

# 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 27 FEBRUARY 2019**



**Ashleigh Sherry**  
**Manager Business System and Administration**



**Agenda for a Meeting of the Development Determination Panel  
to be held on Wednesday 27 February 2019  
in the Walamai Room, Civic Centre, Dee Why**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Development Determination Panel held 13 February 2019	
<b>3.0</b>	<b>DEVELOPMENT DETERMINATION PANEL REPORTS .....</b>	<b>5</b>
3.1	DA2018/1770 - 13 Peronne Avenue, Clontarf - Alterations and Additions to a Dwelling House .....	5
3.2	MOD2018/0642 - 40 Beatty Street, Balgowlah Heights – Modification of Development Consent DA238/2006 granted for alterations and additions to a dwelling house and swimming pool.....	33
3.3	MOD2018/0575 - 5 Commonwealth Parade, Manly – Modification of Development Consent DA436/2008 relating to a residential flat building .....	59

## **2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

### **2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 13 FEBRUARY 2019**

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Development Determination Panel held 13 February 2019 were approved by all Panel Members and have been posted on Council's website.

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### 3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2018/1770 - 13 PERONNE AVENUE, CLONTARF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Rebecca Englund
TRIM FILE REF	2019/093333
ATTACHMENTS	1 <a href="#">↓</a> Assessment Report 2 <a href="#">↓</a> Site and Elevation Plans

#### 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.

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#### RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant Development Consent to DA2018/1770 for Alterations and Additions to a dwelling house on land at Lot 181, DP 9999, 13 Peronne Avenue, Clontarf, subject to the conditions outlined in the Assessment Report.

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## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2018/1770
<b>Responsible Officer:</b>	Claire Ryan
<b>Land to be developed (Address):</b>	Lot 181 DP 9999, 13 Peronne Avenue CLONTARF NSW 2093
<b>Proposed Development:</b>	Alterations and additions to a dwelling house
<b>Zoning:</b>	Manly LEP2013 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	David Warren Patterson Susan Gai Cheney
<b>Applicant:</b>	Addbuild Master Builders Pty Ltd
<b>Application lodged:</b>	31/10/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	08/11/2018 to 26/11/2018
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 204,440.00

### 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 - 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

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 181 DP 9999 , 13 Peronne Avenue CLONTARF NSW 2093
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the western side of Peronne Avenue, Clontarf.</p> <p>The site is irregular in shape with a frontage of 15.45m along Peronne Avenue and an average depth of 46.2m. The site has a surveyed area of 689m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a three-storey detached dwelling house.</p> <p>The site slopes approximately 20m from east to west and contains significant mature vegetation in the western half of the property.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by two- and three-storey detached dwellings.</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:

- Pre-lodgement Meeting PLM2018/0225 was held on 9 October 2018 for alterations and additions to a dwelling house.

## PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the following works:

- Reconfiguration of the ground floor; and
- Construction of a first floor extension.

## 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 Matters for Consideration'	Comments
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&amp;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>Clause 50(1A) of the EP&amp;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&amp;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&amp;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&amp;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&amp;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&amp;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&amp;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><b>(i) Environmental Impact</b> 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><b>(ii) Social Impact</b></p>





Section 4.15 Matters for Consideration'	Comments
	<p>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	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
NECC (Bushland and Biodiversity)	<p>This proposal has been assessed against MLEP Clause 6.5 Terrestrial Biodiversity.</p> <p>The proposal is for ground floor alterations and a first floor addition to an existing residential dwelling. The property contains native vegetation in the western half, Coastal Sandstone Foreshore Forest.</p> <p>The works are within the existing building footprint. No tree or vegetation impacts are proposed. The proposal is considered to be</p>

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Internal Referral Body	Comments
	<p>consistent with the objectives of Clause 6.5 Terrestrial Biodiversity within the MLEP.</p> <p>Council's Natural Environment – Biodiversity section supports the application, subject to conditions.</p>
NECC (Development Engineering)	Development Engineer has no objection to the application subject to the following conditions of consent.
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 Harbour foreshores.</p> <p>Given the nature of the proposal, the separation between sites, setting at some distance 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.
Aboriginal Heritage Office	<p>The Aboriginal Heritage Office has commented on the proposal as follows:</p> <p><i>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</i></p> <p><i>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</i></p> <p><i>Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council should be contacted.</i></p>

#### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\***

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

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

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



application hereunder.

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

#### **SEPP 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. A323648 dated 9 October 2018). 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	9.9m	16.47%	No
Floor Space Ratio	0.4:1 275.6sqm	0.39:1 270.3sqm	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes

#### Detailed Assessment

#### 4.6 Exceptions to development standards

##### Description of non-compliance:

Requirement:	8.5m
Proposed:	9.9m
Is the planning control in question a development standard?	Yes
If numerical enter a % variation to requirement	16.47%

##### 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,
- (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.

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Comment:

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

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

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

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

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

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

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

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

*(b) the concurrence of the Secretary has been obtained.*

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

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



Section 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 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 clause 1.3(c)(g) of the EPA Act. In this regard, the Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by clause 4.6(3)(b). Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3).

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

Clause 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 R1 General Residential zone. An assessment against these objectives is provided below.

**Objectives of development standard**

The underlying objectives of clause 4.3 Height of Buildings development standard are:

- *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 involves the extension of the existing upper level and continues the existing roof



form for the area of new works. The non-compliance in relation to building height arises as a result of the topography of the site, which has a slope of approximately 30% across the building footprint. The proposed extension is set below the existing ridge height, and is consistent with the overall building height of other comparable developments in the immediate vicinity. Further, the proposed extension is set to the rear of the existing dwelling, and is generally not visible from the street. As such, the proposal has no unreasonable impact on the visual impact of the dwelling from the street, and retains the character of the development in the context of the streetscape and its locality.

- *to control the bulk and scale of buildings,*

Comment:

The proposed development is compliant with the floor space ratio development standard set by Clause 4.4 of the Manly LEP 2013, which controls bulk and scale. The proposal does not impact on the site's existing compliance with landscaped area or setbacks, thus demonstrating the proposal does not add unreasonable bulk.

- *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 proposed development is sited and designed so as not to unreasonably impact upon views to, from, or between public or private spaces.

- *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 proposed development is consistent with the requirements of Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP 2013.

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

Comment:

Not applicable. The subject site is zoned R2 Low Density Residential.

**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.*

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Comment:

The proposal retains the existing low density 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. The proposal retains the existing low density residential use of the site.

**Conclusion:**

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

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

Clause 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 can be assumed by the Development Determination Panel.

**Mainly Development Control Plan**

Built Form Controls

<b>Built Form Controls - Site Area: 689sqm</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
4.1.1.1 Residential Density and Dwelling Size	Dwelling Size: Max. 90sqm	270.3sqm	N/A	Yes
4.1.2.1 Wall Height	South: 7.8m (based on gradient 1:4.6)	8.5m	8.97%	No
4.1.2.3 Roof Height	Height: 2.5m	1.16m	N/A	Yes
	Pitch: maximum 35 degrees	18 degrees	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	South: 2.83m (based on wall height)	1.01m	64.31%	No - Existing
	Windows: 3m	1.01m	66.33%	No - Existing
4.1.4.4 Rear Setbacks	8m	26.38m	N/A	Yes
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	8m (rear boundary)	26.38m	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
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 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 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

#### Detailed Assessment

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

##### Description of non-compliance

The proposal includes a wall height of 8.5m to the southern wall of the proposed first floor extension, where a maximum of 7.8m is required based on the gradient of the land.

##### Merit consideration:

With regard to the consideration for a variation, the development is considered against the Objectives of Clause 4.3 Height of Buildings of the MLEP 2013 as follows:

*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:

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The proposed development includes works below the existing ridge height, set away from the street. The proposal retains a bulk and scale on site consistent with existing development in the streetscape. The proposal adequately demonstrates that the works are consistent with the desired future streetscape character in the locality in that it is consistent with the objectives of Clause 3.1 Streetscapes and Townscapes of the MDCP 2013.

*To control the bulk and scale of buildings*

Comment:

The proposed development includes non-compliant elements in relation to the side setback. These elements are acceptable for the reasons detailed in the section of this report relating to Clause 4.1.4.2 Side setbacks and secondary street frontages of the MDCP 2013. The proposed development also includes a non-compliance with the maximum height of building. However, this is a product of the topography of the site and does not result in any unreasonable amenity impacts on the subject site or adjacent sites. The proposal is otherwise compliant with the built form controls (including the floor space ratio development standard, which controls bulk and scale) and does not impact upon the building footprint or landscaped open space. As such, the bulk and scale of the development is adequately controlled.

*To minimise disruption to the following:*

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

Comment:

The proposed development is adequately designed and sited so as not to result in unreasonable impacts upon views to, from, or between public or private spaces.

*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 dwelling*

Comment:

The proposed development provides compliant solar access to the subject site and adjacent sites, including the public recreation area to the east.

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

Comment:

Not applicable. The subject site is zoned R2 Low Density Residential.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP 2013 and the objectives specified in section 1.3(a) of the EP&A Act. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

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

Description of non-compliance

The proposed first floor extension includes a southern side setback of 1.01m (following the existing ground and first floor setbacks), where 2.83m is required based on wall height. Clause 4.1.7 of the MDCP 2013 provides that notwithstanding setback provisions, first floor additions may follow the existing ground floor wall setbacks providing adjoining properties are not adversely impacted by overshadowing, view loss or privacy issues. Further, the proposed extension follows the southern side setback of the existing upper level.

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 subject site is set below the street level on Peronne Avenue, behind a hatched front fence and significant vegetation, and is not wholly visible from the street level. The proposed works are set to the rear of the site, and Notwithstanding this, the proposed works are consistent with existing development along this road, and are complementary to the existing spatial proportions in the area.

*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 development is adequately designed so as not to result in unreasonable impacts upon privacy, solar access, view sharing, or streetscape character, beyond the existing development. The proposed development does not impact upon existing traffic conditions.

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

Comment:

The proposed first floor extension is in a logical location, in consideration of the existing dwelling and adjacent dwellings. The extension is alongside the southern side boundary of the subject site, above the existing building footprint, adjacent to a predominantly blank wall at No.11 Peronne Avenue. The proposal is adequately sited so as to maintain reasonable amenity for the subject site and adjacent sites.

*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 works do not involve removal of any significant vegetation and are limited to the existing building footprint. The proposal does not unduly detract from the context of the site, being adjacent to the foreshore. SEPP 19 does not apply, as the site does not contain or adjoin bushland.

