and finishes shall be as shown on drawings. Use figured dimensions.</p><p>Do not scale on drawings. Use figured dimensions.</p></div></div>				<div><div>LEGEND</div><div><p>EX: Existing WB: Weatherboard BR: Bricks SM: Shingles SM: Sheet Metal</p></div></div>				<div><div>CLIENT</div><div>CHRIS & LILLIA HAUGHTON</div></div> <div><div>PROJECT ADDRESS</div><div>30 ALMA STREET, CLONTARF NSW 2033</div></div>				<div><div>DRAWING NO.</div><div>DA07</div></div> <div><div>DATE</div><div>06 December 2018</div></div> <div><div>SCALE</div><div>1:100 @A3</div></div>				<div><div>DRAWING NAME</div><div>NORTH / SOUTH ELEVATION</div></div>			
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	m: 0626 518 e: operations@actionplans.com.au w: www.actionplans.com.au	A	19/02/18	INITIAL DESIGN PLAN	AL
		B	22/03/18	FIRST DESIGN AMENDMENT	AL
		C	04/07/18	DA REVIEW SET	RNA
		D	08/12/18	DA - SUBMISSION REV A	AF

CLIENT	DRAWING NO.	DRAWING NAME
CHRIS & LILLA HAUGHTON	DA08	EAST ELEVATION
PROJECT ADDRESS	DATE	SCALE
30 ALMA STREET, CLONTARF NSW 2033	06 December 2018	1:100 @A3

LEGEND

EX:	Existing
WB:	Weatherboard
PS:	Privacy Screen
BR:	Barrier
SS:	Sand Stone
SM:	Sheet Metal

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A	15/02/18	INITIAL DESIGN PLAN	AL
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C	04/07/18	DA REVIEW SET	RNA
D	08/12/18	DA-SUBMISSION REV A	AF



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C	04/07/19	DA REVIEW SET	RNA
D	09/12/19	DA - SURMISED, REV A	AF

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CLIENT	DRAWING NO.	DRAWING NAME
CHRIS & LILLIA HAUGHTON	DA09	WEST ELEVATION
PROJECT ADDRESS	DATE	SCALE
30 ALMA STREET, GLONTARF NSW 2083	06 December 2018	1:100 @ A3

LEGEND

EX: Existing
WB: Weatherboard
PS: Privacy Screen
BR: Barrier
GL: Glass
ST: Sheet Metal
SM: Steel

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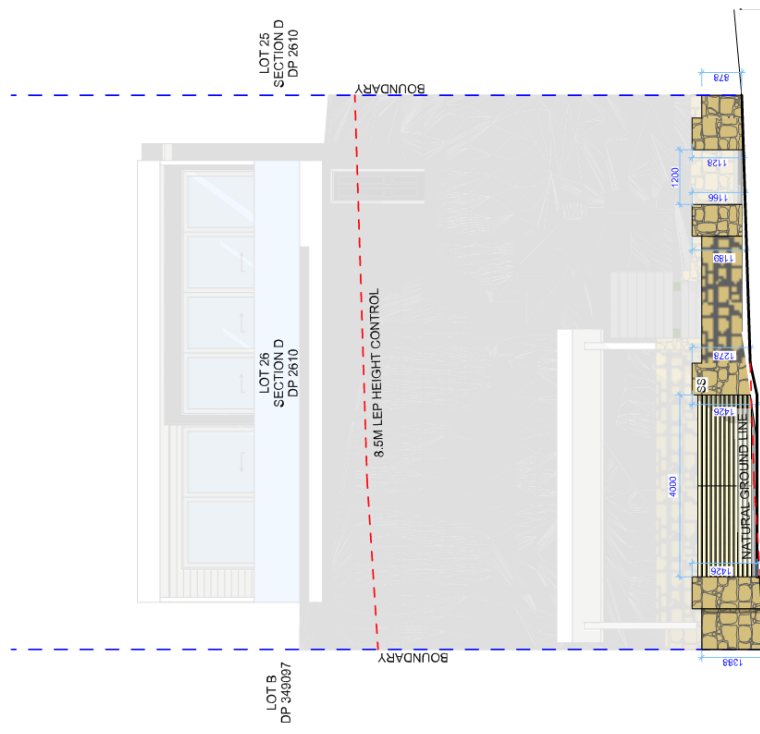
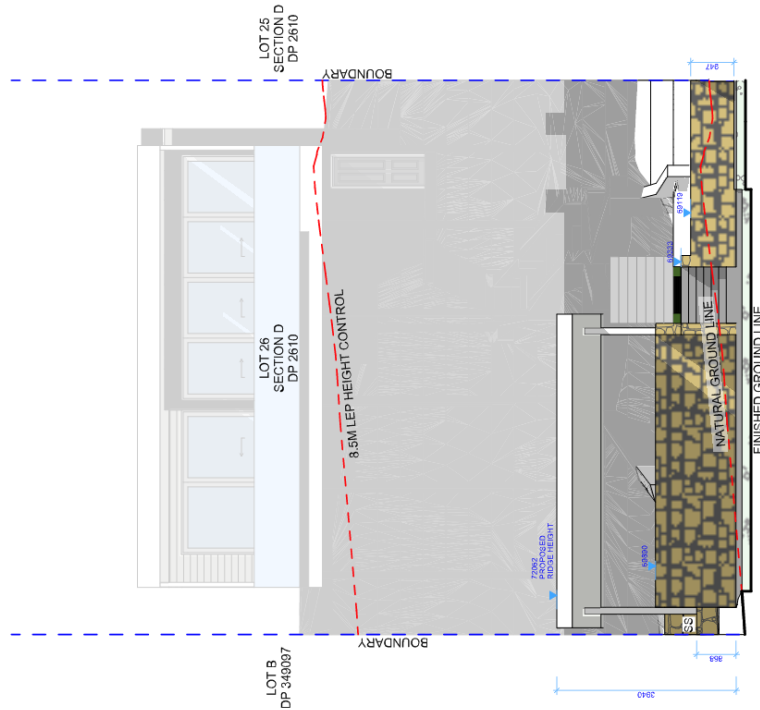
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REV.	DATE	COMMENTS	DRWN
A	15/03/18	INITIAL DESIGN PLAN	AL
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D	06/12/18	DA - SUBMISSION, REV A	AF



