

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL MEETING

Notice is hereby given that a Meeting of the Northern Beaches Local Planning Panel will be held in the Council Chambers, Civic Centre, Dee Why on

WEDNESDAY 5 JUNE 2019

Beginning at 2.00pm for the purpose of considering and determining matters included in this agenda.



Peter Robinson
Executive Manager Development Assessment

Panel Members

Paul Vergotis	Chair
Steve Kennedy	Urban Design Expert
Brian Kirk	Town Planner
John Simmonds	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

Any Panel Member who has a conflict of Interest must not be present at the site inspection and leave the Chamber during any discussion of the relevant Item and must not take part in any discussion or voting of this Item.

**Agenda for a Meeting of the Northern Beaches Local Planning Panel
to be held on Wednesday 5 June 2019
in the Council Chambers, Civic Centre, Dee Why
Commencing at 2.00pm**

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2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 15 MAY 2019

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 15 May 2019 were adopted by the Chairperson and have been posted on Council's website.

3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1	DA2018/1861 - 25 CRESCENT STREET, FAIRLIGHT - ALTERATIONS AND ADDITIONS TO A SEMI-DETACHED DWELLING
REPORTING OFFICER	RODNEY PIGGOTT
TRIM FILE REF	2019/297092
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2018/1861 for alterations and additions to a semi-detached dwelling at Lot A DP 33413, 25 Crescent Street, Fairlight subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1861
Responsible Officer:	Benjamin Price
Land to be developed (Address):	Lot A DP 33413, 25 Crescent Street FAIRLIGHT NSW 2094
Proposed Development:	Alterations and additions to a semi-detached dwelling
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Robert Elly Begg Annemarie Helen Van Egmond-Begg
Applicant:	Robert Elly Begg Annemarie Helen Van Egmond-Begg
Application lodged:	23/11/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	21/03/2019 to 08/04/2019
Advertised:	Not Advertised
Submissions Received:	0
Recommendation:	Approval
Estimated Cost of Works:	\$ 700,000.00

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot A DP 33413 , 25 Crescent Street FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of one (1) corner allotment located on the western side of Crescent Street and the southern side of Griffiths Street.</p> <p>The site is regular in shape with a frontage of 7m along Crescent Street and a depth of 30.4m to Griffiths Street. The site has a surveyed area of 210.7m².</p> <p>The site is located within the R1 General Residential zone and accommodates a single storey semi-detached dwelling.</p> <p>The site slopes from east to west and includes a crossfall of 1.5m.</p> <p>The site does not include any significant landscape features.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential accommodation including semi-detached dwellings, dwelling houses and residential flat buildings.</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:

PLM2018/0215 - The development was subject to a pre-lodgement meeting. It was advised in the meeting that the development should provide a minimum 3m rear setback on the ground floor and 8m rear setback on the first floor.

The original application submitted followed similar rear setbacks to those originally submitted with the pre-lodgement meeting. Council advised the applicant that these setbacks would not be supported. Amended plans were received that provided setbacks consistent with the pre-lodgement advice.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes the following:

Lower Ground Floor Level

- Driveway from Griffiths street
- Excavation to provide for garage and storage area below existing dwelling
- Deep soil planter along the western boundary.

Ground Floor Level

- Alterations and additions to existing ground floor level to provide for laundry/bathroom, two bedrooms, open plan kitchen/living/dining area.
- Internal stair access to upper level
- New deck and terraced planters to the west and north of the new deck.

First Floor Level

- Proposed first floor addition to provide for master bedroom, kids bedroom, bathroom/ensuite and storage area within the existing roof void

Other works

- Roofing
- Driveway and crossover
- Fencing to northern boundary
- Associated landscaping and retaining walls

Amended Plans

Amended plans were received on the 14 March 2019. The amended plans included an increased ground floor rear setback to 3m and an increased first floor setback to 8m. The amended plans were re-notified from the 21 March 2019 to the 8 April 2019. No submissions were received.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional</p>

Section 4.15 Matters for Consideration'	Comments
	<p>information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The landscape component of the proposal is acceptable subject to the protection of existing trees and vegetation, and the completion of landscaping.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP 2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types.</p> <p><u>Planning Comments</u> Given the constrained nature of the site and the significant enhancement to landscaping proposed on the site, the recommendation of a condition requiring compliance with the required canopy tree planting was not incorporated.</p>
NECC (Development Engineering)	Development Engineering 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 items, houses at 16-18 Crescent St, and the stone kerbs.</p> <p>Given the nature of the proposal, the separation between sites, setting across the road 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

External Referral Body	Comments
	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. A333315_02, dated 15 March 2019).

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.15m	N/A	Yes
Floor Space Ratio	FSR: 0.6:1 (126.42sqm)	FSR: 0.74:1 (156.1sqm)	23.3%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1 (126.42sqm)
Proposed:	0.74:1 (156.1sqm)
Percentage variation to requirement:	23.3%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

standard.

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

"The development will maintain a compatible scale relationship with existing residential development in the area. By presenting a well-modulated design with a modest roof form and increased perimeter screen planting, will not be overbearing when viewed from neighbouring properties.

The extent of the proposed new works, whilst not compliant with Council's maximum floor space control, do not present any significant impacts in terms of view loss for neighbours, loss of solar access or unreasonable bulk and scale.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – '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 proposed first floor addition is below the existing ridge level and is compliant with the height of buildings development standard. The height of buildings development standard is designed to control building height ensuring the scale of development is consistent with that of the surrounding area. The proposals compliance with this development standard demonstrates that the overall height of the development is consistent with the desired streetscape character of the locality. The proposed first floor incorporates an additional setback to the first floor. The increased setback will break up the development minimising the overall bulk and scale of the development. The proposed development is suitably designed to ensure the bulk and scale does not result in any unreasonable impact on the existing and desired streetscape character of the locality.

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:

As discussed above, it is not considered that the proposal will result in any unreasonable bulk or scale within the locality. Furthermore the proposal will not obscure any important landscape or townscape features.

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

Comment:

There are a number of recent first floor additions within Crescent Street. These first floor additions are set to the rear maintaining the existing street frontage while providing a low impact development. The proposal is consistent with this type of development. It is noted that the proposal is located on a corner lot resulting in it being more visible to the Griffiths Street streetscape. However, the proposal is a two storey development that could reasonably be envisaged within the character of this area. The proposal will also result in a significant enhancement of landscaping on the site. The proposal will maintain an appropriate relationship with new and existing character of the locality and the landscape character of the area.

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

Comment:

The proposal has been assessed below with regard to amenity impacts and has been found to maintain a reasonable level of amenity within the locality. The proposal will not result in any unreasonable adverse environmental impacts on the use or enjoyment of adjoining land and the public domain.

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

Comment:

Not applicable.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the Clause 4.4 Floor Space Ratio.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

To provide for the housing needs of the community.

Comment:

The proposal will enhance the functionality of the site and continue to provide for the housing needs of the community.

To provide for a variety of housing types and densities.

Comment:

The proposal will maintain the existing housing type on the site.

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

Comment:

Not applicable.

Conclusion:

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

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

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

Planning Circular 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 Floor space ratio Development Standard is assumed by the Local Planning Panel.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 210.7sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	North: 6.8m (based on gradient 1:20)	7.06m - 7.75m	3.8% - 14.4%	No
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.9m	N/A	Yes
4.1.4.1 Street Front Setbacks	East (Primary Frontage) Prevailing building line 2.7m North (Secondary Street Frontage) See Clause 4.1.4.2	East (Primary Frontage) Existing 2.7m Proposed First Floor 9.7m North (Secondary Street Frontage) 0.86m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North (Secondary Street Frontage) Garage 1m-1.1m Ground 1.7m - 1.833m First 2.3m - 2.6m	North (Secondary Street Frontage) Garage Nil Ground 0.86m First 2.16m	Garage 100% Ground 53% First 6% - 20.3%	No
	South 2.6m	South Nil	100%	No
4.1.4.4 Rear Setbacks	West 8m	West Ground - 3m First - 8m	0% - 62.5%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (115.9sqm)	30.8% (65sqm)	43.9%	No
	Open space above ground 25% of total open space (16.25sqm)	14.9% (9.7sqm)		
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (22.75sqm)	57.8%(37.6sqm)	N/A	Yes
	1 native trees	Nil	100%	No
4.1.5.3 Private Open Space	12sqm per dwelling	9sqm	25%	No
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	3.4m	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	Proposed 1 spaces	N/A	No

		Existing Nil		
4.1.10 Fencing	1.5m Where 30% transparent above 1m	3.7m	100%	No, see assessment under Clause 3.1

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	No	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 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
4.1.2 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	No	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
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

Description of Non-compliance

The Manly DCP 2013 permits front fences to a maximum height of 1.5m where the area above 1m is 30% transparent. The existing development on the site includes a fence/wall up to 3.18m in height. The proposal includes the replacement of this fence/wall with one of a maximum height of 3.7m.

Merit Consideration

With Regard to the consideration of the variation, the development is considered under the relevant objectives of Clause 3.1 Streetscapes and Townscapes below:

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

Comment

The existing fence/wall is in poor condition and in need of replacement. The proposed replacement fence/wall is of a higher quality and will result in an enhanced presentation to the streetscape. Furthermore the proposed fence/wall is consistent with that of the property directly opposite on Griffiths Street. The proposal will not result in any unreasonable impacts on the streetscape of the locality.

The proposed garage is integrated into the design of the development and will not result in any unreasonable impacts on the streetscape of the locality.

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

Comment

The streetscape generally consists of one and two storey residential development. Directly opposite the development site on Griffiths Street is a fence/wall similar to that proposed within this application. The proposal will compliment the streetscape of the locality.

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

Comment

The proposal includes landscaping to the rear of the property. This will enhance the landscaping of the site and ensure suitable landscaping is incorporated into the design of the fence/wall.

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

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

Description of Non-compliance

The Manly DCP 2013 permits a maximum 6.8m wall height on a site with this gradient. The proposal includes a wall height of 7.06m - 7.75m, requiring a variation of 3.8%-14.4%.

Merit Consideration

The Manly DCP 2013 does not include objectives relevant to this control but refers to the objectives of Clause 4.3 Height of Buildings of the Manly LEP 2013 as having particular relevance. The proposal is assessed with regard to the relevant objectives as follows:

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

Comment:

The proposed building height is consistent with the maximum permitted building height within the locality. The proposed roof form is of a low pitch that will minimise the overall bulk of the development. The proposal will maintain a development on the site that is consistent with the desired future

streetscape character of the locality.

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

Comment

The proposed first floor steps back from the ground floor to provide articulation and minimise the bulk of the development. The proposal will not result in an unreasonable bulk or scale within the locality.

(c) to minimise disruption to the following:

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

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

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

Comment

The proposal will not result in any unreasonable loss of views within the locality.

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

Comment

The submitted shadow diagrams demonstrate that the proposed development will not result in unreasonable impacts on solar access to public and private open spaces and habitable rooms of adjacent dwellings.

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

Comment

Not applicable

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

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

Description of non-compliance

The Manly DCP 2013 requires walls to be setback the distance equal to 1/3 of the wall height. The proposal is not compliant with this control due to the garage, ground floor living, kitchen and dining area and the rear section of the first floor.

The Manly DCP 2013 also requires a rear setback of 8m. The proposal includes a rear setback of 3m to the ground floor deck 4.94m to the ground floor dwelling and 8m to the first floor. The existing development on the site includes a shed, paved area and seating on the rear boundary with the dwelling setback 4.94m from the rear boundary.

Merit consideration:

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

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

Comment:

The proposed first floor complies with the rear setback control and the ground floor will maintain the existing setback to the dwelling. The proposed deck will not be visually prominent from the street and is screened by vegetation.

The proposed garage is incorporated into the design of the retaining wall and will not dominate the streetscape. Furthermore there are a number of examples of single car parking on the street frontage.

The proposal will maintain the existing spatial proportions within the street. The incorporation of landscaping into the rear setback will enhance the landscape character of the site. The proposed setbacks provide adequate physical separation and articulation to ensure the development does not impose on the streetscape of the locality.

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 proposal is considered to ensure and enhance the local amenity for the following reasons:

- The proposed deck area is small in size and suitably setback to limit overlooking. Furthermore the area of the adjoining site to the rear is currently used for a parking area. The proposal will not overlook any private open spaces or windows to habitable rooms. The incorporation of landscaping within this setback area will provide screening to the property to the rear.
- The submitted shadow diagrams demonstrate that the proposed development will maintain an equitable access to light and sunshine within the locality.
- The proposal will not result in the unreasonable disruption of views.
- The proposal will enhance the streetscape character of the locality and maintain the existing pattern of spaces between buildings.
- The proposal will not impact on traffic conditions within the locality.

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

Comment:

The proposed flexibility is appropriate in this circumstance.

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 landscaping will enhance the natural features on the site and accommodate deep soil plantings.

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 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 Manly DCP 2013 requires 55% of the site area to be provided as total open space. The proposal will provide 30.8% of the site area as total open space.

The Manly DCP 2013 also requires that one native tree, of the species specified, be planted on the site.

Merit consideration:

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

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

Comment:

The proposal will significantly enhance the vegetation on the site and does not include the removal of any significant landscape features.

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

Comment:

The proposal will result in an increase to the landscaped areas on the site and a reasonable area of above ground open space. The proposal also includes suitable tree plantings given the confined nature of the site.

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

the streetscape and the surrounding area.

Comment:

The proposal is suitably designed and landscaped to maintain the amenity of the site, streetscape and surrounding area.

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

Comment:

The proposal will enhance water infiltration on the site. A condition has been recommended to ensure stormwater is suitably disposed.

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

Comment:

The proposed landscaping will minimise the spread of weeds within the locality.

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

Comment:

The proposal will enhance the wildlife habitat on the site.

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

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

The proposal will result in the provision of parking on the site where none had previously been provided. The proposal will result in a reduction in this non-compliance and will maintain the sites consistency with the objectives of the control.

4.4.5 Earthworks (Excavation and Filling)

Description of Non-compliance

The Manly DCP 2013 requires natural and undisturbed ground levels be maintained within 0.9m of the boundary. The proposal includes alteration to the existing retaining walls and additional filling on the site within 0.9m of the boundaries.

The Manly DCP 2013 limits the extent of excavation on sites to generally 1m, with the exception of basement parking. The proposal includes excavation up to 1.8m for the proposed garage, not basement.

Merit Consideration

With regard to the consideration of the variation the development is considered under the objectives of the control as follows:

Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- *Limiting excavation, "cut and fill" and other earthworks;*
- *Discouraging the alteration of the natural flow of ground and surface water;*
- *Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- *Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

Comment

The existing site has been subject to alterations to the landscape in the past. The proposal will generally retain this modified landscape character while still allowing the site to step down to the rear. The proposal will allow for earthworks to provide for parking and a landscaped and stepped rear yard providing a gradual transition of the site to the rear. The proposal will not result in any unreasonable impacts on the landscape character of the locality.

The development will not result in unreasonable impacts on the flow of ground and surface waters or result in sedimentation of drainage lines. The proposed retaining walls are considered to be satisfactory given the existing development on the site and that of nearby/adjoining properties.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Manly Section 94 Development Contributions Plan

S94 Contributions are not applicable to this application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;

- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1861 for Alterations and additions to a semi-detached dwelling on land at Lot A DP 33413, 25 Crescent Street, FAIRLIGHT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA02 Demolition Plan - Issue E	13/03/2019	Watershed Design
DA03 Site and Roof Plan - Issue E	13/03/2019	Watershed Design
DA04 Ground Floor Plan - Issue E	13/03/2019	Watershed Design
DA05 First Floor Plan - Issue E	13/03/2019	Watershed Design
DA06 Lower Ground Floor Plan - Issue E	13/03/2019	Watershed Design
DA07 Section BB - Issue E	13/03/2019	Watershed Design
DA08 Section AA - Issue E	13/03/2019	Watershed Design
DA09 Elevations North, East & West - Issue E	13/03/2019	Watershed Design
DA10 Elevations South & Schedule of Colours and Materials - Issue E	13/03/2019	Watershed Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Report on Geotechnical Assessment for proposed alterations and additions at 25 Crescent Avenue Fairlight - Issue 0	3 April 2018	Crozier Geotechnical Consultants

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan	19 March 2019	Watershed Design

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 \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

5. **Stormwater Disposal**

Plans indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments, shall be submitted prior to the issue of the Construction Certificate. Stormwater shall be conveyed from the site to Griffiths Street.

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

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

6. **Vehicle Crossings Application**

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

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

Reason: To facilitate suitable vehicular access to private property.

7. **External Finishes to Roof**

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

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

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

8. **Sydney Water "Tap In"**

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

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

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

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

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

9. **Dilapidation Survey**

A photographic survey of adjoining property (being 23 Crescent Street Fairlight) detailing the physical condition of those properties, both internally and externally, including such items as walls, ceilings, roof, structural members and other similar items, SHALL BE submitted to Council/Accredited Certifier prior to the issue of a Construction Certificate. This survey is to be prepared by an appropriately qualified person.

On completion of the excavation and building works and prior to occupation of the building, a certificate prepared by the appropriately qualified person to the effect that no damage has resulted to adjoining premises, is to be provided to the Principal Certifying Authority.

If damage is identified by the appropriately qualified person which is considered to require rectification, the damage shall be rectified or a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible and prior to a final Occupation Certificate being issued.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent. In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant must demonstrate, in writing, to the satisfaction of Council/Accredited Certifier that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed.

(Note: This documentation is for record keeping purposes only, and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible)

Reason: Proper management of records.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

10. **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.

11. **Vehicle Crossings**

The provision of one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

12. **Tree and vegetation protection**

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

- i) all trees and vegetation within the site, nominated on the survey, excluding exempt trees under the relevant planning instruments of legislation,
- ii) all other trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation, excluding the nominated Bottlebrush required to be removed for the proposed driveway.

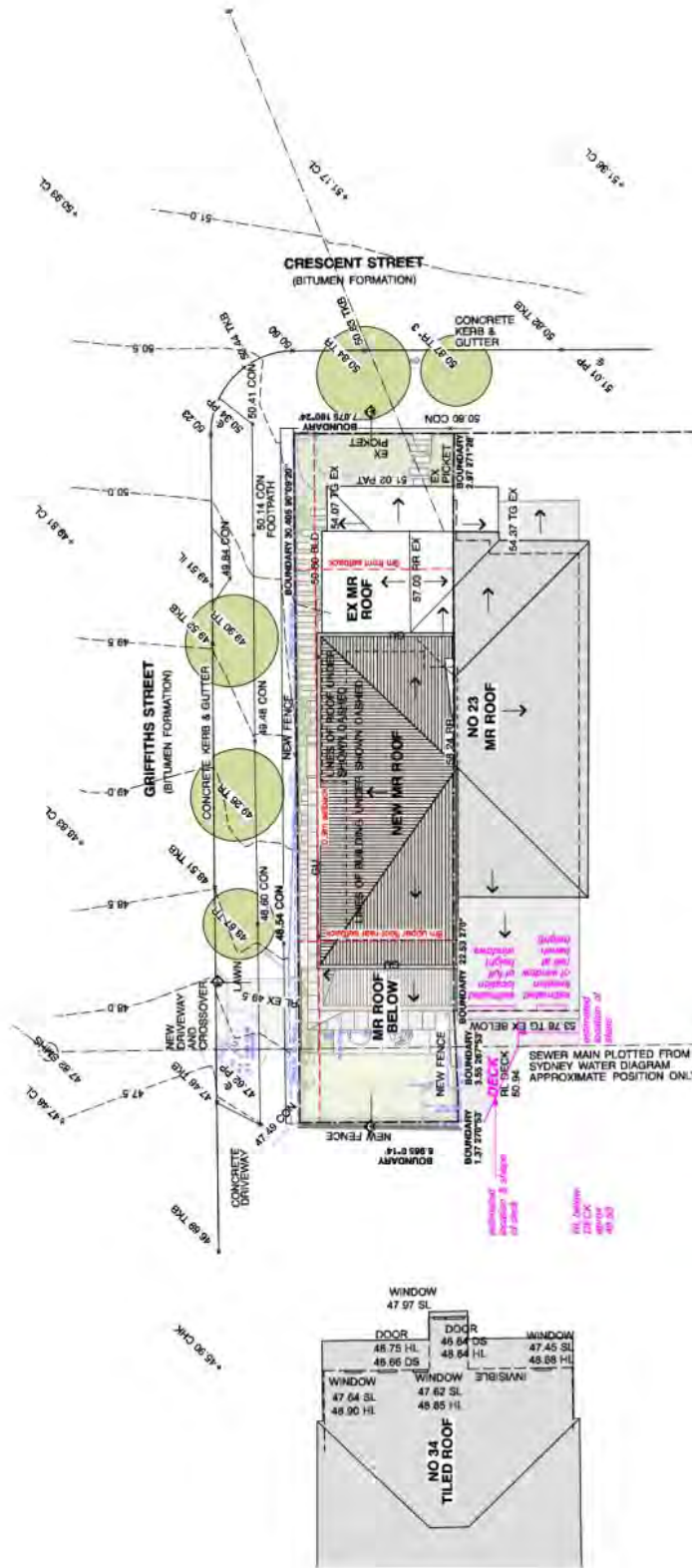
B) Tree protection shall be generally undertaken as follows:

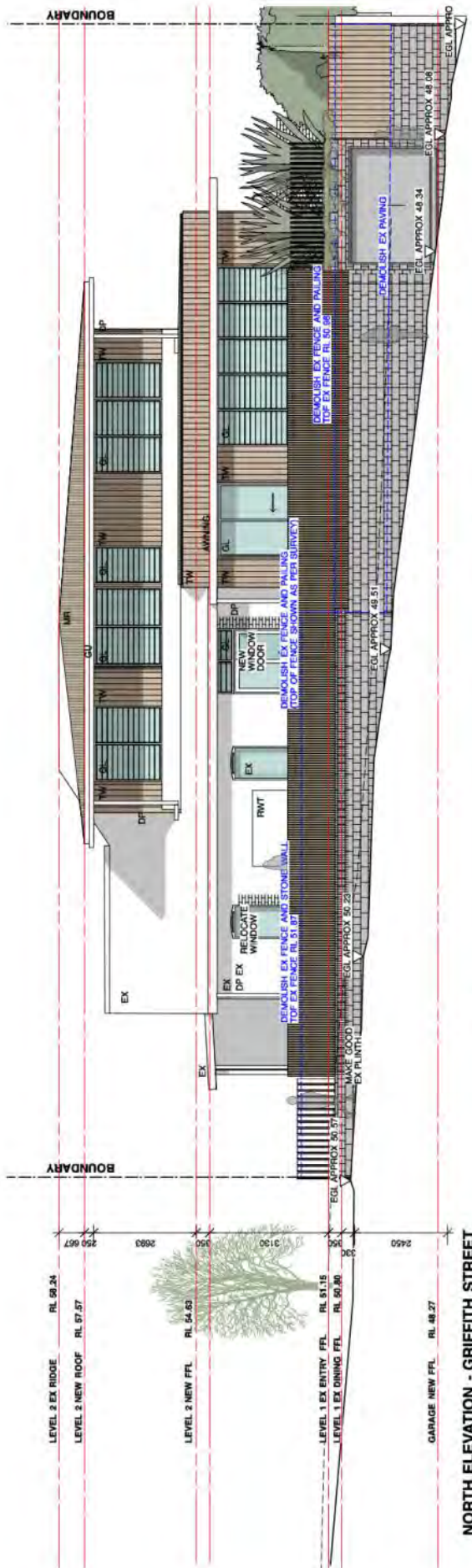
- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
- iii) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an Arborist. Details including photographic evidence of works undertaken shall be submitted by an AQF Level 5 Arborist to the Certifying Authority,
- iv) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a Project Arborist on site,
- vi) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
- vii) excavation for stormwater lines is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist,
- viii) should either or all of v) vi) and vii) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- ix) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009,
- x) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

C) Tree protection shall be specifically undertaken to protect the existing street trees as follows:

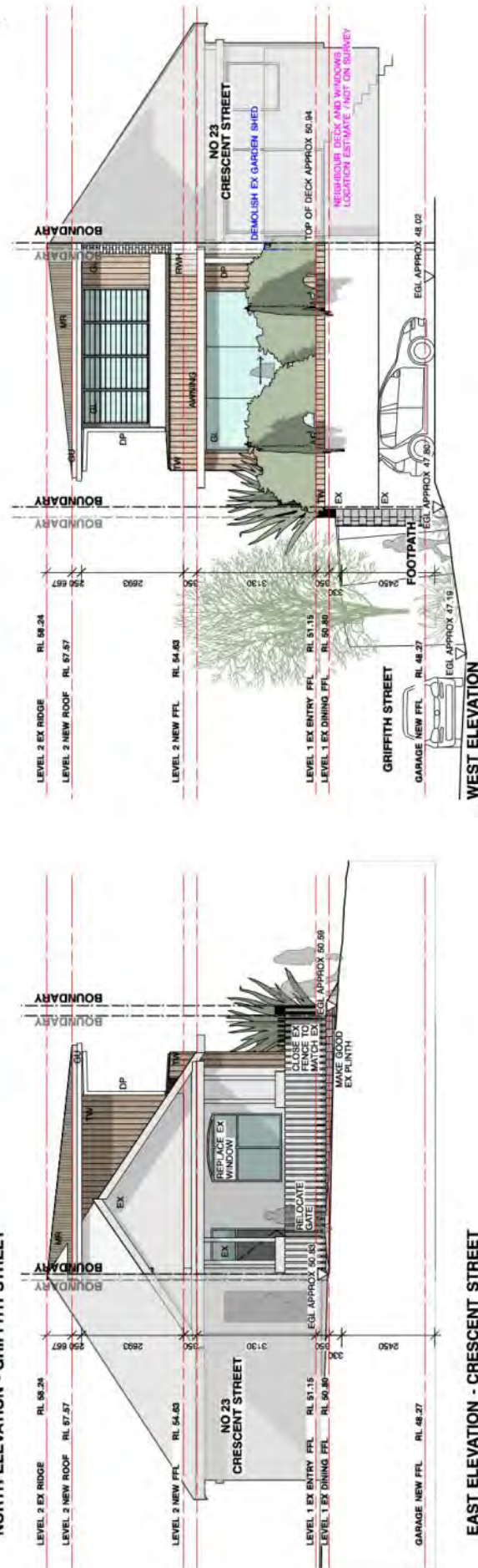
- i) no site facilities, building materials, construction waste bins, excavated material, nor landscape materials are to be placed within the canopy dripline of street trees required to be retained.

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





NORTH ELEVATION - GRIFFITH STREET



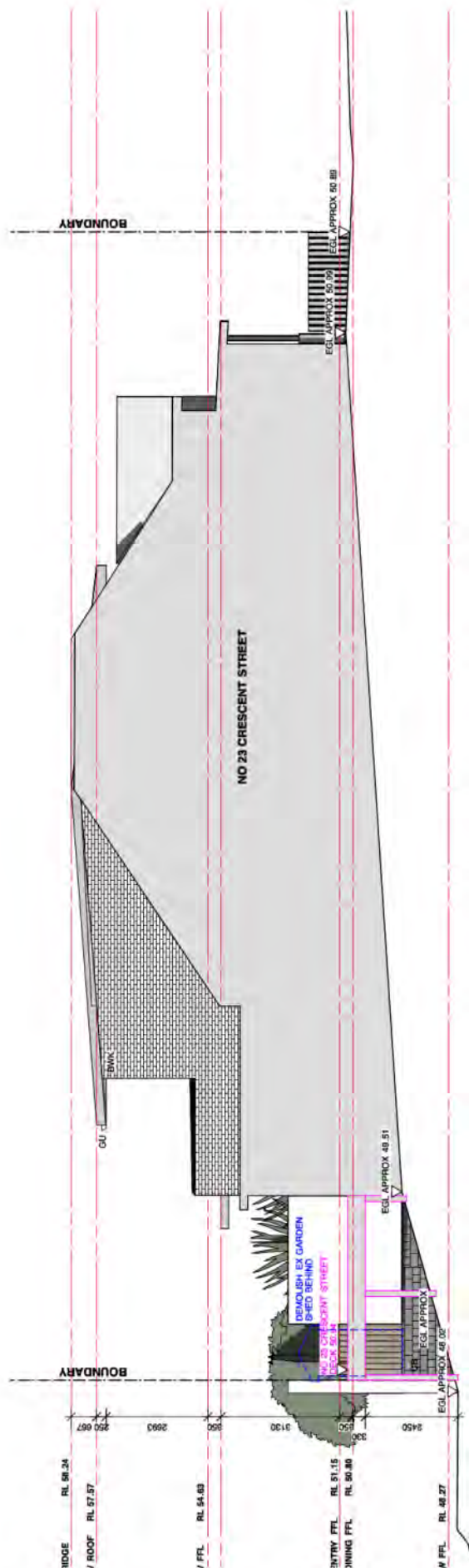
EAST ELEVATION - CRESCENT STREET

NOTES		REVISIONS	
Any recommendations to be brought to the Architect's attention:		NO	amendment
1. Check for errors in the drawings.		A	ISSUE
2. Check for errors in the drawings.		B	ISSUE
3. Check for errors in the drawings.		C	ISSUE
4. Check for errors in the drawings.		D	ISSUE
5. Check for errors in the drawings.		E	ISSUE
6. Check for errors in the drawings.			
7. Check for errors in the drawings.			
8. Check for errors in the drawings.			
9. Check for errors in the drawings.			
10. Check for errors in the drawings.			

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CLIENT	Robbie & Anna Begg	PROJECT	Alterations and Additions	ADDRESS	25 Crescent Street Fairlight	JOB NO	18002	DRAWING NO	DA09	ISSUE	E
				TITLE	Elevations, North, East & West	DRAWN	JK	CHECKED	MK	SCALE	1:100



SOUTH ELEVATION - VIEW FROM 23 CRESCENT STREET

	TV TIMBER CLADDING		GL GLAZING		BRX BRICK		CB BLOCKWORK		MR METAL ROOF
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SCHEDULE OF COLOURS AND MATERIALS

NOTES

- Any materials to be supplied to the Applicant's attention.
- Use of these materials is subject to the Applicant's approval.
- Refer to the Applicant's site plan for the location of the materials.
- Refer to the Applicant's site plan for the location of the materials.
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- Refer to the Applicant's site plan for the location of the materials.

REVISIONS	DATE
A: PRELIMINARY ISSUE	13.03.19
B: ISSUE FOR INFORMATION	13.03.19
C: ISSUE FOR INFORMATION	13.03.19
D: DA ISSUE	13.03.19
E: DA ISSUE	13.03.19

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CLIENT	Robbie & Anna Begg
PROJECT	Alterations and Additions
ADDRESS	25 Crescent Street Fairlight
TITLE	Elevation, South & Schedule of Colours and Materials

JOB NO	18002
DRAWN	JK
CHECKED	MK
SCALE	1:100
DRAWING NO	DA10
ISSUE	E

ITEM 3.2	DA2019/0019 - 7 CARLTON STREET, MANLY - ALTERATIONS AND ADDITIONS TO AN EXISTING SEMI-DETACHED DWELLING
REPORTING OFFICER	RODNEY PIGGOTT
TRIM FILE REF	2019/298897
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2019/0019 for alterations and additions to an existing semi-detached dwelling at Lot 2 DP 583113, 7 Carlton Street, Manly subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0019
Responsible Officer:	Benjamin Price
Land to be developed (Address):	Lot 2 DP 583113, 7 Carlton Street MANLY NSW 2095
Proposed Development:	Alterations and additions to an existing semi-detached dwelling
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Andrew James Formica
Applicant:	Bradley David Dorn
Application lodged:	11/01/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	28/02/2019 to 18/03/2019
Advertised:	Not Advertised
Submissions Received:	0
Recommendation:	Approval
Estimated Cost of Works:	\$ 496,500.00

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.1 Streetscapes and Townscapes
 Manly Development Control Plan - 3.2 Heritage Considerations
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot 2 DP 583113 , 7 Carlton Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Carlton Street.</p> <p>The site is irregular in shape with a frontage of 5.16m along Carlton Street and an average depth of 29.01m. The site has a surveyed area of 180.5m².</p> <p>The site is located within the R1 General Residential zone and accommodates a single storey semi-detached dwelling.</p> <p>The site is generally flat and includes no landscaped areas.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one, two and three storey residential accommodation. The residential accommodation predominantly consists of dwelling houses, semi detached dwellings and residential flat buildings. Directly to the east of the subject site is a two storey dual occupancy and to the west is the adjoining two storey semi-detached dwelling. The buildings to the west are all attached dwellings that have maintained a single storey frontage to the street.</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:

DA2018/1022 - Alterations and additions to the existing semi-detached dwelling - This application was withdrawn due to non-compliances resulting in an excessive visual bulk as well as the designs impact on the heritage conservation area.

The current application submitted to Council has addressed the concerns raised in the previous application.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes demolition works and alterations and additions to the existing semi-detached dwelling. In particular the development includes the following works:

Ground Floor

- Demolition works
- Construction of an open plan living kitchen and dining area with attached deck
- Minor internal alterations

First Floor

- First floor addition including attic space, bathroom study and master bedroom with ensuite.

Site

- Landscaping
- Construction of fencing, garden store deck

On the 13 March additional elevations were provided for the garden store. As the original plans showed the garden store including some elevations, the additional information was not required to be re-notified.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been</p>

Section 4.15 Matters for Consideration'	Comments
	<p>addressed via a condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Strategic and Place Planning (Heritage Officer)	<p>Further to a review of the latest set of plans, I am of opinion that the current form of the proposal is not acceptable, however, it would be acceptable subject to the following conditions:</p> <ol style="list-style-type: none"> 1 – Front yard should be restored to its original configuration, and front verandah and Window W1 should be reconstructed to original detail. In doing so, surviving elements of windows on houses Nos. 17, 19 etc. may be used as models. 2 – Proposed changes to the front fence are not permitted, however, the applicants may restore the fence to its original condition if required. In that regard, further research at Manly library may be of assistance. 3 – Proposed demolition of part of the original external walls of the house and their replacement with new masonry walls is not supported, and should be deleted from all plans and documents. 4 – Conversion of historical window marked W5 in floor plan is not permitted. Any changes to this window should be deleted from documents. Window W5 is to be retained and conserved in situ. 5 – In order to provide access to the "drying court", a door can be provided EITHER by way of conversion of Window W2 OR Window W6. Subsequently, landscaped space is to be moved so as to not allow any loss of landscaped area. 6 – Skylight S1 is not permitted and should be deleted from plans. 7 – All new or replaced materials should match the original in form, material, colour and pitch. Presumed original roofing is corrugated iron in natural colour, timber frames should be used for windows, etc. 8 – New timber cladding is to be laid in horizontal rows, and painted in light cream "off-white" colour to match the front of the house. 9 – Cladding on the dormer and bay window is also to be horizontally laid, of timber weatherboards, painted to match the wall cladding. 10 – Aluminium louvre sunshade on Windows W13, W15 and W17 is not permitted, and should be replaced with timber batten screening to match that on Window W16. 11 – Window W18 is not permitted and should be deleted from the plans and documents. <p><u>Planning Comments</u></p> <p>The following comments are made in relation to the above referral comments:</p> <ol style="list-style-type: none"> 1. A condition requiring window W1 to be reconstructed to original detail has been included in the recommendation. 2. The property adjacent at No.7 Carlton Street has been approved with a new fence. This was assessed by the previous heritage officer as acceptable. To ensure consistency of approach and appearance between dwellings this condition

Internal Referral Body	Comments
	<p>has not been incorporated.</p> <p>3. The walls to be demolished form part of the rear portion which would have formed the secondary utility space. The loss of these elements will not have unreasonable impacts on the heritage conservation area.</p> <p>4. The retention of window 5 (W5) is not supported. This window is not prominent from the streetscape and the proposal includes the re-construction of a doorway in this position using a style similar to the arched window head.</p> <p>5. See above.</p> <p>6. This condition is not supported. The skylight is located on the new first floor addition and will not be visible. The incorporation of this skylight is inconsequential to the heritage conservation area.</p> <p>7. A condition is recommended requiring the replacement of the northern facing roof on the street frontage in accordance with this recommendation. The windows are satisfactory subject to the condition of consent requiring restoration of window W1.</p> <p>8. This condition has not been adopted. The addition is designed to be subservient to the existing retained street frontage. It will not be visually prominent from the street and will not impact on the heritage conservation area.</p> <p>9. See above. This condition has not been included.</p> <p>10. These windows will not be visible from the streetscape and will not have any impact on the conservation area. This condition has not been included.</p> <p>11. This is a rear facing window on the first floor addition. This window will not impact the conservation area. As such this recommendation has not been included.</p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A316719_02 dated 7 January 2019).