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

Comment:

DA2018/1770

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The subject site is not classified as bush fire prone land.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP 2013 and the objectives specified in section 1.3(a) of the EP&A Act. 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**

##### **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**

DA2018/1770

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THAT Council as the consent authority grant Development Consent to DA2018/1770 for Alterations and additions to a dwelling house on land at Lot 181 DP 9999, 13 Peronne Avenue, 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**

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Sheet No. 2 Site Plan	Undated	Addbuild Master Builders Pty Ltd
Sheet No. 4 Ground Floor Plan - Proposed	Undated	Addbuild Master Builders Pty Ltd
Sheet No. 5 First Floor Plan - Proposed	Undated	Addbuild Master Builders Pty Ltd
Sheet No. 6 East Elevation - Front / North Elevation - Side	Undated	Addbuild Master Builders Pty Ltd
Sheet No. 7 West Elevation - Rear / South Elevation - Side	Undated	Addbuild Master Builders Pty Ltd
Sheet No. 8 Section AA	Undated	Addbuild Master Builders Pty Ltd
Schedule of Finishes Sheet 1 of 2	Undated	Addbuild Master Builders Pty Ltd
Schedule of Finishes Sheet 2 of 2	Undated	Addbuild Master Builders Pty Ltd

<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Sediment & Erosion Control Plan	Undated	Addbuild Master Builders Pty Ltd
Stormwater Concept Plan	Undated	Addbuild Master Builders Pty Ltd

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
BASIX Certificate No. A323648	9 October 2018	Addbuild Master Builder Pty Ltd
Preliminary Landslip Assessment	24 October 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:

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan	10 October 2018	Addbuild Master Builders Pty Ltd

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.

### 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.

#### 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](http://www.northernbeaches.nsw.gov.au)).

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

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

##### 5. 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 Standards are to be submitted to the Certifying Authority prior to the issuance of the construction certificate.

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

#### CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

##### 6. Runoff and Sediment Control

Appropriate runoff and sedimentation control devices must be installed prior to and maintained for the duration of works.



Reason: To prevent impacts to native vegetation west of the works.

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

7. **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.

8. **Maintenance of Sediment**

Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.

Reason: To ensure sediment controls are effective

9. **No Material Storage within 5m of a trees and vegetation to be retained**

No storage of building materials or building waste, excavated fill or topsoil storage is to occur within 5m of any trees to be retained. Drainage is to be arranged such that fill, building materials or contaminants are not washed into vegetation to the west of the dwelling.

Reason: To protect and retain trees and vegetation proposed for retention.

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

10. **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.

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

11. **Works to cease if item found**

If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.

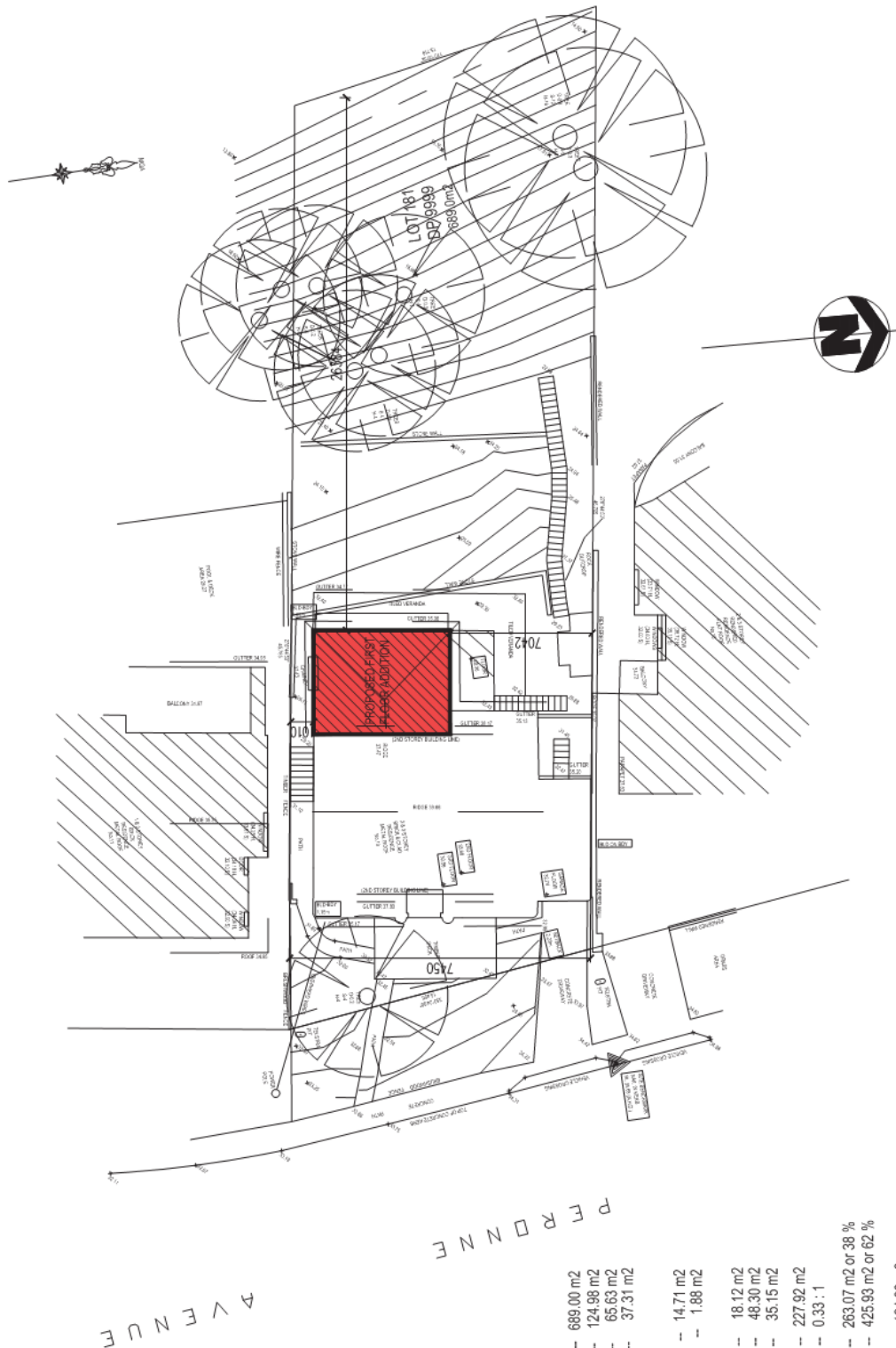
Reason: To protect Aboriginal Heritage.

**Adebuild**  
Master Builders Pty. Ltd

SHEET NO	FOR	JOB NO
2	Mr D. Patterson & Ms S. Cheney	1772/2.5
	AT:	No.13 Peronne Avenue, Clontarf NSW, 2093

**THIS PLAN IS TO BE USED FOR DETAIL  
PURPOSES ONLY AND BOUNDARIES SHOWN  
ON THIS PLAN ARE NOT TO BE USED FOR ANY  
BUILDING OR FENCING SET OUT.**