ACTION
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2 SOUTH ELEVATION - CARPORT
1:100 @ A3

1 SOUTH ELEVATION - FENCE
1:100 @ A3



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C	04/07/18	DA REVIEW SET	RVA
D	06/12/18	DA - SUBMISSION REV A	AF

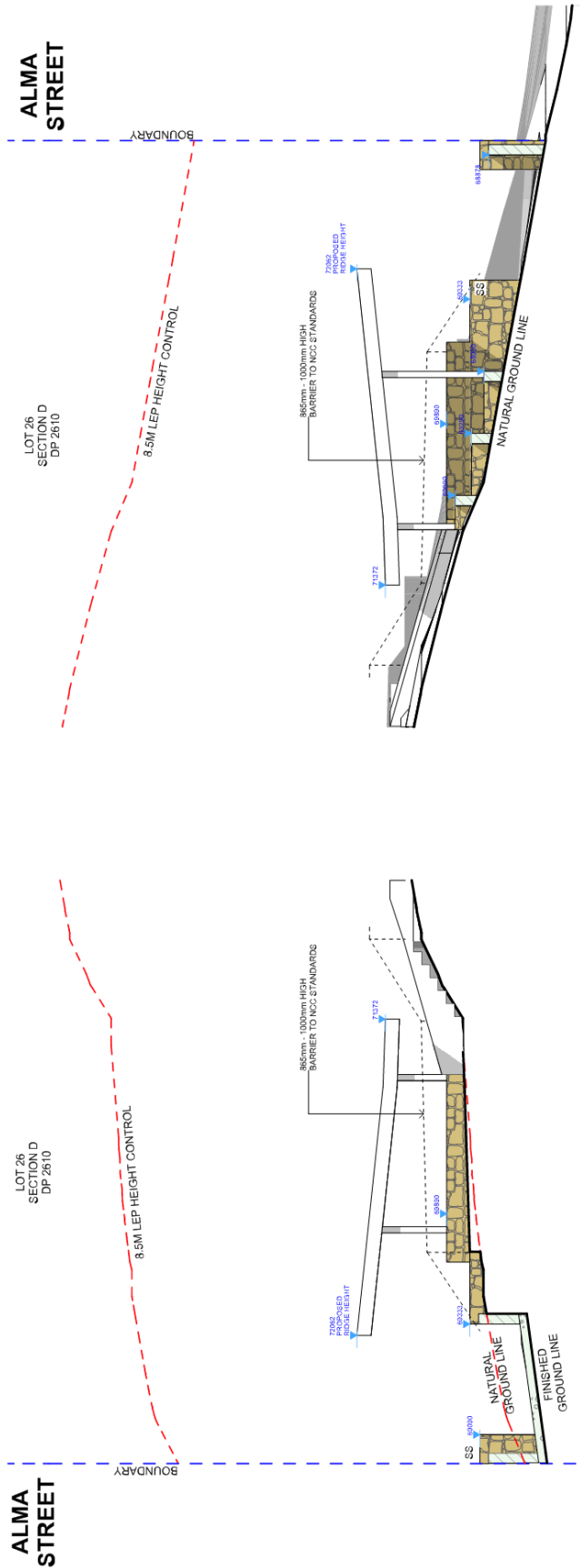
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LEGEND
EX: Existing
NEW: New
PR: Proposed
BR: Barrier
SS: Street
SW: Street Wall

CLIENT
CHRIS & LILLIA
HAUGHTON
PROJECT ADDRESS
30 ALMA STREET,
CLONTARF NSW 2093

DRAWING NO.
DA12
DATE
06 December 2018
SCALE
1:100 @A3

DRAWING NAME
CARPORT - SOUTH
ELEVATIONS



1 EAST ELEVATION - CARPORT
1:100 @ A3

2 WEST ELEVATION - CARPORT
1:100 @ A3



REV.	DATE	COMMENTS	DRWN
A	16/02/18	INITIAL DESIGN PLAN	AL
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C	04/07/18	DA REVIEW SET	RVA
D	06/12/18	DA - SUBMISSION, REV A	AF