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	7m	N/A	Yes
Floor Space Ratio	FSR: 0.6:1 (108.3sqm)	FSR: 0.84:1 (151.7sqm)	39.5%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1 (108.3sqm)
Proposed:	0.84:1 (151.7sqm)
Percentage variation to requirement:	39.5%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size OR Clause 4.3 – Height of Buildings OR Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

assessment.

The applicants written request argues, in part:

Pursuant to the objectives contained in Clause 1.3(g) of the Environmental Planning and Assessment Act 1979 (as amended); the proposed alterations and additions to the existing dwelling are innovative and of high architectural merit. The proposed works provide a site specific design response which respects the location of the property within a heritage conservation area, whilst ensuring that residential amenity in terms of privacy, solar access and view sharing is maintained to adjoining residential properties.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor Space Ratio development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – '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 proposed first floor addition is setback from the street and below the existing ridge level of the existing dwelling. The design will ensure that the additions are visually subservient to the existing building on the site. As a result, the proposal will not be of an unreasonable bulk or scale within the locality. The proposal is of a suitable design to maintain the existing streetscape

character of the locality.

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 first floor will be obscured from public view and as such will not result in an unreasonable building density or bulk as viewed from the street. Furthermore the modest design of the proposal will ensure it does not obscure any important landscape or townscape features.

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

Comment:

The proposal is designed to maintain the single storey street frontage and ensure that it does not impact on this character. The proposal is of a suitable design to ensure it maintains the character of the site and the nearby development.

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

Comment:

The proposal is suitably designed to maintain privacy, views and the shadow diagrams demonstrate that the proposal will not result in any unreasonable overshadowing. The proposed development will minimise adverse environmental impacts on the use and enjoyment of adjoining land and the public domain.

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

Comment:

Not applicable.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of Clause 4.4 Floor Space Ratio of the Manly LEP 2013.

Zone objectives

The underlying objectives of the R1 General Density Residential zone are:

To provide for the housing needs of the community.

Comment:

The proposal will continue the existing residential use of the site.

To provide for a variety of housing types and densities.

Comment

The proposal will maintain the existing housing type on this site.

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

Comment:

Not applicable.

Conclusion:

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

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

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

Planning Circular 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 Floor space ratio Development Standard is assumed by the Local Planning Panel.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 180.5sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	East: 6.5m	6.7m	3%	No
	West: 6.5m	6.6m (common wall)	1.5%	No
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.2m	N/A	Yes
4.1.4.1 Street Front Setbacks	6m	No change to existing front setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East Ground Floor 1.16m First Floor 1.9m - 2.2m West 2.2m	East Ground Floor Nil - 1.14m First Floor 1.23m - 2.65m West Nil (common wall)	0% - 100%	Yes
	Windows: 3m	1.2m-2.6m	N/A	No

4.1.4.4 Rear Setbacks	8m	Existing 7.91m Proposed Dwelling 7.91m Proposed Garden Store Nil	100% 1.1%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (99sqm)	Existing 22.7% (40.9sqm) Proposed 20.8% (37.6sqm)	62%	No
	Open space above ground 25% of total open space	Nil		
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (13.16m)	Existing Nil Proposed 74.5% (28sqm)	N/A	Yes
	1 native trees	1	N/A	Yes
4.1.5.3 Private Open Space	12sqm per dwelling	12.5sqm	N/A	Yes
4.1.10 Fencing	1.5m where 30% transparent above 1m	1.7m 30% transparent above 1m	13.3%	No
Schedule 3 Parking and Access	Dwelling 2 spaces	Nil - No proposed change	100%	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	No	Yes
3.1.1 Streetscape (Residential areas)	No	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	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
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.10 Fencing	No	Yes
4.4.2 Alterations and Additions	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.2 Pittwater Road Conservation Area	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

Description of non-compliance

The Manly DCP 2013 requires fences to be a maximum 1.5m where they are 30% transparent above 1m. The proposed fence is 1.7m and 30% transparent above 1m.

Merit consideration:

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

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

Comment:

The proposed fence will replace an existing higher mostly solid wall. Furthermore the proposed fence is consistent with the neighbouring properties. The proposal will not result in any unreasonable impacts on the street frontage.

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

Comment:

The proposed fence will be consistent with nearby properties and will compliment the streetscape of the locality.

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

Comment:

Soft landscape alternatives are not appropriate in this circumstance.

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

3.2 Heritage Considerations

Merit consideration:

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

Objective 1) To retain and conserve environmental heritage and cultural significance of Manly including:

- *significant fabric, setting, relics and view associated with heritage items and conservation areas;*
- *the foreshore, including its setting and associated views; and*
- *potential archaeological sites, places of Aboriginal significance and places of natural significance.*

Comment:

The development subject to the conditions of consent will restore the elements of the street frontage to original conditions. The proposal subject to the conditions of consent will enhance the views associated with the heritage conservation area and conserve the environmental heritage of Manly.

Objective 2) To ensure any modification to heritage items, potential heritage items or buildings within conservation areas is of an appropriate design that does not adversely impact on the significance of the item or the locality.

Comment:

The proposed design will enhance the significance of the street frontage while providing for a low impact rear addition that will not be visually prominent from the streetscape. The proposal is of an appropriate design, subject to conditions, to ensure it does not adversely impact on the significance of the locality.

Objective 3) To ensure that development in the vicinity of heritage items, potential heritage item and/ or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items.

Comment:

The proposal will not detract from the significance of any heritage items or the conservation area.

Objective 4) To provide infrastructure that is visually compatible with surrounding character and locality/visual context with particular regard to heritage buildings/areas and cultural icons.

Comment:

Not applicable.

Objective 5) To integrate heritage management and conservation into the planning development process including incentives for good heritage management, adaptive reuse, sustainability and innovative approaches to heritage conservation.

Comment:

The development has been assessed with regard to heritage management and conservation and suitable conditions have been recommended to ensure a suitable outcome.

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

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

Description of Non-compliance

The Manly DCP 2013 permits a maximum 6.5m wall height on this site. The proposal includes a wall height of 6.7m on the east and 6.6m on the western (common) wall requiring a variation of 1.5% - 3%.

Merit Consideration

The Manly DCP 2013 does not include objectives relevant to this control but refers to the objectives of Clause 4.3 Height of Buildings of the Manly LEP 2013 as having particular relevance. The proposal is assessed with regard to the relevant objectives as follows:

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

Comment:

The proposed non-compliance is set to the rear of the existing development and will not be visually prominent from the street. The proposed wall height will not impact on the desired streetscape character in the locality.

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

Comment

The proposal is designed to minimise the overall height of development and ensure it is not visually prominent from the street. The proposal will result in a reasonable bulk and scale for the locality.

(c) to minimise disruption to the following:

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

Comment

The proposal will not result in the disruption of views.

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

Comment

The submitted shadow diagrams demonstrate that the proposed development will not result in any unreasonable overshadowing of neighbouring properties.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental

protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment

Not applicable.

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

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

Description of non-compliance

The proposal is not compliant with the minimum required setback due to the ground and first floor and the outbuilding. The outbuilding is also non-compliant with the rear setback.

Merit consideration:

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

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

Comment:

The proposed additions are located behind the front portion of the existing building. This portion is constructed boundary to boundary. As a result the non-compliance will not be visually prominent from the street. The proposal will not impact on the existing or desired streetscape of the locality.

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 proposal is considered to ensure and enhance the local amenity for the following reasons:

- The proposed windows are suitably designed, setback and screened to ensure no unreasonable overlooking within the locality.
- The non-compliances do not result in any unreasonable overshadowing.
- The proposal will not result in any unreasonable impacts on views.
- The proposed additions are screened from the street and will not impact on the streetscape or

traffic conditions within the street.

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

Comment:

The proposed flexibility will not impact on the streetscape or the amenity of the adjoining properties. The proposed flexibility is satisfactory in this circumstance.

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 will enhance the landscaping on the 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 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 Manly DCP 2013 requires a minimum of 55% of the site area to be provided as total open space. The existing site provides 22.7% of the site area as total open space. The proposal will reduce this to 20.8% due to the garden store in the rear yard.

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 existing site is currently all hard paving. The proposal will provide 28sqm of landscaped area to the site. This will greatly enhance the landscaped features of 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:

The proposal will maximise soft landscaped areas on the site. Given the significant improvement in landscaped area on the site the minor reduction of total open space for the garden store is considered to be satisfactory. The proposal includes suitable tree plantings.

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

Comment:

The proposal will maintain suitable amenity within the site, streetscape and surrounding area.

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

Comment:

The provision of landscaped area will significantly reduce water infiltration on this site.

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

Comment:

The proposed landscaping will minimise the spread of weeds.

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

Comment:

The proposed landscaping will maximise wildlife habitat on the site.

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

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

The proposal will not result in any further non-compliance with this control and will not result in any contravention of the objectives of this control.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Manly Section 94 Development Contributions Plan

S94 Contributions are not applicable to this application.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2019/0019 for Alterations and additions to an existing semi-detached dwelling on land at Lot 2 DP 583113, 7 Carlton Street, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Plan/Site Analysis Plan - Issue B	8.01.19	Dorn
Level 00 Plan - Issue B	8.01.19	Dorn
Level 01 Plan - Issue B	8.01.19	Dorn
Roof Plan - Issue B	8.01.19	Dorn
Elevations North & East - Issue B	8.01.19	Dorn
Elevations South & West - Issue B	8.01.19	Dorn
Section - Issue B	8.01.19	Dorn
Elevations Garden Store - Issue A	13.03.19	Dorn

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:

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).

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

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

5. **Sydney Water "Tap In"**

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

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

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

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

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

6. **Amendments to plans**

The plans are to be amended in consultation with an appropriately qualified heritage consultant to include the following:

- o The northern facing roof on the street frontage is to be replaced with corrugated iron or steel in a natural colour
- o The window W1 is to be reconstructed to original detail. In doing so, surviving elements on 17 and 19 Carlton Street may be used as models.

Amended plans and details of the heritage consultant are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To conserve the heritage significance of the conservation area

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

7. **Stormwater Disposal**

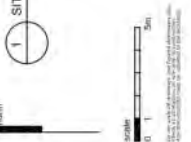
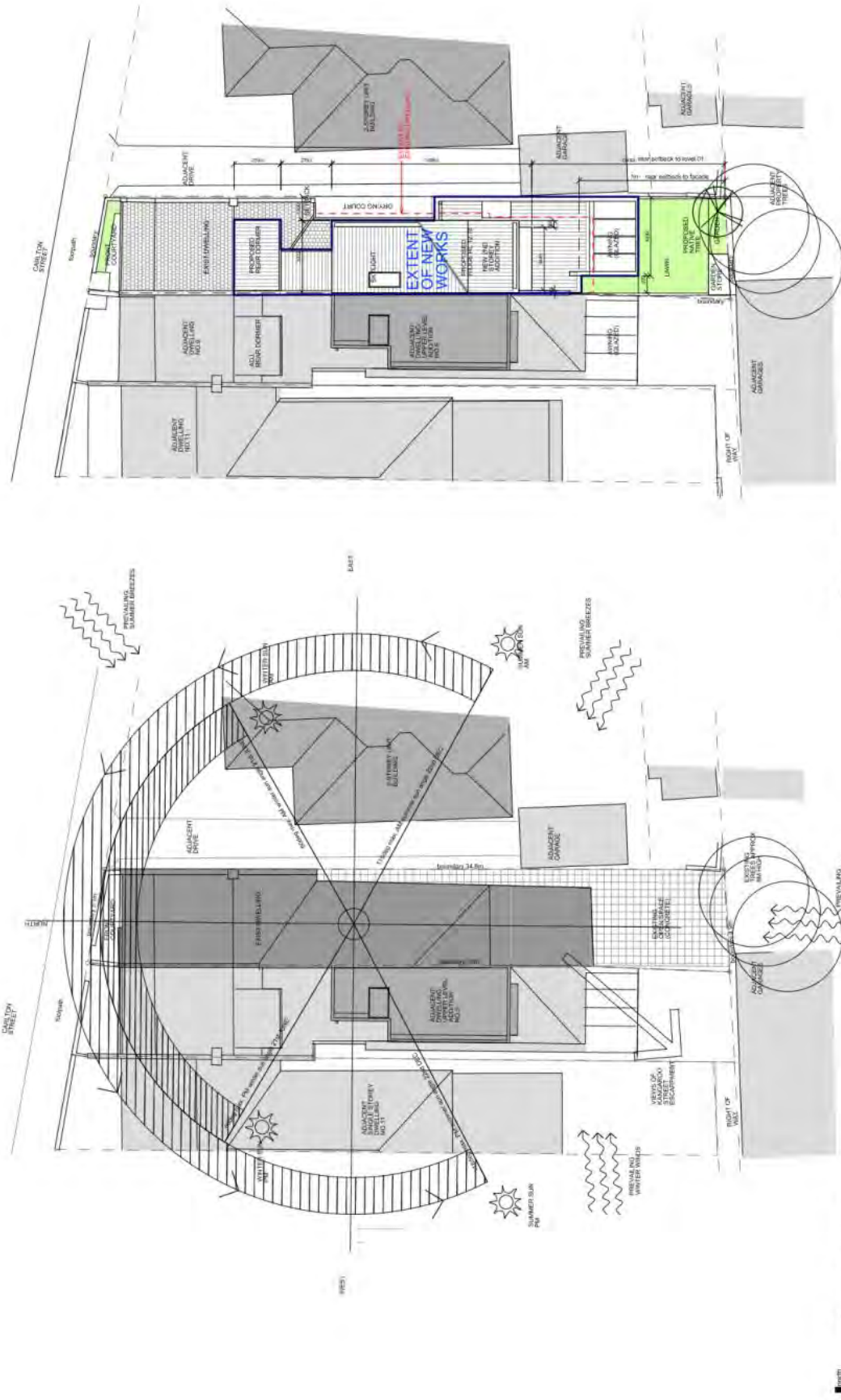
The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

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

Note: The following Standards and Codes applied at the time of determination:

- (a) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003 - Plumbing and drainage - Stormwater drainage
- (b) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003/Amdt 1 - 2006 - Plumbing and drainage - Stormwater drainage
- (c) National Plumbing and Drainage Code.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)



1 SITE ANALYSIS PLAN 1:200

2 SITE PLAN - PROPOSED 1:200

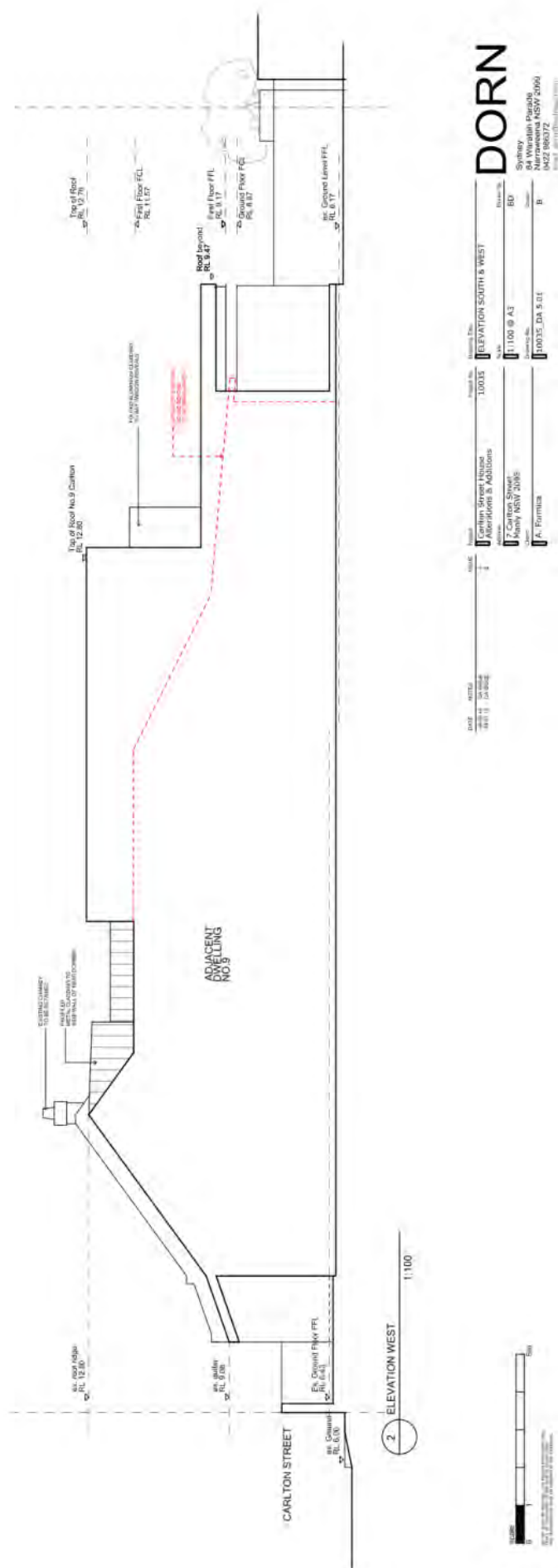
DORN
Sydney
84 Warrush Parade
Maroubra NSW 2099
0422 986372
Email: dorn@northernbeaches.com.au

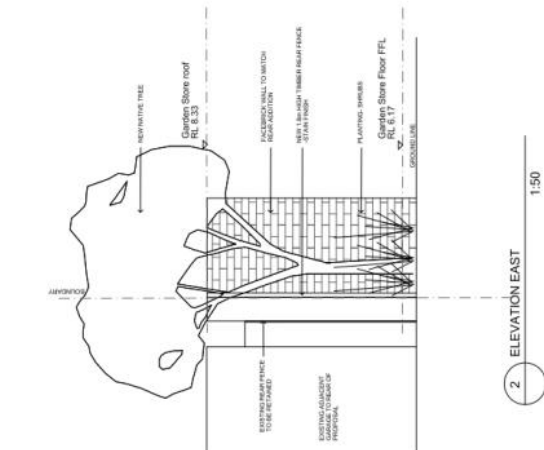
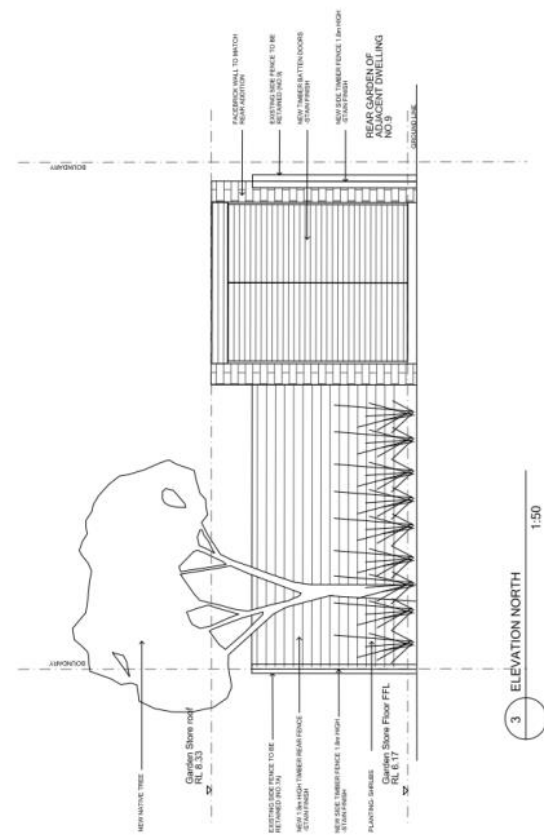
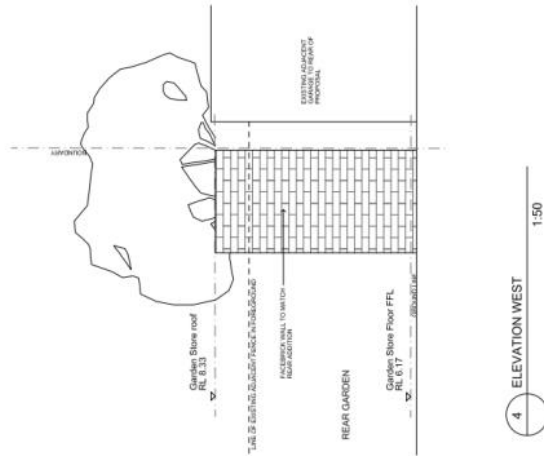
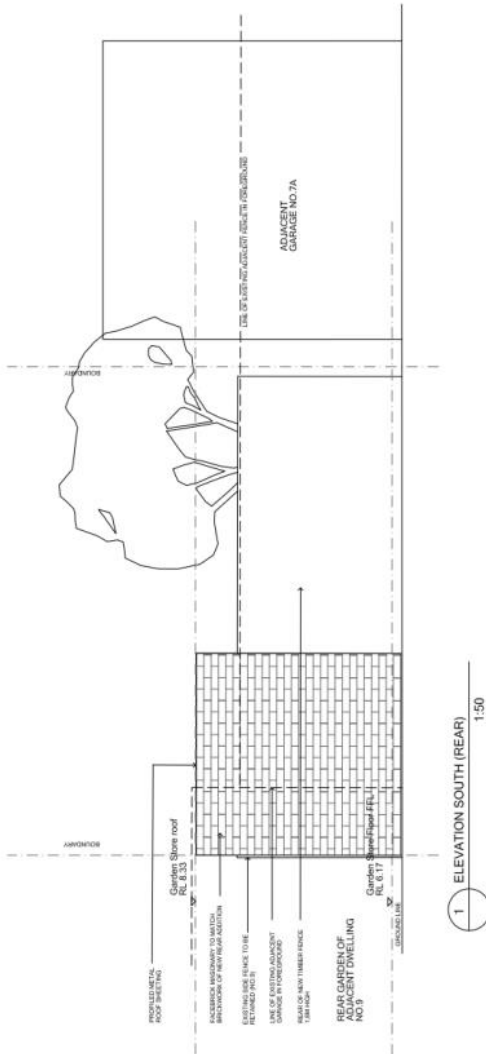
Project: Carrington Street House Alterations & Additions
Client: Carrington Street Harry NSW 2095
Designer: A. Fornica

Site Plan No: 10035
Site Plan No: 10035 DA 1.00
Site Plan No: 10035 DA 1.00

Scale: 1:200
Date: 05/06/2019

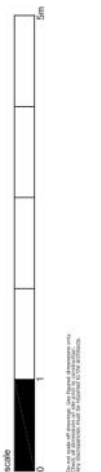






DORN
Sydney
84 Weirish Parade
Newport NSW 2059
0422 986972
dorn_dorn@hotmail.com

Project No. 10035
Project Name: Carlton Street House Alterations & Additions
Address: Carlton Street, Manly NSW 2095
Client: A. Formica
Drawing No. 1:10035_DA 5.02
Scale: 1:50 @ A3
Drawn By: BD
Issue: A



ITEM 3.3	DA2018/1769 - 1167 BARRENJOEY ROAD, PALM BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE AND SEAWALL
REPORTING OFFICER	MATTHEW EDMONDS
TRIM FILE REF	2019/297124
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2018/1769 for alterations and additions to a dwelling house and seawall at Lot 2 DP 830669, 1167 Barrenjoey Road, Palm Beach subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1769
Responsible Officer:	Kent Bull
Land to be developed (Address):	Lot 2 DP 830669, 1167 Barrenjoey Road PALM BEACH NSW 2108
Proposed Development:	Alterations and additions to a dwelling house and seawall
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Michael Gibson Mills
Applicant:	Justin Long Design
Application lodged:	31/10/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	09/11/2018 to 27/11/2018
Advertised:	Not Advertised
Submissions Received:	0
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,182,711.81

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 5.7 Development below mean high water mark
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality
Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan
Pittwater 21 Development Control Plan - C1.23 Eaves
Pittwater 21 Development Control Plan - D12.1 Character as viewed from a public place
Pittwater 21 Development Control Plan - D12.5 Front building line
Pittwater 21 Development Control Plan - D12.8 Building envelope
Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land
Pittwater 21 Development Control Plan - D12.13 Construction, Retaining walls, terracing and undercroft areas
Pittwater 21 Development Control Plan - D12.14 Scenic Protection Category One Areas
Pittwater 21 Development Control Plan - D15.18 Seawalls

SITE DESCRIPTION

Property Description:	Lot 2 DP 830669 , 1167 Barrenjoey Road PALM BEACH NSW 2108
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Barrenjoey Road. The site is known as 1167 Barrenjoey Road, Palm Beach and is legally referred to as Lot 2 DP 830669. The rear part of the site fronting Pittwater forms reclaimed Crown land and is subject to a license agreement (LIC 564640).</p> <p>The site is irregular in shape with a frontage of 18.285m along Barrenjoey Road and a depth of 26m to the Mean High Water Mark (MHWM). The site has a surveyed area of 404.6m².</p> <p>The site is located within the E4 Environmental Living zone and currently accommodates a three (3) storey clad dwelling with a grated car parking platform located on the front portion of the site facing Barrenjoey Road. Pedestrian access to the dwelling is gained via stairs and an inclinator from Barrenjoey Road.</p> <p>Land held under license below mean high water mark is zoned W1 Natural Waterways under the provisions of the Pittwater Local Environmental Plan 2014</p>

The site falls 18.21m (79%) from Barrenjoey Road to the MHWL.

The majority of native vegetation is located between the car parking platform and the dwelling house within the front of the site. A Eucalyptus canopy tree is located within this area. Numerous smaller trees varying in height are located within the northern and southern side setbacks. The rear part of the site fronting Pittwater that forms reclaimed Crown land consists of predominantly turfed areas and shrubs.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by low density residential dwellings within a modified landscaped and bushland setting.

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:

20 June 1994

Erection of a sea wall subject to Building Approval No. 495/94 granted by Council on 20 June 1994.

24 August 1998

Development Application No. 0022/98 for the construction of a dwelling house, parking platform and inclinator was determined by the granting of Development Consent No. 98/95 on 24 August 1998.

16 February 1999

Building Application No. P0074/98 for the erection of a new dwelling was approved by Council on 16 February 1999.

1 December 1999

Modification of Consent No. 98/95, dated 24 August 1998, for the relocation of inclinator landing and car stand platform granted consent on 1 December 1999.

17 September 2018

Development Application No. DA2018/0872 for the alterations and additions to an existing dwelling house and sea wall was withdrawn by the Applicant on 17 September 2018.

APPLICATION HISTORY

31 October 2019

Development Application No. DA2018/1769 for the alterations and additions to a dwelling house and seawall was lodged with Council on 31 October 2018.

7 February 2019

Applicant submitted amended plans (without request from Council) on 7 February 2019.

19 February 2019

The amended plans submitted were accepted by Council on 19 February 2019.

5 March 2019

Site inspection undertaken. No property owners present.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for alterations and additions to the existing dwelling and to a seawall. In particular, the works include:

Ground Floor

- Laundry/pantry room off existing kitchen;
- Excavation and construction of a retaining wall to lower portion of the escarpment;
- External side access stairway connecting the laundry/pantry room;
- External steps seaward and to the north of the existing dwelling; and
- Internal stairs replacing existing.

First Floor

- Roof over existing west facing deck;
- North facing windows to Bedroom 1 to be removed and wall to be filled;

- New store room;
- Widening of existing entry; and
- Internal stairs replacing existing.

Second Floor

- East facing additions comprising an ensuite and Bedroom 4;
- Decked area to the western and eastern elevation;
- Roof over new decked areas;
- External stairs connecting to the parking platform area towards the rear;
- New bin enclosure to parking platform area; and
- Internal stairs replacing existing.

Landscaping works

- Increase of sea wall and retaining wall height;
- Tree removal and replacement plantings; and
- Raising of lawned area to the rear of the dwelling

The application proposes (in part) works below the mean high water mark on land zoned W1 Natural Waterways under the provisions of the Pittwater Local Environmental Plan 2014

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	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has</p>

Section 4.15 Matters for Consideration'	Comments
	<p>therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Matters for Consideration'	Comments
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

- Does the existing use satisfy the definition of "existing use" under the Environmental planning and Assessment Act, 1979 (the 'Act')?

Section 106 of the Act defines an existing use as meaning:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered.

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment:

The applicant has provided evidence in the form of a Building Application (P0074/98) which reveals that the use of the land above and below the Mean High Water Mark commenced as a lawful purpose on 16 February 1999, prior to the coming into force of the Pittwater Local Environment Plan 2014 on 27 June 2014.

2. Was the use of the land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The application proposes works below the mean high water mark on land zoned W1 Natural Waterways under the provisions of the Pittwater Local Environmental Plan 2014. As identified by the land use table of this instrument, development for the purposes of a dwelling houses (and works ancillary to a dwelling house) is prohibited in this zone. However, the use of the land was lawfully approved by Council under Development Consent No. 98/95 on 24 August 1998, prior to the coming into force of Pittwater Local Environmental Plan 2014 on 27 June 2014 which had the effect of prohibiting the works below Mean High Water Mark.

3. Has the use of the building / work / land been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

The applicant has provided evidence in the form of Building Application No. P0074/98 which reveals that the use of the land was carried out on 16 February 1999, which is within one year from the date on which the provision having the effect of prohibiting the use commenced.

- **What is “the land on which the existing use was carried out” for the purposes of cl 42(2) (b) of the Environmental Planning and Assessment Regulation 2000 (“the Regulation”)?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGRA 26 stated (at 27) the rule to be applied as follows: “that if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose”.

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles which should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the court in this case will have general application in dealing with Development Applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

The proposed development exceeds the 8.5m height limit stated under the Pittwater Local Environment Plan 2014. The proposed maximum building height being 10.5m and has been subject to an assessment of the applicant's Clause 4.6 variation request. It should however be noted that Development Consent No. 98/95 approved a building height of 9.7m (following amendments from a proposed 10m height) for the three (3) level dwelling. Furthermore, development may exceed 8.5m, but not more than 10m, where the consent authority is satisfied that the portion of the building above the

maximum height is minor, that the objectives of this clause 4.3 are achieved, that the building footprint is situated on a slope that is in excess of 16.7 degrees and that the building has been sited and designed to take into account the slope of the land to minimise the need for cut and fill. Subject to compliance with the above and given the steep topography of the immediate neighboring properties the 10m height limit could potentially be permitted for future developments on surrounding sites. In addition, the neighbouring dwelling to the south has been built adjacent to the foreshore and the neighboring dwelling to the north is built in close proximity to the foreshore. In comparison to these neighboring properties, the proposed development is set further back when viewed from Pittwater Waterway. Therefore, the proposed development is considered as consistent with the bulk and scale with relation to what is permissible on surrounding sites and with the intention of the desired future character of the Palm Beach Locality.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment:

The existing building is to be altered to increase the building footprint for additional internal floor space and outdoor entertaining areas, with the majority of the existing building retained and reconfigured.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

The proposed development will not have an reasonable impact on adjoining land in terms of amenity, as outlined within this report. While there is additional shadowing as a result of the development, it should be noted that the neighbouring dwelling directly south will maintain existing solar access to areas including the outdoor balcony areas and the north facing window on the ground floor.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

The proposed development provides for an acceptable level of internal amenity within the building, as outlined within this report. The level of amenity as a result of the proposed development will increase based on the reconfiguration and additions of the internal floor area and outdoor entertaining areas.

Conclusion

The use has been approved under a previous EPI (Pittwater Local Environmental Plan 1993) and therefore, is a lawful use. Subsequently, the use can be retained under the current EPI (Pittwater Local Environmental Plan 2014).

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.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The Arborist's Report submitted with the application is noted.</p> <p>The report indicates that 5 trees are required to be removed (with one tree retained) to accommodate the proposed works. One tree is indicated to have Moderate landscape significance and the other four trees are assessed as being of low landscape significance.</p> <p>The Landscape plan submitted with the application indicate 10 trees to be replanted across the site, including 3 canopy species.</p> <p>The site is steep and impacts on the largest of the trees (Tree 1) result in unacceptable impacts on the stability of the tree. Replacement planting of an advance canopy tree is proposed.</p> <p>In view of the site and proposed replanting, no objections are raised subject to conditions as recommended.</p>
NECC (Bushland and Biodiversity)	<p>This application was assessed under Pittwater LEP Clause 7.6 Biodiversity, and Pittwater 21 DCP: Clauses B4.6 Wildlife Corridor and B4.17 Littoral Rainforest.</p> <p>The frontage of the property is very steep while the rear adjoins Pittwater so sediment and erosion control must be installed and maintained during construction works. Due to past disturbance only limited shrub and vine flora species characteristic of the Littoral Rainforest EEC are present on site and impact to the community as a result of the proposal is not considered to be significant.</p> <p>Minor excavation of the steep embankment and other tree removal is proposed.</p> <p>It is recommended that a requirement for weed management works, in</p>

Internal Referral Body	Comments
	<p>addition to the implementation of the proposed Landscape Plan, is included in order to mitigate the impacts of the development on the biodiversity values of the site, including wildlife corridors and native vegetation communities.</p>
NECC (Coast and Catchments)	<p>Estuarine Risk Management</p> <p>The property at 1167 Barrenjoey Road, Palm Beach has been identified as being affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. The Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>An Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty Ltd, dated 12 December 2017 has been submitted in support of the DA. The coastal engineer has determined that an Estuarine Planning Level (EPL) of RL 3.2m AHD is applicable for the site. The proposed development is able to satisfy the relevant requirements of the Estuarine Risk Management Policy and related Estuarine Hazard controls if all recommendations of the approved Estuarine Risk Management Report are implemented and subject to conditions.</p> <p>State Environmental Planning Policy (Coastal Management) 2018.</p> <p>12 Development on land within the coastal vulnerability area</p> <p><i>Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:</i></p> <ul style="list-style-type: none"> (a) <i>if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and</i> (b) <i>the proposed development:</i> <ul style="list-style-type: none"> (i) <i>is not likely to alter coastal processes to the detriment of the natural environment or other land, and</i> (ii) <i>is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and</i> (iii) <i>incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and</i> (c) <i>measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.</i> <p><u>Comment:</u></p>

Internal Referral Body	Comments
	<p>The subject land has not been included on the Coastal Vulnerability Area Map under <i>State Environmental Planning Policy (Coastal Management) 2018</i> (CM SEPP) and in regard to clause 15 of the CM SEPP the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land.</p> <p>As such, it is considered that the application complies with the requirements of <i>State Environmental Planning Policy (Coastal Management) 2018</i> as they relate to development on land identified as a coastal vulnerability area or land that may be affected by coastal hazards.</p>
NECC (Development Engineering)	The submitted Geotechnical Report suggest that an acceptable risk is achievable. No Development Engineering objection subject to conditions.
NECC (Riparian Lands and Creeks)	<p>This application does not trigger additional water quality controls and does not impact a creek riparian area.</p> <p>Sediment and erosion controls must be installed prior to any work on site and should not be removed until groundcover is re-established.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A332098, dated 24 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) 2007Ausgrid

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.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

13 Development on land within the coastal environment area

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

- (f) *Aboriginal cultural heritage, practices and places,*
- (g) *the use of the surf zone.*

Comment:

The proposed development is unlikely to cause an adverse impact to the integrity and resilience of the biophysical, hydrological (surface and ground water) and ecological environment, coastal environmental values and natural coastal process, the water quality of the marine estate, or to marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms. The proposed development does not restrict on any existing public open space or safe access along the foreshore for members of the public, including persons with a disability. The subject site has not been identified to contain any Aboriginal cultural heritage, practices of places, however, a recommended condition will be placed with the consent to ensure that if any Aboriginal engravings or relics are unearthed as part of the proposed development, works will cease immediately and the relevant authorities are notified. The proposed development is not likely to cause an adverse impact to the use of the surf zone.