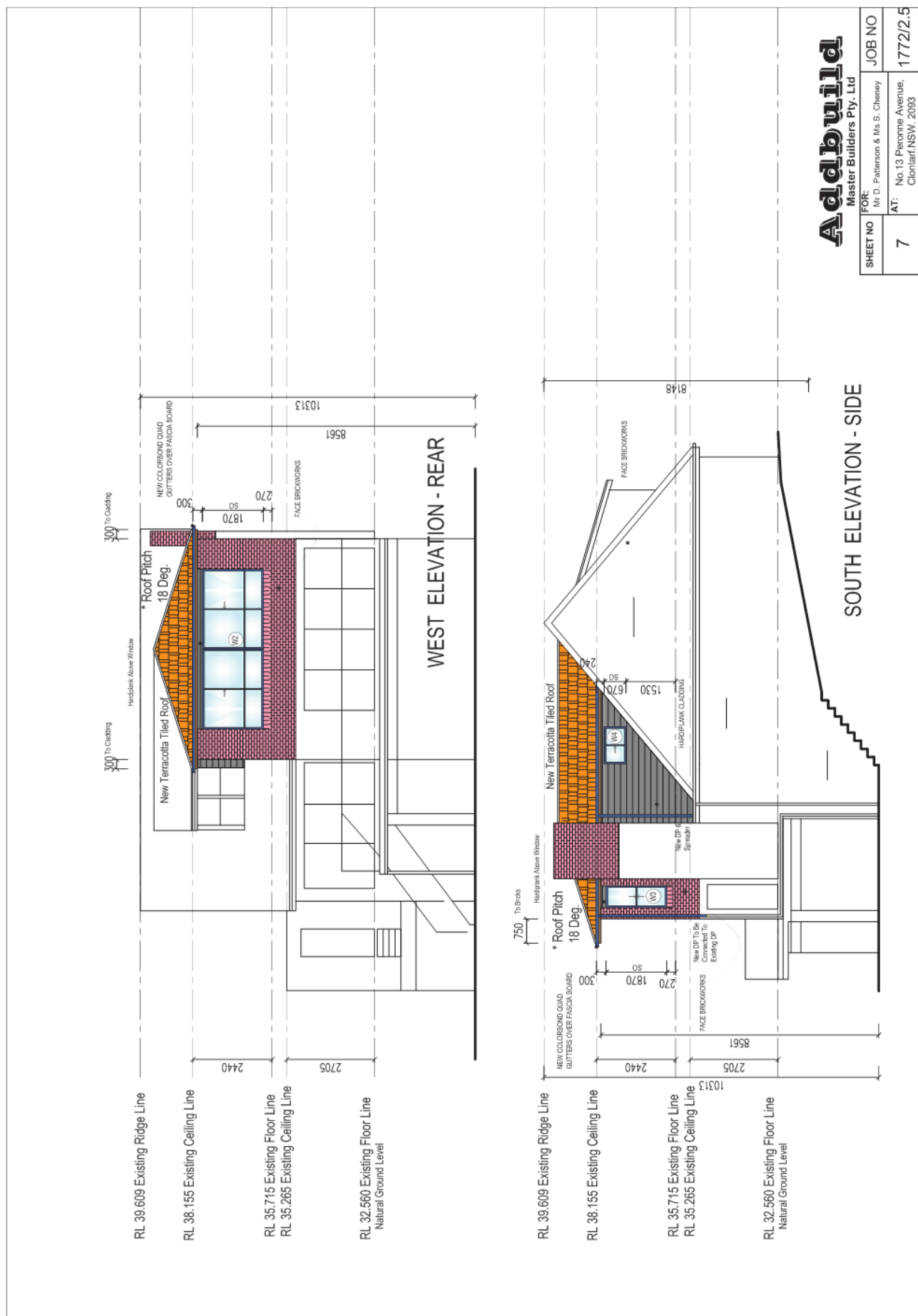
**SITE PLAN**  
Scale - 1:200

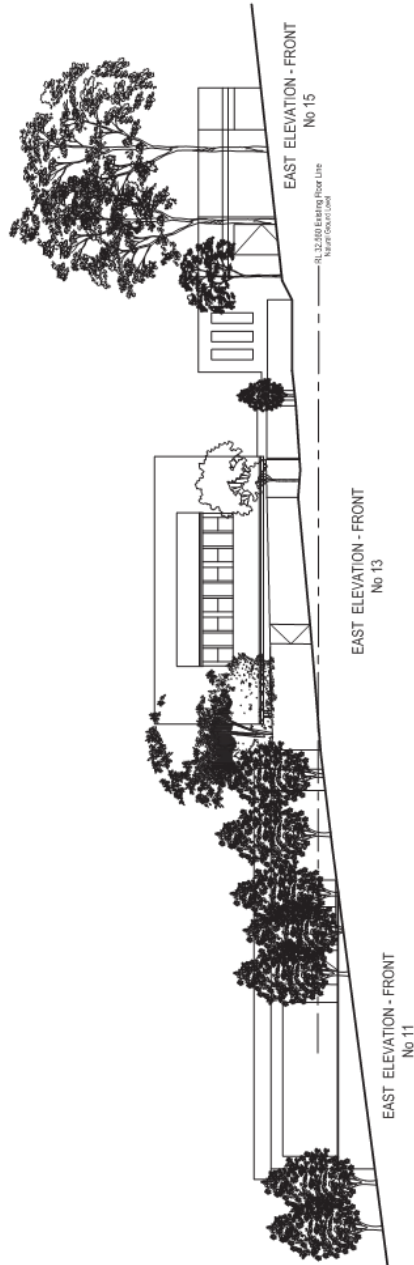


<b>Area Calculations:</b>	
Site Area	-- 689.00 m <sup>2</sup>
Existing Ground Floor Area	-- 124.98 m <sup>2</sup>
Existing First Floor Area	-- 65.63 m <sup>2</sup>
Existing Sub Floor Area	-- 37.31 m <sup>2</sup>
Existing Other Structure -	
Garage	-- 14.71 m <sup>2</sup>
Front Porch	-- 1.88 m <sup>2</sup>
Existing Hardstand Area	
Decking Area	-- 18.12 m <sup>2</sup>
Paving Area	-- 48.30 m <sup>2</sup>
Balcony Area	-- 35.15 m <sup>2</sup>
Existing Gross Floor Area	-- 227.92 m <sup>2</sup>
Existing Floor Space Ratio (FSR)	-- 0.33 : 1
Total Existing Site Coverage	-- 263.07 m <sup>2</sup> or 38 %
Total Existing Landscape Area	-- 425.93 m <sup>2</sup> or 62 %
Proposed Ground Floor Area	-- 124.98 m <sup>2</sup>
Proposed First Floor Area	-- 102.85 m <sup>2</sup>
Proposed Sub Floor Area	-- 37.31 m <sup>2</sup>
Total Proposed Gross Area	-- 265.14 m <sup>2</sup>
Proposed Floor Space Ratio (FSR)	-- 0.38 : 1
Total Proposed Site Coverage	-- 263.07 m <sup>2</sup> or 38 % ( not affected )
Total Proposed Landscape Area	-- 425.93 m <sup>2</sup> or 62 % ( not affected )









**STREETSCAPE**  
Scale - 1:200

**A d d b u i l d**

Master Builders Pty. Ltd

SHEET NO	FOR:	JOB NO
8	Mr. D. Patterson & Ms. S. Cheney	1772/2.5
	AT: No. 13 Peronne Avenue, Clontarf NSW, 2093	

**ITEM 3.2**

**MOD2018/0642 - 40 BEATTY STREET, BALGOWLAH HEIGHTS -  
MODIFICATION OF DEVELOPMENT CONSENT DA238/2006  
GRANTED FOR ALTERATIONS AND ADDITIONS TO A  
DWELLING HOUSE AND SWIMMING POOL**

**REPORTING MANAGER****Steve Findlay****TRIM FILE REF****2019/093588****ATTACHMENTS**

- 1** [↓](#) **Assessment Report**
- 2** [↓](#) **Site and Elevation Plans**

**PURPOSE**

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

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**RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority grant Development Consent to Mod2018/0642 for Modification of Development Consent DA238/2006 granted for alterations and additions to a dwelling house including a swimming pool at Lot 181A, DP 350345, 40 Beatty Street, Balgowlah, subject to the conditions outlined in the Assessment Report.

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## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2018/0642
<b>Responsible Officer:</b>	Thomas Prosser
<b>Land to be developed (Address):</b>	Lot 18A DP 350345, 40 Beatty Street BALGOWLAH HEIGHTS NSW 2093
<b>Proposed Development:</b>	Modification of Development Consent 238/2006 granted for Alterations and additions to a dwelling house including a swimming pool
<b>Zoning:</b>	Manly LEP2013 - Land zoned E3 Environmental Management
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Kathryn Marion Taylor
<b>Applicant:</b>	Kathryn Marion Taylor
<b>Application lodged:</b>	27/11/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	30/11/2018 to 18/12/2018
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Recommendation:</b>	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;  
MOD2018/0642

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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**

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

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 18A DP 350345 , 40 Beatty Street BALGOWLAH HEIGHTS NSW 2093
<b>Detailed Site Description:</b>	<p>The site is located on the eastern (lower) side of Beatty Street and slopes steeply down to the foreshores of North Harbour and Forty Baskets Reserve / Beach. The site is rectangular in shape, with the front western and rear (lower) eastern boundaries averaging 15.35m, and northern and southern side boundaries averaging 54.5m. The site has a surveyed site area of 831m<sup>2</sup>.</p> <p>The slope of the site falls steeply to the rear eastern boundary, falling approximately 15m, with a 1 in 4m slope.</p> <p>Existing development on the site comprises a three storey brick residence with tiled roof and elevated carport fronting Beatty Street.</p> <p>Landscaping comprises several shrubs and trees of varying heights, with stone retaining walls traversing the site fronting North Harbour and a concrete landing adjacent to Forty Baskets Reserve.</p> <p>Neighbouring development comprises multi-level rendered brick residences. The adjoining dwelling to the north (42 Beatty Street) is a part 2 and part 3 storey dwelling house with a large garage fronting Beatty Street. The rear elevation of number 42 shows a large balcony at first floor level and an open pergola protruding approximately 5m closer to the foreshore than the existing dwelling on the subject site. Adjoining the site to the south is a multi-level rendered brick dwelling house with flat roof. This dwelling also has a garage fronting Beatty Street. The lower side of Beatty Street is characterised by garages fronting the street, however garages are typically setback from the side boundaries and some landscaping is utilised to soften the appearance.</p>

Map:

MOD2018/0642

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## 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:

- **DA238/2006** for an existing carport and part demolition of existing dwelling and alterations and additions to the existing dwelling incorporating internal alterations, terrace, balcony and new double carport, swimming pool and associated landscaping approved by the Development Assessment Unit on 27 February 2017.
- The above consent was modified (**DA238/2006- Part 2**) in relation to minor external and internal changes by delegated authority on 26/02/2008. A Construction Certificate for this was registered with Council on 30/06/2008.

## PROPOSED DEVELOPMENT IN DETAIL

The modifications involve works that have been completed and as such retrospective approval is sought under Section 4.55 of the *Environmental Planning and Assessment Act 1979*. In detail, these works include:

### Level 1

- A bar/storage area under the stair
- Wine Cellar
- Enlarged plant room
- Ensuite to bedroom 5

### Level 2

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- Storeroom
- Gymnasium

Additionally, the proposal involves new changes, including:

- New lift (to level 1, 2 and 3)
- Corridor to lift
- Widening of the stairs from the terrace to the rear lawn on Level 1
- Change to external entry stairs on Level 2
- Conversion of an ensuite to a pantry on Level 2
- Reconfigure slot window on southern façade of Level 2
- Remove existing planter at property frontage on northern boundary
- Replace existing window on western façade on Level 3
- New Juliette balcony opening in place of existing window on the western elevation
- Reconfigure Bedrooms 2, 3 and 4 on Level 3 to provide access to ensuites and add one ensuite
- Remove one slot window and install 3 new slot windows on the southern façade of Level 3
- Extension of the existing east-facing terrace on Level 3 with privacy screens on the northern and southern sides
- Installation of two windows in the northern façade and construction of a wall and installation of five narrow windows in the southern side of the approved carport on Level 3 to convert it to a garage

#### **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 DA238/2006, 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:	





<b>Section 4.55 (2) - Other Modifications</b>	<b>Comments</b>
(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 DA238/2006.
(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 DA238/2006 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, Manly Environmental Plan 2011 and Manly 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:

<b>Section 4.15 'Matters for Consideration'</b>	<b>Comments</b>
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)(iia) – Provisions of any planning agreement	None applicable.



Section 4.15 'Matters for Consideration'	Comments
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&amp;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><u>Clauses 54 and 109</u> of the EP&amp;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 98</u> of the EP&amp;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>
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><b>(i) Environmental Impact</b> 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><b>(ii) Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p><b>(iii) Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is 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 Building  
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Ccode and Bushfire Hazard Solutions, dated 23 November 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 1 submission/s from:

Name:	Address:
Tieying Huang	42 Beatty Street BALGOWLAH HEIGHTS NSW 2093

The following issues were raised in the submissions:

- **Opposition to new balcony and privacy screens (for privacy impact and visual impact of screens)**
- **Building height for awning does not comply with the standard**
- **Existing non-compliant storeys impact on shadows, view, overlooking and light**
- **Non-compliance with controls (including setbacks)**

The matters raised within the submissions are addressed as follows:

- **Opposition to new balcony and privacy screens (for privacy impact and visual impact of screens)**  
Comment:  
As a result of the reasonable physical separation between the proposed balcony (terrace) and the neighbouring property, along with the adequate extent of trafficable area to the terrace and the reasonable privacy screening, the proposed new balcony (terrace) would not have any unreasonable amenity impact or any unreasonable visual impact.
- **Building height for awning does not comply with the standard**  
Comment:  
The proposed awning is at a height which is lower than the existing dwelling. Given the location to the rear of the dwelling and at a compliant rear setback, there would be substantial view corridors retained over the rear boundary. Additionally, the open nature of the structure and location to the rear of the building ensure there would be no unreasonable visual impact.
- It is also noted that this application has been made under Section 4.55 of the Environmental Planning and Assessment (EP&A) Act 1979, which is a free-standing provision that 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 substantially the same test and consideration of all relevant s.79C matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application. 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 4.55 modification applications.

- **Existing non-compliant storeys impact on shadows, views, overlooking and light**

Comment:

The proposal extends the terrace area at the existing third level. This extension includes privacy screening which along with the physical separation will ensure an appropriate mitigation of privacy impact and would have no unreasonable impact on views. The proposal also complies with the requirements for Sunlight Access and Overshadowing under the Manly DCP.

- **Non-compliance with controls (including setbacks)**

Comment:

The existing approval is non-compliant with standards of the Manly LEP and controls of the Manly DCP. This proposal involves further areas which do not comply with the standards/controls. These areas which do not comply have been further assessed in this report. This assessment has found that as a result of minimised extent, adequate design and appropriate location, the proposal would be reasonable.

## MEDIATION

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

## REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	The proposed modification has been assessed against Manly LEP Clause 6.5 (Terrestrial Biodiversity). The modification will not result in additional significant impact to soft open space, native vegetation or biodiversity values on the land. It is therefore considered that the modification can achieve consistency with the control.
NECC (Coast and Catchments)	The proposed modifications have been assessed in accordance with the Sydney Harbour REP (Sydney Harbour Catchment), the Manly LEP and Manly DCP. The proposal does not increase the building foot print and the impacts on the coastal environment are determined to not be significant. The following information has been assessed Plans - Master set Statement of Environmental Effects
NECC (Riparian Lands and Creeks)	Assessed under coastal referral
Strategic and Place Planning (Heritage Officer)	Further to a review of available documents and a site visit The application is a S.96, substantially the same as the originally approved DA. Therefore, it is fair to assess that impact of the current proposal will be closely similar to the impact of the previously approved DA. Based on the above, I have no objection to this proposal from heritage perspective and deem heritage conditions not required.