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CLIENT
CHRIS & LILLIA
HAUGHTON
PROJECT ADDRESS
30 ALMA STREET,
CLONTARF NSW 2093

DRAWING NO.
DA13
DATE
06 December 2018
SCALE
1:100 @A3

DRAWING NAME
CARPORT EAST / WEST
ELEVATIONS

ITEM 3.5	DA2018/1528 - 11 COOLANGATTA AVENUE, ELANORA HEIGHTS - DEMOLITION OF EXISTING STRUCTURES
REPORTING MANAGER	ANNA WILLIAMS
TRIM FILE REF	2019/037205
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan

PURPOSE

To refer the attached application for determination by the discretion of the General Manager Planning, Place and Community.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant Development Consent to DA2018/1528 for demolition of existing structures on land at Lot 12 DP 13643, 11 Coolangatta Avenue, Elanora Heights subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1528
Responsible Officer:	Seth Dias
Land to be developed (Address):	Lot 12 DP 13643, 11 Coolangatta Avenue ELANORA HEIGHTS NSW 2101
Proposed Development:	Demolition of existing structures
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Diana Louise Sedgman Paul Charles Sedgman
Applicant:	Rapid Plans Pty Ltd
Application lodged:	14/09/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	18/09/2018 to 04/10/2018
Advertised:	Not Advertised
Submissions Received:	1
Recommendation:	Approval
Estimated Cost of Works:	\$ 27,500.00

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

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 12 DP 13643 , 11 Coolangatta Avenue ELANORA HEIGHTS NSW 2101
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Coolangatta avenue.</p> <p>The site is slightly irregular in shape with a frontage of 15.66m along Coolangatta avenue and a depth of 63.62m. The site has a surveyed area of 1034m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates a single-storey dwelling house.</p> <p>The site slopes upwards from east to west at approximately 7.7%.</p> <p>The site contains a large variety of bushes, trees and small plants. Overgrown turfed grass occupies the majority of the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by other dwelling houses of multiple different architectural styles.</p>

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.

PROPOSED DEVELOPMENT IN DETAIL

The development seeks to demolish an existing dwelling house

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	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah 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 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the</p>



Section 4.15 Matters for Consideration'	Comments
	<p>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 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 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 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</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 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 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 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.

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 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

Name:	Address:
Mr Anthony Stephen Foy	9 Coolangatta Avenue ELANORA HEIGHTS NSW 2101

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPS), Development Controls Plans and Council Policies have been considered in the assessment,



many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
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DA2018/1528

Page 6 of 11



Height of Buildings:	8.5m	N/A	N/A	N/A
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Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

This application seeks to demolish an existing structure, as no new development has been proposed no Warringah Development Control Plan Built Form Controls apply.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.5 Elanora Heights Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C5.17 Pollution control	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Pittwater Section 94 Development Contributions Plan

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1528 for Demolition of existing structures on land at Lot 12 DP 13643, 11 Coolangatta Avenue, ELANORA HEIGHTS, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS



1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA1003 Site Plan	12/09/2018	Rapid Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Statement of Environmental Effects	06/08/2018	Rapid Plans
Demolition and Asbestos License	29/11/2007	Action Demolition and Asbestos Removal Pty Ltd

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

c) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

d) The development is to be undertaken generally in accordance with the following:

Waste Management Plan		
Drawing No.	Dated	Prepared By
DA1004 Waste Management Plan	12/09/2018	Rapid Plans

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

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

2. **Prescribed conditions (Demolition):**

(a) 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 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
- (ii) 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.

(b) 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.

- (c) 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.

Reason: Legislative Requirement (DACPLB09)

3. **General requirements (Demolition):**

- (a) Unless authorised by Council:
Demolition and excavation works are restricted to:
 - o 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) At all times after the submission a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. The consent shall be available for perusal of any Authorised Officer.

- (c) 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.

- (d) 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.

- (e) The applicant shall bear the cost of all works that occur on Council's property.

- (f) No building, demolition, excavation or material of any nature shall be placed on Council's



footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

(i) 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.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

FEES / CHARGES / CONTRIBUTIONS

4. Security Bond

A bond (determined from cost of works) of \$5,000 and an inspection fee in accordance with Council's Fees and Charges paid as security 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, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

5. Compliance with standards (Demolition):

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 Council prior to the commencement of demolition works.