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

Comment:

The application is also supported with a Estuarine Risk Management Report dated 11 December 2017 prepared by Horton Coastal Engineering Pty Ltd and no objections raised by Council's Natural Environment (Coastal) Team. Furthermore, as detailed above, the proposed development has been designed, sited and will be managed to avoid an adverse impact on the cultural and environmental aspects referred to in Subclause (1).

14 Development on land within the coastal use area

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

- that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposed development is not likely to cause an impact on the existing access along the foreshore for members of the public, including persons with a disability and will not cause any overshadowing, wind tunneling or loss of views from public places to foreshores. The visual amenity and scenic qualities of the coast, including the coastal headlands will be preserved. As identified above, the site has not been identified to contain any Aboriginal cultural heritage, practices or places. The proposed development will also not have an adverse impact on the cultural and built environment heritage. It is considered that the proposed development has satisfied the requirement to be designed, sited and will be managed to avoid an adverse impact on the above mentioned cultural and environmental aspects. Furthermore, the proposed development is considered to be of an acceptable bulk, scale and size that is generally compatible with the surrounding coastal and built environment, which consists of low-density residential dwellings and waterway structures facing the Pittwater Waterways.

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

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

Comment:

The application is supported by a Estuarine Risk Management Report dated 11 December 2017 prepared by Horton Coastal Engineering Pty Ltd and Council's Natural Environment (Coastal) Team that considered that the proposed development will not likely cause increased risk of coastal hazards on the subject site or other land.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	Site Area zoned E4: 8.5m	10.5m (2m breach)	23.52%	No
	Site Area zoned W1: 4m	10.5m (6.5m breach)	262.5%	No

Compliance Assessment

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

Detailed Assessment

4.3 Height of buildings

Clause 4.3 (2) stipulates that a building on any land is not to exceed the maximum height of building for land as shown within the Height of Buildings Map. The subject site is located on land within Area 'I' of the Height of Building Map which has a maximum height of 8.5m and land within Area 'B' of the Height of Building Map which has a maximum height of 4m.

The maximum height of the proposed new development has been measured at 10.5m from the ridge of the proposed roof of the second floor terrace to the existing ground level below.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement (Land zoned E4):	8.5m
Proposed:	10.5m
Percentage variation to requirement:	23.52%

Development standard:	Height of buildings
Requirement (Land zoned W1):	4m
Proposed:	10.5m
Percentage variation to requirement:	162.5%

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.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- Despite the variations proposed to the building height controls the overall bulk and scale of the dwelling as viewed from Pittwater will continue to appear as three storeys and sit comfortably both within the established built form when viewed from Pittwater. The design of the alterations and additions abuts the cliff face and responds to the steep topography of the site.
- The roof element of the second level deck will sit on an existing frame and will not give rise to any adverse impact to the scenic quality of the area when viewed from the water. The new deck roof at the ground floor level will also not give rise to any adverse visual impacts. Images of the existing decks are provided as figures 4 and 5 in this report.

- The height, bulk, scale of the dwelling is entirely consistent with the built form characteristics established by neighbouring dwellings and development generally within the sites visual catchment.
- Detailed site and design analysis has ensured that the additional height does not result in any adverse impacts on the amenity of the adjoining, adjacent or properties within the sites visual catchment in terms of solar access, visual bulk and privacy.
- The proposed works do not impede upon any established view lines from neighbouring properties or the street.
- Consistent with the conclusions reached by Senior Commissioner Roseth in the matter *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 I am of the opinion that the impacts arising from the building height to neighbouring dwellings are acceptable and that most observers would not find the height of the proposed development offensive, jarring or unsympathetic in a streetscape context nor the built form characteristics of development within the sites visual catchment. Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings.
- Having regard to the planning principal established by *Veloshin v Randwick City Council* [2007] NSWLEC 428 this is not a case where the difference between compliance and non-compliance is the difference between good and bad design.
- Having regard to *Four2Five Pty Ltd v Ashfield Council* (2015) NSW LEC 1009 and clause 4.6 (3) (a) of the PLEP 2014 I am of the opinion that compliance with the height of building standard contained within Clause 4.3 of MLEP 2014 is unreasonable and unnecessary in the circumstances of this application and the site given the relationship of the proposed height of the building to its neighbouring sites; the absence of environmental impacts associated with the view impact or sunlight access to neighbouring dwellings.
- The proposal is in the public interest as it meets the objectives of the zone and the height of building controls in the LEP. The proposed works do not significantly alter the existing built form and its view from Pittwater.

It is accepted that despite the variation of the building height controls that the overall bulk and scale of the dwelling as viewed from Pittwater will continue to appear as three (3) stories and generally within the established built form as viewed from the Pittwater Waterways. Consideration is also given the proposed development responds to the steep topography of the site. It is further accepted that the design of the roof elements associated with the second level deck and ground floor deck will not give rise to an unacceptable impact on the amenity of adjoining, adjacent or properties in terms of solar access, visual bulk and privacy.

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

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

Therefore, Council is satisfied that the applicant's written request has adequately addressed the

matters required to be demonstrated by cl 4.6(3).

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the E4 Environmental Living zone and the W1 Natural Waterways zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The subject site is on land that is steeply sloping and heavily vegetated towards the front of the site. The proposed development is inconsistent with the desired character for a maximum of two (2) stories for dwelling houses in the Palm Beach Locality and as a result does not maintain a building height that is below the tree canopy. It is however accepted that Council previously approved the existing three (3) level dwelling on this site. Furthermore, the additions proposed as they relate to height and scale, are generally consistent with the existing built form of the dwelling.

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

Comment:

The proposal involves the reconfiguration and articulation to the existing open style decks to the rear of the dwelling as well as entrance ways and additional floor area towards the front of the dwelling. Despite the steep topography, siting and design of the existing dwelling, the additions being predominantly below the height limit will ensure that the development remains compatible with the scale of surrounding and nearby development

c) to minimise any overshadowing of neighbouring properties,

Comment:

While the proposed development maintains a non-compliant building envelope, the location of the

works proposed to the dwelling, including compliance with the 2.5m setback from the property adjoining the south, adequately minimises overshadowing of neighbouring dwellings. This is shown by the compliance with the numerical controls under the P21 DCP as they relate to Solar Access.

d) to allow for the reasonable sharing of views,

Comment:

The spatial separation of the proposed development from the Pittwater Waterways in relation to adjoining neighbouring dwellings ensures that reasonable view corridors from neighboring properties. Furthermore, the location of proposed works at the lower portion of the escarpment ensures the maintenance of views from Barrenjoey Road.

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

Comment:

The proposed development does required the excavation of the lower portion of the escarpment for the ground floor laundry/pantry and for a second floor bedroom. The extent of excavation for the second floor bedroom is limited to supporting posts and it is noted that there is an existing concrete block retaining wall reaching approximately 3m in height behind the ground floor of the existing dwelling. It is therefore considered that the proposed development has been designed to respond sensitively to the natural topography and steep terrain of the escarpment.

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

Comment:

While the proposed development is located on the lower portion and base of the escarpment, the proposal consists of the planting of 6 trees between the dwelling and the road frontage to ensure that the visual impact of the development is subservient to a bushland setting. Furthermore, the proposal also consists of the planting of at least one (1) canopy locally native canopy tree as well as a number of native shrubs between the dwelling and seawall facing the waterways.

Zone objectives

The underlying objectives of the E4 Environmental Living zone are:

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

Comment:

As discussed previously in this assessment, the proposed development has been designed to provide for a proposal that responds sensitively to the relevant ecological, scientific or aesthetic values as they relate to the land. It is therefore considered that the proposal results in an acceptable low-impact residential development.

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

Comment:

The subject site having been identified as being on land mapped as Scenic Protection - Category 1 and Environmentally Sensitive Land, Area 1 of the Landscaped Area Map as well controls relating to the natural environment including land containing Littoral Rainforest and land adjacent to estuarine wetlands within the P21 DCP. Where the control requirements have not been compliant, the assessment has shown that the proposed development has satisfied the relevant outcomes to these controls. The proposal is therefore not considered to have an adverse effect on any relevant ecological, scientific or aesthetic values.

- *To provide for the continuance of a limited range of existing small-scale water-related business and leisure uses.*

Comment:

The proposal has demonstrated that relevant outcomes to controls that relate to the waterways have been achieved. Therefore, the development is not considered to inhibit the continuance of a limited range of existing small-scale water-related business and leisure uses.

- *To ensure that development, by way of its character, design, location and materials of construction, is integrated into the site and natural surroundings, complements and enhances the natural environment and has minimal visual impact.*

Comment:

As discussed earlier and following in this assessment, the proposed works have been incorporated to maintain consistency with contemporary nature of the existing dwelling. Furthermore, the visual impact of the development have been minimised through the inclusion of a number of locally native trees and shrub species to compliment and enhance the natural environment of the area.

- *To protect and enhance the natural landscape by conserving remnant bushland and rock outcrops and by encouraging the spread of an indigenous tree canopy.*

Comment:

The proposed development is considered to protect and enhance the natural landscape by not seeking the removal of any existing large and visible rock outcrops and through the planting of a number of locally native trees and shrub species throughout the site.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E4 Environmental Living zone.

The underlying objectives of the W1 Natural Waterways zone

- *To protect the ecological and scenic values of natural waterways.*

Comment:

It must be noted that the area of the land zoned W1 Natural Waterways was subject to land reclamation and sea wall associated works prior to the development consent no. 98/95 on 24

August 1998 being granted for works associated with the dwelling house which also encroaches on this area.

The proposed works that fall within the area zoned W1 is limited to works associated with the existing balconies, new steps, retaining walls, landscaping and works to the sea wall. It is considered that these works will continue to protect existing ecological and scenic values of the natural waterways.

- *To prevent development that would have an adverse effect on the natural values of waterways in this zone.*

Comment:

The proposed works, particularly the sea wall associated works have been assessed and deemed not have an unacceptable adverse effect on the natural values of the waterways.

- *To provide for sustainable fishing industries and recreational fishing.*

Comment:

The proposed development is not considered to restrict the existing provisions for sustainable finishing industries and recreational fishing in the Pittwater Waterways.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the W1 Natural Waterways zone.

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

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

Planning Circular 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 for which Council has an exemption for dwelling houses that can be determined by the Development Determination Panel.

5.7 Development below mean high water mark

The application proposes works below mean high water mark on land zoned W1 Natural Waterways under the provision of the Pittwater Local Environmental Plan 2014. As identified by the land use table of this instrument, development for the purposes of a dwelling house (and works ancillary to a dwelling house) is prohibited in this zone. It must be noted however that the use if the land was lawfully approved by Council under Development Consent No. 98/95 on 24 August 1998, prior to the coming into force of the Pittwater Local Environmental Plan 2014. The proposed works to the dwelling house that form part of this application do not extend further seaward towards the Pittwater Waterway than that which has already been approved in the above mentioned consent. With relation to the proposed

landscaping works, it should further be noted that condition were enforced in Development Consent No. 98/95 including screen planting for the sub-floor area of the ground floor deck as well as a landscape plan to be submitted prior to the commencement of the development approved. The location and erection of the existing sea wall was subject to Building Approval No. 495/94 granted by Council on 20 June 1994. The proposed works to raise the sea wall is not considered to adversely impact on surrounding properties based on the recommendations of the submitted Estuarine Risk Management Report dated 11 December 2017 prepared by Horton Coastal Engineering Pty Ltd and no objections were raised in the referral comments received by Council's Natural Environment (Coastal) Team.

7.1 Acid sulfate soils

The subject site is identified as: Acid Sulfate Soils Map - Class 5

7.8 Limited development on foreshore area

Based on the plans provided, a portion of the proposed additions including the roofing to the ground floor deck, new steps, retaining walls, increasing the height of the existing sea wall as well as landscaping works fall within the Foreshore Building Line (FBL). Subclause 7.7(2) permits only the following types of development within the FBL:

(2) *Development consent must not be granted for development on land in the foreshore area if*

- (a) *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area;*
- (b) *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access structures or other structures in the foreshore area;*

As the existing dwelling extends partly into the FBL and the type of development proposed falls into the above categories. The proposed roofing to the ground floor deck is an alteration to the existing building and will not result in the footprint of the building extending further into the foreshore area. The new steps, retaining walls, works to the sea wall and landscaping are associated with the developments listed within this subclause.

Based on the above, the development proposed as part of the application is permissible within the foreshore.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	10m	7.5m	25%	No
Rear building line	N/A - FBL applies	Works within FBL (See discussion under Clause 7.8 of the PLEP 2014)	N/A	Yes
Side building line	2.5m	2.56m	N/A	Yes
	1m	1.6m	N/A	Yes
Building	3.5m	Outside envelope (Northern)	49.29%	No

envelope	3.5m	Outside envelope (Southern)	62.12%	No
Landscaped area	60%	38.76% (156.85m ²)	35.4%	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	No	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.17 Littoral Rainforest - Endangered Ecological Community	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.20 Protection of Estuarine Water Quality	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.4 Stormwater Harvesting	Yes	Yes
B5.11 Stormwater Discharge into Waterways and Coastal Areas	Yes	Yes
B5.12 Stormwater Drainage Systems and Natural Watercourses	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	No	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	No	Yes
D12.14 Scenic Protection Category One Areas	No	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.18 Seawalls	No	Yes

Detailed Assessment

A4.12 Palm Beach Locality

The proposed development is inconsistent with the desired character for a maximum of two (2) stories for dwelling houses in the Palm Beach Locality and as a result does not maintain a building height that is below the tree canopy. It should be noted however, that Development Consent No. 98/95 granted by Council approved a three (3) level dwelling. The proposed works exceed the existing approved height is limited to the ridge of the roof to the existing second floor terrace. Despite this, the proposal does also include a number of locally native canopy trees and the external colours are consistent with the requirement to harmonise with the natural environment. Based on the above, it is considered that the proposal is generally consistent with the desired character of the Palm Beach Locality and therefore is supported on merit.

B8.6 Construction and Demolition - Traffic Management Plan

A condition requiring a Construction Traffic Management Plan (CTMP) is applied due to site parking, location and access route issues.

Subject to compliance with this condition, the proposed development is considered to satisfy the outcomes of this control.

C1.23 Eaves

No eaves are included for the additions proposed to the dwelling. The proposed development is of a contemporary character that is consistent with other developments in the locality. The submitted BASIX information also indicates that the appropriate level of solar access and shading would be achieved. Based on the above, the proposed development is considered to satisfy the outcomes of the control and the non-compliance is supported on merit.

D12.1 Character as viewed from a public place

The extent of the proposal that will be seen when viewed from Barrenjoey Road is limited to the new bin enclosure on the existing car parking platform. The bin enclosure is proposed to not exceed the existing height of the timber slatted balustrade and therefore will not result in an adverse impact on views from Barrenjoey Road. The schedule of external finishes indicates the use of natural timber finishes as well as dark and earthy tones. The proposed development is therefore considered to meet the requirements of this clause.

D12.5 Front building line

The proposed development is located within the front building setback, resulting in a technical noncompliance with the control that requires a setback of 10m. The application proposed the second floor open-style deck being 7.5m from the front boundary, resulting in a 25% variation to this control. It should be noted that the proposed Bedroom 4 addition to the dwelling house is also non-compliant being 8.5m from the front boundary. The proposal also includes a minor reconfiguration to the external entry access stairs and the addition of a bin storage area on the existing parking platform. While the application does seek the removal of one native canopy tree (Tree 1) within the front setback. The Landscape Plan submitted with application indicates 10 trees to be replanted across the site, including 3 canopy species. Of these 10 trees, 6 are to be planted within the front setback area. It is considered the the proposed planting scheme will enhance the desired and bushland character of the site. The steeply sloping topography, with the location of the dwelling at the lowest portion of the site results in the proposal having a minimal visual impact. While vehicle maneuvering in a forward direction is not provided, the constraints relating to topography result in compliance with this outcome being difficult to achieve. The formalised bin storage area will reduce the available parking area, however the proposal continues to maintain a minimum of 2 parking spaces on site and not create further pedestrian safety concerns. The proposed development is considered to maintain an equitable preservation of views, while also responding to the outcomes encouraging attracting frontages, preservation of residential amenity and developments that do not dominate the streetscape.

Based on the above, the proposed development located within the front setback is supported on merit and considered to satisfy the outcomes of the control in this particular instance.

D12.8 Building envelope

The proposed development is not within the prescribed building envelope and is technically non-compliant with the control. It should be noted, particularly when considering outcomes such that relate to building scale, density and height, that the majority of the building envelope breach is existing and approved under Development Consent No. 98/95 as discussed earlier in this report. While the dwelling is a three (3) storey development, the control does permit variations for a second storey where the existing dwelling is retained. As the proposal seeks the partial in-fill to the existing second floor deck with glazing, the variation to this particular portion of the development is applicable in this instance. At its maximum extent, the proposal will breach the building envelope on the northern elevation by 3.5m (49%). On the southern elevation, the proposal will breach the building envelope by 4.1m (62%). The length of the breach to the building envelope control is applicable for the majority of both the northern and southern elevations. It should be noted a variation within the control permits shading devices

extending outside the building envelope. As such, this variation is considered applicable for the roofing and partial in-fill to the existing second floor deck, as well as the partial in-fill of the first floor deck. The remaining portion of the proposed development that breaches the building envelope is generally limited to the minor additions to the second floor en-suite. The variations sought for the proposed development does not result in an unreasonable impact to neighbouring properties with regards to amenity, views and solar access.

Based on the above, the non-compliance's and variations to the building envelope control is supported on merit and considered to satisfy the outcomes of the control in this particular instance.

D12.10 Landscaped Area - Environmentally Sensitive Land

Required Landscaped Area: 60% (242.76m²)
Proposed Landscaped Area: 38.76% (156.85m²)
Revised Landscaped Area (with variations): 50.77% (205.42m²)

The proposed development is technically non-compliant with the control that requires 60% of the total site area to be dedicated for landscaping. The proposal seeks to vary this control by 35.4% reducing the overall landscaped area to 38.76% (156.85m²). The variations in this clause allow for a revised landscaped area calculation to include impervious areas of less than 1m in width, and up to 6% of the total site area if used for outdoor recreational purposes. Total pathways is 6% (24.29m²) and the variation for outdoor recreational areas is 6% (24.27m²). The revised landscaped area is 50.77% (205.42m²). While there remains a non-compliance, this is a generally a result of the proposed second floor deck that provides usable and private open space towards the front of the dwelling. It should also be noted that the proposal seeks the replacement of the timber decked area south of the dwelling for soft landscaping, and that the existing elevated parking platform is grated to maximise the infiltration of water and minimise run-off. It is further considered that the remaining non-compliance to landscaped area will not adversely impact the bulk and scale of the development or result in an unreasonably level of amenity and solar access being provided and maintained. As discussed previously in this report, the desired and bushland character of the site is enhanced with the conservation and natural vegetation and biodiversity through 10 trees being planted across the site, including 3 native canopy species.

Based on the above, the non-compliance to the landscaped area is supported on merit and considered to satisfy the outcomes of the control in this particular instance.

D12.13 Construction, Retaining walls, terracing and undercroft areas

The proposed development results in an undercroft area 1.7m in height beneath the ground floor deck. The submitted landscape plan does not indicate that adequate landscaping being provided to screen this area and therefore is non-compliant with the requirement of this control. In order to meet the requirements of this control and to achieve the desired future character of the locality, a condition is recommended for the landscape plan to be amended to include locally native planting along the western elevation of the ground floor deck at a sufficient height to screen this undercroft area.

Based on the above, the non-compliance is supported on merit and, subject to compliance with recommended conditions, considered to satisfy the outcomes of the control in this particular instance.

D12.14 Scenic Protection Category One Areas

The proposed development is technically non-compliant with the control that control that requires screen planting to be located between structures and boundaries facing waterways. As discussed previously in this report under D12.13 Construction, Retaining walls, terracing and undercroft areas, a condition has been recommended for the proposed Landscape Plan to be amended to include locally

native plantings of a height to sufficiently screen the undercroft area of the ground floor deck along the western elevation of the dwelling. In order to maintain privacy between the adjoining property directly south and to meet the controls relating to the retention of existing native vegetation outside the immediate area required to carry out the development, a condition has also been placed for the Landscape Plan to be amended to show the retention of existing native screen plantings adjacent to the southern boundary. The schedule of finishes submitted has been considered to be compliant with control requiring the use of dark and earthy tones that blend into the natural environment. Furthermore, the proposed Landscape Plan demonstrates the planting of at least one (1) locally native canopy tree as well as a number of native shrubs between the dwelling and seawall facing the waterways.

Based on the above, the non-compliance is supported on merit and, subject to compliance with recommended conditions, considered to satisfy the outcomes of the control in this particular instance.

D15.18 Seawalls

The proposed increase in height to the existing sea wall is technically non-compliant with the control for sea walls not being permitted. However, variations in this clause allow Council to consider the construction of seawalls where there is potential for erosion from coastal process and protection of property is necessary. While the 0.5m-0.9m increase in the sea wall height would not necessarily be required for the protection of habitable areas within the dwelling from coastal processes, consideration has been given that these risks to the property would be suitably mitigated subject to adherence with the conditions of consent. Furthermore, the site inspection undertaken and comments provided by the Applicant on behalf of the property owners indicated that water does at times splash over the existing sea wall. It is considered that proposed works to the seawall would not increase the risk of coastal hazards (physical processes) in relation to surrounding properties. The increase in height to the seawall is applicable for a length measured at 10.3m facing the Pittwater Waterway and maintains curvature of the existing shoreline. The additions are proposed as being constructed of sandstone, will not involve dredging and maintain a seawall height that is consistent with the adjoining neighboring property directly north, therefore being sympathetic to the natural character of the Pittwater Waterway. Relevant conditions have been recommended by Council's Natural Environment (Coastal) Team to minimise any adverse affects of estuarine process. The works associated with the sea wall will not encroach further into the intertidal zone or the existing sandy beach area to the front and therefore not considered to adversely impact upon matters relating to marine flora, fauna, water quality or existing water based activities in the locality.

Based on the above, the non-compliance is supported on merit, and subject to compliance with recommended conditions, considered to satisfy the relevant criteria and outcomes of this control.

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 inconsistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Pittwater Section 94 Development Contributions Plan

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1769 for Alterations and additions to a dwelling house and seawall on land at Lot 2 DP 830669, 1167 Barrenjoey Road, PALM BEACH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A04, Issue A (Proposed Ground Floor)	6 February 2019	Justin Long Design
A05, Issue A (Proposed First Floor Plan)	6 February 2019	Justin Long Design
A06, Issue A (Proposed Second Floor Plan)	6 February 2019	Justin Long Design
A07, Issue A (Proposed Roof & Concept Stormwater Drainage Plan)	6 February 2019	Justin Long Design
A08, Issue A (Proposed Western & Eastern Elevations)	6 February 2019	Justin Long Design
A09, Issue A (Proposed Northern Elevation)	6 February 2019	Justin Long Design
A10, Issue A (Proposed Southern Elevation)	6 February 2019	Justin Long Design
A11, Issue A (Proposed Longitudinal Section)	6 February 2019	Justin Long Design
A12, Issue A (Proposed Longitudinal Section)	6 February 2019	Justin Long Design
A13, Issue A (Proposed Site & Landscape Plan)	6 February 2019	Justin Long Design
A14, Issue A (Proposed Ground Floor Demolition & Excavation Plan)	6 February 2019	Justin Long Design
A15, Issue A (Proposed First Floor Demolition & Excavation Plan)	6 February 2019	Justin Long Design
A16, Issue A (Proposed Second Floor Demolition & Excavation Plan)	6 February 2019	Justin Long Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report, No. 2017-222	8 December	Crozier Geotechnical

	2017	
Estuarine Risk Management Report	11 December 2017	Horton Coastal Engineering Pty Ltd
BASIX Certificate, A332098	24 October 2018	Justin Long Design
Arboricultural Impact Assessment	26 October 2018	Footprint Green 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:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Northern Beaches Council Waste Management Plan	22 October 2018	Justin Long Design
A18, Issue A (Proposed Erosion & Sediment Control Plan)	6 February 2019	Justin Long Design

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.

4. **Amendment to Approved Plans**

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

- A13, Issue A (Proposed Site & Landscape Plan) shall be amended to include locally native plantings of a height to sufficiently screen the undercroft area of the ground floor level deck along the western elevation of the dwelling.
- A13, Issue A (Proposed Site & Landscape Plan) shall be amended to show the retention of existing native screen planting adjacent to the southern boundary in vicinity of the dwelling.

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

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

FEES / CHARGES / CONTRIBUTIONS

5. **Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Crozier Geotechnical Consultant (2017/222) dated December 2017 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

7. **Estuarine Hazard Design Requirements**

The following applies to all development:

All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes; they will not reduce public access to or diminish the amenity of adjoining public foreshore land.

Reason: To minimise potential risk associated with coastal hazards for development in the coastal zone.

8. **Estuarine Planning Level Requirements**

An Estuarine Planning Level (EPL) of RL 3.2m AHD has been determined by Horton Coastal Engineering Pty Ltd for the subject site and shall be applied to all development proposed below this level as follows:

- All structural elements below RL 3.2m AHD shall be of flood compatible materials;
- All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above RL 3.2m AHD or waterproofed to this level; and
- The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below RL 3.2m AHD.

Reason: To ensure aspects of the development likely to be affected by wave action and tidal inundation are built at the appropriate level.

9. **Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty Ltd, dated 11 December 2017 and these recommendations are to be incorporated into construction plans and engineering specifications.

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

Reason: To minimise potential risk associated with estuarine hazards for development in the coastal zone.

10. **Structural Engineering for Estuarine Risk**

Structural engineering design for the development shall be prepared, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for the design life of the new development (taken to be 100 years unless otherwise justified and accepted by Council) the raised seawall is able to withstand the wave impact forces and loadings identified in the approved Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty Ltd dated 11 December 2017.

Reason: To ensure structural engineering design is prepared by an appropriately qualified professional

11. **Engineers Certification of Plans**

The structural design for the raised seawall shall be prepared by and each plan/sheet signed by, a registered professional civil or structural engineer with chartered professional status (CP Eng) who has an appropriate level of professional indemnity insurance and shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure structural engineering design is prepared by an appropriately qualified professional

12. **Compliance with Standards**

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

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

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

13. **Sydney Water "Tap In"**

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

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

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

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

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

14. **Construction Traffic Management Plan**

Submission to Council's satisfaction of a Construction Traffic Management Plan (CTMP) prepared by a suitable qualified consultant, prior to the issue of the Construction Certificate.

The plan is to address and detail arrangements regarding:

- o Detail concerning delivery and removal of all materials;
- o Proposed traffic routes, noting that 3 tonne limits apply to some roads within the Northern Beaches Council Local Government Area;
- o Location and extent of on/off road site parking for construction workers during the construction period;
- o The details of any proposed on street parking changes/future work zone applications (subject to additional approvals); and
- o Proposed hours of operation.

The CTMP must be approved in writing by Council prior to the issue of any Construction Certificate.

Reason: To ensure pedestrian safety and to manage traffic as a result of the demolition/construction of the proposed development.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. Tree Protection

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

- i) all trees and vegetation within the site, nominated on the plans and as recommended in the Arboricultural Impact Assessment prepared by Footprint Green dated 26 October 2018, shall be protected during all construction stages, excluding exempt trees under the relevant planning instruments or legislation,
- ii) all other trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

B) Tree protection shall be undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4, and according to the Arboricultural Impact Assessment prepared by Footprint Green dated 26 October 2018,
- ii) any tree roots exposed during excavation with a diameter greater than 50mm within the TPZ must be assessed by an Arborist. Details including photographic evidence of works undertaken shall be submitted by an AQF Level 5 Arborist to the Certifying Authority,
- iii) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- iv) no tree roots greater than 50mm diameter are to be cut from protected trees unless authorized by the Project Arborist on site,
- v) all structures are to bridge tree roots greater than 50mm diameter unless directed by a AQF Level 5 Arborist on site,
- vi) should either or both iv) and v) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures provided. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority.

Reason: To ensure compliance with the requirement to retain and protect significant planting on development sites, and protect the existing amenity that trees and/or bushland vegetation provide.

16. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site (DACNED06)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

17. Protection of rock and sites of significance

- a) All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.
- b) Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

18. Construction Traffic Management Plan

A copy of the Construction Traffic Management Plan (CTMP) approved under Condition 14 of this consent is to be retained on site for the duration of the demolition and construction works.

Reason: To ensure pedestrian safety and to manage traffic as a result of the demolition/construction of the proposed development.

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

19. Condition of retained vegetation

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

- a) Compliance to Arborist recommendations for tree protection and excavation works.
- b) Extent of damage sustained by vegetation as a result of the construction works.
- c) Any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: To ensure compliance with the requirement to retain and protect significant planting on development sites, and protect the existing amenity that trees and/or bushland vegetation provide.

20. Stormwater Disposal

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

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

development.

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

Prior to issue of the Occupation Certificate, Form 3 of the Geotechnical Risk Management Policy is to be completed and submitted to the Principal Certifying Authority.

Reason: To ensure geotechnical risk is mitigated appropriately.

22. **Required Planting**

Trees shall be planted in accordance with the following schedule:

No. of Trees Required.	Species	Location	Minimum Pot Size
10	As indicated on Site and Landscape Plan Dwg No.A13 dated 24.10.18 prepared by Justin Long Design	As indicated on the Landscape Plan	25 litre, with the exception of Tree 8 on the landscape plan, which is to be planted at minimum pot size 75 litre

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

Reason: To maintain environmental amenity.

23. **Weed Removal and Management**

No weeds are to be imported on to the site.

All invasive and priority weeds on the site are to be removed and managed continuously, in accordance with the Biosecurity Act 2015.

Details demonstrating the removal and management of weeds are to be prepared by the project ecologist in writing and submitted to the Principal Certifying Authority prior to occupation certificate.

Reason: Weed management and biosecurity

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

24. **Landscape maintenance**

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

Reason: To maintain local environmental amenity.

25. **Control of Weeds**

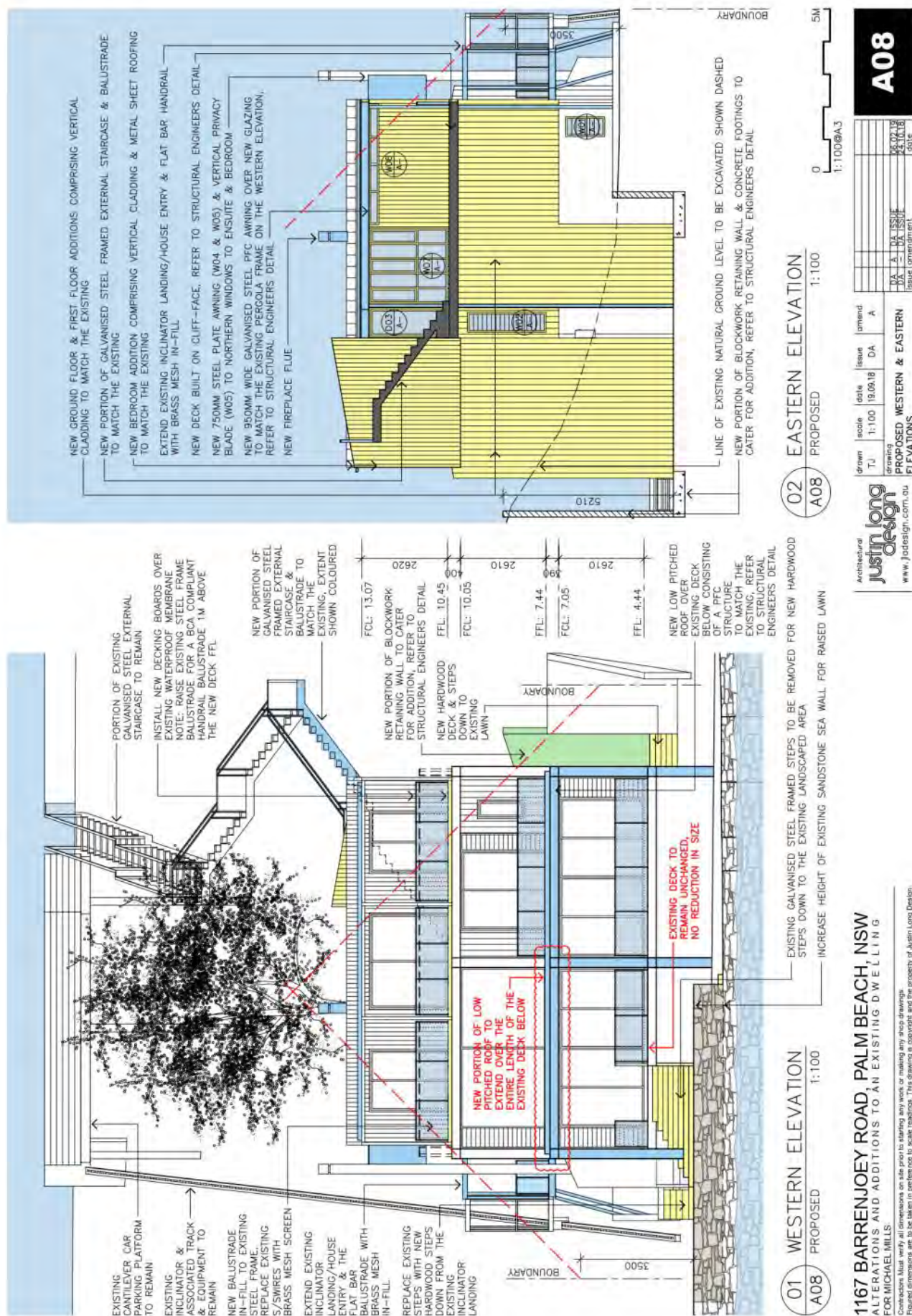
Prior to the completion of works, all priority weeds (as listed under the Biosecurity Act 2015) are to be removed/controlled within the subject site using an appropriately registered control method. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>). All environmental weeds are to be removed and controlled. Refer to Council website http://www.pittwater.nsw.gov.au/environment/noxious_weeds

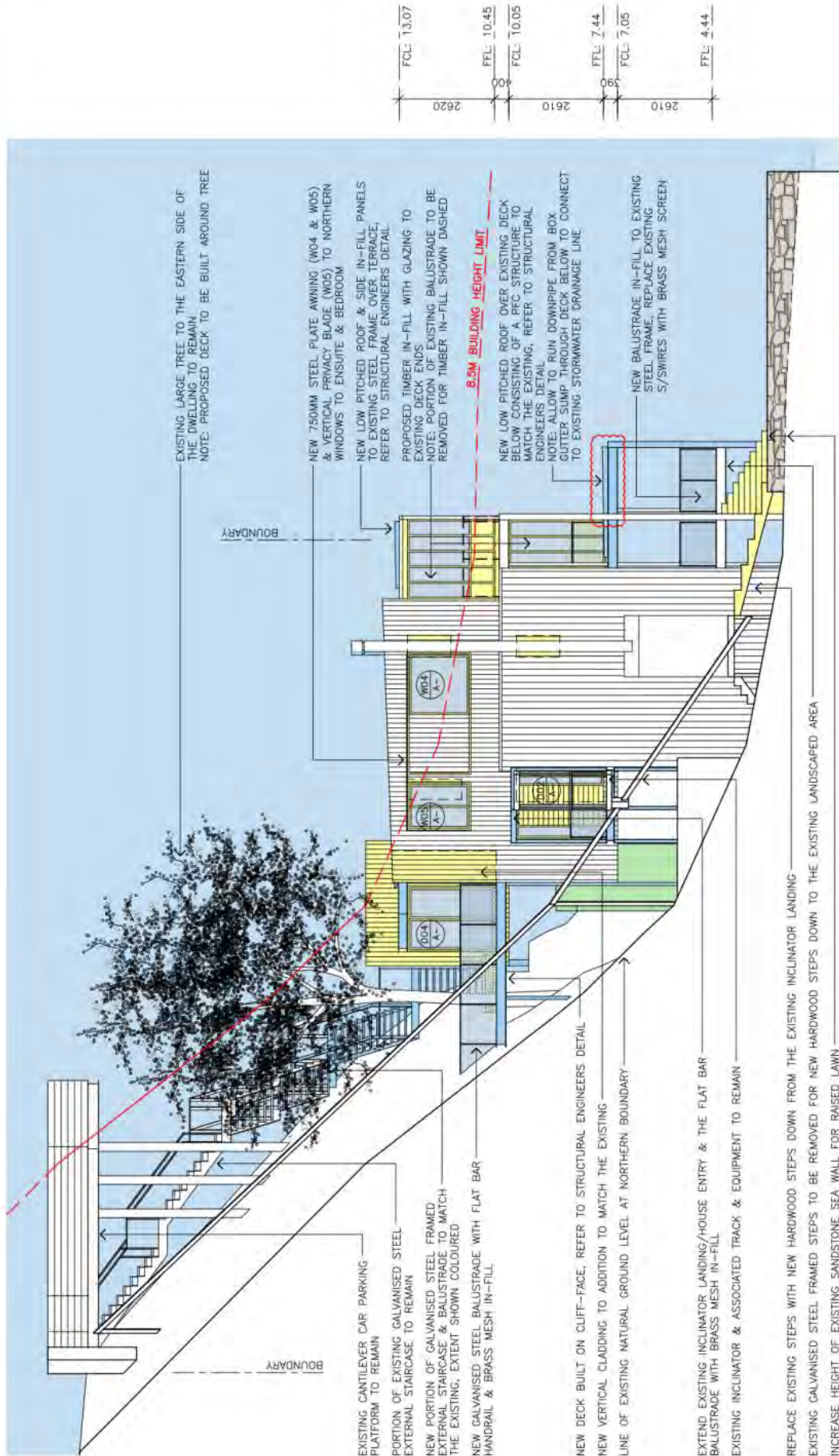
Reason: Weed management.