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. A330012).

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.

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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	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.6m	10.6m (existing)	N/A	No but no change to existing
Floor Space Ratio Site area: 831m <sup>2</sup>	FSR: 0.4:1	FSR: 0.53:1 (443.8m <sup>2</sup> )  It is noted that the approved plans were measured in accordance with the calculation of FSR under the Manly LEP 2013 and found to be 382m <sup>2</sup> or 0.459:1.	FSR: 0.53:1 (443m <sup>2</sup> )	N/A	No (see comments)

Compliance Assessment

Clause	Compliance with Requirements
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	N/A
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

**4.6 Exceptions to development standards**

Whilst the modification application will result in a Floor Space Ratio that exceeds the maximum permitted by Clause 4.3 of the MLEP 2013, this modification application does not strictly need to



address the requirements of Clause 4.6. This application has been made under Section 4.55 of the Environmental Planning and Assessment (EP&A) Act 1979, which is a free-standing provision that 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 substantially the same test and consideration of all relevant s.79C matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application. 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 4.55 modification applications. Nevertheless, an assessment of the variation is as follows:

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

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

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

Comment:

The proposal provides additions of floor space including at the front of the lower two levels of the existing dwelling. At this location, the area is not visually prominent in the street. This is a result of the slope from Beatty Street down to an access road and the further slope from the front of the site. This results in the maintenance of the predominant form at this part of Beatty Street which is garages close to the boundary of the access road and floor space of dwellings stepping down the topography away from this access road to provide a character which is consistent with and desired for the streetscape.

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

Comment:

The proposed modifications would not have any unreasonable impact on views and would not cause any unreasonable obscurement of townscape or landscape features. This is a result of the works being generally retained within the building envelope and also being down slope from the frontage of the site.

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

Comment:

The proposed dwelling maintains the approved height, maintains modulation in the side setbacks, and maintains similar front and rear building lines. This has the effect of providing a building form that will maintain appropriateness as compared to the other the other development in the area and provides modulation that is desirable for the area.

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

Comment:

The proposed modifications are in locations (at low levels, good physical separation or within the existing envelope) that will ensure there is no unreasonable environmental impact. In particular, the additional floor space does not add openings or bulk that would have any unreasonable impact on the



neighbouring properties.

**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.

**What are the underlying objectives of the zone?**

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the E3 Environmental Management zone.

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.
- To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.
- To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.
- To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.
- To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.

Comment:

The proposed development is for a residential use and is consistent with the objectives above.

**Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?**

(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**

Comment:

In this circumstance, providing flexibility to the floor space ratio development standard is appropriate as the non-compliance does not lead to any unreasonable amenity impact and would be appropriate in the street context.

**(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances**

Comment:

It is appropriate to allow flexibility in this circumstance as an addition of floor space can be made to the dwelling without having any unreasonable impact on amenity and the proposed development would be visually appropriate given the context of the site and topographical nature of the surroundings.



## Manly Development Control Plan

### Built Form Controls

<b>Built Form Controls - Site Area: 831m<sup>2</sup></b>	<b>Requirement</b>	<b>Approved</b>	<b>Proposed</b>	<b>Complies</b>
4.1.2.1 Wall Height	North: 8m	9.5m	9.5m	No (as approved)
	South: 8m	9.85m	9.85m	No (as approved)
4.1.2.2 Number of Storeys	2	3	3	No (as approved)
4.1.2.3 Roof Height	Height: 2.5m	2m	2m	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Consistent with prevailing setback	Consistent with prevailing setback	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 3.16m	2.1m-3m	2.1m	<b>No (see comments)</b>
	South: 3.28m	1.5m-3.3m	3.6m (to extended part of terrace)	Yes (for terrace) No (for dwelling but as approved)
	Windows: 3m	1.5m (dwelling)	0m (garage) 1.5m (south elevation of dwelling)	<b>No (see comments)</b>
4.1.4.4 Rear Setbacks	8m	27m (to new paving) 30m (to terrace)	30m (to terrace)	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (498.6m <sup>2</sup> )	75% (620.3m <sup>2</sup> )	76% (633m <sup>2</sup> )	Yes
	Open space above ground 25% of total open space	13.5% (78m <sup>2</sup> )	14.4% (91m <sup>2</sup> )	
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (253.2m <sup>2</sup> )	55% (350m <sup>2</sup> )	54% (345m <sup>2</sup> )	Yes
4.1.5.3 Private Open Space	12m <sup>2</sup> per dwelling	35m <sup>2</sup>	38m <sup>2</sup>	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	40% (6m)	40% (6m)	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	2 spaces	Yes



#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 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		
4.1 Residential Development Controls	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
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

#### Detailed Assessment

##### 3.4.2 Privacy and Security

#### Description of issue

The proposal involves an increase in the size of the terrace to the rear of the site at Level 3.

#### Merit consideration:

With regard to the consideration of the issue, 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

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- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings*

Comment:

The proposed extensions to the terrace at the rear of the dwelling are both to the south and north. The proposal complies with the southern side setback to the terrace but does not comply with the side setback to the northern elevation. Despite this non-compliant setback, the terrace provides a suitable minimisation of privacy loss through privacy screening and appropriate physical separation from the neighbouring property. Additionally, there are palm trees between the proposed terrace and the living spaces at 42 Beatty Street which provide further mitigation of privacy impact.

***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 orientation of living areas for dwellings along this side of Beatty Street is toward this rear as a result of views toward north harbour. As a result of the location of the proposed privacy screen being well separated from neighbouring living space as well as being to a compliant rear setback, there would not be unreasonable impact caused on these views or any other amenity caused by this screening.

***Objective 3) To encourage awareness of neighbourhood security***

Comment:

The proposal maintains openings and provides an extension to the existing terrace. This provides appropriate 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.

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

Description of non-compliance

The proposal does not comply with the control for side setbacks at the north elevation (3.16m is required). The proposal provides a setback of 2.1m to the extended terrace.

The proposal does not comply with the control for setback to new windows facing boundaries (3m is required). The proposal provides new windows for the garage which are on the boundary (Nil).

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:

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The proposal involves converting the existing car parking structure from a carport to a garage. As a result of the large visual buffer between the subject site and the Streetscape (caused by the slope of the land and the access lane), along with the consistency of the proposed structure with nearby structures, the proposal will maintain desirable proportions and presentation. The other works relating to this modification are located in a location away from the streetscape in which there would be no unreasonable visual impact.

**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 modification involves conversion of the approved carport to be a garage with two large windows on the northern elevation. As a result of the use for this area remaining as car parking, there would be no unreasonable privacy impact caused by these windows being on the boundary.

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

Comment:

The proposed modification is to a dwelling that has been approved for alterations and additions. These alterations and additions do not involve any significant change to the siting of the existing dwelling. Under this modification the extension of the terrace area as well as the store and gym underneath the garage. These extensions to the building siting are in locations that are well separated from neighbouring living areas and not easily visible from the streetscape or foreshore. As a result, the proposed siting of the dwelling is appropriate.

**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 compliant landscaped area and a compliant rear setback to include this landscaping. As such in this circumstance, the proposal provides appropriate opportunity for and provision for natural features.

**Objective 5) To assist in appropriate bush fire asset protection zones**Comment:

A Bush Fire Report was submitted with the application that included a certificate (prepared by Building Code and Bushfire Hazard Solutions, dated 23 November 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.

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****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 approval to Modification Application No. Mod2018/0642 for Modification of Development Consent 238/2006 granted for Alterations and additions to a dwelling house including a swimming pool on land at Lot 18A DP 350345,40 Beatty Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

### **A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read 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**

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA01 -Site Plan- Rev A	26/11/18	Corben Architects
DA06- Level 1 Proposed- Rev A	26/11/18	Corben Architects
DA07- Level 2 Proposed- Rev A	26/11/18	Corben Architects
DA08- Level 3 Proposed- Rev A	26/11/18	Corben Architects
DA09- Roof Plan- Rev A	26/11/18	Corben Architects
DA10- North Elevation- Rev A	26/11/18	Corben Architects
DA11- South Elevation- Rev A	26/11/18	Corben Architects
DA12- East Elevation- Rev A	26/11/18	Corben Architects
DA13- West Elevation- Rev A	26/11/18	Corben Architects
DA14- Western Street Elevation- Rev A	26/11/18	Corben Architects
DA15- Section A- Rev A	26/11/18	Corben Architects
DA16- Section B- Rev A	26/11/18	Corben Architects

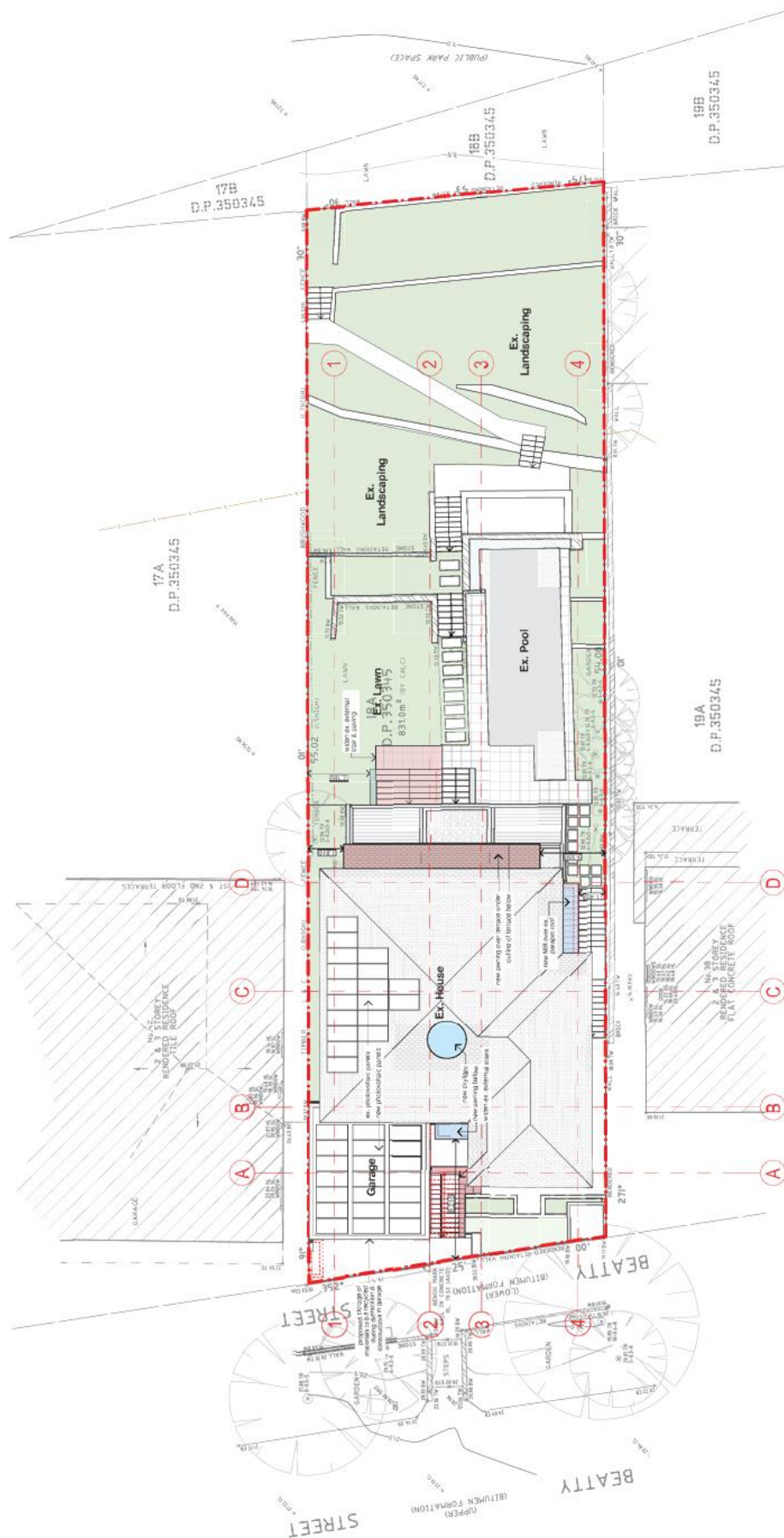
### **B. Add Condition ANS05 - Pollution Control to read as follows:**