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)



ITEM 3.6 **DA2018/1312 - 19 TUTUS STREET, BALGOWLAH HEIGHTS -
DEMOLITION WORKS AND CONSTRUCTION OF A NEW
DWELLING HOUSE**

REPORTING MANAGER **ADAM MITCHELL**

TRIM FILE REF **2019/036898**

ATTACHMENTS **1** [↓](#) **Assessment Report**
2 [↓](#) **Site Plan and Elevations**

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 grant Development Consent to DA2018/1312 for demolition works and construction of a new dwelling house on land at Lot 14 DP 9561, 19 Tutus Street, Balgowlah Heights subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1312
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 14 DP 9561, 19 Tutus Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Demolition works and construction of a new dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Danling Zhuang
Applicant:	Bechara Chan & Associates
Application lodged:	08/08/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	14/08/2018 to 30/08/2018
Advertised:	Not Advertised
Submissions Received:	4
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,510,000.00

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 Development Control Plan - 3.1 Streetscapes and Townscapes
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 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 - 4.1.8 Development on Sloping Sites
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features
 Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 14 DP 9561 , 19 Tutus Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Tutus Street.</p> <p>The site is regular in shape with a frontage of 15.24m along Tutus Street and a depth of 67m. The site has a surveyed area of 1021.9m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house.</p> <p>The site includes a crossfall of approximately 5m from the high point in the rear curtilage to the street front.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential development typically single and two storey dwelling houses.</p>

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.

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for demolition, excavation and the construction of a detached dwelling house with basement, swimming pool and decking.

Specifically, the works incorporate the following:

Basement

- Three (3) parking spaces.
- Storage room.
- Lift.
- Access.

Lower ground floor

- Rumpus/Gym.
- Entry foyer.
- Lift/lift lobby.
- Plant room.

Ground Floor

- Bedroom 1 with Walk-in robe and ensuite.
- Bedroom 2 and 3 with walk-in robe and shared ensuite.
- Bedroom 4 with walk-in robe.

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- Study.
- Bathroom.
- Laundry.
- Foyer.

First Floor

- Master bedroom with walk-in robe, ensuite and rear terrace.
- Kitchen and living room.
- Family room.
- Powder room.
- Front terrace.

Other

- Demolition.
- Excavation.
- Swimming pool.
- Landscaping.
- Front and rear deck terrace.
- Driveway crossing.
- Retaining walls.

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	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 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>

Section 4.15 Matters for Consideration'	Comments
	<p>Clauses 54 and 109 of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p>Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p>Clauses 93 and/or 94 of the EP&A Regulation 2000 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>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</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 suitable for the proposed development.
Section 4.15 (1) (d) – any submissions DA2018/1312	See discussion on "Notification & Submissions Received"



Section 4.15 Matters for Consideration'	Comments
made in accordance with the EPA Act or EPA Regs	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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Matthew Willis, dated 17 April 2018) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

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 2000 and the relevant Development Control Plan.

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

Name:	Address:
Mr John William Darragh	14 Tutus Street BALGOWLAH HEIGHTS NSW 2093
Mrs Diane Falabella	17 Tutus Street BALGOWLAH HEIGHTS NSW 2093
Mr Craig Swanton Hurt	21 Tutus Street BALGOWLAH HEIGHTS NSW 2093
Mr Paul Wilfred Finn	5 New Street BALGOWLAH HEIGHTS NSW 2093

The following issues were raised in the submissions and each have been addressed below:

- **Height of buildings non-compliance/Bulk and scale**
- **Swimming pool location.**
- **Sunlight access and overshadowing.**
- **Privacy.**
- **Landscaping.**
- **Stormwater management.**
- **Bushfire.**
- **Demolition impacts.**

The matters raised within the submissions are addressed as follows:
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- **Height of buildings non-compliance/ Bulk and scale**

Comment:

See comments under Clause 4.6 of the Manly LEP in this report. In summary, the proposed written request from the applicant has been considered and is found to have adequately demonstrated the matters required to be demonstrated by under clause 4.6. It is deemed that the proposals bulk and scale is reasonable in this residential context.

Accordingly, this matter does not warrant the refusal of the application.

- **Swimming pool location**

Comment:

Concern was raised in regards to the location of the proposed swimming pool on site, and the potential resulting amenity impacts. The proposed pool is located to the north east corner of the property. An assessment of the against the underlying objectives of Clause 4.1.9 of the Manly DCP has been undertaken within this report. In summary, the location of the swimming pool is deemed to be reasonable.

Concern was also raised in regards to the acoustic impact of the swimming pool mechanics including the pool filter. A recommended condition of consent has been included as part of this recommendation to ensure that the pool filter box is centrally located and sound insulated to ensure no unreasonable aural impact to adjoining properties.

Accordingly, this matter is resolved by way of condition.

- **Sunlight access and overshadowing**

Comment:

An assessment of the application against Clause 3.4.2 Sunlight Access and Overshadowing of the Manly DCP reveals that the application complies with the requisite provisions for solar access and does not unreasonably overshadow adjoining properties.

This matter is addressed in further detail elsewhere in this report.

- **Privacy**

Comment:

Concern was raised about resulting privacy impacts (acoustic and visual) from the dwelling house and swimming pool. The proposal has been assessed against the privacy provisions under Clause 3.4.2 of the Manly DCP in this report. In summary, the proposal complies with the relevant provisions and underlying objectives under Clause 3.4.1 of the Manly DCP.