26. **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.





01 NORTHERN ELEVATION
A09 PROPOSED 1:100

1167 BARRENJOEY ROAD, PALM BEACH, NSW
ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING
FOR MICHAEL MILLS

Contractors must verify all dimensions on site prior to starting any work or making any site drawings.
Figured dimensions are to be taken in preference to scale readings. This drawing is copyright and the property of Justin Long Design.

Architectural
Justin Long
Design
www.jlodesign.com.au

drawn TJ
scale 1:100
date 19.06.18
issue DA
amend A
drawing PROPOSED NORTHERN ELEVATION

DA	A	DA ISSUE	DATE	DATE
DA	A	DA ISSUE	19.06.18	24.10.18
issue	amendment	issue	amendment	date

A09

0 5M
1:100BA3





ITEM 3.4	DA2018/2015 - 163 RIVERVIEW ROAD, AVALON BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE AND CONSTRUCTION OF A SWIMMING POOL
REPORTING OFFICER	STEVE FINDLAY
TRIM FILE REF	2019/298739
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2018/2015 for alterations and additions to a dwelling house and construction of a swimming pool at Lot 100 DP 1250837, 163 Riverview Road, Avalon Beach subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/2015
Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 100 DP 1250837, 163 Riverview Road AVALON BEACH NSW 2107
Proposed Development:	Alterations and Additions to a dwelling house and construction of a swimming pool
Zoning:	E4 Environmental Living W1 Natural Waterways
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Geoffrey Howard Lee Yin Lee
Applicant:	Turnbull Planning International Pty Ltd
Application lodged:	19/12/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	31/12/2018 to 29/01/2019
Advertised:	Not Advertised
Submissions Received:	1
Recommendation:	Approval
Estimated Cost of Works:	\$ 997,702.00

Executive Summary

This report is submitted to the Local Planning Panel for the consideration of Development Application DA2018/2015 for alterations and additions to the existing dwelling at 163 Riverview Road, Avalon Beach.

In the case of this application, the four levels of the existing dwelling house are to remain but reconfigured with internal changes, new access and balcony elements and a new roof form. The existing carport will be modernised to a garage. External works include an inclinator, a new swimming pool and associated decking and landscaping.

The site is known as 163 Riverview Road and has a total area of 1010m². The site is located on the eastern side of Riverview Road. The site experiences significant fall from the top of the site to the rear high water mark of Pittwater waterways.

The proposed alterations and additions are to be made to a "dwelling house" as defined under the Pittwater Local Environmental Plan (PLEP) 2014 and is permissible with consent in the E4 Environmental Living Zone. The proposed development has been assessed against the applicable planning controls for the site including the relevant provisions of Pittwater LEP 2014. The application does not comply with the building height development standard of 8.5m. Therefore, the applicant has lodged a request under Clause 4.6 for variation to the development standard.

In the circumstances of the very steep site conditions, the breach is largely unavoidable due to the slope of the land. Therefore, the variation to the development standard of 8.5m, while continuing to allow for a consistent architectural style throughout the entire building, is not considered unreasonable and essentially the encroachment does not result in any unreasonable impacts to any surrounding properties.

The application has also been assessed against the planning controls of the Pittwater 21 Development Control Plan, and whilst there are some minor variations to the built form as a result of the proposal, they are found to be generally consistent with the relevant requirements. In this regard, the built form will integrate into the landscape and continue to sit comfortably with adjoining and surrounding residential dwelling houses.

The proposed development was notified for a period of 14 days. During this period, one (1) submission was received, which has been addressed in detail in the notification section of this report.

The assessment report concludes that the proposed design is a visually modernised improvement of the existing dwelling house, with an improved integration with the landform and landscape and provides continued consistency with surrounding developments. This report recommends that consent be granted to this application in accordance with recommended conditions.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone E4 Environmental Living
Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 5.7 Development below mean high water mark
Pittwater Local Environmental Plan 2014 - 5.9 Preservation of trees or vegetation
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - A4.1 Avalon Beach Locality
Pittwater 21 Development Control Plan - B3.1 Landslip Hazard
Pittwater 21 Development Control Plan - B5.10 Stormwater Discharge into Public Drainage System
Pittwater 21 Development Control Plan - B5.11 Stormwater Discharge into Waterways and Coastal Areas
Pittwater 21 Development Control Plan - B5.12 Stormwater Drainage Systems and Natural Watercourses
Pittwater 21 Development Control Plan - B5.13 Development on Waterfront Land
Pittwater 21 Development Control Plan - C1.1 Landscaping
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.6 Acoustic Privacy
Pittwater 21 Development Control Plan - C1.19 Incline Passenger Lifts and Stairways
Pittwater 21 Development Control Plan - C1.25 Plant, Equipment Boxes and Lift Over-Run
Pittwater 21 Development Control Plan - D1.1 Character as viewed from a public place
Pittwater 21 Development Control Plan - D1.8 Front building line
Pittwater 21 Development Control Plan - D1.9 Side and rear building line
Pittwater 21 Development Control Plan - D1.11 Building envelope
Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land
Pittwater 21 Development Control Plan - D1.17 Construction, Retaining walls, terracing and undercroft areas

SITE DESCRIPTION

Property Description:	Lot 100 DP 1250837 , 163 Riverview Road AVALON BEACH NSW 2107
Detailed Site Description:	<p>The subject site is a single residential allotment located on the eastern side of Riverview Road, Avalon Beach.</p> <p>The property is located within land zoned for E4 Environmental Living pursuant to the Pittwater Local Environmental Plan 2014. The site is also located within the Coastal Zone and is subject to estuarine and geotechnical hazards.</p> <p>The site is regular in shape and has a total area of 1010m². The property has a street frontage of 14.885m and depths of 62.66m and 59.13m respectively, measured from the front boundary to the Mean High Water Mark (M.H.W.M). The site fronts onto the Pittwater Waterway. At present, the site</p>

accommodates a detached double carport on the front boundary, a four (4) storey dwelling house, and a detached jetty/pontoon structures on the waterway.

The site has numerous trees throughout that were established prior to the construction of the dwelling house, or have been planted and established since its construction.

Surrounding developments consist of other similar detached dwelling houses, of varying ages, within a landscaped and bushland setting.

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant development applications:

- Development application N0251/98 for additions to the dwelling house was approved by Council on the 08/12/1998.
- Application JC2/0079/98 for the extension to the existing jetty of 5 metres was on approved on the 16/06/1998.

A Pre-lodgement Meeting PLM2018/0210

A prelodgement meeting was held on 25 September 2018 between Council staff, the owner/applicant and Town Planning consultant to discuss the alterations and additions to the existing dwelling house, the construction of a swimming pool and inclinator, and associated landscaping.

It was concluded that the proposal could be supported if the issues in relation to landscaping and tree removal were addressed appropriately. It was advised that any future application must address any variation to the Building Height standard pursuant to Clause 4.6 of the Pittwater LEP 2014 for the

variation to Part 4.3 Height of Buildings of the Pittwater LEP 2014.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for alterations and additions to the existing dwelling, including the construction of an inclinor and swimming pool.

Specifically, the application seeks consent for:

- Demolition of the existing roof and construction of a new "butterfly" roof;
- New external balconies;
- Installation of two internal lifts and an external inclinor;
- Internal reconfiguration;
- Swimming pool and associated decking; and
- Concrete slab for improved external access from the driveway, external stairs and associated landscaping.

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	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p>Clauses 54 and 109 of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p>Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p>Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading</p>

Section 4.15 Matters for Consideration'	Comments
	<p>of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

Name:	Address:
Mr Nik Samodol	165 Riverview Road AVALON BEACH NSW 2107

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

- Privacy
- Inclinators
- Noise

The matters raised within the submissions are addressed as follows:

- **Concern was raised that the additional balcony areas and enlarged terraces will create additional overlooking and privacy impacts into the northern neighbour property.**

Comment:

In summary, the proposal has provided design solutions to minimise privacy impacts on the adjoining property.

This includes removal of windows along the northern elevation, privacy screens, and sunscreens. However, there could be additional overlooking and privacy impacts to the northern neighbouring site from the additional balcony and terrace areas. Areas which have been identified as creating overlooking have been appropriately addressed by conditions which require the installation of privacy screens to certain terraces and balconies on Level 0 and Level 2/3.

It is therefore considered that this issue does not warrant refusal or further amendments to the application.

- **Concern was raised that the proposed inclinator landing adjoining the balcony on Level 0 will have privacy impacts to the northern neighbouring property.**

Comment:

There are concerns that the proposal would result in unreasonable privacy impacts to the northern neighbouring site No.165 Riverview Road. It is recognised that the inclinator is closer to the northern side setback, and there could be additional privacy and overlooking issues due to the line of travel proposed by the inclinator.

Conditions are to be imposed to ensure that the inclinator will contain a non-transparent (solid) screen on the northern elevation of the carriage, and a privacy screen adjacent to the landing area on the northern elevation of the Level 0 terrace area to mitigate further privacy impacts from the inclinator.

It is considered that this issue does not warrant refusal or further amendments to the application.

- **Concern is raised that the pool pump and the inclinator will create additional acoustic**

impacts for the Northern neighbouring property.

Comment:

The development is not expected to produce an unreasonable noise level above the level of normal residential use that is produced on all other similar sites that include inclinators.

The noise from the inclinator has been assessed by Council's Environmental Health (Industrial) officers, and a condition regarding the level of noise generated by the inclinator has been imposed. The condition requires that the noise from the mechanical motor for the inclinator is not to exceed 5dB (A) over the ambient background noise level when measured at the nearest property boundary. This is to ensure reasonable levels of acoustic amenity is maintained.

The swimming pool pump is also conditioned to be located away from the northern side boundary, and enclosed in a sound proof enclosure.

Therefore, the proposal is not likely to result in unreasonable noise issues. However, if noise levels are created that intrude on the amenity of the neighbours, Council's Environmental Compliance Business Unit can be contacted, as the Protection of the Environment Operations Act 1997 enables Council to take action.

It is considered that this issue does not warrant refusal or further amendments to the application.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	There are no objections or conditions to be imposed that relate to the property being within the mapped area for Class 5 Acid Sulfate Soil.
Environmental Health (Industrial)	There is no objection to the proposed development, specifically the lift and inclinator, subject to conditions.
Landscape Officer	<p>The proposal, in terms of landscape outcome, is acceptable subject to the protection of existing trees and vegetation, and completion of landscaping.</p> <p>Council's Landscape section has assessed the proposal against the following Pittwater 21 DCP 2014 Controls:</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees or Bushland Vegetation • C1.1 Landscaping
NECC (Bushland and Biodiversity)	Revised plans were provided on the 25/03/2019 (Landscape Plan L-01 Rev I, prepared by Space Landscape Designs dated 30/04/2018, Architectural Plans Sheets A101 through to A114, Review 3 prepared by Blue Sky dated 21/03/2019). The plans show retention of T16 and the existing pedestrian pathway adjacent T16, and removal of T1, T7, T8 and T11. The applicant proposes to replace T7 with a <i>Ceratopetalum Gummiferum</i> , however this is not identified on the revised Landscape Plan.

Internal Referral Body	Comments
	<p>The retention of T16 and the existing pathway is considered to meet the requirement of <i>designed and sited to avoid and minimise impact to native vegetation (including significant canopy trees)</i>.</p> <p>The revised Landscape Plan has not been amended to include replacement planting for the trees proposed for removal and 80% species from the Pittwater Spotted Gum EEC, as per Biodiversity's initial assessment.</p> <p>A condition will be imposed as follows:</p> <p>A revised Landscape Plan is to be provided prior to CC that shows:</p> <ul style="list-style-type: none"> • A minimum of 4 replacement canopy trees (minimum mature height of 8.5m) of species from the Pittwater Spotted Gum EEC; • Plantings (including understorey shrubs and grasses) that include a minimum 80% species from the Pittwater Spotted Gum EEC.
NECC (Coast and Catchments)	<p>Estuarine Risk Management</p> <p>The property at 163 Riverview Road, Avalon Beach has been identified as being affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. The Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>Based upon the survey lodged in support of the DA, the foreshore edge treatment type for the subject site appears to be a vertical seawall with a variable crest height around RL 2.0m AHD. As such, in accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 2.72m AHD has been adopted by Council for this property.</p> <p>New development the subject of this DA is shown as occurring above a minimum level of RL 4.5m AHD (inclinator landing) i.e. above the base EPL. The proposed development is therefore able to satisfy the relevant requirements of the Estuarine Risk Management Policy and associated B3.7 Estuarine Hazard controls subject to conditions.</p> <p>State Environmental Planning Policy (Coastal Management) 2018 12 Development on land within the coastal vulnerability area</p> <p><i>Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:</i></p>

Internal Referral Body	Comments
	<p>(a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and</p> <p>(b) the proposed development:</p> <p>(i) is not likely to alter coastal processes to the detriment of the natural environment or other land, and</p> <p>(ii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and</p> <p>(iii) incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and</p> <p>(c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.</p> <p><u>Comment:</u> The subject land has not been included on the Coastal Vulnerability Area Map under <i>State Environmental Planning Policy (Coastal Management) 2018</i> (CM SEPP) and in regard to clause 15 of the CM SEPP the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land.</p> <p>As such, it is considered that the application complies with the requirements of <i>State Environmental Planning Policy (Coastal Management) 2018</i> as they relate to development on land identified as a coastal vulnerability area or land that may be affected by coastal hazards.</p>
NECC (Development Engineering)	The site is located in Geotechnical Hazard H1 Area, an "Acceptable Risk Management" level is achievable in accordance with the Geotechnical Report provided by White Geotechnical Group. The existing vehicular crossing is satisfactory. There is no Development Engineering objection subject to conditions.
NECC (Riparian Lands and Creeks)	<p>This application is recommended for approval with conditions.</p> <p>There is some disagreement in the application about work required on the stormwater discharge point to Pittwater.</p> <p>The SEE says: "the current stormwater collection system and dispersal into Pittwater will be maintained as part of the development."</p> <p>If this is so, the condition relating to the stormwater discharge point into Pittwater will not apply.</p> <p>The stormwater plan provides detail relating to a "SN150 pipe to penetrate seawall and discharge directly into Pittwater Waterway" (DR-001 provided by Stellen Consulting with detail on DR-</p>

Internal Referral Body	Comments
	<p>004). These drawings suggest that this will be new work. Council no longer accepts stormwater disposal via pipes that penetrate a seawall. This does not meet the requirements of Pittwater 21 DCP B5.11 Stormwater Discharge into Waterways and Coastal Areas - the discharge system will minimise the visual/environmental impact of any drainage discharge structure along the foreshore.</p> <p>It also doesn't meet the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Under Part 2, Division 4: Coastal Use Area 14) (1) Development must not be granted to development on land that is within the coastal use area unless the consent authority: (a) has considered whether the proposed development is likely to cause an adverse impact on the following: (iii) the visual amenity and scenic qualities of the coast.</p> <p>Typically a keyhole design is required where the outlet is recessed into the seawall with rip rap below the outlet to prevent scour. Nothing should protrude beyond the sea wall.</p> <p>The design incorporates a trash screen, which is acceptable.</p> <p>Sediment and erosion controls must be installed prior to any work on site and maintained until work is complete and groundcover has been re-established.</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>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.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</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. A334532 and 07 December 2018). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. A334532 and 07 December 2018).

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

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

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.

SEPP (Coastal Management) 2018

The subject site is identified as being located within the Coastal Use Area under the provisions of SEPP (Coastal Management) 2018. Upon review of the application, Council can be satisfied of the matters prescribed by clauses 13, 14 and 15 of this policy.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	15.1m	77%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
5.9 Preservation of trees or vegetation	Yes
5.9AA Trees or vegetation not prescribed by development control plan	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone E4 Environmental Living

The development proposed is found to be consistent with the following Outcomes of the E4 Environmental Living zone:

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.
- To provide for residential development of a low density and scale integrated with the landform and landscape.

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

The proposed development is found to have a acceptable impact on significant vegetation on the site, as detailed in the Landscape Officer and Biodiversity comments elsewhere in this report.

The documentation accompanying the proposed structure contains sufficient information for Council to be satisfied that the development will integrate with the landform and landscape and be consistent with surrounding developments.

4.3 Height of buildings

The dwelling has a maximum height of 15.1m, measured from interpolated natural ground levels, which exceeds the maximum 8.5m building height standard under PLEP 2014.

However, PLEP 2014 cl. 4.3 Height of buildings subclause (2D) provides that development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if:

- (a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and*
- (b) the objectives of this clause are achieved, and*
- (c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and*
- (d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.*

Thus, provided all of the requirements of clause 4.3(2D) are satisfied—in that regard, see below—the development may exceed a height of 8.5m, but not be more than 10.0m.

Thus, as the majority of the news works are above the 8.5m building height and the 10m building height, not all of the requirements of clause 4.3(2D) are satisfied. Therefore, the relevantly applicable maximum height development standard is 8.5m, subject to the application and operation of clause 4.6 of PLEP.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	15.1m
Percentage variation to requirement:	77%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 - Height of Buildings, has taken into consideration the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

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

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

Comment:

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

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

cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

*"We respectfully submit that the written request justifies the contravention of the height of build
(a) compliance with the development standard is unreasonable or unnecessary in the circumstances
(b) there are sufficient environmental planning grounds to justify contravening the development standard"*

Further, the written request shows that the proposed development will be in the public interest

Accordingly, we respectfully submit that the written request is well founded as the variation sought

Therefore applicants written request argues, in part:

- The proposed breach relates to the steep topography of the site;

- The proposed breach does not result in any unreasonable overshadowing of adjoining properties;
- The proposed breach does not result in any view loss impacts from the public domain;
- The proposed breach does not result in any loss of privacy for neighbouring properties;
- The proposed breach does not result in any adverse visual impact given the overall improved articulated nature of the dwelling, and due to the dense vegetation surrounding the site;
- The proposed breach does not detract from compliance with the E4 Environmental Zone objectives.

In the circumstances of the very steep site conditions, variation with the development standard of 8.5m while continuing to allow for a consistent architectural style throughout the entire building, is not considered unreasonable.

It is agreed that the breach is largely unavoidable due to the considerable slope of the land and essentially the encroachment does not result in any unreasonable impacts to any surrounding properties.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

character of the locality,

Comment:

The development is for the alterations and additions to the existing four (4) storey dwelling house. The proposal reflects the established built form character of the immediate Riverview Road area where multi-level, variably stepped houses are prevalent, due to the steep topography of the land and difficulty with pedestrian and vehicular access.

In this case, the four levels are to remain but reconfigured with internal changes, new access and balcony elements and a new roof form. It is the new roof form and the balcony additions that contributes to the noncompliance.

Although the design of the alterations is more contemporary and architecturally unique when compared to the more traditional style of surrounding development, the residential nature of the development and the non-compliance, is considered to be consistent with the objectives of the zone and the urban context of the local area.

The development satisfies this objective.

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

Comment:

The development is located on the downward slope of the Riverview Road escarpment which is characterised by undulating topography to the Pittwater water high water mark. This results in variable built forms along the road, such that there is an eclectic mix of height and scale in which to be compatible with.

Notwithstanding, the overall height of the development is below the existing RL38.45 at RL37.09 (reduced by 1.36m as shown in Figure 1 below) due to the change in the roof design, and continues to be representative of a four (4) storey development when viewed from properties to the north and west and a two (2) storey development when viewed from the upslope of Riverview Road.

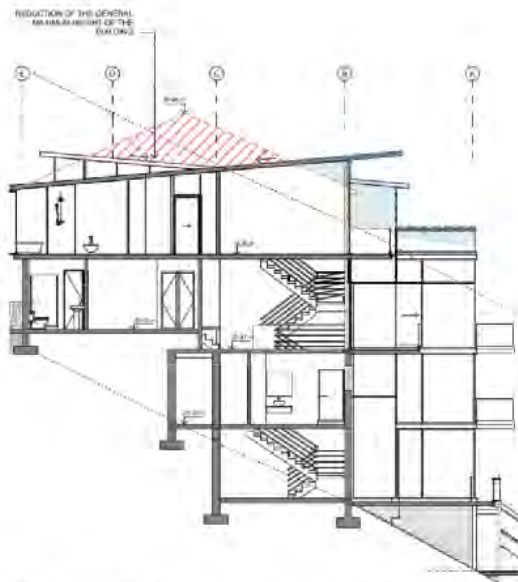


Figure 1: Existing and proposed roof height

The non-compliance is located at the western edge of the roofline and of the balcony of Level 4 and the additional balconies of Level 2/3. It is noted that a reduction to the height would not achieve compliance and will not reduce the scale of the building to any significant extent such that it would appear as smaller than the existing.

Because of the topographical nature of the site and the local area, the resulting variety of built forms along Riverview Road and the overall compliance of the development to the standard, the noncompliance is considered to be relatively minor and does not unreasonably conflict with the height and scale of surrounding and nearby development. In this context, the proposed height is considered to be compatible.

The development satisfies this objective.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The development application includes shadow diagrams which are certified by the architect (see Plan No. A114 dated 21 March 2019 as prepared by Blue Sky Designs). The diagrams indicate that the development will cast shadow over the neighbouring property to the south (No. 165 Riverview Road) between 9.00am and 12.30pm on 21 June.

However, it should be noted here that overshadowing is controlled by Clause C1.4 Solar Access in the Pittwater DCP 2014 which requires that at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of three hours of sunlight between 9.00am and 3.00pm on June 21. In this regard, the diagrams indicate that the development will overshadow the rear private open space of the neighbouring property. However this private open space will receive a minimum of 3 hours of sunlight. The development therefore complies with the requirements of that particular control.

Notwithstanding, it is estimated that modifying the height of the development to comply would

not result in any notable improvement such that it would reduce the above degrees of overshadowing. Given the finding in this clause, the development satisfies this objective.

d) to allow for the reasonable sharing of views,

Comment:

It is acknowledged that the non-compliance along the western edge of the proposed roof, the additional increase in the level four southern wall plane, and the proposed balconies do not impact the viewing angle from the properties to the north No.165 Riverview Road or south No.161 Riverview Road. The sweeping range of views available from the internal areas and balconies of both properties which remain intact.

The height non-compliance does not have an unreasonable impact upon the existing views from the opposite side of Riverview Road of Pittwater water views due to the higher placement/vantage point of these properties. The views from these dwelling houses are likely to be improved and enhanced as a result of the proposal, as the height and bulk and scale of the roofline is less than what is currently on the site.

The development satisfies this objective.

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

Comment:

The proposal is designed to respond the topographical constraints of the site. The proposals design with the open style rear balcony areas, provides a more "stepped" look when viewed from the rear and the neighbouring properties. The proposal reflects the established built form character of the immediate Riverview Road area where multi-level, variably stepped houses are prevalent, due to the steep topography of the land and difficulty with pedestrian and vehicular access.

The development satisfies this objective.

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

Comment:

Despite the topographical constraints of the site, the developments design creates additional articulation, and visual interest and is sufficiently setback from the boundaries such that the visual impact of the building will be appropriately managed.

Active living spaces are located towards the rear of the dwelling house and away from the street, thus maintaining acoustic and visual privacy for occupants.

Existing landscaping has been retained wherever possible and will soften and filter the built form. Therefore, the proposal will be sufficiently integrated into the existing landscaped setting.

The development satisfies this objective.

Zone objectives

The underlying objectives of the zone are:

The underlying objectives of the E4 Environmental Living zone

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

Comment:

The proposed alterations and additions will be low-impact and have been designed to respond sensitively to the steep topography. The dwelling house will provide the occupants an increased level of amenity without causing unreasonable impacts to adjoining neighbours or to the site itself. The development does not result in any adverse impact to the native natural environment as significant trees are maintained, additional landscaping will be incorporated, in addition to the proposal requiring minimal excavation for the supporting posts and foundations.

As such, the development is consistent with this stated objective.

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

Comment:

The landscaping of the site will preserve many of the existing trees on the site and include additional plantings to compensate for the trees that are to be removed as part of the proposal.

Landscaping will be integrated into the building design. The landscaping softens and screens the built form when viewed from the Riverview Road streetview and the Pittwater water foreshore. The natural landscaped bushland to be brought into the subject property will ensure that the proposed dwelling house sits within a natural setting and below the existing tree canopy.

As such, the development is consistent with this stated objective.

- *To provide for the continuance of a limited range of existing small-scale water-related business and leisure uses.*

Comment:

This is not applicable for this application.

- *To ensure that development, by way of its character, design, location and materials of construction, is integrated into the site and natural surroundings, complements and enhances the natural environment and has minimal visual impact.*

Comment:

The development will be of a minor scale, that will be integrated with the existing dwelling and the very steep landform. Landscaping has been designed to respond to difficult constraints, and will screen and soften the proposed built form. The design is open and responding to the natural vegetated context in which the site is located.

The development will not dominate the existing bushland environment. The bulk and scale is consistent with the surrounding area and the existing landscaping has been retained and will allow for and accommodate an integrated landscaped setting.

Privacy, amenity and solar access are provided for within the proposed development. Therefore, the proposed development will have a negligible impact on surrounding residences.

As such, the development is consistent with this stated objective.

- *To protect and enhance the natural landscape by conserving remnant bushland and rock outcrops and by encouraging the spread of an indigenous tree canopy.*

Comment:

The development will retain the existing riparian and foreshore vegetation and continue to maintain the existing trees for the wildlife corridors. The proposal seeks to minimise the removal of the listed endangered ecological community and replanting of the removed native vegetation is proposed as part of the application. Significant rock outcrops on the site are to be retained as part of this proposal.

As such, the development is consistent with this stated objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E4 Environmental Living zone.

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel, for which Council has an exemption for dwelling houses that can be determined by the Development Determination Panel. However, this exemption has expired and renewal has been sought, thus requiring the matter to be determined by the Local Planning Panel.

5.7 Development below mean high water mark

The application does not include any works below the mean high water mark.

5.9 Preservation of trees or vegetation

A landscaping plan has been submitted with the application (Landscape Plan L-01 dated 30/4/2018) as well as an Arborist Report (Urban Forest Australia dated December 2018). Council's Landscaping and Biodiversity officers have assessed the proposal and consider the impact of the development on the existing trees and vegetation to be reasonable, subject to the imposed conditions.

7.1 Acid sulfate soils

The site is identified as being partly within 'Class 1' and partly within 'Class 5' on the Acid Sulfate Soils Map.

The proposed development involves minor earthworks in relation to the construction of the proposed swimming pool and inclinator. Due to the sloping nature of the site, there is minimal excavation as part of the proposal. The proposed earthworks do not involve the disturbance of more than one tonne of soil, which is the trigger for an Asset Sulfate Soil Management Plan (ASSMP). Therefore, a ASSMP is not required.

In addition, the water table will also not be affected by the proposed works.

Councils Environmental Health Officers have reviewed the application and have no comments and/or conditions in regards to Acid Sulfate Soil.

7.2 Earthworks

A Geotechnical Assessment has been prepared by White Geotechnical Group, Reference No. J1707, dated 22 November 2018. This report and its recommendations are included within the applied conditions to ensure there is no adverse impacts to the surrounding properties resulting from the proposals required excavation.

Accordingly, Councils Landscape and Biodiversity officers have concluded that the impact of the earthworks will not unreasonably impact or disrupt vegetation on the property.

7.6 Biodiversity protection

A landscaping plan has been submitted with the application (Landscape Plan L-01 dated 30/4/2018) as well as an Aborisit Report (Urban Forest Australia dated December 2018). Councils Landscaping and Biodiversity officers have assessed the proposal and consider the impact of the development on the existing biodiversity to be reasonable, subject to the imposed conditions.

7.7 Geotechnical hazards

A Geotechnical Assessment has been prepared by White Geotechnical Group, Reference No. J1707, dated 22 November 2018. This report and its recommendations are included within the applied conditions to ensure there is no adverse impacts to the surrounding properties resulting from the proposal on sloping land.

7.8 Limited development on foreshore area

The application proposes minor works within the foreshore area, including:

- The construction of a inclinator track
- The construction of an inclinator landing and access ramp to the existing pathway

The applicant has not provided a statement to confirm that all proposed works are permissible within the foreshore area and consistent with the provisions clause 7.8 of PLEP 2018, however the minor works proposed are permissible within the foreshore area.

It is concluded that the the proposed inclinator track, landing and access ramp will be consistent with the provisions of the control. The proposed new access ramp is supported as the footprint of the development remains consistent with that currently on site, the proposed works are not visually dominant, and consistent with the design criteria of the control.

Overall, the proposed development will achieve consistency with the provisions of this control.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	0.0m Garage 8.2m Inclinator 14.6m Dwelling	100% - -	No Yes Yes
Rear building line	6.5m	29.4m New decking 23.9m Rear lift 22.7m Swimming pool 1.1m Inclinator landing	- - - 83%	Yes Yes Yes No
Side building line	1m Northern	1.08m - 1.9m Swimming pool 1.3m - 1.5m Coping 1.2m Pool decking 1.8m Floor Decking 2/3 level 0.5m - 0.7m Inclinator track 1.4m - 2.3m Dwelling wall 4 level 1.0m - 1.7m Privacy screen	- - - - 45% - -	Yes Yes Yes Yes No Yes Yes
	2.5m Southern	1.6m Dwelling (existing) 1.6m Rear deck	- 36%	Yes No
Building envelope	3.5m	Outside envelope	-	No
	3.5m	Outside envelope	-	No
Landscaped area	60%	60% (565sqm)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B3.8 Estuarine Hazard - Medium Density Residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.20 Protection of Estuarine Water Quality	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.11 Stormwater Discharge into Waterways and Coastal Areas	Yes	Yes
B5.12 Stormwater Drainage Systems and Natural Watercourses	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	No	Yes
D1.9 Side and rear building line	Yes	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	No	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes

Detailed Assessment

A4.1 Avalon Beach Locality

The development is consistent with the Desired Character statement of the Avalon Beach Locality with exception of the third and fourth storey element of the dwelling.

Specifically, the locality statement provides that the *"locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape"*.

However, the third and fourth storey elements are existing, and the proposal is for alterations to the dwelling house including the existing third and fourth floor with no significant excavation.

In this regard, the built form will continue to sit comfortably with adjoining and surrounding two, three and four storey residential development. Also, consistent with adjoining development, the built form is located downslope in steep topography and therefore proposed landscaping, in conjunction with existing and required landscaping by recommended conditions contained within this report, will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape.

On balance, the proposal is considered consistent with the desired future character of the locality.

B3.1 Landslip Hazard

A Geotechnical Assessment has been prepared by White Geotechnical Group, Reference No. J1707, dated 22 November 2018. This report and its recommendations are included within the applied conditions to ensure there is no adverse impacts to the surrounding properties resulting from the proposal on sloping land.

B5.10 Stormwater Discharge into Public Drainage System

Subject to compliance with applied conditions, the proposal is considered to meet the requirements of this clause.

B5.11 Stormwater Discharge into Waterways and Coastal Areas

Subject to compliance with applied conditions, the proposal is considered to meet the requirements of this clause.

B5.12 Stormwater Drainage Systems and Natural Watercourses

Subject to compliance with applied conditions, the proposal is considered to meet the requirements of this clause.

B5.13 Development on Waterfront Land

Subject to compliance with applied conditions, the proposal is considered to meet the requirements of this clause.

C1.1 Landscaping

The submitted Landscape Plan (Landscape Plan L-01 dated 30/4/2018) shows that there are trees to be removed as part of the application. However, additional trees and vegetation will be incorporated on the property. Therefore, the proposal is not to the detriment of any existing flora and fauna in the local area and is consistent with the provisions of the Plan.

C1.3 View Sharing

The views from the subject site and adjoining properties are mainly to the west and include Pittwater water views. The proposed works to the existing dwelling have been sited generally within the footprint of the existing dwelling, to minimise any impacts on views enjoyed by the neighbours to either side. Areas protruding the current footprint are open style balconies, with glass balustrades to ensure there is no unreasonable obstruction into any view lines of the northern and southern adjoining neighbours.

Dwellings on the opposite side of Riverview Road and upslope from the site obtain views of Pittwater over the roof of the existing dwelling. These views are likely to be enhanced as a result of the proposal, as the overall height of the roofline is less than what currently exists on the site.

C1.4 Solar Access

The application was supported by shadow diagrams by Blue Sky Designs, dated 21 March 2019.

Overall, the proposal is considered to be designed and sited to maximise solar access to adjoining dwellings during mid-winter, with a reasonable level of solar access maintained by adjoining properties.

Furthermore, the proposed development, with additional windows to the north and west have been sited to maximise solar access in midwinter, reducing the need and dependence on artificial lighting. As such, despite the additional overshadowing resulting from the proposal, the development is consistent with the outcomes of this control.

C1.5 Visual Privacy

Having regard to this localised situation, the assessment of privacy is to be based on the principle of not creating additional unreasonable impacts on the existing level of privacy between neighbours.

Due to the sloping topography, the proposed works are elevated above ground such that additional overlooking could occur. However, the development has been generally designed to satisfactorily address overlooking by undertaking the following privacy mitigation measures:

- The use of metal privacy screens, sunscreens and timber screening for Level 4 of the northern elevation
- The use of timber privacy screens on the northern elevation adjoining the pool area
- An existing door adjacent to the Level 0 games room on the northern elevation replaced with a window
- Part of the deck on Level 0 adjoining the northern side boundary is to be removed
- No additional windows for the southern elevation.

A submission has been received from the owners of the northern adjoining dwelling at 165 Riverview Road raising concerns with regard to potential overlooking associated with balcony and inclinator landing areas.