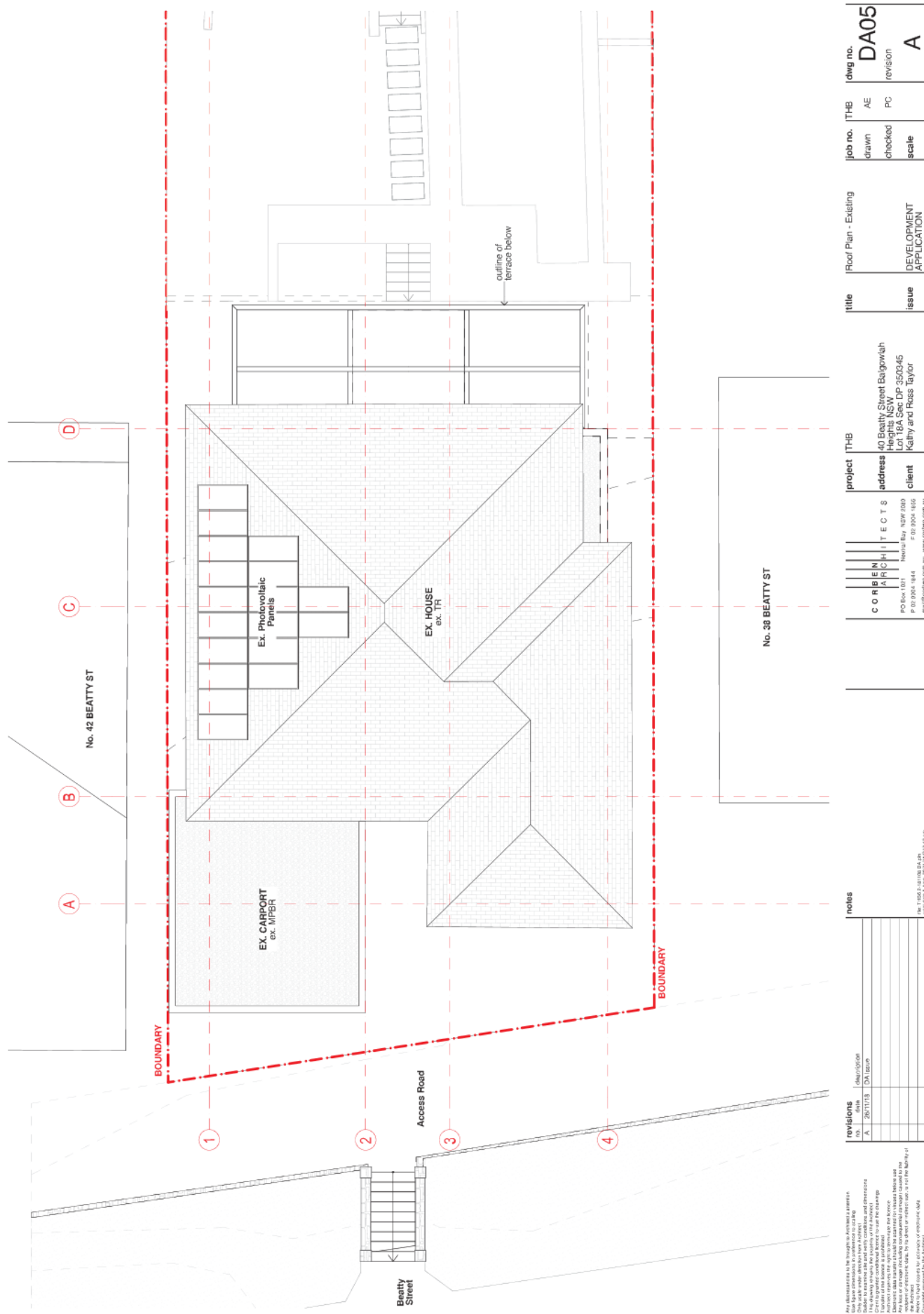
All stockpiles, materials, waste and slurry associated with works (including excavated material) is to be contained at source within the construction area and enclosed in waterproof covering and/or sediment and erosion control while not in use. All waste/debris is to be removed off site and disposed of as frequently as required in accordance to local regulations.



Reason: To protect the surrounding environment, and ensure that pollutants and building associated waste do not leave the construction site.