This matter is addressed in further detail elsewhere in this report. Accordingly, this matter is resolved by way of condition.

- **Landscaping**

Comment:

Council's landscape officer raised no objection to the removal of trees on site as indicated in both the landscape architectural plan and arboricultural report. It is noted that the proposal



meets the minimum native tree requirement under Clause 4.1.5.2 of the Manly DCP.

This matter is addressed in further detail elsewhere in this report.

- **Stormwater impacts**

Comment:

The application was referred of to development engineering to comment. The engineers raised no issues with the proposed stormwater management, subject to conditions of consent.

Accordingly, this matter is resolved by way of condition.

- **Bushfire**

Comment:

The proposed bush fire report does not rely on alternate solutions. The BAL rating proposed within the bushfire report is correct.

Accordingly, this matter does not warrant the refusal of the application.

- **Demolition Impacts**

Comment

Standard conditions of consent have been included as part of this recommendation to ensure compliance with relevant Australian Standards (AS) for demolition.

Accordingly, this matter does not warrant the refusal of the application.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>In terms of the landscape component of the proposal, the impact to the streetscape is unacceptable.</p> <p>DCP Control 4.1.9 Swimming Pools, Spas and Water Features, requires that pools are located to not adversely impact on the streetscape and integrate landscaping. The proposal does not achieve this requirement. The pool, elevated above ground level presents a built form to the streetscape that is not softened by landscaping. The proposal intent of an infinity style design will ensure that no planting to soften the built form nor provide any privacy will be provided.</p> <p>DCP Control 4.1.9.2 (a) does not allow a pool in the front setback. Exception to this control is provided where the pool does not detract from the amenity of the neighbourhood, or where a minimum distance from the front boundary is equivalent to at least twice the height of the</p>
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Internal Referral Body	Comments
	<p>swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level. This has not been achieved in this proposal.</p> <p>The site plan has the potential to setback / relocate the pool away from the front boundary and provide a planter to facilitate planting to allow the setting to be softened, as well as provide privacy for users within the pool from the streetscape and vice-versa.</p> <p><i>Planner's comment:</i> Streetscape and Amenity considerations including privacy have been assessed in this report and has been deemed to be reasonable. As such, the proposed location of the swimming pool and associated landscaping is considered acceptable.</p>
NECC (Development Engineering)	Development Engineer has no objection to the application subject to the following condition of consent.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 930993S).



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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	52

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

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.34m	9.8%	No
Floor Space Ratio	FSR:0.4:1 408.76m ²	FSR: 0.397:1 406m ²	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	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
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Requirement:	8.5m
Proposed:	9.34m
Is the planning control in question a development standard?	YES
If numerical enter a % variation to requirement	9.8%

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* and an assessment of the request to vary the development standard in accordance with the requirements of Clause 4.6 is provided below:

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,
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(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.

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

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard. The applicant's written request has demonstrated consistency with the objectives of the Building Height development standard as detailed below:

- The request submits that the overall height of the dwelling house is consistent prevailing building height and roof forms of recent development within Tutus street. The proposal provides for a low-pitched roof form which is compatible with more recent developments in the locality. The overall height is comparable particularly when compared to the adjoining development at No. 17 and 21 Tutus Street. The proposal has a maximum height of RL 55.63 which is comparable to the adjoining property with a height of RL 55.13.



- The request submits that the front façade provides for substantial articulation through the use varied setbacks, balconies and change in external finishes. The main dwelling structure is well setback from the street to minimise bulk and scale.
- The request submits the proposal retains views of North Harbour as the proposal has been designed to retain the views currently enjoyed by the adjoining properties by maintaining a front setback that is consistent with the building line established by No. 17 and 21 Tutus Street. Further, properties to the rear do not currently enjoy any views due to the natural topography and as such the proposal will not have any impact on these properties in terms of views.
- The request submits that all properties receive some shadowing from the northern properties. Shadow diagrams have been prepared which demonstrate that at least 2 hours of solar access is maintained to the private open space and living room windows on the winter solstice.
- Objective 5 is not relevant in this circumstance.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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



assessment.

The Applicant's written request has demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard, as detailed below:

- The request states that the variation to the building height is the result of previous excavation and the slope of the site. Furthermore, the overall design is of good architectural quality and the development satisfies the zone objectives and the objectives of the development standard.
- The requests submits that there is no material impact on adjoining properties or the public domain arising from the variation to the building height development standard and the objectives of the control are satisfied, it is considered that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

In doing so, 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 building is of a good design and will protect the amenity of the surrounding built environment therefore satisfying cl 1.3(c)(g) of the EPA Act.

In this regard, the applicants written request has adequately demonstrated the 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).

cl 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 cl 4.3 Height of Buildings development standard are:

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 development is considered to be of a scale, bulk, form and height than can be compatible with surrounding and nearby developments in Tutus Street. The development is predominantly beneath the maximum permissible height limit as evident on the architectural plans, and overall achieves a building height that is not inconsistent with other multi storey dwelling houses on the



western side of Tutus Street. The dwelling house as articulated through staggered wall planes and generous front and rear setbacks reduces the apparent building mass and overall bulk and scale of the building house. The dwelling house responds well to the constraints of the site.