To prevent overlooking within 9m and to achieve consistency with this development control, conditions of consent are recommended to require:

- A fixed privacy screen is to be erected along the northern edge of Level 0 terrace area due to the intensified usage and potential additional overlooking created by the new inclinator landing area

- A fixed privacy screen is to be erected along the northern edge of Level 2/3 terrace due to the increase in size of the private open space area directly adjoining the kitchen area of the dwelling

Privacy screens have not been imposed on the balconies of Level 1 as there is no change to the existing balconies adjoining the bedrooms, nor the balconies of Level 4 as these balconies also adjoining bedrooms and are in a very elevated position. It is considered that overlooking from a living area is more objectionable than overlooking from a bedroom where people spend less waking time. Due to this feature being directly associated to bedrooms, it is not considered that privacy treatments are required and privacy levels are considered to be reasonable within the residential context of the site.

A privacy screen has not been proposed for the additional balcony area on Level 2/3 adjoining the lounge room 1 as this balcony is an extension of the existing balcony, there is sufficient spatial separation and no unreasonable additional direct overlooking into the southern neighbouring site.

Therefore, subject to conditions of consent, the proposal is considered to optimise privacy through good design and provide a sense of territory and safety for residents, consistent with the outcomes of this development control.

C1.6 Acoustic Privacy

The acoustic levels would be consistent with current residential living. However, the new pool filter and the inclinator motor are to be conditioned so as not to cause a sound level in excess of 5 dB(A) at any time above the background noise level at any point along the site boundaries when measured in accordance with the Environment Protection Authority's Industrial Noise Policy. The condition will ensure compliance with an acceptable noise level as established under best practice guidelines.

C1.19 Incline Passenger Lifts and Stairways

The proposed inclinator has a side boundary setback of 0.5m to 0.7m which is less than the minimum 2.0m requirement of the control. The inclinator location has been designed to work with the constraints of the site (namely the steep topography, rock outcrops and existing canopy trees). Therefore, full compliance with the 2.0m requirement is not able to be achieved.

Notwithstanding, the non-compliance is supported as being reasonable for the following reasons;

- There is no excessive excavation, or the removal of natural rock or trees,
- It is to be erected as near as possible to the ground level (existing) of the site, and
- Is located alongside the northern adjoining properties existing inclinator.

The noise of the inclinator will be conditioned so not to demonstrate a sound level in excess of 5 dB(A) at any time above the background noise level at any point along the site boundaries when measured in accordance with the Environment Protection Authority's Industrial Noise Policy.

A condition will also require that the carriage of the inclinator is also to be fitted with a solid screen on the northern elevation to ensure that privacy levels to the neighbouring site is maintained. A condition will also be imposed to ensure there are no lights fitted to the carriage of the inclinator, and that the carriage is to be a dark colour so that the inclinator blends in with the surrounding vegetation.

C1.25 Plant, Equipment Boxes and Lift Over-Run

To ensure that the swimming pool pump does not give rise to any adverse acoustic impacts a condition will be imposed to ensure the swimming pool pump is contained within a sound proof enclosure.

The placement of the proposed lift within the existing dwelling house footprint will ensure there is no adverse amenity impacts to the surrounding sites.

D1.1 Character as viewed from a public place

The existing dwelling house is orientated towards the Pittwater Waterway. The dwelling whilst large, has a proposed design that is well articulated and will have a lesser visual impact than the dwelling that is currently situated on the site. The visual impact of the proposed works will be lessened over time with the growth of the proposed landscaping, and ultimately, there will be a significant improvement in the presentation to Pittwater.

D1.8 Front building line

The proposed alterations and additions to the dwelling house comply with the required front setback.

However, the proposed garage continues the existing non-compliance with the front setback at 0.0m.

It is noted that the proposed stair access concrete slab platform encroaches within Council's Road Reserve. No Owner's Consent has been issued by Council to allow for this encroachment and accordingly, a condition will be imposed to require an Encroachment Application to be submitted to Council to obtain owners consent prior to the issue of the Construction Certificate.

The garage development as proposed is found to be consistent with the following Outcomes of D1.8 Front building line:

- *To achieve the desired future character of the Locality.*
- *The amenity of residential development adjoining a main road is maintained.*
- *Vegetation is retained and enhanced to visually reduce the built form.*
- *Vehicle manoeuvring in a forward direction is facilitated.*
- *To encourage attractive street frontages and improve pedestrian amenity.*
- *To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.*

Comment

The inclusion of a garage along the front boundary of the property is consistent with the character of the Locality. The use of glazing on the eastern and western elevations will ensure the existing view lines to the street are maintained and thus the garage does not dominating the street frontage. The garage will be located adjoining the existing garage of No. 161 Riverview Road. The retention of the trees and landscaping at the front boundary will soften the built form and is consistent with the bushland character of Riverview Road and the Locality.

D1.9 Side and rear building line

The application includes some minor non-compliances with the side building line requirement of 2.5m (southern) and 1.0m (northern) as detailed within the built form controls table and summarised below:

- 0.5m - 0.7m inclinator track (north)
- 1.0m - 1.7m privacy screening (north)
- 0.1m Garage (south)

The existing carport is located on the front boundary to Riverview Road with an existing 0.1m southern side setback. The proposed carport will retain this existing 0.1m southern side setback which does not comply with the 1.0m minimum setback prescribed.

The proposed rear deck area also does not comply with the 2.5m side setback prescribed by this development control. However, this proposed side boundary distance follows the existing dwelling house setback and has been designed to work with the constraints of the site (namely the steep topography rock outcrops and existing canopy trees).

The proposed inclinator track does not comply with the 1.0m setback, being 0.5m - 0.7m and the required 2.0m setback (C1.19 Incline Passenger Lifts and Stairways). The inclinator is a relatively minimal structure with the largest element being the carriage to carry people up and down the site. The rail will be located as close as possible to ground level depending on the topography. The inclinator is located directly adjacent to the existing inclinator on No.165 Riverview Road, and is consistent with numerous inclinator tracks that are located on neighbouring sites.

The proposed swimming pool and associated decking, are consistent with the 1.0m minimum side setback.

As such, despite the non-compliances, the proposal is considered to achieve consistency with the outcomes of this control and is supportable on merit, as follows:

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

Comment:

The proposed alterations and additions are considered to satisfactorily achieve the desired future character of the Avalon Beach locality.

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

Comment:

Given the site constraints in relation to the topography, foreshore building line and the sensitive nature of the location, the non-compliance's identified are not considered to result in unreasonable or adverse bulk and scale.

The proposed balcony areas are open style, with glass balustrades to minimise the bulk and scale.

The proposed garage is located over the existing hardstand/carport area, and is consistent with adjoining properties that also have garages, such as these at No.s 157, 159, 159a, and 161 Riverview Road. The garage is relatively small in size and continues to allow the ability to site the water views to Pittwater through the existing views corridors from the street. The garage is also surrounded by large existing trees that assist in softening the built form.

The inclinator is a relatively minimal caged structure, with the largest element being the carriage to carry people up and down the site. The rail will be located as close as possible to ground level depending on the topography. The carriage that carries the people will predominately be at a resting location beside a built form structure, i.e. located next to the dwelling house. This minimises any additional visual dominance on the site.

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

Comment:

The proposed works, including the garage have been sited generally within the footprint of the existing dwelling, to minimise any impacts on views enjoyed by the neighbours.

The proposed garage will continue to allow view sharing to Pittwater water views through established view corridors.

Dwellings on the opposite side of Riverview Road and up slope from the site obtain views of Pittwater over the roof of the existing dwelling. These views are likely to be enhanced as a result of the proposal, as the overall height and bulk of the proposal is less than what currently exists on the site.

The inclinator and rear balcony are sited well below street level, therefore providing no additional impact to the public view line.

Views from the neighbouring sites are predominately towards the rear western boundary of their sites, therefore the built form proposed will not unreasonable effect the views lines from the directly adjoining properties.

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

Comment:

The lowering of the existing roofline will create new sight lines across the site toward the Pittwater water way. The location of the dwelling house below street level and the reduction in the overall height of the dwelling has provided a more discreet scale toward Riverview Parade.

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

Comment:

The dwelling has been situated such that privacy between the subject site and the neighbouring properties is adequately maintained. It is considered that the subject development does not result in any unreasonable overshadowing of adjacent properties (as assessed under Cl. 1.4 Solar Access) and provides sufficient privacy measures on windows such as screens to ensure that no unreasonable overlooking occurs. The use of design features such as these privacy screens, and conditioned changes to the inclinator landing and the cage itself by incorporating a solid wall, will ensure that privacy is maintained to the neighbouring site.

Existing significant trees and additional landscaping will assist in providing increased privacy and amenity.

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

Comment:

The development maintains a substantial portion of the property as natural landscaped area. Significant trees are to be maintained in the front and rear setback areas, with additional planting to compensate for the trees to be removed. These existing trees to be retained provide a mature tree canopy. The proposal's presentation within the streetscape is considered significantly improved through replacing the existing old carport with a modern garage, and improving the

landscaping and access within the front setback, which is consistent with the streetscape.

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

Comment:

Given the constraints on the development by virtue of the escarpment location and the siting of the existing structures on the site, some flexibility in applying the required setbacks is considered appropriate in this instance and provides for a development that will preserve the natural environment of the property while providing new recreational areas suited to modern living expectations. The proposal will result in minor non-compliance with the side building lines which have individually been assessed as acceptable.

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

Comment:

As indicated, the site retains the significant trees located with the the front and rear setback area of the site. In conjunction with the new planting proposed under this application throughout the site, the visual presence of the built form will be adequately filtered by vegetation.

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

Comment:

The site does not adjoin a commercial zone, this outcome does not apply to this site.

D1.11 Building envelope

The existing dwelling exhibits significant non-compliance with the side building envelope requirements. The proposed development involves additional areas that protrude beyond the existing envelope breach.

These additional non-compliances are minor and include the following:

- Northern Elevation: two additional areas measuring: 1.0m (height) and 0.6m (width) and a triangle 1.0m (height) and 1.8m (width)
- Southern Elevation: one additional areas measuring: 2.7m (height) and 1.5m (width)

In both instances, the non-compliances reflect the transitions within the existing ground line. The resulting built form is not considered unreasonably bulky or dominant and will be suitably in scale with the large trees that dominate the site as shown by Figure 2 and Figure 3 below.



Figure 2: Northern Elevation

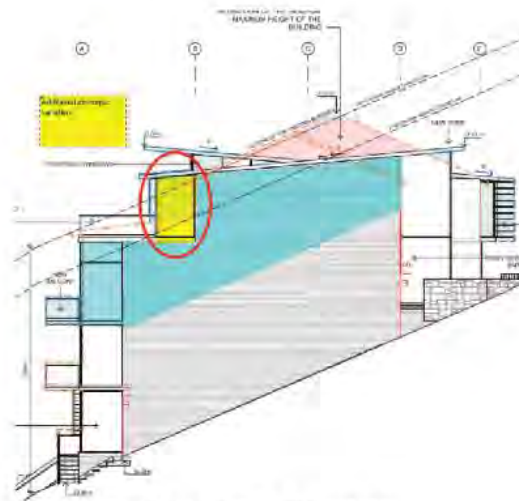


Figure 3: Southern Elevation

The proposed works are considered to be reasonable solution in light of the constraints of the site and is consistent with the outcomes of the building envelope control, as follows:

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

Comment:

The proposed development is consistent with the desired future character of the Avalon Beach locality.

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

Comment:

The proposed development presents a more modern and improved design, with the new additions being consistent with or below the height of the existing roof line at RL37.09 from RL38.45. Furthermore, the resultant built form will be maintained below the existing tree canopy.

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

Comment:

The proposed new development is considered to be a sensitive design response in consideration of the natural characteristics of the site, with the retention of significant existing canopy trees and the enhancement of landscaping within the front setback and foreshore area.

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

Comment:

The proposed additions are relatively minor in size. The northern elevation variations will be shielded by the proposed privacy screening and landscaping when viewed from the front setback and foreshore area. There is currently existing vegetation along the side boundaries on the subject site and neighbouring sites, which will assist in softening the additional built form. The additional encroachment area directly adjoin the significant wall planes of the adjoining dwelling houses, demonstrating consistency with adjoining development.

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

Comment:

As discussed previously due to the downslope siting of the existing dwelling, the proposed additions will not result in any unreasonable impacts upon views.

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

Comment:

The design of the proposed additions, combined with imposed conditions, will not result in any unreasonable impacts upon the amenity of adjoining properties.

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

Comment:

Vegetation is retained and enhanced within the front setback and foreshore area to reduce the visual impact of the development.

D1.14 Landscaped Area - Environmentally Sensitive Land

The proposed landscaped area does not meet the 60% landscaped area requirement under this control.

The proposed development results in a landscaped area of 515m² or 55% of the site area, which is a minor variation of the 60% minimum requirement of this control. However, the control provides for variations to include pathways and certain hard surfaces (up to 6% of the site associated with recreation areas), if the proposal is consistent with the outcomes of the control. Therefore, when taking into account the variations for outdoor recreational area and pathways to be included as impervious landscape treatments, the revised landscape area is 60% or 565m².

The following is noted:

- The proposed development is consistent with the desired future character of the Avalon Beach Locality of low density houses in a landscaped setting.
- The bulk and scale of the proposal is minimised, and the proposed development maintains a reasonable level of amenity and solar access to both neighbouring properties and the occupants of the subject site.
- The retention of significant trees and existing vegetation will reduce the visual impact of the built form as well as conserve the biodiversity on site.
- No additional on-site stormwater detention would be required to capture additional stormwater run off. The additional hard surface area is predominantly a result of proposed open timber decks.

Due to the inclusion of the pathways and certain hard surfaces, a merit assessment has been undertaken to ensure the proposal is consistent with the outcomes of the control.

The application of the variation is considered to be warranted, as the outcomes of the control are achieved as follows:

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

Comment:

The proposed development is consistent with the desired character of the Avalon Beach Locality.

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

Comment:

A considerable portion of the proposed hard surfaces is comprised of access stairs and uncovered decking, and as such, the resultant built form is not considered to be excessive with regard to bulk and scale.

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

Comment:

The proposed development maintains adequate amenity to adjoining dwellings and significantly improves amenity for occupants of the subject site.

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

Comment:

The proposed development retains significant vegetation on the site, with appropriate enhancement demonstrated in the landscape plans provided.

- *Conservation of natural vegetation and biodiversity.*

Comment:

The proposed development, which is primarily constructed on piers, is a sensitive solution for the constrained site that preserves the natural features and biodiversity.

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

Comment:

Subject to conditions recommended by Council's Development Engineers, stormwater will be appropriately managed on the site.

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

Comment:

The proposed development will preserve and enhance landscaping on the site, to emphasise the natural setting.

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

Comment:

A considerable proportion of the hard surface areas proposed are elevated above ground and permeable, maximising water infiltration. Furthermore, subject to conditions of consent, Council is

satisfied that stormwater will be appropriately managed on the site.

Based on the above, the proposed landscape area in this instance is supported on merit and considered to satisfy the outcomes of the control.

D1.17 Construction, Retaining walls, terracing and undercroft areas

The undercroft area has a maximum height of 3.2m which exceeds the maximum 3.0m requirement of the control. Notwithstanding, the non-compliance is supported AS being reasonable for the following reasons;

- Excavation works and site disturbance are minor and limited to fixing pier and beam steel posts;
- The height of the undercroft area falls with the slope of the landform from a maximum height of 3.2m to 1.5m;
- The use of natural timber paneling combined with landscaping to screen and soften the undercroft;
- The localised steepness at the rear of the site; and
- The height of the undercroft level is consistent with that of adjoining and surrounding residential development.

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

Pittwater 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;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects,

all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

This report provides a detailed assessment of the Development Application for the alterations and additions to 163 Riverview Parade, Avalon Beach.

Public Exhibition

The public exhibition of the application resulted in one (1) response from neighbouring residents. Those objecting to the proposal raised concerns in relation to the additional privacy impacts and acoustic impacts that would be generated by the development.

The issues raised in the submissions have been addressed in the "Public Exhibition & Submissions Received" section in this report.

Conditions have been included that address the privacy and acoustic impacts.

Referrals

The application was referred to seven (7) internal departments and external authorities.

External: No response was received from Ausgrid within the 21 day statutory period, therefore it is assumed that no objections are raised and no conditions are recommended.

Internal: Council's Bushland and Biodiversity, Riparian, Coast and Catchment and Landscape Officers indicated that the proposal is acceptable subject to specific conditions. Council's Environmental Health Officers and Development Engineers also advised that the proposal is acceptable subject to specific conditions.

Assessment of the Development Application

The works sought as a part of this application include additions to the existing dwelling-house and detached garage and the inclusion of a new swimming pool and associated landscaping.

The assessment of the proposed development against the provisions of PLEP 2014 found that the proposal does not comply with the 'Height of Buildings' Development Standard under the PLEP 2014 which permits a maximum building height of 8.5m within the E4 Environmental Living zone.

In this case, the four levels are to remain but reconfigured with internal changes, new access and balcony elements and a new roof form. It is the new roof form and the balcony additions that contributes to the building height noncompliance. Whilst the building height variation is significant the overall height of the development is below the existing RL38.45 at RL37.09 (reduced by 1.36m), and it is agreed that the breach is largely unavoidable due to the considerable slope of the land and essentially the encroachment does not result in any unreasonable impacts to any surrounding properties. Furthermore, the applicant has provided sufficient justification for the substantial departure from the development

standard.

In addition, the assessment of the proposed development against the provisions Pittwater 21 DCP found that the proposal does not comply with a number of controls, i.e wall height, side boundary envelope and front boundary setback. Given the constraints on the development by virtue of the escarpment location and the siting of the existing structures on the site, some flexibility in applying these controls is required. It is considered that the scale of these non-compliances will not have unreasonable amenity impacts for adjoining properties and are consistent with the bushland character of Riverview Road and the Locality.

Recommendation - Approval

In summary, the proposal should be approved as the design is reasonable for the site by virtue of the level of non-compliance that does not create unreasonable amenity impacts. The proposed alterations and additions will integrate with the landform and landscape and be consistent with surrounding developments.

It is considered that all processes and assessments have been satisfactorily addressed and that proposed development does not constitute the proper and orderly planning for the site or the locality. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/2015 for Alterations and Additions to a dwelling house and construction of a swimming pool on land at Lot 100 DP 1250837, 163 Riverview Road, AVALON BEACH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Plan A101	21/03/2019	Blue Sky Building Designs
Floor Plan Level 0 A102	21/03/2019	Blue Sky Building Designs
Floor Plan Level 1 A103	21/03/2019	Blue Sky Building Designs
Floor Plan Level 2/3 A104	21/03/2019	Blue Sky Building Designs
Floor Plan Level 4 A105	21/03/2019	Blue Sky Building Designs
Garage and Workshop A106	21/03/2019	Blue Sky Building Designs
East Elevation and West Elevation A107	21/03/2019	Blue Sky Building Designs
North Elevation A108	21/03/2019	Blue Sky Building Designs
South Elevation A109	21/03/2019	Blue Sky Building Designs
Section 1 A110	21/03/2019	Blue Sky Building Designs
Section 2 A111	21/03/2019	Blue Sky Building Designs
Section 3 A112	21/03/2019	Blue Sky Building Designs

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment	December 2018	Urban Forestry

		Australia
Geotechnical Investigation	22 November 2018	White Geotechnical Group

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
Landscape Plan L01	19/03/2019	Space Landscape Design

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. Amendments to the approved plans

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

- a) An opaque privacy screen is to be affixed to the entire northern elevation of the inclinator carriage.
- b) No bright lighting is to be installed to the carriage of the inclinator. A modest amount of low level lighting may be used for safety purposes only.
- c) The swimming pool filter is not to be located within the northern side setback and is to be enclosed within a sound proof enclosure
- d) A 1.65 metre high privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost northern edge of the terrace off the Level 0 Games room, adjacent to the inclinator landing as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.
- d) A 1.65 metre high privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost northern edge of the terrace off the Level 2/3 kitchen as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

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

3. Prescribed Conditions

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

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

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

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

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

Reason: Legislative Requirement

4. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
 - 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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

5. Security Bond

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White geotechnical group (J1707) dated 22 November, 2018 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

7. No approval is granted for any oil, wood or solid wood heater

Due to lack of detail submitted, No approval is granted for any oil, wood or solid fuel heater

Reason: To avoid potential nuisance and non compliance. (DACHPCPC5)

8. Design of Outlet Structure

If the existing stormwater discharge outlet is not being used:

The replacement outlet structure discharging stormwater into Pittwater must be designed in accordance with *Pittwater 21 DCP* B5.11 Stormwater Discharge into Waterways and Coastal

Areas. The pipe outlet must not protrude beyond the sea wall and a defuser must be incorporated to reduce scour if the outlet discharges onto sand/soil (not required for rock shelf).

This design is to be submitted to the Certifying Authority prior to the release of the Construction Certificate.

Reason: To protect the waterway from the effects of localised erosion and visual impacts (DACNECPCC1)

9. **Estuarine Hazard Design Requirements**

The following applies to all development:

All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes; they will not reduce public access to or diminish the amenity of adjoining public foreshore land.

Reason: To minimise potential risk associated with estuarine hazards for development in the coastal zone.

10. **Estuarine Planning Level Requirements**

An Estuarine Planning Level (EPL) of RL 2.72m AHD has been adopted by Council for the subject site and shall be applied to all development proposed below this level as follows:

- All structural elements below RL 2.72m AHD shall be of flood compatible materials;
- All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above RL 2.72m AHD or waterproofed to this level; and
- The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below RL 2.72m AHD.

Reason: To ensure aspects of the development that may be affected by estuarine wave action and tidal inundation are built at the appropriate level.

11. **Revised Landscape Plan**

A revised Landscape Plan is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate and is to include:

- Provision of a minimum of 4 replacement canopy trees (minimum mature height of 8.5m) of species from the Pittwater Spotted Gum EEC;
- Plantings (including understorey shrubs and grasses) that include a minimum of 80% species from the Pittwater Spotted Gum EEC.

The revised Landscape Plan is to be certified by a qualified landscape architect, Arborist or Ecologist prior to issue of the Construction Certificate.

Reason: To ensure landscaping is consistent with relevant Natural Environment LEP/DCP controls. (DACNECPCC2)

12. **Amendments to the approved plans**

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

- a) An opaque privacy screen is to be affixed to the entire northern elevation of the inclinator carriage.
- b) No bright lighting is to be installed to the carriage of the inclinator. A modest amount of low level lighting may be used for safety purposes only.
- c) The swimming pool filter is not to be located within the northern side setback and is to be enclosed within a sound proof enclosure
- d) A 1.65 metre high privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost northern edge of the terrace off the Level 0 Games room, adjacent to the inclinator landing as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.
- d) A 1.65 metre high privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost northern edge of the terrace off the Level 2/3 kitchen as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

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

13. **Compliance with Standards**

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

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

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

14. **Sydney Water "Tap In"**

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

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

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

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

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

15. **Encroachment Agreement**

An Encroachment Application is to be submitted to Council for approval in relation to the proposed concrete slab access to the property on Council's Road Reserve in accordance with Council's Pittwater 21 DCP 2014 Clause B6.1, prior to issue of the Construction Certificate. All costs associated with these works are to be borne by the applicant.

The applicant is to enter into any appropriate agreements with Council, such as Deeds and Leases and pay any associated fees, in accordance with the above Policy.

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

Reason: Ensure compliance with Council Encroachments/ Constructions & Road Reserve Lease Requirements

16. **Waste Management Plan**

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

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

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

17. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

18. **Project Arborist**

A Project Arborist with minimum horticulture qualification equivalent to AQF Level 5 is to be appointed prior to commencement of works to supervise and certify works as identified in the Arboricultural Impact Assessment prepared by Urban Forestry Australia with section 5.

Recommendations, including all items listed under 5.1 Minimising Impacts on Trees to be Retained, 5.2 Tree protection, and 5.3 Arboricultural Advice.

The Project Arborist is to provide details to the Certifying Authority that all components of this condition have been satisfied.

In particular, the Project Arborist and Certifying Authority must ensure the following works, as recommended within the Arboricultural Impact Assessment are undertaken near trees:

- i) following demolition of structures and pavements within the TPZ of trees to be retained, the newly exposed ground is to be watered and mulched with coarse mulch to a depth of 100mm,
- ii) all decking, including allowances for bearers, joists and decking timbers must be elevated at least 200mm above existing ground within 6m of Tree 9,
- iii) the existing wall adjacent to adjoining Trees 4 and 5 should be retained within a 2.5m radius of each tree to avoid potential destabilising of the trees,
- iv) the Project Arborist is to be present to supervise all works within: 3 metres of Tree 3; 5 metres from Trees 10, 12 and 13; 6 metres from Tree 9; and 8 metres from Trees 14 and 15,
- v) landscaping other than proposed new paths is to retain the existing ground levels within the 10 metres radius of Trees 14 and 15,
- vi) garden edging must only be installed under the supervision of the Project Arborist,
- vii) the Project Arborist must advise on all aspects of tree protection prior to and during construction. Fencing may be removed for soft landscaping. No skid-steer loaders (e.g. Bobcats) or similar landscaping machinery or equipment are to be used within the TPZ during landscaping.

Reason: to ensure protection of vegetation is provided and maintained.

19. **Tree removal**

The following existing trees within the site are granted approval for removal based on the assessment and recommendations of the Arboricultural Impact Assessment prepared by Urban Forestry Australia: Trees 1, 7, 8, 11, and 16.

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

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site (DACNED06)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

21. **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.

22. **Tree and vegetation protection**

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

- i) all trees and vegetation within the site identified for retention in the Arboricultural Impact Assessment prepared by Urban Forestry Australia: Trees 2, 3, 4, 6, 9, 12, 13 and 14,
 - ii) exempt trees and palms within the site under the relevant planning instruments of legislation are excluded,
 - iii) all other trees and vegetation located on adjoining properties, including Trees 10, 15 and 17,
 - iv) all road reserve trees and vegetation, including Tree 18.
- B) Tree protection shall be generally undertaken as follows:
- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4,
 - ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
 - iii) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an Arborist. Details including photographic evidence of works undertaken shall be submitted by an AQF Level 5 Arborist to the Certifying Authority,
 - iv) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a Project Arborist on site,
 - vi) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
 - vii) excavation for stormwater lines is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist,
 - viii) should either or all of v), vi) and vii) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
 - ix) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009,
 - x) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

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

23. **New vegetation planting**

Landscaping is to incorporate a minimum of 4 canopy trees (minimum mature height of 8.5m) and 80% locally native vegetation species (as per species listed in the Pittwater Spotted Gum Endangered Ecological Community)

Reason: To maintain native vegetation in accordance with relevant Natural Environment LEP/DCP controls. (DACNEEDW1)

24. **Tree Protection - Arborist Supervision of Works**

All works within 5 metres of the existing trees to be retained including pruning, demolition, excavation, civil works, fencing and the like must be carried out by hand under the supervision of an experienced and minimally AQF Level 5 qualified Arborist. Should roots larger than 50mm be encountered all excavation works are to cease immediately and a qualified Arborist is to advise on the impacts of the roots removal on the tree's survival and report to the Principal Certifying Authority prior to works recommencing. If tree roots are present a pier and beam

method of footing construction is to be adopted so as to bridge/span any identified lateral roots.

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

25. **Protection of Trees During Works - Certified by Project Arborist**

All trees that are specifically nominated to be retained on the Site Plan (prepared by Blue Sky Building Designs, Rev 3 dated 21/03/2019) shall be retained and protected during any vegetation clearing, demolition, excavation and construction on the site. All tree protection measures are to be in accordance with Australian Standards AS 4970—2009 Protection of Trees on Development Sites'.

A certificate demonstrating compliance must be prepared by the project Arborist and submitted to the Principal Certifying Authority prior to commencement of any works on the site.

Reason: To protect native vegetation, wildlife and habitats in accordance with relevant Natural Environment LEP/DCP controls.(DACNEEDW2)

26. **Aboriginal Heritage**

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

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

Reason: Aboriginal Heritage Protection. (DACAHE01)

27. **Waste Management During Development**

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

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

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

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

28. **Landscape works**

Landscaping is to be implemented in accordance with the landscape plan I-01, issue H, as prepared by Space Landscape Designs.

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 conditions of consent.

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

29. **Condition of retained vegetation**

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

- i) Compliance to Arborist recommendations for tree protection and excavation works.
- ii) Extent of damage sustained by vegetation as a result of the construction works.
- iii) Any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: to ensure compliance with the requirement to retain and protect significant planting on development sites.

30. **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.

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

Prior to issue of the Occupation Certificate, Form 3 of the Geotechnical Risk Management Policy is to be completed and submitted to the Principal Certifying Authority.

Reason: To ensure geotechnical risk is mitigated appropriately.

32. **Landscaping**

Landscaping is to be implemented in accordance with the revised Landscape Plan required under this consent, including:

- o Provision of a minimum of 4 replacement canopy trees (minimum mature height of 8.5m) of species from the Pittwater Spotted Gum EEC;
- o Planting (including understorey shrubs and grasses) that includes a minimum of 80% species from the Pittwater Spotted Gum EEC.

The new landscaping is to be certified as complete and in accordance with approved Landscape Plans and these conditions of consent by a qualified landscape architect, arborist or ecologist prior to issue of any Occupation Certificate.

Reason: To ensure landscaping is consistent with relevant Natural Environment LEP/DCP controls. (DACNEFPOC1)

33. **Protection of Trees To Be Retained**

All existing trees and trees on adjoining lands (except exempt trees) which are not approved for removal are to be retained and protected during any vegetation clearing, demolition, excavation and construction on the site. All tree protection measures are to be in accordance with Australian Standards AS 4970—2009 'Protection of Trees on Development Sites'.

A certificate demonstrating compliance must be prepared by the project arborist and submitted to the Principal Certifying Authority prior to issuing any Occupation Certificate.

Reason: To protect native vegetation, wildlife and habitats in accordance with relevant Natural Environment LEP/DCP controls. (DACNEFPOC2)

34. **Swimming Pool Requirements**

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

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

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

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life (DACPLF09)

35. **Waste Management Confirmation**

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

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

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

36. **Landscape maintenance**

All landscape components are to be maintained for the life of the development.

A maintenance program is to be established. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components and species to maintain the landscape theme of the landscape plan.

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

37. **Environmental and priority weed control**

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: preservation of environmental amenity.

38. **Noise Impact on the Surrounding Area**

The use of the inclinor, pool pump and lift shall not cause mechanical sound level in excess of 5 dB(A) at any time above the background noise level at any point along the site boundaries when measured in accordance with the Environment Protection Authority's Industrial Noise Policy.

Reason: To ensure compliance with acceptable levels of noise established under best practice guidelines.

39. **Retention of Natural Features**

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

Reason: To ensure the retention of natural features.

40. **Tree Retention**

All existing trees as indicated on the Site Plan (prepared by Blue Sky Building Designs, Rev 3 dated 21/03/2019) shall be retained. For all other tree issues not related to a development application, applications must be made to Council's Tree Management Officers.

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

41. **No Planting Environmental Weeds**

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

Reason: Weed management.

42. **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.

43. **Dead or Injured Wildlife**

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

Reason: To protect native wildlife in accordance with Section 2.1 of the NSW Biodiversity Conservation Act 2016.