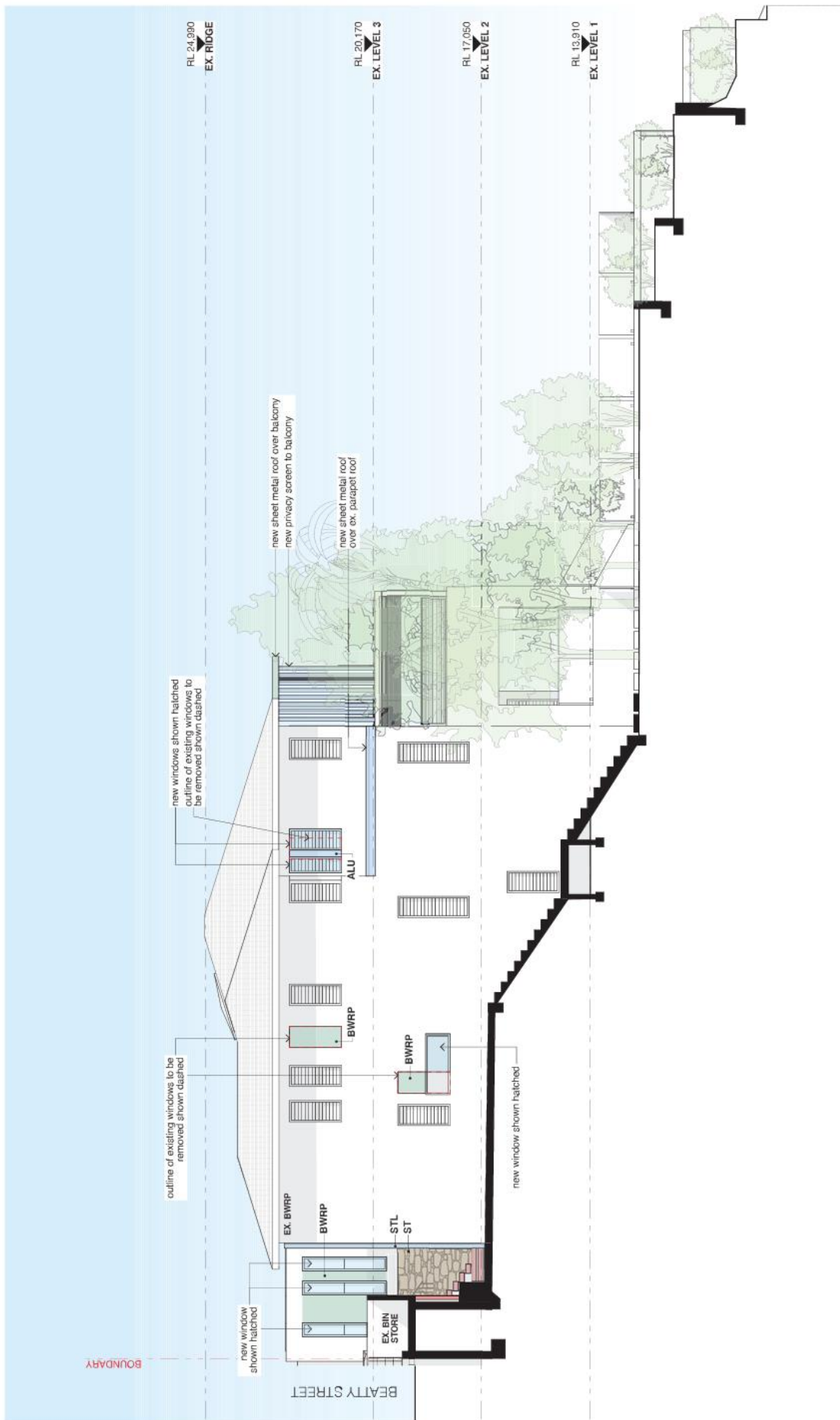


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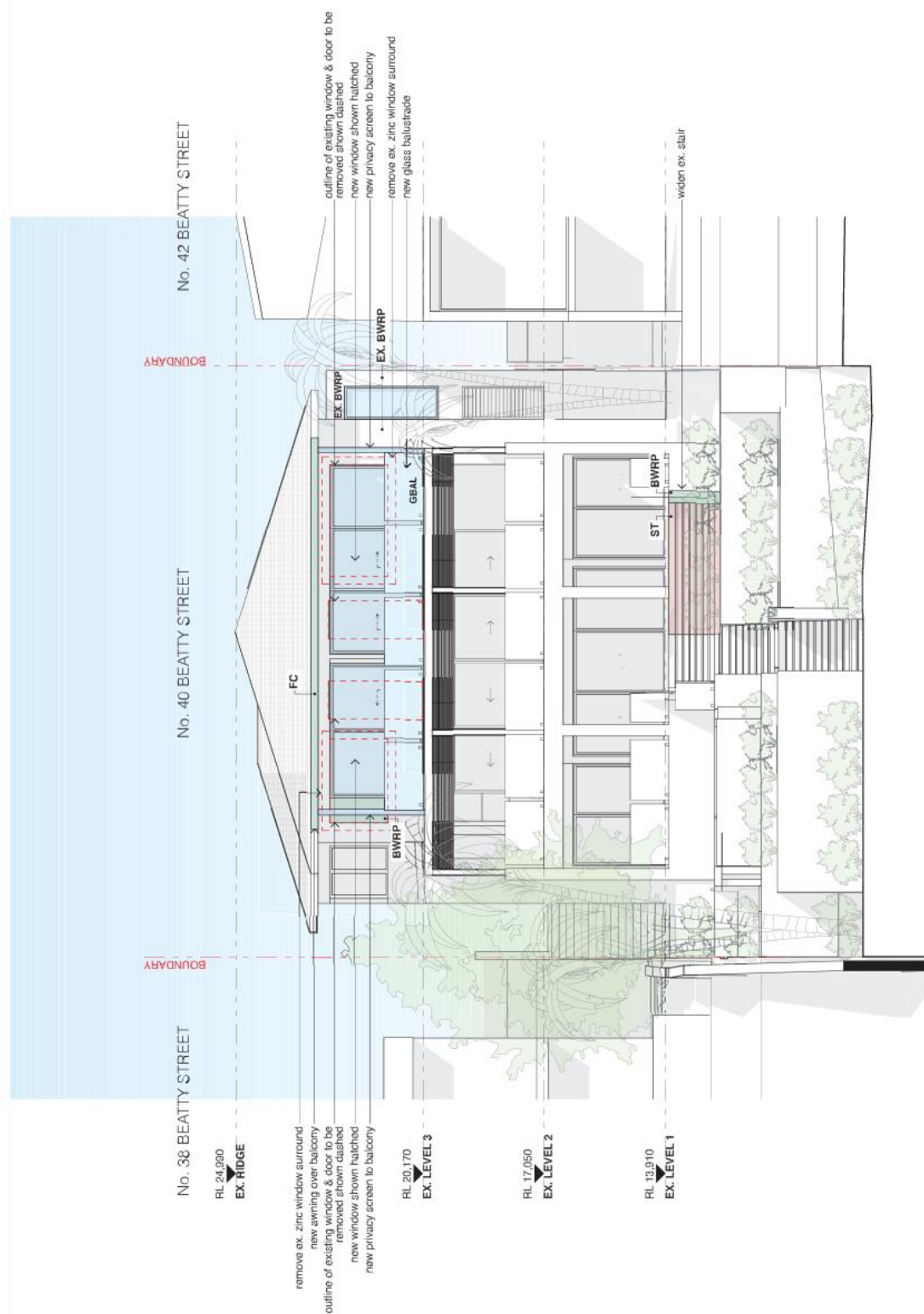


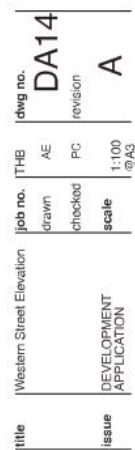




revisions		notes	
no.	description		
A	20/11/18 DA Issue		



[illegible]



<b>C O R B E N</b>	<b>T H B</b>
<b>A R C H I T E C T S</b>	<b>p r o j e c t</b>
PO BOX 1021 P 02 9065 1844 E 02 9065 1856 M 0477 606965 extn 001 www.corben.com.au	<b>address</b> 40 Beatty Street Belgoviah Heathville NSW Lot 18A Sec DP 3520345 <b>client</b> Kahly and Ross Taylor

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**ITEM 3.3****MOD2018/0575 - 5 COMMONWEALTH PARADE, MANLY -  
MODIFICATION OF DEVELOPMENT CONSENT DA436/2008  
RELATING TO A RESIDENTIAL FLAT BUILDING****REPORTING MANAGER****Steve Findlay****TRIM FILE REF****2019/093669****ATTACHMENTS**

- 1 [↓](#) Assessment Report
- 2 [↓](#) Site and Elevation Plans

**PURPOSE**

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

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**RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority grant Development Consent to Mod2018/0575 for Modification of Development Consent DA436/2008 relating to a residential flat building on land at Lot CP SP 11874, 5 Commonwealth Parade Manly, subject to the conditions outlined in the Assessment Report.

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## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2018/0575
<b>Responsible Officer:</b>	Thomas Prosser
<b>Land to be developed (Address):</b>	Lot CP SP 11874, 5 Commonwealth Parade MANLY NSW 2095
<b>Proposed Development:</b>	Modification of Development Consent DA436/2008 relating to a residential flat building
<b>Zoning:</b>	Manly LEP2013 - Land zoned R1 General Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Proprietors of Strata Plan 11874
<b>Applicant:</b>	Platform Architects Pty Ltd
<b>Application lodged:</b>	29/10/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	05/02/2019 to 21/02/2019
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	4
<b>Recommendation:</b>	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;

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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 - 4.4 Floor space ratio  
 Manly Development Control Plan - 3.1 Streetscapes and Townscapes  
 Manly Development Control Plan - 3.4.2 Privacy and Security  
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation  
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping

## SITE DESCRIPTION

<b>Property Description:</b>	Lot CP SP 11874 , 5 Commonwealth Parade MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject property is commonly known as 5 Commonwealth Parade, Manly and legally known as SP 11874. The site is located on the western side of Commonwealth Parade. The property is an irregular rectangle in shape, has a frontage of 15.4m to Commonwealth Parade and 9.2m to The Crescent, an average depth of 38.8m and an overall site area of 460m<sup>2</sup>.</p> <p>The property currently contains a three-storey residential flat building with vehicular access via an existing driveway from</p> <p>The Crescent to an existing single garage to the rear of the existing dwelling. The property slopes approximately 6m from west to east. The adjacent property to the north, at 1-3 Commonwealth Parade, is developed with a three-storey residential development. The adjacent property to the south, at 7 Commonwealth Parade, is developed with a seven-storey residential development. Development in this area of Commonwealth Parade consists of residential developments.</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:

- **DA211/2004** - Demolition and construction of a new four-unit residential flat building, and strata subdivision. Approved by DAU on 29 September 2006.
- **DA436/2008** : Amendment to the basement level design to minimise the environmental impact. Approved by DAU on 3 March 2009.
- **DA436/2008 – Part 2**: Section 96 to modify approved Basement additions to three (3) storey Residential Flat Building - involving the conversion of upper level apartment into two apartments - one (1) two (2) bedroom apartment and one (1) one (1) bedroom apartment with changes to the internal wall, door and windows. Withdrawn by the applicant on 13 August 2013.
- **DA436/2008 – Part 3**: Section 96 to modify approved Basement additions to three (3) storey Residential Flat Building – involving conversion of a car parking space into a storage area, level 1, 2 and 3 extension, pergola extensions to level 2 and level 3, internal alterations, delete planter box on level 1, addition of an dividing screen and changes to window and doors. Approved by DAU on 9 November 2016.
- **DA436/2008- Part 4**: Section 96 to modify a Residential Flat Building including the following:
  - Reduction in four units to three;
  - Reduction in parking requirement and introduction of a car stacker;
  - Reduction in basement level and adjustment of all other floor levels (increased floor to ceiling height, no additional overall height);
  - Changes to windows, doors, façade and eastern balconies;
  - Internal reconfiguration;
  - Addition of privacy screening to western balconies; and
  - Addition of hydrant and drencher booster assembly cupboards.
- **MOD2018/0161**- Modification of Development Consent DA0436/2008 granted for basement additions to a three (3) storey Residential Flat  
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Building Including:

Basement

- Relocation of stairs
- Relocation of mechanical services
- Relocation of garbage room
- Additional excavation for car stacker for car lift

Ground Level

- Changes to layout and addition of bedroom/ensuite
- Cut out of slab
- New roof at northern end of room
- Slight increase in floor space to Bedroom 2

First Level

- Changes to internal layout
- Decrease to south side setback and increase at north side setback
- Slight increase in floor space to Bedroom 3

Second Level

- Changes to internal layout
- Slight increase in floor space to Bedroom 3

Third Level

- Changes to internal layout

Roof Level

- Addition of skylights
- Extension of roof to cover extension of lower levels

**Status of Consent No. DA436/2008**

It has been confirmed that Development Consent No. **DA436/2008** has not lapsed, therefore, this modification can be dealt with.

**PROPOSED DEVELOPMENT IN DETAIL**

The proposed modifications to the approved Residential Flat Building are detailed as follows:

Basement Floor Plan

- Changes to stair and lift
- Realignment of parking space 3 and deletion of turntable
- Increase in size of store 3
- Replacement of swing metal garage door with overhead door
- Round planter to Commonwealth Parade frontage

Ground Floor Level Plan

- Reconfiguration of floor plate including removal of storage area  
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- New southern courtyard accessed from Bedroom 3
- Realignment of northern entrance courtyard
- Change to Commonwealth Parade balcony including new curved sandstone wall, fixed privacy screening and a landscape planter.
- Existing "Nailsworth" sign to be on sandstone wall
- 

#### Level 1 Floor Plan

- Reconfiguration of floor plate including setting back of eastern wall and conversion to balcony (including planter boxes).
- Landscaping to western courtyard

#### Level 2 Floor Plan

- Change to side boundary alignment
- Changes to balconies including addition of privacy screening and landscape planters

#### Level 3 Floor Plan

- Narrowing and lengthening floor plate.
- Setting back of eastern facade and integration of privacy screening and planter boxes to 'Commonwealth Parade balcony'
- Increase in size of 'The Crescent facing Balcony' and integration of privacy screening and planter boxes

#### Roof

- Change from curved roof to flat roof and associated lower building height

### **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  
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Assessment Report for MOD2018/0575, 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:

<b>Section 4.55 (2) - Other Modifications</b>	<b>Comments</b>
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 DA436/2008.
(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 DA436/2008 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, Manly Environmental Plan 2013 and Manly 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:

<b>Section 4.15 'Matters for Consideration'</b>	<b>Comments</b>
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Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	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>Division 8A of the EP&amp;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><u>Clauses 54 and 109</u> of the EP&amp;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>Clauses 93 and/or 94</u> of the EP&amp;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&amp;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&amp;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&amp;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) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b></p>





Section 4.15 'Matters for Consideration'	Comments
	The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	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 4 submission/s from:

Name:	Address:
Ms Anne Maria Nicholson	1/36 Sydney Road MANLY NSW 2095
Mr Joshua James Robert Zoeller	2 / 1 A Fairlight Street MANLY NSW 2095
Mr Alexander Tryfon Manu	2 / 1 - 3 The Crescent MANLY NSW 2095
Ms Boronia Clair Foley	3/1 Commonwealth Parade MANLY NSW 2095

The following issues were raised in the submissions:

- **Impact on privacy caused by the angle of the facade. Request for more privacy screening**
- **A carpark exhaust vent and riser are situated on The Crescent boundary.**

**With regard to the riser there reference is made to the following clauses 5.1.2.17 (external details for plant, exhausts, ducts and other services as part of the overall building structure), 4.1.4.1 (Street Front Setbacks), 4.1.4 Setbacks and Building Separation and 3.9.3 Noise from Mechanical Plant.**

- **Concerns regarding excavation, request for new dilapidation report relating to this excavation, and request for further conditions to ensure compliance with previous conditions (DA31, DA40, DA48). Request for a preliminary engineer and survey report prior to commencement as well as a further independent report if the preliminary report**



shows excavation will extend beyond existing footings (as referenced under conditions DA40).