The development satisfies this objective.

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

Comment:

The bulk and scale of the development is consistent with nearby development and will not result in any unreasonable impacts within the locality. The proposed bulk and scale is satisfactory in this circumstance.

The predominant compliance achieved by the building demonstrates a considered built form that is likely to be compatible with any future development on surroundings lands.

The development satisfies this objective.

(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 impacts on views from the proposed development are considered acceptable, having regard to *Tenacity Consulting v Waringah* [2004] NSWLEC 140.

The development satisfies this objective.

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

Comment:

The solar impacts of this aspect of the development are minimal and acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces.

The development satisfies this objective.

(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:



Not applicable

Conclusion:

The proposed development satisfies the underlying objectives of the Height of Buildings development standard.

Zone objectives

The underlying objectives of the R2 General Residential zone

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

Comment:

The proposal retains the existing residential use of the site.

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

Comment:

Not applicable.

Conclusion:

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

cl 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 PS 18-003 dated 21 February 2018, 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 where the variation to a numerical standard is not greater than 10%. Following the release of PS18- 003, Council received correspondence from a delegate of the Secretary which granted Council staff, for 12 months from 1 March 2018, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary the Height of Buildings development standard by more than 10% via determination at the DDP.

As the development varies the development standard by less than 10% the concurrence of the Secretary is assumed.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1021.9m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	South: 8m (based on gradient 1:4)	8.3m	3.75%	No
	North: 8m (based on	8.5m	6.25%	No

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	gradient 1:4)			
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	1m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	1.78m, consistent with prevailing setback	71%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.76m (based on southern wall height)	1.5m- 3m	54%	No
	2.83m (based on northern wall height)	1.5m-6.7m	53%	No
	Windows: 3m	1.5m	50%	No
4.1.4.4 Rear Setbacks	8m	21m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% 613.14m ² of site area	85.8% 877.5m ²	N/A	Yes
	Open space above ground 25% of total open space	7% 73.1m ²		
4.1.5.2 Landscaped Area	Landscaped area 40% 351m ² of open space	46.7% 410m ²	N/A	Yes
	4 native trees	5 trees	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	877.5sqm	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	3.6m	100%	No
	1m curtilage/1.5m water side/rear setback	0.8m from coping, 1.2m from waters edge	20%	No
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 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
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
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	Yes
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

Description of non-compliance

Clause 4.1.10 of the Manly DCP requires front fences be a maximum height of 1m or 1.5m with 30 percent transparency.

The proposed front fence has a maximum height of 2.45m, non-compliant with 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 minimise any negative visual impact of walls, fences and carparking on the street frontage.

Comment:

The proposed development will not have an unreasonable negative impact upon the streetscape. The proposed front fence as viewed from the streetscape is not unreasonable in terms of visual bulk.

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

Comment:

The proposed height of the front fence in conjunction with the garage along the front boundary is consistent with other development within the street particularly that of No. 17 and 21 Tutus Street,



Balgowlah Heights.

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

Comment:

The proposed landscaping proposed to the front of the dwelling house ensures that the visual bulk and scale of the built form as viewed from the street is reduced or abated to a reasonable extent.

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.

3.4.1 Sunlight Access and Overshadowing

Merit consideration:

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

Objective 1) To provide equitable access to light and sunshine.

Comment:

The proposed works will allow for adequate light and sunshine to access the subject site and adjoining properties.

Objective 2) To allow adequate sunlight to penetrate:

- private open spaces within the development site; and
- private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.

Comment:

No. 17 Tutus Street, Balgowlah Heights

The proposed dwelling house will increase overshadowing to living room windows and private open space of the adjoining southern property.

Clause 3.4.1.1 a) of the Manly DCP requires new development to not eliminate more than one third of existing sunlight accessing the private open space of adjacent properties between 9am and 3pm throughout the winter solstice. Increased shading occurs at all hours between 9am and 3pm. Between 9am and 12pm the level of shadowing to the private open space is extensive, with the swimming pool shadowed for the majority of this period. However, between 12pm and 3pm the level of shadowing is considered negligible to minor with the majority of the private open space retaining sunlight for three hours. The level of sunlight retained to the adjoining southern property is considered adequate.

Clause 3.4.1.2 a) of the Manly DCP requires at least 2 hours of solar access be retained to living room windows that presently enjoy solar sunlight between 9am and 3pm on the winter solstice. The north facing ground floor windows will be shadowed at all hours between 9am and 3pm. However, between



the hours of 12pm and 3pm the adjoining southern property will retain adequate sunlight access to living rooms. Additionally, the living room windows and doors to the rear of the property will retain sunlight. The proposal is consistent with this objective.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

The primary dwelling retains a compliant rear setback which ensures that high levels of sunlight will access the outdoor living area and landscaped area to the rear of the adjoining southern property (No. 17 Tutus Street, Balgowlah Heights).