SHEET TITLE: SITEPLAN
SHEET NO: A101
SCALE: As indicated

PROJECT TITLE: ALTERATION & ADDITION
PROJECT NO.: 2018017
AT: 163 Riverview Rd, Avalon
FOR: Yini & Geoffrey Lee

DESIGNED BY: YINI & GEOFFREY LEE
PREPARED BY: BLUE SKY BUILDING DESIGNS
Mobile: 0 414 310 171
E: info@bsbd.com.au

ISSUE	DATE	DESCRIPTION	DRWN	CHKD
10.04.2018	PRE-DA		KC	
01-16-22.08.2018	PRE-DA 2-4		KC	MW
05.10.2018	DA PLANS		MW	
DA 15.11.2018	DA PLANS_draft		MW	
DA 17.12.2018	DA PLANS_deck reduction		MW	

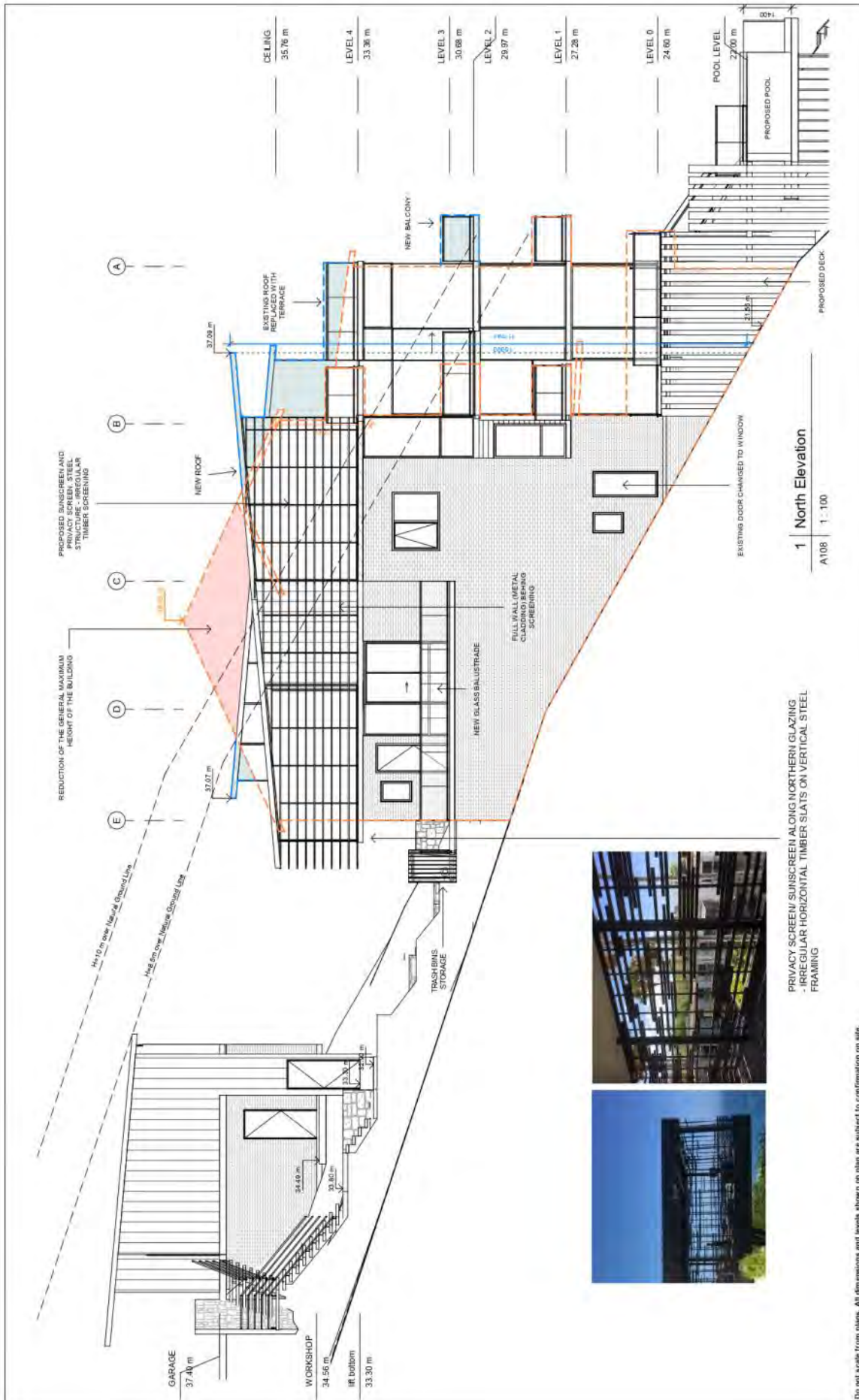


SHEET TITLE: ELEVATIONS
SHEET NO: A107
SCALE: 1:100

PROJECT TITLE: ALTERATION & ADDITION
PROJECT NO: 2018017
AT: 163 Riverview Rd, Avalon
FOR: Yin & Geoffrey Lee

DESIGNED BY: YIN & GEOFFREY LEE
PREPARED BY: BLUE SKY BUILDING DESIGNS
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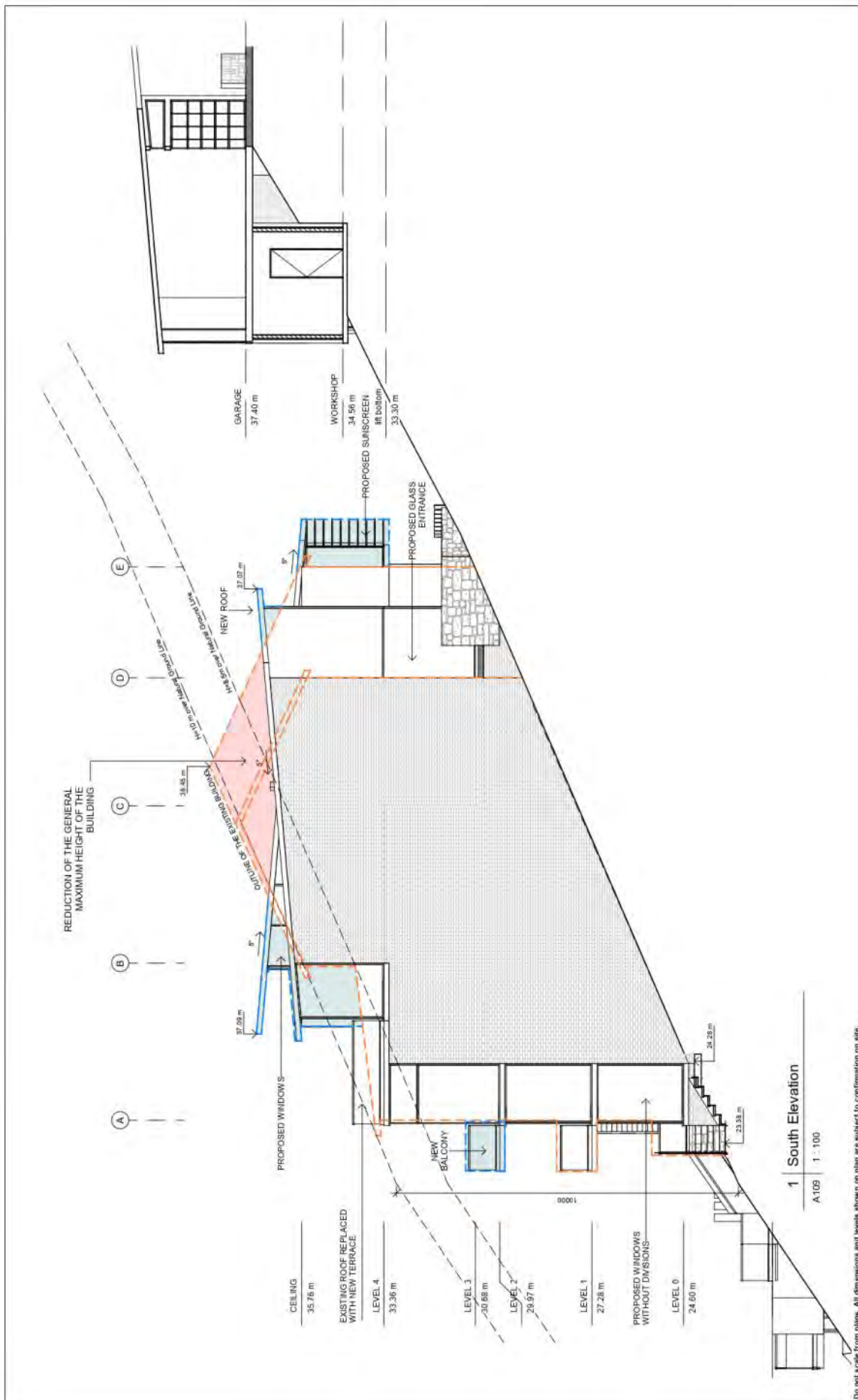


SHEET TITLE: ELEVATIONS
SHEET NO: A108
SCALE: 1 : 100

PROJECT TITLE: ALTERATION & ADDITION
PROJECT NO: 2018017
AT: 163 Riverview Rd, Avalon
FOR: Yini & Geoffrey Lee

DESIGNED BY: YIN & GEOFFREY LEE
PREPARED BY: BLUE SKY BUILDING DESIGNS
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ISSUE	DATE	DESCRIPTION	DRWN	CHKD
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DA PLANS	05/10/2018	DA PLANS	MW	MW
DA PLANS	15/11/2018	DA PLANS_draft	MW	MW
DA PLANS	17/12/2018	DA PLANS_deck reduction	MW	MW



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DA 15.11.2018	DA PLANS_draft	DA PLANS_draft	MW	MW
DA 17.12.2018	DA PLANS_deck reduction	DA PLANS_deck reduction	MW	MW

ITEM 3.5	DA2018/1438 - 6A CARLTON STREET, MANLY - ALTERATIONS AND ADDITIONS TO A SEMI DETACHED DWELLING
REPORTING OFFICER	MATTHEW EDMONDS
TRIM FILE REF	2019/297146
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2018/1438 for alterations and additions to a semi detached dwelling at Lot 105 DP 1136451, 6A Carlton Street, Manly subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1438
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 105 DP 1136451, 6 A Carlton Street MANLY NSW 2095
Proposed Development:	Alterations and Additions to a semi detached dwelling
Zoning:	Manly LEP2013 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Hugh Stuart Penny Jennifer Louise Penny
Applicant:	Hugh Stuart Penny
Application lodged:	30/08/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	11/09/2018 to 27/09/2018
Advertised:	Not Advertised
Submissions Received:	1
Recommendation:	Approval
Estimated Cost of Works:	\$ 280,000.00

The application proposes a variation to both the Height of Buildings and Floor Space Ratio development standards of more than 10%. As such, the application is referred to the Development Determination Panel.

Council received one submission related to view loss from the adjoining property to the west (6B Carlton Street). Following Council writing to the applicant, the applicant provided amended plans to address view loss to the oceans and Norfolk Palm Trees.

Height poles were erected on site as part of the assessment of the original plans. No height poles were erected as when the amended plans were lodged with Council, as the potential view loss could be accurately assessed without the need for the erection of height poles.

As noted in the view loss analysis in the report the impact of the proposal as amended is deemed to be

negligible.

Further, the adjoining property to west had recent approval for a similar second floor addition (DA46/2017).

No further assessment issues are raised and the proposal is recommended for approval.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of 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 - 3.4.3 Maintenance of Views

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot 105 DP 1136451 , 6 A Carlton Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Carlton Street.</p> <p>The site is irregular in shape with a frontage of 7.75m along Carlton Street and a depth of 51m. The site has a surveyed area of 348.6m².</p> <p>The site is located within the R3 Medium Density Residential zone and accommodates a semi-detached dwelling house.</p> <p>The site is generally flat across the property.</p>

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by residential accommodation including dwelling houses, semi-detached dwellings, multi dwelling housing and residential flat buildings.

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:

DA608/1999 – Demolition of a house.

DA436/2001 – New Building Serviced Apartments.

DA286/2003 – Multi-unit residential development containing thirteen apartments.

DA347/2008 – Stratum subdivision to create 6 lots and Strata Subdivision to create 7 lots

DA75/2013- Construction of a front fence to substation area.

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for the construction of a second floor addition, terrace extension and pergola atop of an existing two storey semi-detached dwelling house.

AMENDED PLANS

Following a preliminary assessment of the application, Council wrote to the applicant on 18 January 2019 outlining issues related to views loss that would not allow Council to support the application. Following receipt of the letter, the applicant advised Council that they intended to amend the

application . Council agreed to accept amendments to the application.

The applicant subsequently provided amended plans to address the concerns raised on 30 April 2019. Amendments to the proposal included the relocation of the second floor addition towards the rear of the property and the removal of the proposed pergola.

The amendments proposed are of a lesser environmental impact in respect to the original plans lodged with Council. As such, the amended application was not re-notified to adjoining properties. The is in accordance with clause 2.6 of the Manly DCP 2013.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the</p>

Section 4.15 Matters for Consideration'	Comments
	<p>consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

Name:	Address:
Mr David Nicholas Donn Howe	6 B Carlton Street MANLY NSW 2095

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

- **View Loss**
- **Bulk and Scale**

The matters raised within the submissions are addressed as follows:

- **View Loss**

Comment:

Concern was raised in regards to view loss from private open space to South Steyne. The proposal has been assessed against the view loss provisions under Clause 3.4.3 of the Manly DCP and the Land and Environment Court Case of *'Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC 140'* in this report (refer to Cl. 3.4.3 Maintenance of Views under the MDCP 2013 section of this report). In summary, the amended proposal does not cause unreasonable view loss to and from private open space.

This matter does not warrant refusal of the application.

- **Bulk and Scale**

Concern was raised in regards to the siting of the second floor addition and the resulting bulk and viewed from the street. The amended plans lodged to Council on 30 April 2019, have increased the setback of the addition to be inline with the existing stairwell as requested in the submission. The impact upon the streetscape is not unreasonable.

This matter does not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Strategic and Place Planning (Heritage Officer)	<p>Further to a review of the available documents and site visit, the site of proposed development is not a listed heritage item in its own right, however, it is located in the proximity of a heritage conservation area and in vicinity of several heritage items.</p> <p>Given the nature of the proposal and the item, the impact on heritage values is assessed as acceptable. Based on the above, I have no objections to this proposal from heritage perspective.</p> <p>Proposal is acceptable without conditions.</p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A326483_02).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

14 Development on land within the coastal use area

(1)

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

Comment:

There are no identified aboriginal sites on the subject site. The proposal will have no significant impact on cultural or environment heritage.

The proposal takes is consistent with the bulk and scale of adjoining properties and takes into account the surrounding coastal environment.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

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

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

Comment:

The proposed works are considered to have a negligible impact on the surrounding environment and is unlikely to cause an increased risk of coastal hazards on the subject land or other land.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

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%	No
Floor Space Ratio	FSR: 0.6:1 209.1m ²	FSR: 0.72:1 252m ²	20.5%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
6.1 Acid sulfate soils	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.9m
Percentage variation to requirement:	16%

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.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- The proposed works represent a minor increase to the existing building height with the resultant height, bulk, scale of the dwelling entirely consistent with the built form characteristics established by neighbouring dwellings and development generally within the sites visual catchment.
- The proposed additions will sit below the height of the adjoining buildings to the west and will be entirely consistent with that established by the existing pair of semi-detached dwellings.
- The additions maintain the upper level setback approved at No. 6B Carlton Street, Manly and will sit back behind the front building alignment/ façade of the levels below. Accordingly, the proposed works will not be readily discernible in a streetscape context.

Planners Comment

It is agreed, that the proposed proposed works will not largely alter the bulk scale of the existing building when viewed from the street nor will it be inconsistent with existing development in the locality, but will improve the internal amenity for the occupants by providing a larger habitable space. Notwithstanding the non-compliance, the proposal is not considered to result in any unreasonable visual or amenity impacts on the surrounding area or properties.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R3 Medium Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposed height of the semi-detached dwelling is considered reasonable when considering the height of existing development along the northern side of Carlton Street. The height of the dwelling is consistent with that of the recent approval of second floor addition at No. 6B Carlton street (adjoining semi-detached dwelling to the west). The visual bulk of the dwelling as viewed from public open space is not adverse or unreasonable.

b) to control the bulk and scale of buildings,

Comment:

The proposal is also consistent with the bulk and scale of the surrounding properties. The perceived bulk of the proposed is set back to the northern end of the of the building away fro the street. This reduces the amount of building visible from the street while maintaining the amenity of the house.

c) to minimise disruption to the following:

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

Comment:

The proposal has been assessed against the view loss provisions under Clause 3.4.3 of the Manly DCP and Tenacity Consulting v Warringah [2004] NSWLEC 140 when considering the impacts on the views of adjoining properties in this report. In summary, the proposed development does not cause unreasonable view loss to and from public and private open spaces.

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

Comment:

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

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

Comment:

The proposed development will not unreasonably compromise the management of the coastline or foreshore.

Zone objectives

The underlying objectives of the R3 Medium Density Residential zone are:

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

Comment:

The proposal will not affect the housing needs within the community.

- *To provide a variety of housing types within a medium density residential environment.*

Comment:

The proposal does not propose to alter the existing dwelling density.

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

Comment:

The proposal is for residential use.

- *To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*

Comment:

The proposed development is considered to be a suitable redevelopment of the site.

- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

Comment:

The proposal is not for a tourist use.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone.

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel, for which Council has an exemption for dwelling houses that can be determined by the Development Determination Panel.

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1
	209.1m ²
Proposed:	0.72:1

	252m ²
Percentage variation to requirement:	20.5%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- The variation sought including the compatibility of the FSR and resultant built form outcome with

that established by adjoining development (6B Carlton Street) and medium density development generally within the sites visual catchment, the appropriate distribution of floor space across the site and the general lack of adverse streetscape and residential amenity consequences. The contextually appropriate quantum and distribution of floor space on this particular site provides for a view sharing outcome and promotes good design and amenity consistent with objective 1.3 (g) of the Act.

- The proposed development, by virtue of the height and GFA proposed, will not be perceived as inappropriate or jarring in the context of surrounding development and development generally within the R3 Medium Density Residential Zone.
- The bulk and scale of the proposed works are consistent with the existing and desired medium density streetscape character in which medium density development displaying a recessive 3rd storey building element are characteristic. We note that the GFA/ FSR is consistent with that recently approved for alterations to No. 6B Carlton Street pursuant to DA 46/2017 being 0.76:1.

Planners comment:

It is agreed that there a varying types of development in the close vicinity of the subject site and that proposed development would be in keeping with the bulk and scale of the majority of development in the locality.

Further, it is agreed the proposed development that there is no unreasonable streetscape of residential amenity impacts.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

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

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

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – '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 proposed addition of gross floor area is towards the rear portion of the building, at second floor level and within the existing building footprint. As viewed from the Carlton street, the building would still present as consistent or of less bulk than that of neighbouring properties within the locality.

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 extension of gross floor area is entirely within the existing building footprint. No important landscape features within the close vicinity of the subject site will be unreasonably impacted by the proposed works, as the footprint of the dwelling is not increased. The subject site allows for a presentation of landscaping and vegetation that is complementary to the area. The proposal will not unreasonably impact upon the Manly townscape.

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

Comment:

The development overall is found to enhance the visual continuity of the existing character of the area and improve the aesthetics of the development on site.

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

Comment:

The extension of floor space does not adversely increase visual and aural privacy impacts on adjoining development, nor is there unreasonable levels of shadowing to the adjoining dwellings to the east and west (Nos. 4 and 6B Carlton Street). The proposal is consistent with the numeric control under clause 3.4.1 and 3.4.2 of the Manly DCP. The proposal has also been assessed against the view loss provisions under Clause 3.4.3 of the Manly DCP and Tenacity Consulting v Warringah [2004] NSWLEC 140, with no unreasonable impact to neighbouring private open space or the public realm.

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

Comment:

The development maintains a residential use.

Zone objectives

The underlying objectives of the R3 Medium Density Residential zone are:

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

Comment:

The proposal will not affect the housing needs within the community.

- *To provide a variety of housing types within a medium density residential environment.*

Comment:

The proposal does not propose to alter the existing dwelling density.

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

Comment:

The proposal is for residential use.

- *To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*

Comment:

The proposed development is considered to be a suitable redevelopment of the site.

- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

Comment:

The proposal is not for a tourist use.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent / inconsistent with the objectives of the R3 Medium Density Residential zone.

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

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

Planning Circular 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 Floor space ratio Development Standard is assumed by the Local Planning Panel, for which Council has an exemption for dwelling houses that can be determined by the Development Determination Panel.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 348.6m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	East: 6.5m	9.4m	44%	No
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	0.5m	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	7.3m, consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	3.33m (based on eastern wall height)	1.1m	56%	No
	Windows: 3m	1.3m-3m	66%	No
4.1.4.3 Wall on Boundary	Height- 3m	9m	66%	No
	Length- Max 35% (16.8m)	5.5m	-	Yes
4.1.4.4 Rear Setbacks	8m	23m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements	Open space 55% (192m ²) of site area	57.5% 200m ²	-	Yes
Residential Open Space Area: OS3	Open space above ground 25% (50m ²) total open space	15% 30m ²	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% (70m ²) of open space	64.5% (129m ²)	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	18sqm	-	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
3.1.1 Streetscape (Residential areas)	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 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
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

Merit consideration:

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

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Comment:

The proposed development will result in negligible view loss from No 6B Carlton Street, Manly to North Steyne. The loss of view is not unreasonable and will maintain adequate view sharing between properties.

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

The proposal results in a negligible disruption of views from neighbouring properties. The level of view loss is not unreasonable and has been assessed below with regards to the planning principle established by the NSW Land and Environment Court.

Council received one (1) submission from a neighbouring property in relation to view loss from the original and amended plans submitted. The Manly DCP refers to the planning principle within *Tenacity Consulting v Waringah [2004] NSWLEC 140* when considering the impacts on the views of the adjoining properties. This is provided below:

1. Nature of the view affected.

The first step is the assessment of views to be affected. Water views are valued more highly than

land views. Iconic views (for example of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Comment:

No. 6B Carlton Street, Manly

The nature of the views affected from this property would be beach, ocean and iconic views of the Norfolk Island Pine trees to the east. The views would be filtered through existing development and vegetation as pictured below.



Photo 1- Rooftop Terrace



Photo 2- Rooftop Terrace



Photo 3- Rooftop Terrace

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

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

Comment:

No. 6B Carlton Street, Manly

The views from this property are obtained over the side boundary (east). The views are filtered through Carlton Street and existing neighbouring development. Views are obtained from a standing and sitting positions from the rooftop terrace.

3. Extent of Impact

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

Comment:

No. 6B Carlton Street, Manly

This property currently has significant Beach and Oceans Views and as well as Norfolk Island Pine Trees to the east. Views from the rooftop terrace would be impacted to a negligible extent as a result of the amended proposal.

4. Reasonableness of the proposal causing the impact

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

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

Comment:

In considering the totality of impact it is noted that proposal is non-compliant with both Clause 4.3- Height of Buildings and Clause 4.4- Floor Space under the Manly LEP 2013 . While the application proposes a significant variation to both of these Development Standards, it considered that the amended proposal is sited to ensure highly valued views are retained. The proposal, as amended, responds appropriately to the available views through the provision of appropriate view corridors, setbacks (front) and building articulation to ensure highly valued views are retained and the impact on properties in terms of view loss is negligible. A more skilful design is not likely to be able to achieve the same development potential and amenity while reducing view impacts to neighbouring properties. The proposal is acceptable and view sharing is achieved from neighbouring properties.

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

Comment:

The proposed works will not cause unreasonable loss of views. In regards to 'view creep' the proposal or neighbouring properties does include unreasonable bulk which could result in unreasonable future view loss. The amended proposal appropriately

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

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

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

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

Description of non-compliance

Clause 4.1.4.2 of the Manly DCP requires development be setback at least 3.33m from the eastern property boundary.

New windows from habitable dwelling that face the side boundary are to be setback at least 3m from side boundaries.

The development proposes the following:

East side setback- 1.1m (56% variation to the numeric control).

Windows- 1.3m- 3m (66% variation to the numeric control)

Wall on boundary (Height)- 9m (66% variation to the numeric control)

Merit consideration:

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

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

Comment:

The proposed second floor addition is setback 7.3m from the front boundary. The physical separation proposed between the street and the proposed addition will not have any unreasonable impact upon the desired character of the street.

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 addition and new decking will not unreasonably compromise privacy between the subject site and adjoining properties. The proposed development is consistent. The proposal has been assessed against the view loss provisions under Clause 3.4.3 of the Manly DCP and the Land and Environment Court Case of *Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC 140*. The proposal maintains adequate sunlight access to adjoining properties. The proposal will not impact upon existing traffic conditions.

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

Comment:

Flexibility is provided in this circumstance as the proposed development will not result in any unreasonable amenity impacts (privacy, solar access, views) to adjoining properties.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed development is consistent with the requirement for landscaped open space. The proposal does not propose the removal of any native vegetation or trees. *State Environmental Planning Policy No 19 - Urban Bushland* is not applicable in this instance.

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

Comment:

The subject site is not located in a bush fire asset protection zone.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Manly Section 94 Development Contributions Plan

S94 Contributions are not applicable to this application.

CONCLUSION

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

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

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

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

considered to be:

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1438 for Alterations and Additions to a semi detached dwelling on land at Lot 105 DP 1136451, 6 A Carlton Street, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA02/ Ground / Site Plan and Level 1	30 August 2018	Wolski- Copppin
DA03/ Level 2 and Roof Plan	10 April 2019	Wolski- Copppin
DA04/ Elevations 01	10 April 2019	Wolski- Copppin
DA05/ Elevations 02	10 April 2019	Wolski- Copppin
DA06/ Section	10 April 2019	Wolski- Copppin

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A326483_02	17 April 2019	Senica Consultancy Group

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).

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

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

5. **External Finishes to Roof**

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

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

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

6. **Stormwater Disposal**

Stormwater shall be disposed of to an existing approved system or in accordance with Council's "Manly Specification for on-site Stormwater Management".

Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from development. (DACPLCPCC1)

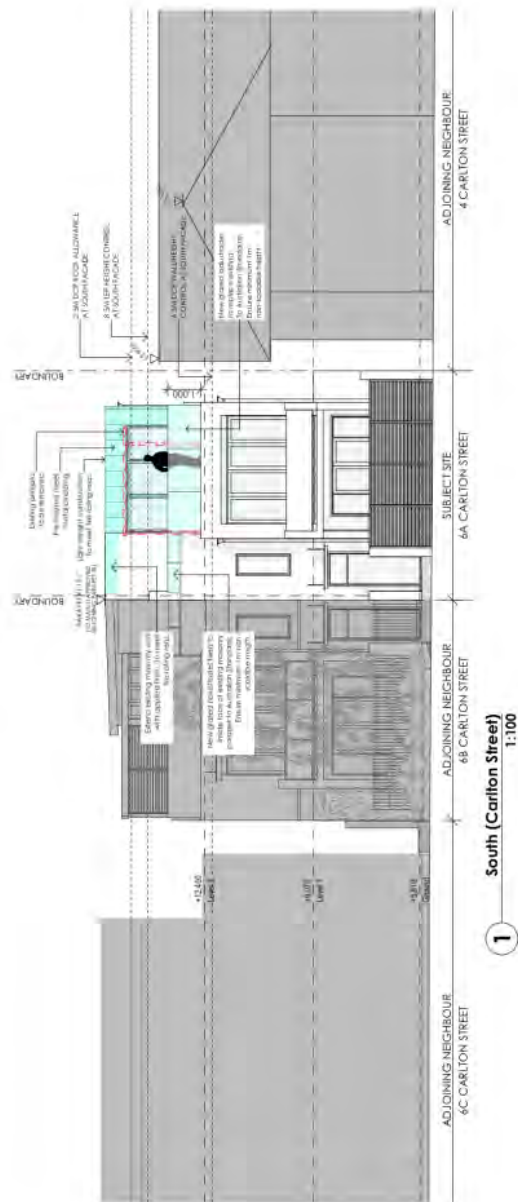
CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

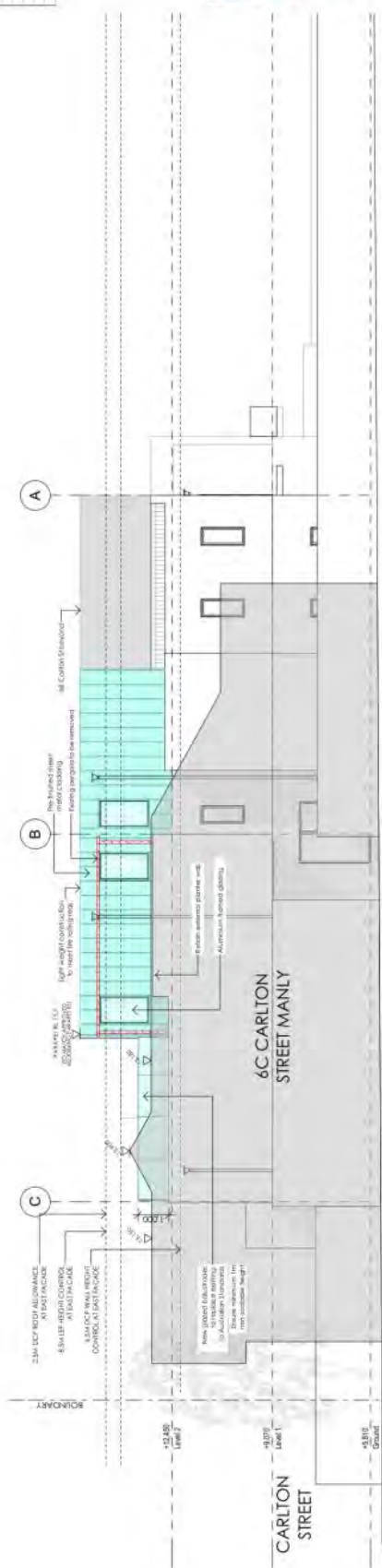
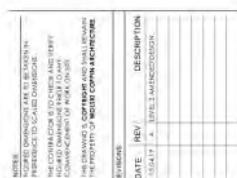
7. **Stormwater Disposal 2**

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

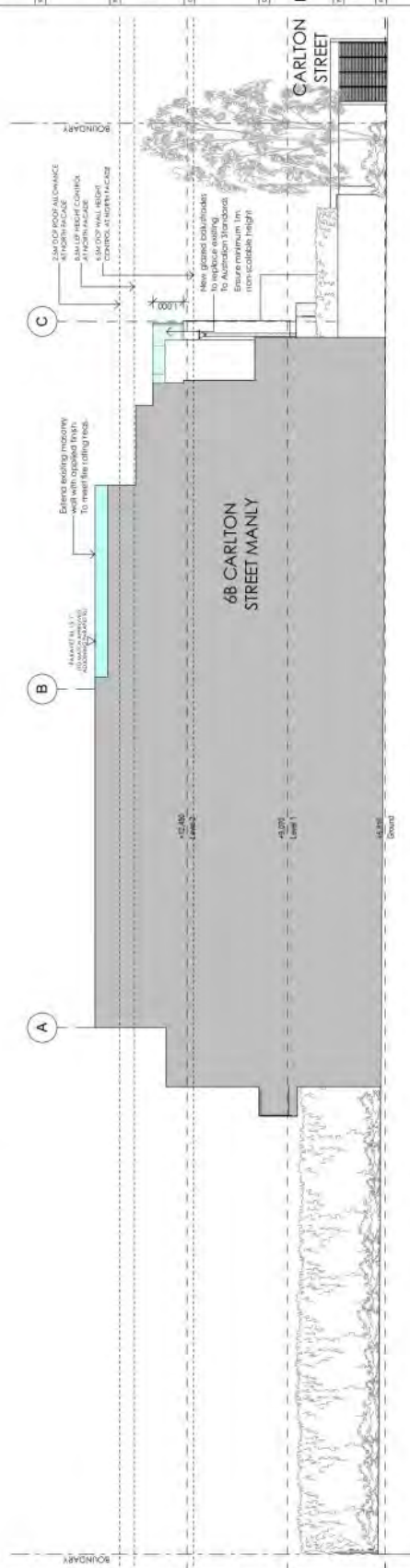
Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACPLFPOC1)





2 East 1:100



1	West	1.100
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DATE	REV	DESCRIPTION
10/01/19	A	SENT 2 AMENDED DESIGN

04
Glazed Balustrade
Frameless Glass



05
Applied Finish
Colour to match
existing



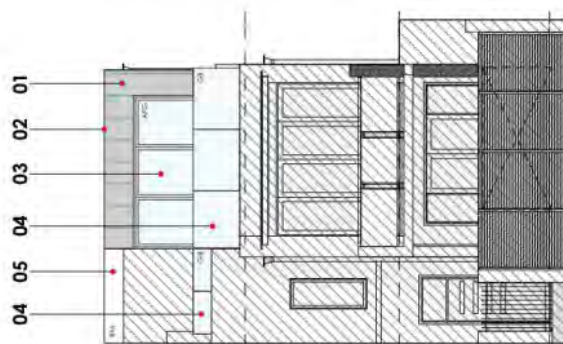
01
Sheet Metal Cladding
Colorbond® Shale Grey
or similar



02
Roofing & Gutters
Profile & colour
to match existing



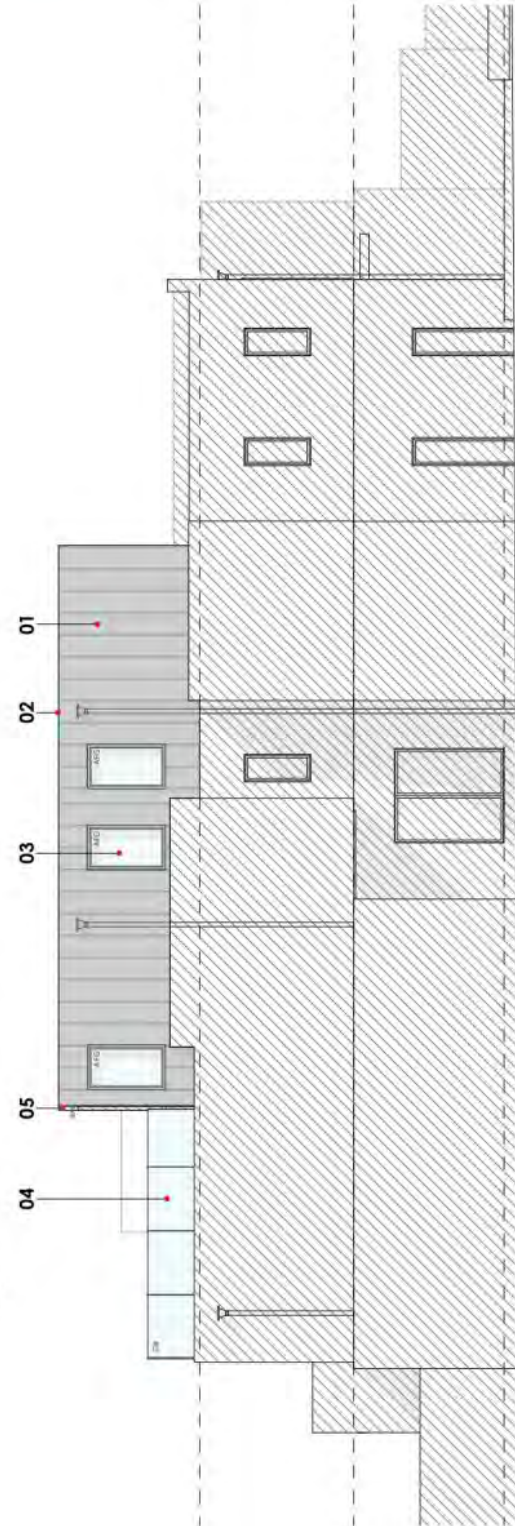
03
**Aluminium Framed
Glazing**
Colour to match
existing



South Elevation

2

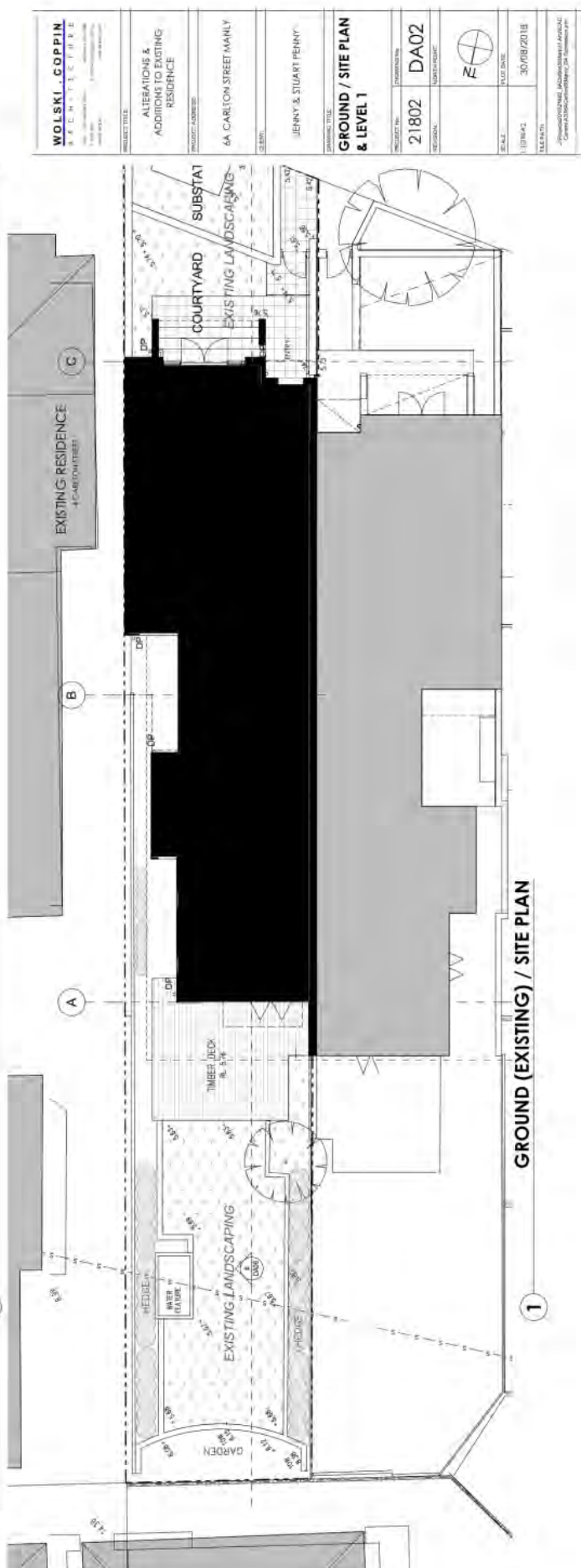
DATE	REV	DESCRIPTION
10/01/19	A	SENT 2 AMENDED DESIGN



East Elevation

1

HISTORY	
<p>REPORT CONTAINS 148 (148) VOTES PREVIOUS TO LOCAL ELECTIONS.</p> <p>RE CONVINCE #10 CIVIL AND VERTY (1990) (1990) (1990) (1990) (1990) (1990) (1990) (1990)</p> <p>THE DELIVERED FOR REPORT AND FOR LOCAL ELECTIONS TO LOCAL CONSTITUTIONAL</p>	



ITEM 3.6	DA2018/1606 - 97 PRINCE ALFRED PARADE, NEWPORT - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING OFFICER	STEVE FINDLAY
TRIM FILE REF	2019/298768
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2018/1606 for alterations and additions to a dwelling house at Lot 101 DP 13457, 97 Prince Alfred Parade, Newport subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1606
Responsible Officer:	Ashley Warnest
Land to be developed (Address):	Lot 101 DP 13457, 97 Prince Alfred Parade NEWPORT NSW 2106
Proposed Development:	Alterations and Additions to a dwelling house
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	James Beckett Critchley
Applicant:	James Beckett Critchley
Application lodged:	28/09/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	05/10/2018 to 23/10/2018
Advertised:	Not Advertised
Submissions Received:	1
Recommendation:	Approval
Estimated Cost of Works:	\$ 166,425.00

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

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

Pittwater 21 Development Control Plan - C1.3 View Sharing

Pittwater 21 Development Control Plan - D10.11 Building envelope (excluding Newport Commercial Centre)

Pittwater 21 Development Control Plan - D10.13 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 101 DP 13457 , 97 Prince Alfred Parade NEWPORT NSW 2106
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Prince Alfred Parade.</p> <p>The site is irregular in shape with a frontage of 16.9m along Elvina Avenue and a depth of 41.6m. The site has a surveyed area of 521.2m² and a slope of 29.3% that falls from the south to the north.</p> <p>The site is located within the E4 Environmental living zone under the PLEP 2014.</p> <p>The site contains an existing three (3) storey dwelling house with a metal roof.</p> <p>The front of the site contains a variety of hedges and one (1) native tree with a height of 5.0m. The rear of the site contains several 8.0m-12.0m high native trees.</p> <p><u>Detailed Description of Adjoining/Surrounding Development</u></p> <p>Adjoining and surrounding development is characterised by similar two and three storey residential developments.</p>

Map:





Figure 1 - Three Dimensional Impression of the Front Elevation of the Proposed Dwelling Additions

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	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause</p>

Section 4.15 Matters for Consideration'	Comments
	<p>is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. In summary, the proposed development is found to be consistent with the desired future character for the locality and relevant locality specific controls. The proposed alterations and additions are respectful to the site and the adjoining neighbours.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development as the key characteristics of the site, including its location, orientation, aspect, character, size, and topography make the site

Section 4.15 Matters for Consideration'	Comments
	suitable for residential development of the type proposed, which is consistent with the zoning of the land and predominantly complying with the DCP controls that applicable to the subject site.
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. The public interest is best served by the orderly and economic use of land for purposes which are permissible and which, in their design, configuration and operation, satisfy the intent of the relevant controls. In the subject case, the proposal is in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

Name:	Address:
BBF Town Planners	1 / 9 Narabang Way BELROSE NSW 2085

The following issues were raised in the submission:

- Breach of the maximum building height control
- Additional overshadowing
- Breach of the building envelope control
- View loss
- Increased noise associated with the lift
- Adverse impact on streetscape

The matters raised within the submission are addressed as follows:

- **Breach of the maximum building height control**

The submission raises concerns that there are insufficient environmental planning grounds to support

the clause 4.6 variation.