- Request nothing is to circumvent D31 which requires no works to encroach the boundary
- Traffic flows have changed since the development was originally approved

The matters raised within the submissions are addressed as follows:

- **Impact on privacy caused by the angle of the façade**  
Comment:  
As a result of the physical separation, with the road as a buffer, between the subject site and dwellings opposite on 'The Crescent,' the setback to the dwelling is reasonable to ensure privacy impact is minimised without any further screening.
- **A carpark exhaust vent and riser are situated on The Crescent boundary.**  
With regard to the riser there reference is made to the following clauses 5.1.2.17 (external details for plant, exhausts, ducts and other services as part of the overall building structure), 4.1.4.1 (Street Front Setbacks), 4.1.4 Setbacks and Building Separation and 3.9.3 Noise from Mechanical Plant  
Comment:  
A condition has been imposed to ensure the exhaust is minimised in bulk and scale to a reasonable extent.
- **Concerns regarding excavation, request for new dilapidation report relating to this excavation, and request for further conditions to ensure compliance with previous conditions (DA31, DA40, DA48). Request for a preliminary engineer and survey report prior to commencement as well as a further independent report if the preliminary report shows excavation will extend beyond existing footings (as referenced under conditions DA40)**  
Comment:  
The existing condition requiring a dilapidation report is maintained. A further condition has been imposed to require a report from a suitably qualified engineer to provide recommendations which will ensure there is not unreasonable risk to neighbouring properties.
- **Request nothing is to circumvent D31 which requires no works to encroach the boundary**  
Comment:  
This condition remains.
- **Traffic flows have changed since the development was originally approved**  
Comment:  
Despite any changes to traffic, the car parking situation including number of spaces is approved. The minor changes including 'realignment of parking space 3 and deletion of turntable' would have no unreasonable impact on traffic.

### Re-notification and Later Submissions

The proposal was re-notified for 14 days between 5 February and 19 February due to an error in the description of the development in the notification letter. One (1) additional submission has been received. However, the notification letter specified that the closing date for submissions was on 21 February 2019. As such, any submissions received before this closing date and after the time of writing this report will be considered in an addendum to this report.



## 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 completion of landscaping.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP 2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types.</p>

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

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\*

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

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

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

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

#### SEPP 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. 315056M\_06).

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

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Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	40	30

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	Approved	Proposed	% Variation	Complies
Height of Buildings:	11m	11.4m	10.6m	N/A	Yes
Floor Space Ratio Site area: 459.4m <sup>2</sup>	FSR: 0.75:1	FSR: 1.369:1 (630m <sup>2</sup> )	FSR: 1.369:1 (629m <sup>2</sup> )	N/A	No (however less than originally approved FSR)





#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes

#### Detailed Assessment

##### 4.4 Floor space ratio

Whilst the modification application will result in a Floor Space Ratio that exceeds the maximum permitted by Clause 4.3 of the MLEP 2013, 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 Environmental Planning and Assessment (EP&A) Act 1979, which is a free-standing provision that 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 substantially the same test and consideration of all relevant s.79C matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application. 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 4.55 modification applications. Nevertheless, an assessment of the variation is as follows:

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

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

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

Comment:

The proposal provides for slightly less overall floor space than approved under the previous modification. This includes the addition of floor space at some parts of the approved envelope and reduction at other parts. Specifically, there is a change in location of the floor space at 'Level 2' which has come as a result of a change in alignment of the building at the southern elevation. Along with this, there are other minor changes to at the side setback, with some parts of the building having an increased side setback and other areas having a decreased side setback. Overall, this will provide a bulk and scale that is similar to the approved and desirable in the streetscape (given the modulation at each level).

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

Comment:

The proposed modifications would not have any unreasonable impact on views and the change in design to the top level maintains view corridors to the side and over the top of the proposed Residential





flat building.

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

Comment:

The modified design provides a building height that is lower than the approved height, maintains modulation in the side setbacks and maintains similar front and rear setbacks. This has the effect of providing a building form that will maintain appropriateness as compared to the other the other development in the area and provides modulation that is desirable for current development.

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

Comment:

The compliant building height and compliant setbacks to the top level provide a situation in which the proposal would provide an openness and separation from neighbouring properties which would appropriately minimise amenity impact.

**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.

**What are the underlying objectives of the zone?**

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R1 zone.

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

Comment:

The proposed development is for a residential use and is consistent with the objectives above.

**Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?**

(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.**

Comment:

In this circumstance, providing flexibility to the floor space ratio development standard is appropriate as the non-compliance does not lead to any unreasonable amenity impact and would be appropriate in the



street context.

**(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.**

Comment:

It is appropriate to allow flexibility in this circumstance as an addition of floor space can be made to the dwelling without having any unreasonable impact on amenity and the proposed development would be visually appropriate given the context of the site and topographical nature of the surroundings.

### Manly Development Control Plan

#### Built Form Controls

Built Form Controls - Site Area: 459.4m <sup>2</sup>	Requirement	Approved	Proposed	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per	3 dwellings	3 dwellings	No (as approved)
4.1.2.1 Wall Height	North: 10.5m	8.4m	10.1m	Yes
	South: 10.5m	8.6m	10.3m	Yes
4.1.2.2 Number of Storeys	3	3	3	Yes
4.1.2.3 Roof Height	Height: 2.5m	2.5m	0.6m	Yes.
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	0m to basement and ground  2.12m to first floor balcony  3.7m to second floor  5m to third floor	0m (to basement and ground)  2.48m (to first floor balcony)  3.5m (to second floor)  4.5m to third floor	<b>No (see comments)</b>
4.1.4.2 Side Setbacks and Secondary Street Frontages	South: 2.5m (Level 2)  Note: Other setbacks are equal to or greater than approved.	0.2m-2.6m	1.5m	<b>No (see comments)</b>
4.1.4.4 Rear Setbacks	8m	7.3m to basement  7.2m to ground  0m to first floor stairs and landscaping	7.3m to basement  7.2m to ground  0m to first floor stairs and landscaping	<b>No [for part of second floor balcony (see comments)]</b>  Yes for third floor

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		7m to second floor	5.8m-7.5m to second floor  12.7m to third floor	
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS2	Open space 50% of site area (230m <sup>2</sup> )	66.8% (307.6m <sup>2</sup> )	66.7% 305m <sup>2</sup>	Yes
	Open space above ground 40% of total open space	55% (169.6m <sup>2</sup> )	57% (175.6m <sup>2</sup> )	<b>No (see comments)</b>
4.1.5.2 Landscaped Area	Landscaped area 30% of open space	13% (40m <sup>2</sup> )	20% (60m <sup>2</sup> )	No (but greater than approved)
4.1.5.3 Private Open Space	18m / 12sqm per dwelling	20-71m <sup>2</sup> per dwelling	60m per dwelling (average)	Yes
Schedule 3 Parking and Access	6 spaces (including 1 visitor)	8 spaces (including 1 visitor)	8 spaces (including 1 visitor)	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
3.7 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 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
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Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

#### Detailed Assessment

### **3.1 Streetscapes and Townscapes**

#### Issue

The proposal involves modifications to an approved residential flat building. This includes changes, particularly to the top level of the building, that will have implications in the the building presents within the streetscape.

By way of comparison, the proposed residential flat building has a top level with a flat roof whereas the approved building has a curved roof. The proposed form also has a lower ridge height, further setback to Commonwealth Parade and a closer setback to The Crescent.

#### Merit consideration:

With regard to the consideration of the issue, the development is considered against the underlying Objectives of the Clause as follows:

**Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.**

#### Comment:

The proposed car parking is to remain as approved with the exception of the realignment of a parking space and the deletion of a turntable. Additionally, the proposed and existing retaining walls and walls are setback from the street and integrated with landscaping so as to appropriately minimise the presentation of bulk and scale associated with the overall building.

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

#### Comment:

The proposed building is compliant with the requirement for building height under the Manly LEP and provides modulation including greater setbacks for higher levels of the building. The existing streetscape is characterised predominantly by buildings with a greater height, bulk and scale than the proposed building. In particular, the neighbouring building at 7 Commonwealth Parade is significantly larger than the proposed dwelling. Conversely, the building adjacent to the north, 1-3 the Crescent, is smaller than the proposed development and the predominant form in the streetscape. As such, the proposed building which is compliant with the development standard for building height and well



modulated (through setbacks), provides a balanced outcome for the immediate vicinity as well as an appropriate outcome for the broader Streetscape.

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

Comment:

The proposal provides planter boxes and landscaping to be integrated with the retaining walls and built form on site. along with reasonable setbacks, this provides a situation in which the visual outcome for the site is appropriate.

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

Description of issue

The proposed modifications involve changes in location and size of balcony areas and changes to windows. As a result, the impacts on privacy are different to that of the original approval and most recent approval.

Merit consideration:

With regard to the consideration of the issue, the development is considered against the underlying Objectives of the Clause 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 involves balconies (and a terrace) at the front and rear of the development, and a balcony to the east at the ground floor. The proposal also involves windows at each elevation.

In regard to the windows, the physical separation between adjoining living spaces, the location and minimised design, ensure that there would be no unreasonable opportunity for direct overlooking between properties.

The balconies are orientated toward the streets, have reasonable side setbacks and provide privacy screens to the side elevations to adequately minimise potential privacy impact (acoustical and visual).

**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:

Privacy Screens are provided to the side elevations of the balconies but as a result of the physical separation of these areas from neighbouring living areas, there would be no unreasonable amenity impact caused by this screening. As a result, there is an appropriate balance provided between privacy and other amenity.

**Objective 3) To encourage awareness of neighbourhood security.**

Comment:

The proposal provides balconies and entrances at the front and rear elevation which provide appropriate 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.

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

Description of non-compliance

The streetscape of Commonwealth Parade has a variable building line and the proposal does not comply with the 6.0m numerical control which applies in this case.

The proposal does not comply with the control for side setback at Level 2 at the southern elevation (2.5m is required). The proposal provides a continuous wall which is 1.5m from the boundary. It is noted that the approved wall had a varied setback of 0.2m to 2.6m.

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 involves a building which is well modulated with the top level being setback from the sides and street front so as to minimise visual prominence. Along with the compliant building height, this provides an outcome in which the proposed residential flat building has a bulk that will present in a way which is consistent with the desired character of the street. Additionally, the landscaping provided in the form of planter boxes to the outdoor open space provides an adequate integration of landscaping with built form which provides a well balanced presentation.

**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 residential flat building provides reasonable modulation and a compliant building height so as to provide adequate spacing and a minimisation of bulk to maintain adequate amenity. This involves providing a significant open corridor on either side of the top level of the development as well as a built form which does not extend vertically so as to provide any unreasonable amenity impact.

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

Comment:

The proposal addresses both street frontages and each level is in part stepped back from the lower level. Given the context of the site (with two street frontages) and area (with buildings of varied bulk and building line) as well as the reasonable visual presentation and lack of amenity impact, the proposed siting of the building is appropriate.