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.

3.4.2 Privacy and Security

Merit consideration:

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:

No. 17 Tutus Street, Balgowlah Heights

The proposed windows on both the ground and first floor of the dwelling house are appropriately sited and screened so as to not directly overlook windows of the adjoining southern dwelling.

The first floor south facing living room windows are highlight windows with a sill height of 2.5m above finished floor level. The picture window off the foyer on the first floor is setback 2m from the southern boundary and will have a substantial view to the ground floor bedroom of No. 17 Tutus Street. A suitable condition has been imposed as part of this recommendation to mitigate the potential for direct viewing between both properties, as stated below:

Privacy- Windows

The proposed first floor foyer window is to have a sill height of at least 1.6m above finished floor level, or be fixed and frosted below 1.6m.

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

Reason: to protect the visual privacy of adjoining residences.

No. 21 Tutus Street, Balgowlah Heights

The proposed ground and first floor east facing balconies are setback 13.4m from the front boundary and orientated directly east, the balconies do not directly overlook the private open space of No. 21 Tutus Street.

The proposed ground floor balcony has a maximum depth of 1.96m across the extent of the balcony. Further, it is located off three ground floor bedrooms, the intensification of use is minor and is unlikely to result in any unreasonable privacy impacts to the adjoining northern property No. 21 Tutus Street.

No. 5 New Street, Balgowlah Heights

The proposed rear terrace picture windows that adjoin the internal staircase along the northern elevation are setback 5.4m from the northern boundary, sufficient physical separation between properties to ensure both visual and acoustic privacy. Landscaping proposed between the staircase window and the northern property boundary, may also further supplement privacy between properties.

The proposed first floor windows on the northern side of the dwelling house off the master bedroom directly facing the rear of No. 5 New Street, Balgowlah heights are screened to a height of 2.5m above finished floor level mitigating any potential for direct overlooking to the adjoining property.

Note: Please refer to Clause 4.1.9 of the Manly DCP within this report for privacy comments related to the proposed swimming pool

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:

The proposed private open space is located to the front of the property. The proposed works are appropriately screened and offset from adjoining property boundaries to maintain privacy while allowing for a greater outlook to North Harbour and the Ocean.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed works will allow for passive surveillance of the street.

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.

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



This Clause relies upon the objectives of Clause 4.3 under MLEP 2013. An assessment of the proposal against the objectives of Clause 4.3 has been provided within this report. This assessment has found the proposal to be consistent with the objectives of Clause 4.3.

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

Description of non-compliance

Clause 4.1.4.1 of the Manly DCP requires dwelling be setback at least 6m from the front boundary or be consistent with the prevailing building line within the streetscape.

Clause 4.1.4.2 requires development be setback at least one third of the adjoining wall height.

Clause 4.1.4.2 of the Manly requires windows be setback at least 3m from side boundaries.

The development proposed the following:

Front setback- 1.78m, 71% variation to the numeric control.

Windows- 1.5m, 50% variation to the numeric control.

Side setback (southern)- 1.5- 3mm (dwelling house), 54% variation to the numeric control.

Side setback (northern)- 1.5m-6.7m , 53% 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 proposed works will not have an unreasonable impact on the streetscape. The dwelling is consistent with the prevailing spatial proportions of the street. Neighbouring properties to the north and south maintain a similar bulk and scale and retain similar side setbacks

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:

Amenity considerations including privacy, solar access and maintenance of views are all maintained to a reasonable extent as part of this proposed development.



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

Comment:

Flexibility is provided in this circumstance as the proposed new dwelling house will not cause any unreasonable 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:

The proposed development is consistent with the numeric control for landscaped open space. Important landscape features on site and immediately adjoining the subject site are to be retained.

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

Comment:

Subject to the conditions of consent recommended in the bush fire report, the proposal satisfies this objective

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.

4.1.8 Development on Sloping Sites

A geotechnical report has been submitted with the application, assessing the potential impact of the steep topography and excavation of the site.

The dwelling house responds appropriately to the sloping site.

4.1.9 Swimming Pools, Spas and Water Features

Clause 4.1.9 of the Manly DCP 2013 requires Pools be no higher than 1m above natural ground level. The proposed new pool is elevated 3.6m above ground, non-compliant with the numerical control. The relevant objectives in this Manly DCP that relate to open space are as follows:

The proposed swimming pool height is non-compliant with the provisions of Clause 4.1.9.2 but is consistent with the objectives of Clause 4.1.9, as assessed below:

Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring

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properties and to minimise the impact of filter noise on neighbouring properties;

Comment:

In order to maintain suitable visual and acoustic privacy between the subject site and the adjoining northern property a suitable condition has been included as part of this recommendation:

Privacy- Pool Fencing

Swimming pool fencing to the northern side of the swimming pool is to be solid or opaque.

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

Reason: To ensure the acoustic amenity of the neighbouring residents.

Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;

Comment:

The location of the proposed swimming pool is deemed appropriate given the following:

- The proposed swimming pool is unobtrusive to the public domain. Landscaping along the remainder of the street frontage is reasonable within the streetscape.
- Landscaping is proposed to both the northern and southern side of the swimming pool to reduce any unreasonable visual bulk and viewed from adjoining properties and the public domain.
- Important landscape features and the natural topography to the rear of the site will be retained.

Objective 3) To integrate landscaping; and

Comment:

The proposed swimming pool integrates screen planting to the north of the lap pool which may supplement the visual impact on the pool from the surrounding northern property. Landscaping is also proposed to the south of shallow pool to offset the visual bulk of the deck as viewed from the street.

Objective 4) To become an emergency water resource in bush fire prone areas.

Comment:

The pool may be a viable water resource during bush fire emergencies.

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.

4.1.10 Fencing

This clause relies upon the objectives of clause 3.1 under Manly DCP 2013. An assessment of the



proposal against the objectives under clause 3.1 has been provided within this report. The assessment found the proposal to be consistent with the objectives of clause 3.1.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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

Manly Section 94 Development Contributions Plan

S94 Contributions are not applicable to this application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1312 for Demolition works and construction of a new dwelling house on land at Lot 14 DP 9561, 19 Tutus Street,

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BALGOWLAH HEIGHTS, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA.01/ Site plan.	October 2017	Bechara Chan and Associates.
DA.02/ Lower ground floor plan, basement plan.	October 2017	Bechara Chan and Associates.
DA.03/ Ground Floor Plan, level 1 floor plan.	October 2017	Bechara Chan and Associates.
DA.04/ Roof and site plan.	October 2017	Bechara Chan and Associates.
DA.05/ Elevations	October 2017	Bechara Chan and Associates.
DA.06/ Section A-A, B-B	October 2017	Bechara Chan and Associates.
DA.14/ Swimming pool plan	October 2017	Bechara Chan and Associates.
DA01/ Demolition plan	October 2017	Bechara Chan and Associates.

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Investigation Report	21 June 2018	geo-environmental engineering
Bushfire risk assessment	5 June 2018	Matthew Willis

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
L01/ Landscape plan	27 June 2018	Sussan Zindo

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

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

2. 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 (DACPLB09)

3. 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) 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved



waste/recycling centres.

- (i) 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.

- (j) 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.

- (k) 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 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (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. (DACPLB10)

FEES / CHARGES / CONTRIBUTIONS



4. **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 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, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

5. **Stormwater Disposal**

Plans indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments, shall be submitted prior to the issue of the Construction Certificate. The plans must indicate the provision of a rainwater tank in accordance with the BASIX certificate. Stormwater shall be conveyed from the site to Tutus Street.

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

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

6. **Tanking of Basement Level**

The basement area is to be permanently tanked. Details of the tanking are to be prepared by a suitably qualified Engineer. Where temporary dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Office of Water. The bore license must be obtained prior to commencement of dewatering works. All requirements of the NSW Office of Water are to be complied with and a copy of the approval must be submitted to the Principal Certifying Authority. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements

7. **Shoring of Adjoining Property**

Should the proposal require shoring to support an adjoining property or Council land, owner's consent for the encroachment onto the affected property owner shall be provided with the



engineering drawings.

Council approval is required if temporary ground anchors are to be used within Council land. A Temporary Ground Anchors (Road Reserve) Application is to be submitted with Council for assessment and approval subject to Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

8. **Vehicle Crossings Application**

A Driveway Levels and Formwork Inspections Application shall be made with Council subject to the payment of the fee in accordance with Council's Fees and Charges. The fee includes all Council inspections relating to the driveway construction and must be paid.

Approval of the application by Council is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

9. **Compliance with Standards**

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

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

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

10. **External Finishes to Roof**

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

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

11. **Privacy- Windows**

The proposed first floor foyer window is to have a sill height of at least 1.6m above finished floor level, or be fixed and frosted below 1.6m.

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

Reason: to protect the visual privacy of adjoining residences. (DACPLCPCC1)

12. **Swimming Pool Filter Box**

Any mechanical plant associated with the swimming pool and spa shall be centrally located

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within the site, away from the boundaries and acoustically treated so the pool filter does not emit any noise of 5dba above background noise at the nearest residential receiver.

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

Reason: To ensure the acoustic amenity of the neighbouring residents. (DACPLCPCC2)

13. Boundary fencing

No approval is given for the proposed 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. Privacy- Pool Fencing

Swimming pool fencing to the northern side of the swimming pool is to be solid or opaque.

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

Reason: To ensure the acoustic and visual amenity of the neighbouring residents.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. Public Liability Insurance - Works on Public Land

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. Road Reserve

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety.

17. Vehicle Crossings

The provision of one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/2 NH and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.



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

Reason: To facilitate suitable vehicular access to private property.

18. **Protection of Adjoining Property - Excavation**

Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.

Reason: To ensure private and public safety

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

19. **Reinstatement of Kerb**

All redundant laybacks and vehicular crossings shall be reinstated to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To facilitate the preservation of on street parking spaces

20. **Stormwater Disposal**

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

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