Comment:

An assessment of the clause 4.6 variation request has been undertaken within that section of this report. The assessment finds the applicant's written request adequately demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

- **Additional overshadowing**

Concerns were raised with regards to the additional afternoon shadow that will be cast onto the adjoining dwelling at 3 Elvina Avenue.

Comment:

The shadow diagrams provided in support of the application identifies the main private open space and the principle living area of 3 Elvina Avenue will receive a minimum 3 hours of sunlight between 9.00am and 3.00pm on June 21st and is therefore consistent with the requirements of the clause.

- **Breach of the building envelope control**

The concern is that the breach of the building envelope control does not provide for development that is consistent with the objectives of the control.

Comment:

A portion of the proposed works are located outside the building envelope. The proposed works are consistent with the objectives of the control and are discussed in further detail in section D10.11 of this report.

- **View loss**

Concerns were raised in relation to the potential loss of views as a result of the proposed development.

Comment:

A site visit at 3 Elvina Avenue was conducted to assess the potential view loss impact as a result of the development. The view loss assessment in accordance with the four step process as outlined within Tenacity Consulting v Waringah [2004] NSWLEC 140 was carried out as detailed in the View Sharing section of this report. In summary, the view impacts do not warrant the redesign or refusal of the application.

- **Noise associated with the use of the lift**

Concerns were raised with regards to noise generated in association with the use of the lift and the impacts on amenity.

Comment

To ensure the noise generated by the mechanical components of the lift are minimised, a condition of consent has been imposed for these mechanical components to be acoustical treated. Noise generated in association with the use of the lift is consistent with reasonable residential expectations.

- **Adverse impact on streetscape**

The submission raises concerns that the proposed lift will have an adverse visual impact when viewed from the street and adjoining properties. The submission also raises concerns with the ability of the proposal to meet the outcomes of D10.1 of P21 DCP.

Comment

The proposal is consistent with the objectives of the control. The use of transparent materials for the lift structure and the incorporation of a light weight roof structure over the existing first floor balcony minimises any adverse visual impacts of the development on the natural environment.

The lift is designed to integrate with the existing dwelling to provide access to all levels for less mobile people. The location of the lift minimises the need for excavation on the site without resulting in significant structural change and redesign of the dwelling.

Additionally, the retention of the existing vegetation within the front yard substantially softens the bulk and scale of the development.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	The site is located on Pittwater LEP Biodiversity map, Pittwater 21 DCP Wildlife Corridors map and Pittwater Spotted Gum Forest EEC map. The works include a new lift & roof and replacement of existing access stairs at the front of the site. The SEE states <i>the proposal will not require the removal of any significant trees or vegetation</i> . One small tree and shrub are located on the subject site adjacent the proposed works that may be impacted by the proposed works. An Arborist report is not provided. It is recommended a condition be included that requires replacement planting. There are no further Biodiversity issues.
NECC (Coast and Catchments)	<p>State Environmental Planning Policy (Coastal Management) 2018</p> <p>12 Development on land within the coastal vulnerability area</p> <p><i>Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:</i></p> <p>(a) <i>if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and</i></p> <p>(b) <i>the proposed development:</i></p> <p>(i) <i>is not likely to alter coastal processes to the detriment of the natural environment or other land, and</i></p> <p>(ii) <i>is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and</i></p>

Internal Referral Body	Comments
	<p>(iii) incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and</p> <p>(c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.</p> <p>Comment: The subject land has not been included on the Coastal Vulnerability Area Map under <i>State Environmental Planning Policy (Coastal Management) 2018</i> (CM SEPP) and in regard to clause 15 of the CM SEPP the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land. As such, it is considered that the application complies with the requirements of the CM SEPP as they relate to development on land identified as a coastal vulnerability area or land that may be affected by coastal hazards.</p>
NECC (Development Engineering)	The proposed development does not require OSD. The submitted Geotechnical report addresses the relevant DCP controls. No objection to approval, subject to conditions as recommended.
NECC (Riparian Lands and Creeks)	<p>This application does not trigger water quality controls and will not directly impact a riparian area.</p> <p>The applicant must install and maintain sediment and erosion controls for the duration of work.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A327912, Dated 27/11/2018).

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

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

13 Development on land within the coastal environment area

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

Comment:

The proposed works are not likely to cause an adverse impact upon the matters identified in this clause. The proposed alterations and additions do not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes.

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

Comment:

Council is satisfied the proposed works are designed, and can be managed, to avoid adverse impacts based upon the matters identified in this clause.

14 Development on land within the coastal use area

(1)

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

Comment:

The proposal does not impact upon the existing and safe access to and along the foreshore. The visual amenity from private and public space will not be adversely effected and the surrounding area consists of examples of similar developments.

The land adjacent to the subject site is mapped as having a high likelihood of containing Aboriginal heritage sites. The foreshore area is heavily modified and no sites have been identified within the vicinity of the proposed development.

The proposed works are not likely to cause an adverse impact upon the matters identified in this clause. A condition of consent has been placed to stop works and report the findings to the AHO if any Aboriginal Engravings or Relics are unearthed.

As such, the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

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

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

Comment:

Council is satisfied that the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.1m	18.8%	No

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance:

Requirement:	8.5m
Proposed:	10.1m
Is the planning control in question a development standard?	YES
If numerical enter a % variation to requirement	18.8%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 - Height of Buildings development standard, has taken into consideration the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

Clause 4.6 Exceptions to development standards:

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular

development,

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

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

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment

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

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

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

Comment

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

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

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 applicants written request argues, in part:

"In regard to the proposed development at 97 Prince Alfred Parade, Newport, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The proposed additions incorporating the additional building elements which exceed the 8.5m height standard are considered to promote good sustainable design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EPA Act which is a suitable environmental planning ground which justifies the flexible application of the development standard.*
- The development is constrained by the siting of the existing development and sloping topography of the site.*

- *The variation to the height control is inconsequential as it is of negligible impact to the streetscape and the amenity of neighbouring properties."*

It is agreed that the breach occurs as a result of the steep topography of the site and the siting of the existing dwelling. It is also agreed that the breach does not result in any unreasonable impacts to any surrounding properties.

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

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

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

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

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

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

Comment

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the E4 Environmental Living zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

Comment

The existing three storey dwelling is not consistent with the requirement for a maximum of two storeys in any one place. It is noted that the bottom level is utilised as an enclosed garage. The three storey design of the dwelling is not a prominent feature when viewed from the street as the majority of the two lower levels are screened by existing vegetation. The proposed works will not emphasise the existing three storey design of the dwelling.

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

Comment

The proposed new passenger lift and balcony roof is keeping within the maximum height of the existing dwelling. Surrounding development consists of similar two storey dwellings with sub-floor garage/enclosed parking spaces below.

c) to minimise any overshadowing of neighbouring properties,

Comment

The development will cast additional shadow onto the neighbouring property at 3 Elvina Avenue, however, in accordance with the certified shadow diagrams, the main private open space and the principle living area of 3 Elvina Avenue will receive a minimum 3 hours of sunlight between 9.00am and 3.00pm on June 21st. Therefore, the proposal is consistent with the relevant solar access requirements of P21 DCP.

d) to allow for the reasonable sharing of views,

Comment

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, have been applied to the proposal. The detailed assessment within Section C1.3 of this report identifies that the proposal is consistent with the relevant view sharing objectives of P21 DCP. The impact of the proposal on available views is considered reasonable.

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

Comment

The lift is designed to integrate with the existing dwelling to provide access to all levels. The location of the lift minimises the need for excavation on the site.

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

Comment

The use of transparent materials for the lift structure and the incorporation of a light weight roof structure over the existing first floor balcony minimises any adverse visual impacts of the development on the natural environment.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the building height development standard.

Zone objectives

The underlying objectives of the E4 Environmental living zone are addressed as follows:

(a) To provide for low-impact residential development in areas with special ecological, scientific or

aesthetic values.

Comment

The proposed works comply with the side and front setback requirements and do not seek to increase upon the existing hardsurfaced area. The proposal is considered a low-impact residential development.

(b) To ensure that residential development does not have an adverse effect on those values.

Comment

As a result of the general compliance of the development and the imposed conditions, the development will not adversely impact the solar access, view sharing, privacy and amenity experienced by the residents of the adjoining dwellings.

(c) To provide for residential development of a low density and scale integrated with the landform and landscape.

Comment

The lift is designed to integrate with the existing dwelling to provide access to all levels. The location of the lift minimises the need for excavation on the site.

The utilisation of transparent materials further integrates the design with the landscape.

(d) To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.

Comment

No vegetation is impacted or proposed for removal as part of the application.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E4 Environmental Living zone.

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

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

Planning Circular 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, for which Council has an exemption for dwelling houses that can be determined by the Development Determination Panel. However, as the exemption had lapsed at the time of scheduling this matter for determination, the application is being reported to the Local Planning Panel.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	7.8m	N/A	Yes
Rear building line	6.5m	N/A	N/A	Yes

Side building line	2.5m (east)	3.0m to 4.2m	N/A	Yes
	1.0m (west)	1.0m	N/A	Yes
Building envelope	3.5m (east)	Outside envelope	33.8%	No
	3.5m (west)	Outside envelope	122%	No
Landscaped area	60%	40%	33.3%	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.12 Stormwater Drainage Systems and Natural Watercourses	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.13 Pollution Control	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	Yes	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	Yes	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	No	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	No	Yes
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.3 View Sharing

During the assessment of this application, a submission was received from the owners of 3 Elvina Avenue, whom raised concern with the development on the grounds of view loss. The views to the north-west that will be effected are identified in the image below.



Figure 2 : View from first floor level external deck of 3 Elvina Avenue to the north-west

An assessment of the views likely to be impacted upon as a result of the lift and roof over the balcony is undertaken as follows:

Merit consideration

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

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

Comment:

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

1. Nature of the views affected

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

Comment on Principle 1:

The views from 3 Elvina Avenue that are the concern are to the north-west of the property and include views of the Pittwater waterway. The views are predominantly obstructed by vegetation. To the north of 3 Elvina Avenue, unobstructed views of Old Mangrove Bay include the interface between the land and water.

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

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

Comment on Principle 2:

At the property of 3 Elvina Avenue, views to the north of Old Mangrove Bay can be viewed internally from the living, dining, and kitchen area on the first floor and the master bedroom on the second floor level. Views of Old Mangrove Bay are also obtained externally from the adjoining first and second level front decks. Views to the north from 3 Elvina Avenue are obtained across the front boundary from a seated and standing position and are unaffected by the proposal. The views to the north are identified in the image below.



Figure 3 - View from first floor level external deck of 3 Elvina Avenue to the north

Views to the north-west of the Pittwater waterway can be viewed internally from the living, dining, and kitchen area on the first floor and the western bedrooms along on the second floor

level. These views can also be obtained externally from the first and second level decks. Views to the north-west of 3 Elvina Avenue are obtained across a side boundary with views from a standing position. These views will be effected by the proposal.

3. Extent of impact

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

Comment on Principle 3:

Given the design and layout of 3 Elvina Avenue, waterway views including the interface between the land and water are obtained from the majority of the internal and external principle living areas over the front boundary. All views to the north are unaffected by the proposal.

All views to the north-west of the property from a standing and seated position will be affected by the proposal. The extent of impact of the proposal on available views is ranked as minor.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The proposed external lift does not comply with the relevant height and building envelope controls. Compliance with either of these controls would be difficult to achieve due to the specific location and design of the existing structure. In addition, due to the nature of the proposal being a vertical lift element, a design that complies with the height and building envelope controls would not serve its purpose and function to provide access to all levels of the dwelling for less mobile people.

A redesign of the proposal to incorporate the lift internally would result in significant structural change and redesign of the dwelling. The relocation of the lift would result in a significant increase in cost of the proposal and would not resolve the non-compliant building envelope and height and potentially result in further non-compliances. Having regard to this and the resultant impact of the proposal on available views, the proposal is considered reasonable.

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

Comment:

The location of the lift in lieu of the existing staircase provides a design that maintains the amenity of the existing dwelling. As mentioned in the Statement of Environmental Effects, the new passenger lift is to be transparent to minimise the impacts on views to and from private and public places.

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

Comment:

Not vegetation is impacted or proposed for removal as part of the proposed works.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of C1.3 of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D10.11 Building envelope (excluding Newport Commercial Centre)

A portion of the lift and the roof over the first floor level balcony does not comply with the building envelope requirements. A variation to the building envelope requirement is permitted where the outcomes of the clause are achieved.

The outcomes are achieved in the following ways:

- The desired future character of the Newport Locality is maintained.
- The proposed building scale and density is consistent with similar forms of development in the area.
- The proposed lift is situated and designed to minimise site disturbance and maintain the natural features of the site.
- The bulk and scale of the proposal is minimised through the retention of the existing vegetation within the front yard and the use of transparent materials for the lift. To further minimise any additional bulk, when viewed from adjoining properties and street front, the privacy screen along the eastern elevation is to be deleted.
- The proposal will not result in any unreasonable impacts upon views currently enjoyed from public or private places.
- The proposal has been designed to maximise amenity for the occupants of the dwelling whilst maintaining a reasonable level of privacy, amenity and solar access to the adjoining properties. The deletion of the privacy screen will minimise any impacts on solar access currently enjoyed by adjoining properties whilst maintaining a reasonable level of privacy.

With consideration of the above, the variation to the building envelope requirements is considered satisfactory in addressing this control.

D10.13 Landscaped Area - Environmentally Sensitive Land

There is a significant shortfall in landscaped area of 303.6m². The shortfall in landscaped area is considered reasonable as the proposal does not seek to increase the existing hardsurfaced area.

In addition, the proposal is seen to achieve the outcomes of the clause in the following ways:

- The proposal is consistent with the desired future character of the Newport Locality.

- Bulk and scale of the built form is minimised through the use of transparent materials.
- A reasonable level of privacy, amenity and solar access is maintained by the residents of the subject site and the adjoining dwellings.
- No vegetation is proposed for removal, the retention of the existing vegetation within the front yard substantially screens the dwelling when viewed from the street.
- The existing landscaped area is not proposed to be reduced, therefore maximising soft surfaces.

With consideration of the above the variation to the landscaped area requirement is considered reasonable and satisfactory in addressing this control.

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

Pittwater 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;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1606 for Alterations and Additions to a dwelling house on land at Lot 101 DP 13457, 97 Prince Alfred Parade, NEWPORT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A101, A102, A103, A104, A105, A106, and A107	14/09/2018	Blue Sky Building Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report	17/09/2018	White Geotechnical Group 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:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
A109	14/09/2018	Blue Sky Building Design

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. **Amendments to the approved plans**

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

(a) The proposed privacy screen on the eastern elevation of the balcony is to be deleted.

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

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

3. **Prescribed Conditions**

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the

allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative Requirement

4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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.

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

FEES / CHARGES / CONTRIBUTIONS

5. **Security Bond**

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group dated 17 August 2018 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form

2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

7. **Structural Adequacy and Excavation Work**

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

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
 - (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.
- Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

8. **Amendments to the approved plans**

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

- (a) The proposed privacy screen on the eastern elevation of the balcony is to be deleted.

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

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

9. **Compliance with Standards**

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

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

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

10. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site (DACNED06)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. **Maintenance of 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.

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

13. **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.

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

Prior to issue of the Occupation Certificate, Form 3 of the Geotechnical Risk Management Policy is to be completed and submitted to the Principal Certifying Authority.

Reason: To ensure geotechnical risk is mitigated appropriately.

15. **Acoustic Treatment**

The lift is to be acoustically treated so that it does not emit any noise of 5dba above background noise at the nearest residential receiver.

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

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

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**16. Tree Retention**

In accordance with Pittwater 21 DCP Control B4.22 Protection of Trees and Bushland Vegetation, all existing trees as indicated in the Survey Plan shall be retained except where Council's prior written consent has been obtained, for trees that stand within the envelope of approved development areas and removal is approved through an arborist report. For all other tree issues not related to a development application, applications must be made to Council's Tree Management Officers.

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

17. 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.

18. Dead or Injured Wildlife

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

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

19. Provision of Canopy Trees

At least two canopy trees are to be provided onsite, with at least one at the front, which at maturity will achieve a canopy height greater than 8.5 metres, to visually reduce the height, bulk and scale of the building. Species selection is to incorporate locally native species. This planting is to be retained over the life of the development and replaced if they should die or be destroyed or removed.

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

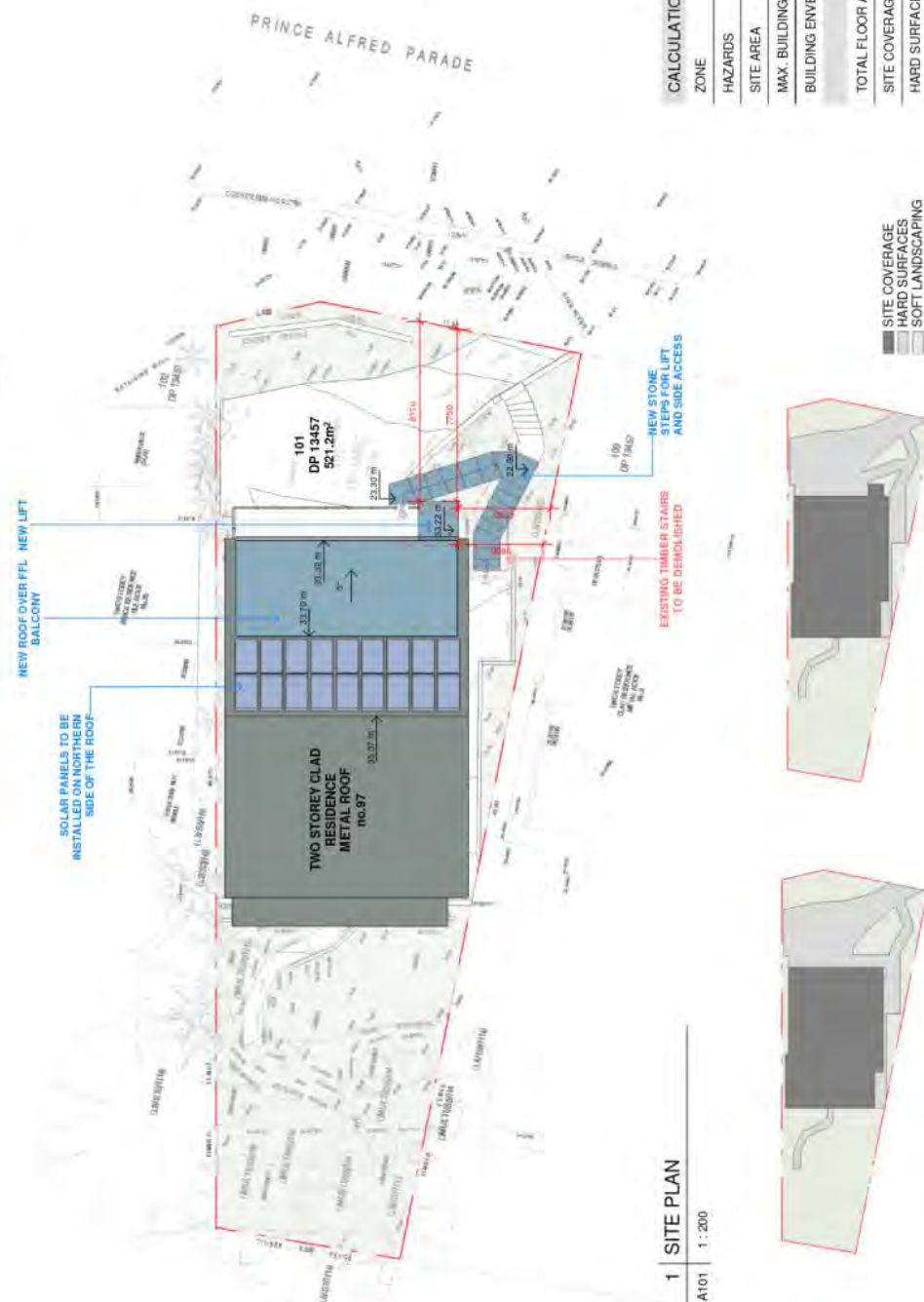
NOTES:

1. Demolition works to be carried out in accordance with the requirements of A2001:2001 The Demolition of Structures. Also in compliance with work cover authority of NSW requirements, including but not limited to:
 - Protection of site workers and the general public
 - Asbestos handling and disposal where applicable
2. Trench protection to be in accordance with AS 3600.1
3. All construction to comply with current BCA codes and Australian Standards.
4. Stormwater system to be connected to existing.
5. Underpinning shall comply with AS 1684
6. The proposed construction shall be in accordance with all the sub-consultants reports and recommendations. The architectural documents form part of the total construction set and are not to be taken as exclusively being the building construction documents
7. Eaves within 900mm of allotment boundaries are to be constructed of non-combustible materials. eaves must not be within 450mm of allotment boundaries as required by part 3.7.1 of BCA
8. Sediment & Erosion control are to be installed and maintained during the life of the project

ALL BUILDING WORKS MUST BE CARRIED OUT IN ACCORDANCE WITH THE REQUIREMENTS OF THE BUILDING CODE OF AUSTRALIA (BCA) AND AUSTRALIAN STANDARDS

CALCULATION TABLE

ZONE	E4 - ENVIRONMENTAL LIVING		
HAZARDS	GEOTECHNICAL HAZARD		
SITE AREA	521.2 m ²		
MAX. BUILDING HEIGHT	Hmax = 8.5 m		
BUILDING ENVELOPE	3.5m - SIDE BOUNDARY ENVELOPES		
	EXISTING	DEMOLISHED	PROPOSED
TOTAL FLOOR AREA	282.4 m ²	-	282.4 m ²
SITE COVERAGE	166.5 m ² / 31.9%	-	169 m ² / 32.4%
HARD SURFACE	117.5 m ²	10 m ²	120.2 m ²
SOFT LANDSCAPING	237.2 m ² / 45.5%	-	232 m ² / 44.5%
FLOOR SPACE RATIO	0.54:1	-	0.54:1



3 AREA DIAGRAM - PROPOSED

A101 1:500

2 AREA DIAGRAM - EXISTING

A101 1:500

Do not scale from plans. All dimensions and levels shown on plan are subject to confirmation on site.

PROJECT TITLE: ALTERATION & ADDITION
PROJECT NO.: 2018032
AT: 97 Prince Alfred Parade, Newport
FOR: Jim Crichley & Claire Dennett

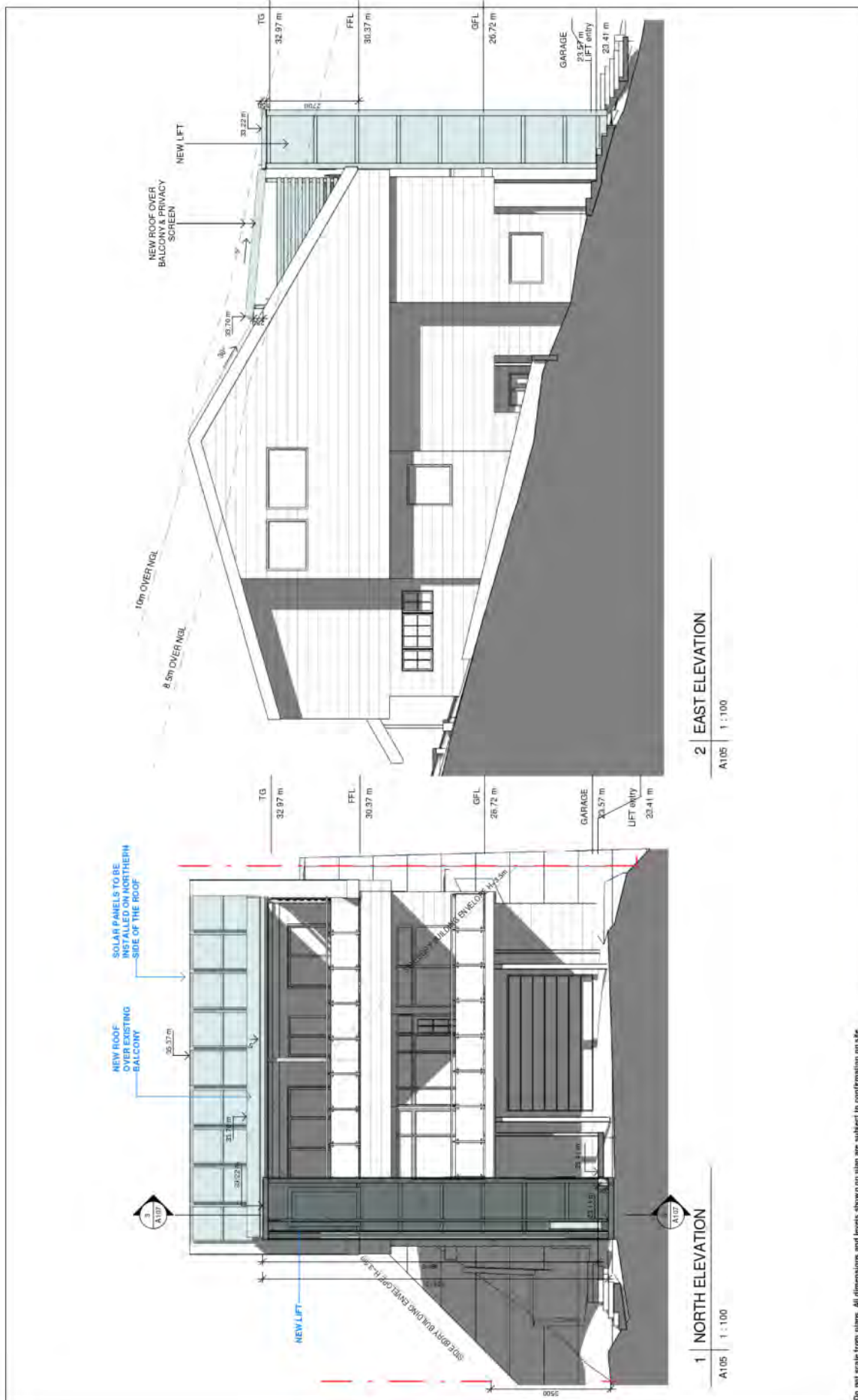
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ISSUE	DATE	DESCRIPTION	DRWN	CHKD
	04.07.2018	EXISTING	KA	KM
	01.08.2018	PRELIMINARY 1	KA	KM
	20.08.2018	PRELIMINARY 2	KA	KM
	14.09.2018	DA ISSUE	KA	MW

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SHEET TITLE: SITE PLAN
SHEET NO.: A101
SCALE AS: As indicated



SHEET TITLE: ELEVATIONS

SHEET NO: A105

SCALE AS: 1 : 100

PROJECT TITLE: ALTERATION & ADDITION

PROJECT NO.: 2018032

AT: 97 Prince Alfred Parade, Newport

FOR: Jim Crichtley & Claire Demmitt

BLUE SKY
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ISSUE	DATE	DESCRIPTION	DRWN	CHKD
1	04.07.2018	EXISTING	KA	KM
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4	14.09.2018	DA ISSUE	KA	MW

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1 SOUTH ELEVATION
A106 1 : 100

2 WEST ELEVATION
A106 1 : 100

Do not scale from plans. All dimensions and levels shown on plan are subject to confirmation on site.

ISSUE	DATE	DESCRIPTION	DRWN	CHKD
1	04.07.2018	EXISTING	KA	KM
2	01.08.2018	PRELIMINARY 1	KA	KM
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BLUE SKY
BUILDING DESIGNS
www.blueskybuildingdesigns.com.au

100 BEL AIR
Sydney NSW 1500
Telephone: 6100 3300 131
E: info@blueskydesigns.com.au

PROJECT TITLE:	ALTERATION & ADDITION
PROJECT NO.:	2018032
AT:	97 Prince Alfred Parade, Newport
FOR:	Jim Crutchley & Claire Demmelt

SHEET TITLE:	ELEVATIONS
SHEET NO.:	A106
SCALE AS:	1 : 100

ITEM 3.7 **DA2018/1820 - 74 BOWER STREET, MANLY - ALTERATIONS
AND ADDITIONS TO A DWELLING HOUSE****REPORTING OFFICER** **RODNEY PIGGOTT****TRIM FILE REF** **2019/297160****ATTACHMENTS** 1 [↓](#) **Assessment Report**
2 [↓](#) **Site Plan and Elevations****PURPOSE**

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2018/1820 for alterations and additions to a dwelling house at Lot 9 DP 8075, 74 Bower Street, Manly subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1820
Responsible Officer:	David Auster
Land to be developed (Address):	Lot 9 DP 8075, 74 Bower Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Trustees Roman Catholic Church Archdiocese Sydney Band Pty Ltd
Applicant:	Band Pty Ltd
Application lodged:	14/11/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	21/11/2018 to 07/12/2018
Advertised:	Not Advertised
Submissions Received:	2
Recommendation:	Approval
Estimated Cost of Works:	\$ 270,000.00

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot 9 DP 8075 , 74 Bower Street MANLY NSW 2095
Detailed Site Description:	<p>The site has a generally rectangular shape, with the front and rear boundaries being angled to form a parallelogram. It has side boundaries 45.835m long, and front and rear boundaries of 16.365m. It has a surveyed area of 698.5sqm. The topography slopes down from front to rear (south to north). The site backs onto a cliff above the public walkway between Manly Beach and Shelley Beach.</p> <p>There is an existing three storey dwelling located in the approximate centre of the site. The dwelling has views out towards the ocean to the north, Manly Beach to the west, and Fairy Bower to the east.</p> <p>Surrounding development consists mainly of large detached dwellings of various heights and designs. The immediate neighbours to each side (east and west) have similar views to the north, east and west. The sites across the road to the south are significantly higher than the subject site.</p>

Map:



SITE HISTORY

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

Application 10.2006.250.1 for Alterations & Additions to the existing dwelling house was approved by Council on 19 January 2007.

Application 10.2005.56.1 for Demolition & Construction of a new multi-level dwelling with pool & landscaping was approved by Council on 11 May 2005.

PROPOSED DEVELOPMENT IN DETAIL

The proposed works include the following:

- Extending upper level Master Bedroom by 2 metres to the north
- Extending upper level Bed 2 by 1 metre to the north
- Extending roof and parapet above the rooms respective to the proposed extensions
- Demolishing existing roof under the rooms respective to the proposed extensions
- Replacing existing fixed windows with operable windows in the rooms and installing three additional windows to the Master Bedroom.

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 Matters for Consideration'	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the 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	<p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed development on</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

Name:	Address:
Squillace Architects Vince Squillace & Associates	1/80 Albion Street SURRY HILLS NSW 2010
Symons Goodyer Pty Ltd Geoff Goodyer	PO Box 673 BALGOWLAH NSW 2093

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

- Privacy
- View loss
- Aesthetic appearance

The matters raised within the submissions are addressed as follows:

- **Privacy**
Comment:
Concerns were raised by the neighbours on both sides regarding privacy. This issue is assessed in detail under clause 3.4.2 Privacy and Security in this report. In summary, the proposal is not considered to result in any unreasonable privacy impacts. No conditions are recommended in this regard, and the submissions are not supported.

- **View loss**
Comment:
Concerns were raised by the owners of number 76 regarding loss of views. This issue has been assessed in detail under clause 3.4.3 Maintenance of Views in this report. In summary, the proposal is considered to minimise view loss in accordance with the clause, and maintain a reasonable sharing of views in accordance with the NSW Land and Environment Court Planning Principle. The submission is not supported in this regard.

- **Aesthetic appearance**
Comment:
The submission raised concerns with the colour of the drainpipes, as they are slightly lighter in colour than the rendering of the walls. This is considered by the objector to be unsightly and a condition has been requested should the development be approved requiring drainpipes to match the colour of the wall to which they are attached. The finishes are to match the existing building, and a slightly different colour of drain pipe compared to the wall is not considered to result in any unreasonable unsightliness. The submission is not supported in this regard.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p>The proposed development has been assessed against the following provisions:</p> <ul style="list-style-type: none"> - NSW Biodiversity Conservation Act 2016 (BC Act) - Manly DCP Clause 5.4.2 (Threatened Species and Critical Habitat Lands) - Manly LEP Clause 6.5 (Terrestrial Biodiversity) <p>The subject site is known habitat for the endangered population of long-nosed bandicoot at North Head. Accordingly, a five-part test is required to be prepared in accordance with the provisions of the NSW BC Act. Given that the proposal will have a minimal long-term impact on soft-open space, Council's Biodiversity Section has undertaken this assessment. The assessment concluded that, subject to conditions of consent, the proposal complies with the controls and is unlikely to result in a significant impact to the endangered population.</p>
NECC (Coast and	The DA has been assessed for impacts to the coastal environment

Internal Referral Body	Comments
Catchments)	<p>including impacts on Cabbage Tree Bay. The Statement of Environmental Effects did not address SEPP (Coastal Management) however an internal assessment has been undertaken. The application has been assessed in consideration of SEPP 2016 (Coastal Management), Manly LEP 2013 and Manly DCP 2013. Clause 6.8 Landslide Risk has been considered.</p> <p>The following reports have been assessed: Statement of Environmental Effects Plans - Master Set Geotechnical Report.</p> <p>The application is acceptable with conditions.</p>
NECC (Riparian Lands and Creeks)	No comments and no conditions recommended.
Strategic and Place Planning (Heritage Officer)	<p>Further to a review of available documents and a site visit The site of proposed development is not heritage listed, however, it is in the vicinity of listed item, the Fairy Bower Pool (1167 in Manly LEP). 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.

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. A328195_02). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

10 Development on certain land within coastal wetlands and littoral rainforests area

- (1) *The following may be carried out on land identified as "coastal wetlands" or "littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*
 - (a) *the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
 - (b) *the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
 - (c) *the carrying out of any of the following:*

- (i) *earthworks (including the depositing of material on land),*
- (ii) *constructing a levee,*
- (iii) *draining the land,*
- (iv) *environmental protection works,*
- (d) *any other development.*

Comment:

The site is not on land identified as "coastal wetlands" or "littoral rainforest".

11 Development on land in proximity to coastal wetlands or littoral rainforest

- (1) *Development consent must not be granted to development on land identified as "proximity area for coastal wetlands" or "proximity area for littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
 - (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
 - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

The site is not on land identified as "proximity area for coastal wetlands" or "proximity area for littoral rainforest".