**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 provides planter boxes to each balcony and planting surrounds the terrace. This provides a situation in which are provided across many parts of the site. Furthermore, the total landscaping is improved as compared to the existing approval. This provides an appropriate outcome for natural features on site.

**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.



#### 4.1.5 Open Space and Landscaping

##### Description of non-compliance

The proposal does not comply with the control for total open space above ground (40% required). The proposal involves 57% or 175.6m<sup>2</sup> of total open space which is 6m<sup>2</sup> greater than the approved amount.

##### Merit consideration:

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

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

##### Comment:

The proposal provides a greater amount of landscaped area than approved and this provides a reasonable outcome for the site.

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

##### Comment:

Although the proposal involves a total open space above ground which does not comply with the control, each of the areas which are provided above ground provide additional landscaping in the form of planter boxes. As a result, landscaping is reasonably maximised given the existing situation and area (dominated by built form).

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

##### Comment:

Despite the non-compliance with the control for total open space above ground, the proposal provides a design for the balconies which includes privacy screens and orientation away from neighbouring living space to minimise amenity impact.

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

##### Comment:

The planter boxes above ground will ensure that water infiltration on site is maximised.

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

##### Comment:

The proposal does not propose any noxious weeds.



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

Comment:

The reasonable setbacks maximise opportunity for wildlife corridors.

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

**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**

As required by original conditions.

**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 approval to Modification Application No. Mod2018/0575 for Modification of Development Consent DA436/2008 relating to a residential flat building on land at Lot CP SP 11874,5 Commonwealth Parade, MANLY, subject to the conditions printed below:

### **A. Add Condition No.1C - Modification of Consent - Approved Plans and supporting Documentation to read as follows:**

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

#### **a) Approved Plans**

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
A0.02 Excavation and Fill Plan	2018.10.08	platform architects
A1.01 Basement Plan	2018.10.08	platform architects
A1.01 Ground Floor Plan	2018.10.08	platform architects
A1.02 Level 1 Plan	2018.10.08	platform architects
A1.03 Level 2 Plan	2018.10.08	platform architects
A1.04 Level 3 Plan	2018.10.08	platform architects
A1.05 Roof Plan	2018.10.08	platform architects
A2.01 East Elevation	2018.10.08	platform architects
A2.02 North Elevation	2018.10.08	platform architects
A2.03 West Elevation	2018.10.08	platform architects
A2.04 South Elevation	2018.10.08	platform architects
A3.01 Section AA	2018.10.08	platform architects
A3.02 Section BB	2018.10.08	platform architects
A3.03 Section CC	2018.10.08	platform architects
A3.04 Section DD	2018.10.08	platform architects
A5.01 Driveway Plan	2018.10.08	platform architects
A5.02 Driveway Sections	2018.10.08	platform architects

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Report to Cecil Koutsos on Geotechnical Investigation for Proposed Residential Development	2 October 2009	Jeffrey and Katauskas Pty Ltd





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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
L.SK.01 Landscape Sketch Plan	16.10.18	platform architects
L.SK.02 Landscape Sketch Plan	16.10.18	platform architects
L.SK.03 Landscape Planting Plan	16.10.18	platform architects
L.SK.04 Planting Character	16.10.18	platform architects

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.

**B. Add Condition ANS17- On slab planter works and planting to read as follows:**

Details shall be submitted to the Certifying Authority prior to the Construction Certificate,

i) indicating the proposed method of waterproofing to concrete slabs and planters to which soil and planting is being provided,

ii) indicating soil type, plant species, irrigation, services connections, maintenance activity schedule and soil depth compliant with iii) below:

iii) the following minimum soil depths are required:

- 300mm for lawn
- 600mm for shrubs
- 1 metre for trees

iv) certification shall be provided by a structural engineer that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: to ensure appropriate and secure waterproofing and drainage is installed to direct water flow into the drainage system, and away from habitable areas.

**C. Add Condition ANS18- Landscape works to read as follows:**

Landscaping shall be is to be implemented in accordance with the landscape sketch plans, drawing numbers L.SK.01 to L.SK.07 inclusive, dated 16.10.2018, as prepared by scape design, and inclusive of the following requirement:

i) the proposed *Livistona australis* shall be planted with a clear trunk of 3 metres minimum.

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 approved plans and inclusive of any conditions of consent.

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

**D. Add Condition ANS19- 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 Plans.

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

**E. Add Condition ANS20- 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.

**F. Add Condition ANS21- Engineering and Excavation details to read as follows:**

A suitably qualified engineer is to provide a report with recommendations for works and confirmation of work details that will not cause unreasonable risk to the neighbouring properties. The development is to comply with the recommendations provided within this report.

Reason: To minimise risk caused by excavation.







**FOUR-STAR RATES:** Four-star hotels are highly desirable ones. Four-star hotels are designed to provide a good quality of service and facilities, but are not as expensive as five-star hotels. They are usually found in the city center and have a good location. They are usually found in the city center and have a good location.

REVIEWER	DATE	DESCRIPTION	BY
A	2016/12/17	PECCA	19
B	2016/12/17	Autobahn 12 to Land	20
C	2016/12/17	Autobahn 12 to Land	21
D	2016/12/17	Autobahn 12 to Land	22
E	2016/12/17	Autobahn 12 to Land	23
F	2016/12/17	Autobahn 12 to Land	24
G	2016/12/17	Autobahn 12 to Land	25
H	2016/12/17	Autobahn 12 to Land	26
I	2016/12/17	Autobahn 12 to Land	27
J	2016/12/17	Autobahn 12 to Land	28
K	2016/12/17	Autobahn 12 to Land	29
L	2016/12/17	Autobahn 12 to Land	30
M	2016/12/17	Autobahn 12 to Land	31
N	2016/12/17	Autobahn 12 to Land	32
O	2016/12/17	Autobahn 12 to Land	33
P	2016/12/17	Autobahn 12 to Land	34
Q	2016/12/17	Autobahn 12 to Land	35
R	2016/12/17	Autobahn 12 to Land	36
S	2016/12/17	Autobahn 12 to Land	37
T	2016/12/17	Autobahn 12 to Land	38
U	2016/12/17	Autobahn 12 to Land	39
V	2016/12/17	Autobahn 12 to Land	40
W	2016/12/17	Autobahn 12 to Land	41
X	2016/12/17	Autobahn 12 to Land	42
Y	2016/12/17	Autobahn 12 to Land	43
Z	2016/12/17	Autobahn 12 to Land	44
AA	2016/12/17	Autobahn 12 to Land	45
AB	2016/12/17	Autobahn 12 to Land	46
AC	2016/12/17	Autobahn 12 to Land	47
AD	2016/12/17	Autobahn 12 to Land	48
AE	2016/12/17	Autobahn 12 to Land	49
AF	2016/12/17	Autobahn 12 to Land	50
AG	2016/12/17	Autobahn 12 to Land	51
AH	2016/12/17	Autobahn 12 to Land	52
AI	2016/12/17	Autobahn 12 to Land	53
AJ	2016/12/17	Autobahn 12 to Land	54
AK	2016/12/17	Autobahn 12 to Land	55
AL	2016/12/17	Autobahn 12 to Land	56
AM	2016/12/17	Autobahn 12 to Land	57
AN	2016/12/17	Autobahn 12 to Land	58
AO	2016/12/17	Autobahn 12 to Land	59
AP	2016/12/17	Autobahn 12 to Land	60
AQ	2016/12/17	Autobahn 12 to Land	61
AR	2016/12/17	Autobahn 12 to Land	62
AS	2016/12/17	Autobahn 12 to Land	63
AT	2016/12/17	Autobahn 12 to Land	64
AU	2016/12/17	Autobahn 12 to Land	65
AV	2016/12/17	Autobahn 12 to Land	66
AW	2016/12/17	Autobahn 12 to Land	67
AX	2016/12/17	Autobahn 12 to Land	68
AY	2016/12/17	Autobahn 12 to Land	69
AZ	2016/12/17	Autobahn 12 to Land	70
BA	2016/12/17	Autobahn 12 to Land	71
BB	2016/12/17	Autobahn 12 to Land	72
BC	2016/12/17	Autobahn 12 to Land	73
BD	2016/12/17	Autobahn 12 to Land	74
BE	2016/12/17	Autobahn 12 to Land	75
BF	2016/12/17	Autobahn 12 to Land	76
BG	2016/12/17	Autobahn 12 to Land	77
BH	2016/12/17	Autobahn 12 to Land	78
BI	2016/12/17	Autobahn 12 to Land	79
BJ	2016/12/17	Autobahn 12 to Land	80
BK	2016/12/17	Autobahn 12 to Land	81
BL	2016/12/17	Autobahn 12 to Land	82
BM	2016/12/17	Autobahn 12 to Land	83
BN	2016/12/17	Autobahn 12 to Land	84
BO	2016/12/17	Autobahn 12 to Land	85
BP	2016/12/17	Autobahn 12 to Land	86
BQ	2016/12/17	Autobahn 12 to Land	87
BR	2016/12/17	Autobahn 12 to Land	88
BS	2016/12/17	Autobahn 12 to Land	89
BT	2016/12/17	Autobahn 12 to Land	90
BU	2016/12/17	Autobahn 12 to Land	91
BV	2016/12/17	Autobahn 12 to Land	92
BW	2016/12/17	Autobahn 12 to Land	93
BX	2016/12/17	Autobahn 12 to Land	94
BY	2016/12/17	Autobahn 12 to Land	95
BZ	2016/12/17	Autobahn 12 to Land	96
CA	2016/12/17	Autobahn 12 to Land	97
CB	2016/12/17	Autobahn 12 to Land	98
CC	2016/12/17	Autobahn 12 to Land	99
CD	2016/12/17	Autobahn 12 to Land	100

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|-------|----|----------------------------|----|--------------------------|----|--------------------------|
| 10040 | 10 | METAL PRACTICE BLADES      | 10 | GLASSING                 | 10 | FLOOR TILES - WET AREA   |
| 10041 | 11 | CEILING RENDER - LIGHT     | 11 | METAL SUBSTRATE/PREPARE  | 11 | WALL TILES - WET AREA    |
| 10042 | 12 | CEILING RENDER - DARK      | 12 | MASTERS COATS/GRIND      | 12 | PROPOSED BL.             |
| 10043 | 13 | CEILING RENDER - OFF WHITE | 13 | NATURAL TONES TILES INT. | 13 | POSTING TO BE MAINTAINED |
| 10044 | 14 | CARPET - REDWOOD           | 14 | NATURAL TONES TILES EXT. | 14 | POSTING TO BE MAINTAINED |
| 10045 | 15 | CARPET - REDWOOD           | 15 | NATURAL TONES TILES EXT. | 15 | POSTING TO BE MAINTAINED |

platform  
ARCHITECTS

PROJECT  
THREE STOREY RESIDENTIAL FLAT BUILDING  
WITH BASEMENT CAR PARK AT:  
5 COMMONWEALTH PDE,  
MANLY, NSW

WEST ELEVATION

PROJECT	CPM
A2 03	S4 55