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) *if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) *the proposed development:*
 - (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
 - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
 - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures are in place to ensure that there are appropriate responses to, and management*

of,
anticipated
coastal
processes
and
current
and
future
coastal
hazards.

Comment:

The site is not on land identified as "coastal vulnerability area".

13 Development on land within the coastal environment area

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

Comment:

The site is identified as being within the coastal environment area. The proposal is for a minor extension to the rear of the upper level, which will remain entirely within the footprint of the building below. It will not have any significant or unreasonable adverse impacts on any of the matters for consideration above.

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

Comment:

As discussed above, the proposal is for minor works over the existing building footprint. It will have no significant adverse impacts on any of the above matters for consideration. As such, it is considered to be consistent with clause 2(a) above, in that it is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1).

14 Development on land within the coastal use area

(1)

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

Comment:

The site is within the coastal use area. The proposal for a minor extension to the rear of the upper level, wholly over the existing building footprint, will not have any unreasonable impacts on any of the above matters for consideration.

As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

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

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

Comment:

The proposal is for minor works to the rear of the upper level, entirely within the existing building footprint. It is not likely to cause any increased risk of coastal hazards on the subject site or other land.

Manly Local Environmental Plan 2013

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

aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	N/A	Yes
Floor Space Ratio	FSR: 0.45:1	FSR: 0.51:1	11.8%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.45:1
Proposed:	0.51:1
Percentage variation to requirement:	11.8%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ

provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- The variation is a minor extension of an existing non-compliance.
- There is almost no visible change to the building from the street.
- The existing building was approved under previous planning controls (MLEP 1988), which measured floor space differently, and would have meant the extent of variation would have been greater under the previous policy (0.56:1 compared to 0.51:1 under the current controls). The statement argues that the extent of variation now proposed is less than what was originally approved for the existing building under the old policy.
- The proposal has no noticeable impact on the building height, maximum wall height and maximum storeys.
- Only a small amount of additional overshadowing will be caused.
- No unreasonable view impacts will be caused.
- No other unreasonable impacts will be caused to the surrounding neighbours or general locality.
- The proposal is consistent with the objectives of the zone and the development standard.

These arguments are considered to be generally accurate and in their description of the alterations and additions (and resulting environmental impacts) as minor and not unreasonable. The proposal is also considered to be consistent with the objectives of the zone and development standard, as argued by the applicant. Little weight is given to the argument regarding the greater extent of non-compliance

previously approved under the previous LEP as compared to the extent of non-compliance now proposed. There are no savings provisions applicable in this regard, and the current application is assessed wholly against the current planning controls under which it was lodged. However, the other arguments presented are considered to constitute sufficient environmental planning grounds to consider the proposed variation.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will not unreasonably impact upon the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor Space Ratio development standard and the objectives of the E3 Environmental Management zone. An assessment against these objectives is provided below.

Objectives of development standard

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 proposed alterations and additions are at the rear of the existing dwelling, and maintain the existing heights and setbacks of the building. The proposal will have a negligible impact on the streetscape character.

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

Comment:

The proposed works occur at the rear of the existing dwelling, over the existing footprint, and will not create any unreasonable impacts on views from any public place to any important features. The neighbours to the west have objected to view loss. However, as discussed within this report, the proposal is not considered to result in any significant view impacts, and is not considered to be unreasonable in this regard.

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

Comment:

The proposed works are a minor extension to the rear of the upper level, which will remain well within the building footprint below. They will not have any significant or unreasonable impacts on the visual relationship between the building and the character and landscape of the surrounding area.

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

Comment:

The proposed works are minor, and as assessed throughout this report are not considered to result in any unreasonable impacts to adjoining land or the public domain. In relation to the concerns raised by neighbours regarding views, privacy and visual amenity, the proposal is not considered to result in any unreasonable impacts.

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

Comment:

The proposed works will not impact on the viability of any business zones.

Zone objectives

The underlying objectives of the E3 Environmental Management zone are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

Comment:

The site is within the Foreshore Scenic Protection area and in an area of significance with regard to bandicoots. The proposed works are to the existing upper level, and will be wholly within the existing footprint of the building below. The works are minor, being a small extension of two bedrooms to the rear, and will not have any significant or unreasonable environmental impacts on the surrounding area.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

Comment:

The proposal is a minor extension to an existing approved and permissible use - being a dwelling house - in the zone. It will not have any unreasonable adverse impacts 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.*

Comment:

No trees are proposed for removal. The works are a minor extension to the rear of the existing building, and will not cause the building to 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.*

Comment:

The proposed works are a minor extension to two bedrooms at the upper level, and will remain well within the footprint of the existing building. The proposal will not have any significant negative impact on the nearby foreshore, or any significant geological features or bushland, and will not result in the loss of any 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.*

Comment:

The proposed works are entirely within the existing building footprint, and will not cause any increased runoff.

- *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 works maintain the existing height of the building, and comply with the built form controls in relation to height. The proposal is for a minor extension to the rear at the upper level, and will not cause the development to become unreasonably bulky. It will not cause any impacts to existing vegetation or topography, and as assessed throughout this report will not have any unreasonable environmental impacts to surrounding land.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E3 Environmental Management zone.

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

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

Planning Circular 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 Floor space ratio Development Standard is assumed by the Local Planning Panel, for which Council had an exemption for dwelling houses that could be determined by the Development Determination Panel. This exemption has expired, and the application has therefore been referred to the Local Planning Panel for determination.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 698.5sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling/500sqm	1 existing and unchanged	N/A	Yes
	Dwelling Size: 90sqm	357sqm	N/A	Yes
4.1.2.1 Wall Height	E: 6.5m (based on gradient flat)	5.8m	N/A	Yes
	W: 6.5m (based on gradient flat)	8.3m (maintains existing heights)	N/A	Yes
4.1.2.2 Number of Storeys	2	3 (maintains existing heights)	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.5m	N/A	Yes
	Pitch: maximum 35 degrees	Less than 35 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Works at rear	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E 1.9m (based on wall height) W 2.8m (based on wall height)	E 2.4m W 2.7m	N/A N/A	Yes Yes
	Windows: 3m	E 2.4m W 2.7m	20% 10%	No No
4.1.4.4 Rear Setbacks	8m	8.4m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS 3	Open space 55% of site area	Existing and unchanged	N/A	Yes
	Open space above ground 25% of total open space	Existing and unchanged		
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	Existing and unchanged	N/A	Yes
	3 native trees	Works over existing footprint. No changes to landscaping	N/A	Yes

4.1.5.3 Private Open Space	18sqm	Existing and unchanged	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	Existing and unchanged	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	Existing and unchanged	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: $38/40 \times 100 = 95$ 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
3.3.2 Preservation of Trees or Bushland Vegetation	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
3.7 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)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	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
4.4.1 Demolition	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.2 Alterations and Additions	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

The neighbours to the east (number 72) and west (number 74) have both objected to the proposal on privacy grounds.

To the east number 72 has living room windows on the western side. Number 72 has objected to the reduced space between the new north facing windows from Bedroom 1 W03 and W04, and to the two east facing windows from Bedroom 1, W01 and W02. Conditions have been requested including fixed vertical external privacy louvres (300mm deep) to the north facing windows, and frosted glazing and overlapping louvres to W01 and W02.

The proposed north facing windows (W03 and W04) will replace the existing north facing windows, and remove an existing vertical projecting privacy screen, that does not currently offer any great privacy protection between the existing windows and the neighbouring windows. This privacy screen will be relocated to the east of the north facing windows, and may provide some small protection in that direction, though this is not relied upon in this assessment. The dwelling at number 72 is located to the north of the subject dwelling, and the proposed new north facing windows will only be able to view into the extreme north western corner of the adjacent living room window and out the other side. They will not offer views into the actual room beyond the extreme corner of this room. Given they are bedroom windows, with a relatively low privacy impact due to limited use of the room, and do not create any great increase to privacy impacts no conditions are recommended. There is not considered to be any unreasonable impacts caused by the proposal and it is therefore not considered necessary to restrict the views from the bedroom by the addition of fixed vertical louvres.

The east facing windows W01 and W02 are provided with louvres on the plans. These windows are to a walk in robe, and a small corner of the bedroom. These are low use areas, and it is likely that when they are in use by the occupants they will be wish to have windows shielded for dressing and the like. The louvres provided are considered sufficient in this regard. No further conditions are considered necessary.

Number 74 to the west has no east facing windows in this location at the same level, but has an upper level deck off a study/bedroom area facing to the north and wrapping around the eastern side of the building. To the west the proposal includes 4 new side facing windows. These are W09 and W10 from the Bedroom 2, and W05 and W06 from Bedroom 1. Number 74 has requested conditions requiring frosted glazing and opening limited to 125mm to W06 and W10, and frosted glazing and opening limited to 45 degrees to W05 and W09.

W06 and W10 are small windows with minimum sill heights of 1.7m. W09 and W05 are situated in the northern corners of their respective bedrooms, and replace existing similar west facing windows slightly, moved slightly further north. Given their location the majority of views out of these windows during general bedroom use will be in an angled direction to the north west, and not directly west towards the upper level deck of number 74. Given that these windows are bedroom windows, located in the corner

of the room, or with high sills, and that they do not look directly into a primary living area but will only impact on an upper level deck off a bedroom/study, they are not considered to result in any unreasonable privacy impacts. No conditions of consent are recommended in this regard.

3.4.3 Maintenance of Views

The owners of number 76 to the west have objected to the proposal based on view loss.

Merit consideration:

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

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Comment:

The proposal is considered to maintain a reasonable sharing of views, as discussed below in relation to the planning principles established by the Land and Environment Court.

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

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

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

Comment:

The views available from number 76 are panoramic views of Manly and Manly Beach to the north west, Queenscliff Headland and the headlands beyond to the north, the ocean, and around to Fairy Bower headland to the north east. The views are considered to be highly valuable and iconic.

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

Comment:

The primary living area and master bedroom are situated at the northern end of the dwelling, and the views from these areas will be completely unaffected by the proposal. The dwelling includes two upper level bedrooms/studies situated towards the southern end of the building, with adjoining balconies. The views from these areas are not 'whole' views, as they are broken by the northern portion of the dwelling at number 76. Relevantly to the current proposal, the view towards Fairy Bower headland is across two side boundaries from these areas, and is heavily filtered and broken by vegetation and the existing

development at numbers 74 and 72, such that there are only glimpses of the headland currently available from the building at these locations. The view from these areas is considered much less valuable than the primary views in relation to the first step above.

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

Comment:

The proposed rear extension of the upper level bedrooms at number 74 will obscure a small portion of the top of the Fairy Bower headland that is currently visible through the glass balustrade of the upper level deck of number 72, when viewed from the balcony situated on the towards the southern end of number 76 on its western side, attached to a bedroom/study. It will also obscure a small portion of ocean from a similar balcony in a similar location but on the eastern side of the dwelling at number 76. The panoramic views from the main living areas, master bedroom, and upper level deck will be completely unaffected. For the whole of the property, the view loss is considered to be 'negligible'.

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

Comment:

The proposal generally maintains the heights of the existing dwelling, and is compliant with the overall height control. It also complies with the rear and side setback controls. It does not comply with the floor space ratio control as discussed in this report. However, this is a very minor rear extension to the upper level bedrooms, which has a negligible impact on the views of neighbours from bedroom/study areas situated towards the southern end of their dwelling. The views from the main living areas will remain completely unaffected. The proposal is not considered to result in any unreasonable view impacts, despite the non-compliance with the FSR control. A reasonable sharing of views is considered to be maintained. A 'more skilful design' is not considered necessary, and imposing amendments on the applicant is not considered reasonable in the circumstances.

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

Comment:

As discussed above, the proposal is considered to maintain reasonable view sharing. Therefore, although there will be some very small view impact to bedrooms/studies situate towards the southern end of the dwelling at number 76, there will be no impacts on the views from the main living areas, and the proposal is not considered to result in any unreasonable 'view creep'.

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.

4.1.3 Floor Space Ratio (FSR)

The lot is not an 'undersized lot' as discussed within this clause. The proposal is non-compliant with the minimum floor space ratio requirement under clause 4.4 in the LEP (refer to discussion under clause 4.6 in this report). The proposal is considered to achieve the outcomes of this DCP clause as discussed below.

Merit Assessment

Objective 1) To ensure the scale of development does not obscure important landscape features.

Comment: The proposed works are very minor in scale compared to the existing dwelling, being a small extension to the rear of two upper level bedrooms. They are not considered to have any significant or unreasonable impacts on views to any important landscape features.

Objective 2) To minimise disruption to views to adjacent and nearby development.

Comment: The proposal is a minor rear extension to the upper level. The neighbour to the west has objected to the proposal based on view loss impacts. However, as discussed under clause 3.4.3 in this report, the proposal is not considered to result in any unreasonable view loss. The minor extension is therefore considered to be consistent with this objective.

Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.

Comment: The proposed works do not create a significant amount of additional overshadowing, and will not cause the development to become inconsistent with this objective. The adjoining dwellings have their primary living spaces orientated to the north, and these are not affected.

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

Description of non-compliance

Clause 4.1.4.2 requires that windows be setback 3m from the side boundaries. Proposed windows W02 to the east, and W09 to the west are located 2.4m and 2.7m from the side boundaries respectively.

Merit consideration:

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

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

Comment:

The proposed works are at the rear of the existing dwelling and will have no significant or unreasonable impacts on the streetscape.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The neighbours to each side (east and west) have objected to the proposal on privacy grounds. The eastern neighbours have also raised view loss as a concern. These issues have been addressed in detail under clause 3.4.2 and 3.4.3 in this report. In summary, the proposal is considered to maintain a reasonable level of privacy, and does not have unreasonable impacts on views. The additions will not create any significant or unreasonable overshadowing. The proposal is considered to be consistent with this objective.

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

Comment:

The proposed alterations and additions are dictated in their location by the existing dwelling.

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 are entirely over the existing building footprint, and will not affect the landscaped area on site, or have any unreasonable impacts in relation to any natural features in the surrounding area.

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

Comment:

The site is not identified as being bush fire prone.

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1820 for Alterations and additions to a dwelling house on land at Lot 9 DP 8075, 74 Bower Street, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A001 A	August 2018	Mark Hurcum Design Practice
A103 A	August 2018	Mark Hurcum Design Practice
A104 A	August 2018	Mark Hurcum Design Practice
A201 A	August 2018	Mark Hurcum Design Practice
A202 A	August 2018	Mark Hurcum Design Practice
A204 A	August 2018	Mark Hurcum Design Practice
A221 A	August 2018	Mark Hurcum Design Practice

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report Project No.: 2018-182	December 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:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
74 Bower St Manly Waste Management Plan Issue: A	October 2018	Design Practice

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).

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 Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

6. External Finishes to Roof

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**7. Installation and Maintenance of Sediment and Erosion Control**

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after

periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

8. **Pre-clearance Survey Required – Bandicoot Habitat**

A pre-clearance survey for Long-nosed Bandicoot activity and presence is required prior to the removal of any vegetation, material or debris stockpiles. Clearing may only proceed if the survey concludes that no Long-nosed Bandicoots are present within the area to be cleared. All clearing must initially be carried out with hand tools to identify whether any bandicoots are sheltering within the area to be cleared (e.g. at the base of vegetation or under deep litter). Machinery may only be used once it has been confirmed that no bandicoots are sheltering within the area to be cleared. Clearing must be carried out at dusk and completed within one day so that bandicoots do not reoccupy partially cleared areas overnight. A record of each inspection is to be made in the daily inspection register log-book. The log-book is to be made available to the Principal Certifying Authority.

Reason: To avoid injury or death of Long-nosed Bandicoots which may be utilising stockpiles of vegetation, materials or debris.

9. **Pollution Control**

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.

10. **Report Dead or Injured Bandicoots – Bandicoot Habitat**

Any injured or dead Long-nosed Bandicoots found within the worksite must be reported to the National Parks & Wildlife Service (9457 9577) or Northern Beaches Council (1300 434 434).

Reason: To prevent impacts to Long-nosed Bandicoots in accordance with the Biodiversity Conservation Act 2016.

11. **Pollution Control**

Any excess materials such as cleaning paintbrushes, lacquers, and any water from cleaning tools must not enter the stormwater network and/or receiving waterways.

Reason: To ensure that building associated chemicals and pollutants don't enter the surrounding environment.

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

12. **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.

Note: The following Standards and Codes applied at the time of determination:

- (a) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003 - Plumbing and drainage - Stormwater drainage
- (b) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003/Amdt 1 - 2006 - Plumbing and drainage - Stormwater drainage
- (c) National Plumbing and Drainage Code.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)

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

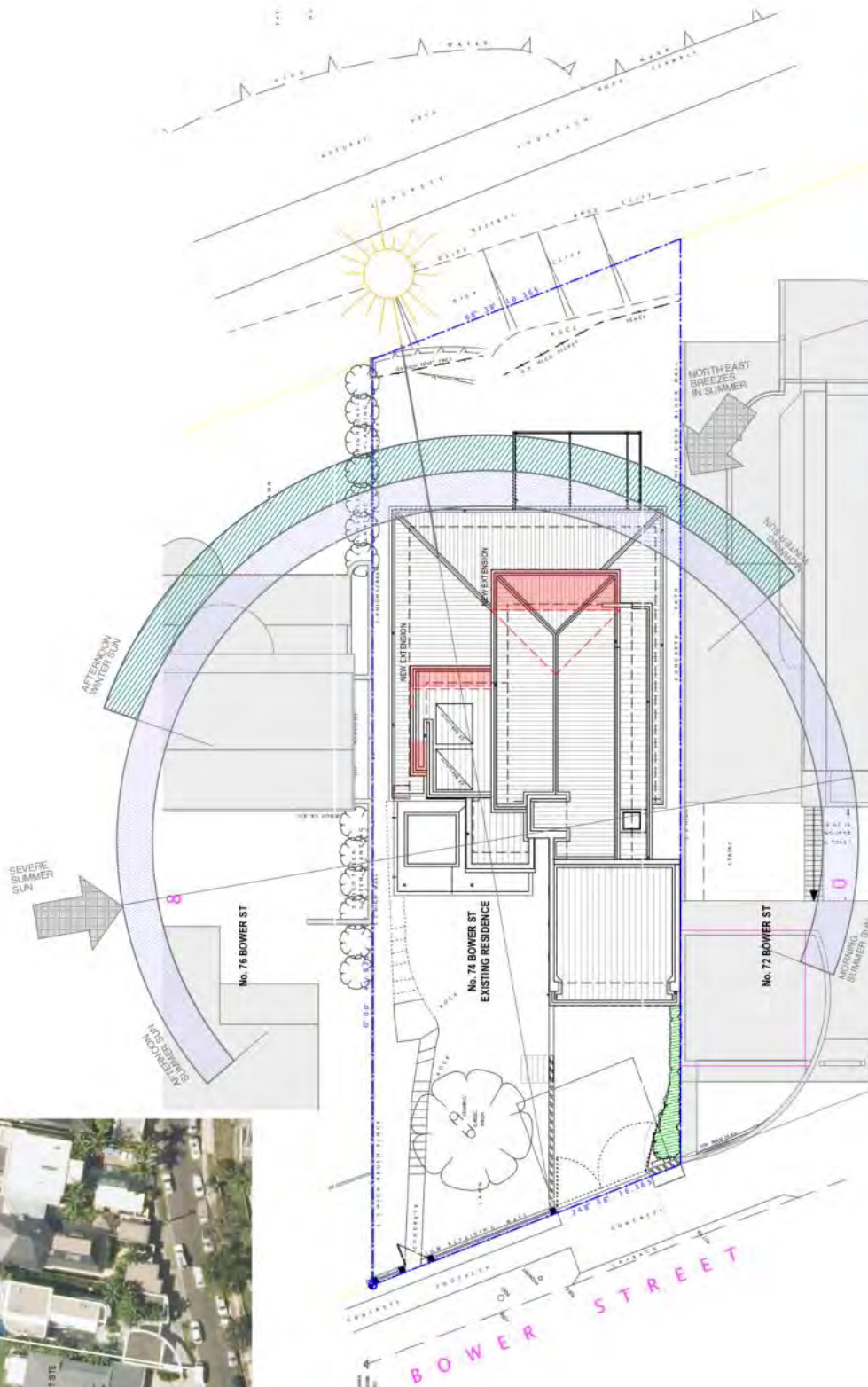
13. **Dead or Injured Wildlife – Manly LEP Clause 6.5**

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

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.



1 LOCALITY MAP
Scale: NTS



FOR DEVELOPMENT APPLICATION ONLY

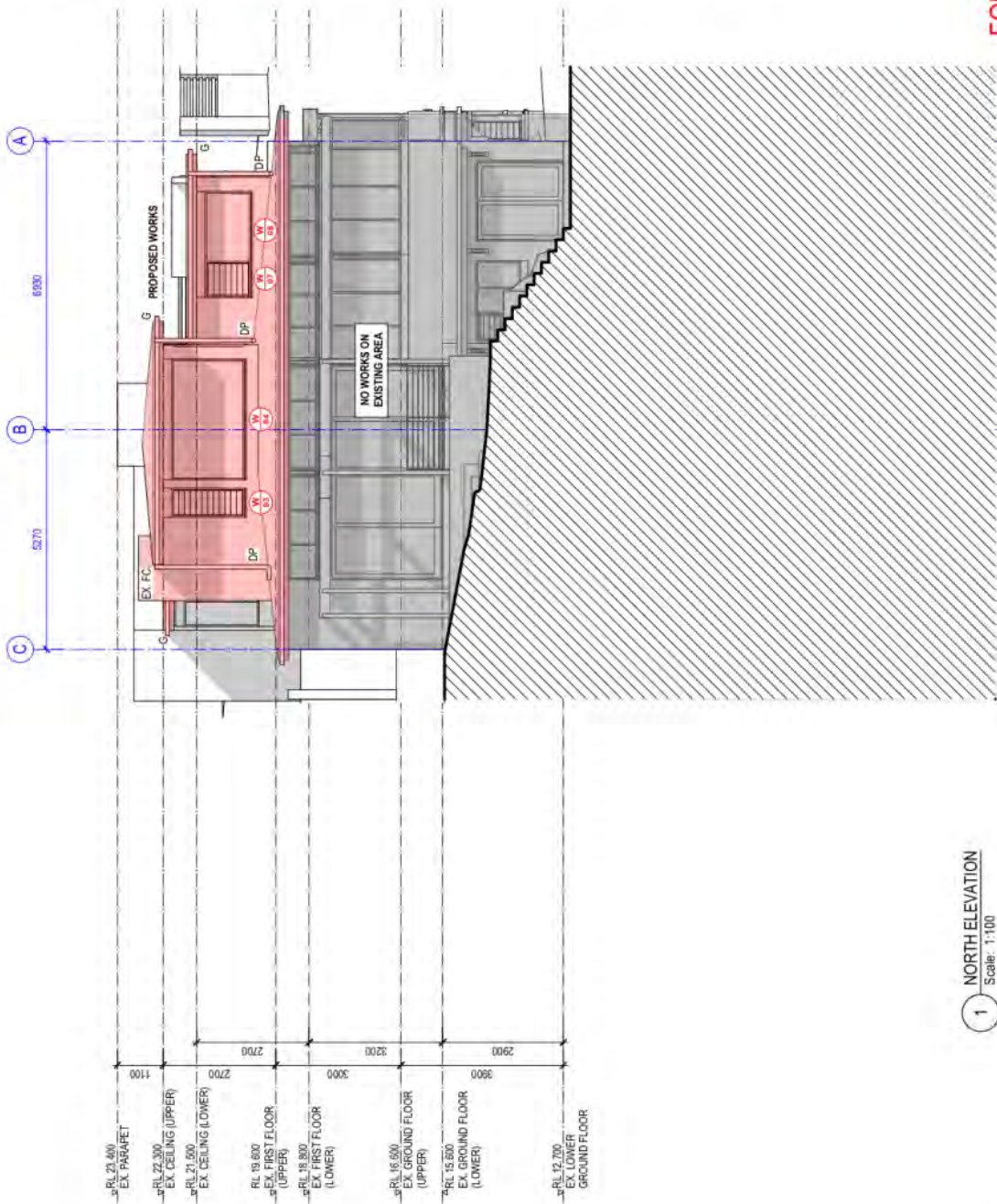
MARK KURLAND DESIGN PRACTICE	DATE	SCALE
DESIGNED FOR DEVELOPMENT APPLICATION	A	1:200 @ A3
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LEVEL 1: 101 ALAN RD, NORTH MANLY		
LEVEL 0: 101 ALAN RD, NORTH MANLY		
LEVEL -1: 101 ALAN RD, NORTH MANLY		
LEVEL -2: 101 ALAN RD, NORTH MANLY		
LEVEL -3: 101 ALAN RD, NORTH MANLY		
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LEVEL -20: 101 ALAN RD, NORTH MANLY		

A001 A
Scale - 1:200 @ A3
AUGUST 2018

ALTERATIONS AND ADDITIONS 74 BOWER STREET MANLY

SITE PLAN AND SITE ANALYSIS

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1 NORTH ELEVATION
Scale: 1:100

NORTH ELEVATION

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**EXTERNAL FINISHES SCHEDULE
(TO MATCH EXISTING)**



P1 (EX F1)
EXISTING RENDER WALL COLOUR
DULUX:
BERKSHIRE WHITE
SW1B



P2
WALL COLOUR
DULUX:
APARTITION
SWB2



P3
TIMBERWORK AND WALL COLOUR
DULUX:
TEALHOUSE
GR23



P4
FEATURE COLOUR
DULUX:
NAMADJI
SW4G8



MR1
ROOF SHEET AND ACCESSORIES
COLOUR:
COLOURBOND
WOODLAND GREY



GL1
ALUMINIUM WINDOW FRAME
COLOUR:
PONDICOAT
OFF WHITE

FOR DEVELOPMENT APPLICATION ONLY

A201 A

Scale - 1:100 @ A3

AUGUST 2018



**ALTERATIONS AND ADDITIONS
74 BOWER STREET MANLY**



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AUGUST 2018

MARK BUREAU DESIGN PRACTICE

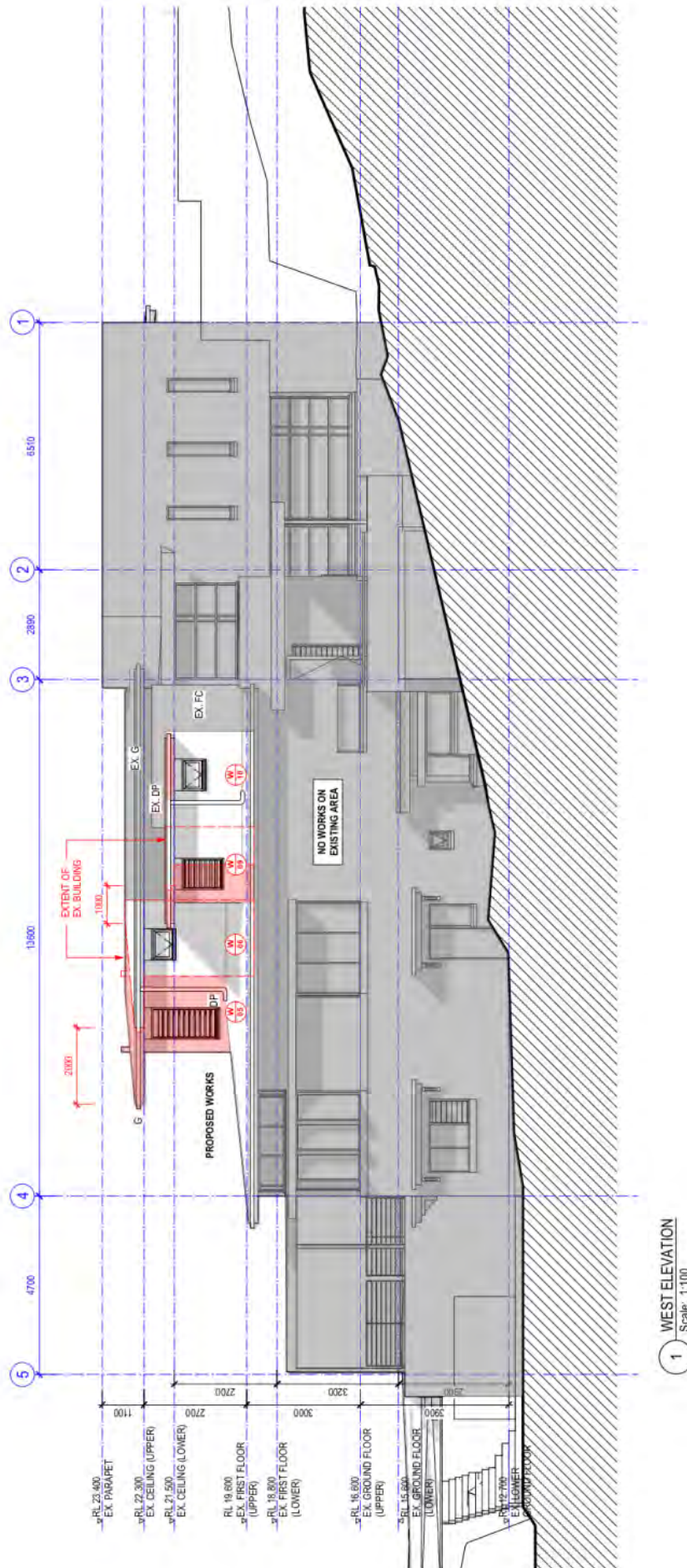
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NORTH SENECA NY SW 2060
FACSIMILE 021 0055 2060
ILLINOIS 021 0055 2060

DATE	ISSUE

10

DESIGN PRACTICE



FOR DEVELOPMENT APPLICATION ONLY

NO.	DATE	BY	CHKD	SCALE
1	10/01/2018	ALAN	ALAN	1:100
2	10/01/2018	ALAN	ALAN	1:100
3	10/01/2018	ALAN	ALAN	1:100
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33	10/01/2018	ALAN	ALAN	1:100
34	10/01/2018	ALAN	ALAN	1:100
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36	10/01/2018	ALAN	ALAN	1:100
37	10/01/2018	ALAN	ALAN	1:100
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99	10/01/2018	ALAN	ALAN	1:100
100	10/01/2018	ALAN	ALAN	1:100

ALTERATIONS AND ADDITIONS 74 BOWER STREET MANLY

WEST ELEVATION

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ITEM 3.8 **DA2018/2014 - 14 LAUDERDALE AVENUE, FAIRLIGHT -
ALTERATIONS AND ADDITIONS TO AN APPROVED SINGLE
DWELLING**

REPORTING OFFICER **MATTHEW EDMONDS**

TRIM FILE REF **2019/297176**

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

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2018/2014 for alterations and additions to an approved single dwelling at Lot CP SP 14778, 14 Lauderdale Avenue, Fairlight subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/2014
Responsible Officer:	Kent Bull
Land to be developed (Address):	Lot CP SP 14778, 14 Lauderdale Avenue FAIRLIGHT NSW 2094
Proposed Development:	Alterations and additions to an approved single dwelling
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Adrian Le Mans
Applicant:	Adrian Le Mans
Application lodged:	19/12/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	08/01/2019 to 29/01/2019
Advertised:	Not Advertised
Submissions Received:	2
Recommendation:	Approval
Estimated Cost of Works:	\$ 150,000.00

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.3 Height of buildings

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.4.3 Maintenance of Views

SITE DESCRIPTION

Property Description:	Lot CP SP 14778 , 14 Lauderdale Avenue FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The site is known as 14 Lauderdale Avenue, Fairlight and is legally referred to as Lot CP SP 14778. The subject site consists of one (1) allotment located on the northern side of Lauderdale Avenue</p> <p>The site is regular in shape with a frontage of 16.04m along Lauderdale Avenue and a depth of 48.22m. The site has a surveyed area of 734.9m².</p> <p>The site is located within the R1 General Residential zone of the Manly LEP 2013 and accommodates a three storey single occupancy with a rear garage carport.</p> <p>The slope of the site is 9.1% and falls from the rear boundary to the road frontage. The site contains a modified landscape setting, with no significant vegetation or landscape features on the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential flat buildings, semi-detached dwellings and dwelling houses.</p>

Map:



View impact assessment undertaken from apartment at Unit 1/1-3 Clifford St, Fairlight.

29 January 2019

View impact assessment undertaken from apartment at Unit 3/1-3 Clifford St, Fairlight.

7 February 2019

Meeting held at Dee Why Civic Centre between the Council's Development Assessment Officer and the owner's town planner and architects to discuss matters raised in submissions and determination level for the application.

15 May 2019

Following a request by Council, written confirmation from the Applicant and Property Owner that while the property is presently a Dual Occupancy that the intention is to turn the building to a single dwelling in accordance with Development Consent No. DA2018/0770. A recommended condition has also been discussed with the Applicant's representative to ensure that the second floor is to remain associated with the use of the building for a dwelling house as granted under DA2018/0770.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the alterations and additions an approved single dwelling. In particular, the works include:

Ground Floor

- No changes to Ground Floor.

First Floor

- Alterations and additions to existing first floor level to provide for the demolition of existing internal stairs and the construction of new internal stairs.

Second Floor

- Alterations and additions to existing second floor level to provide for the demolition of existing internal stairs and the construction of new internal stairs; and
- Extension to existing bedroom, bathroom and walk in robe.

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	See discussion on "Environmental Planning Instruments"

Section 4.15 Matters for Consideration'	Comments
environmental planning instrument	in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. T This clause is not relevant to this application.</p>

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

Name:	Address:
Ingrid Paton	
Ms Billee Christine Cross	47 Wimbledon Avenue NARRABEEN NSW 2101

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

- Building Height
Comment:
Concerns were raised from the residents of the rear adjoining residential flat building to 14 Lauderdale Avenue with regards to the breach in building height. See Clause 4.6 Exceptions to

development standard for further discussion.

- View Sharing
Comment:
Concerns were raised from the residents of the rear adjoining residential flat building to 14 Lauderdale Avenue with regards to potential loss of views arising from the proposal. See Clause 3.4.3 Maintenance of Views for further discussion.

REFERRALS

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A336467, dated 10 December 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	Existing: 11.15m Proposed: 11.15m	31.5	No
Floor Space Ratio	FSR: 0.6:1	FSR: 0.47:1 (345.85m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes

Clause	Compliance with Requirements
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

Clause 4.3 (2) stipulates that a building on any land is not to exceed the maximum height of building for land as shown within the Height of Building Map. The subject site is located on land within Area 'I' on the Height of Buildings Map which has a maximum height of 8.5m.

The maximum height of the proposed development has been measured at 11.15m from the ridge of the proposed roof of the second floor to the existing ground level below.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	11.15m
Percentage variation to requirement:	31.5%

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.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

(3) Development consent must not be granted for development that contravenes a development

standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- The works will not see any increase in the current overall building height and occur as a result of the extent of the existing development on site, together with the site's sloping topography. The modification to the existing building are considered to be compatible with the form and nature of the surrounding development.
- The proposal is consistent with the character of development in the locality. The proposal sees the construction of a new roof that will increase view sharing of neighbouring sites.
- The development will maintain a compatible scale relationship with the existing residential development of the area. Development in the vicinity has a wide range of architectural styles and the given the variety in the scale of development, this proposal will reflect a positive contribution to its streetscape.
- The proposed new works do not present any unreasonable additional impacts in terms of view loss for neighbours, or bulk and scale.
- The proposed new works which will maintain the existing primary ridge level of RL 25.68 and provides for improved amenity within the second floor level is considered to promote good sustainable design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objectives 1.3 (g) of the EPA Act which is a suitable environmental planning ground which justifies the flexible application of the development standard.

It is accepted that the proposed works to the second floor will not result in an increase in the current overall building height and that the alterations and additions to the existing dwelling are compatible in scale and architectural style with surrounding residential development. While the point suggesting an increase in view sharing is not considered applicable for all neighbouring sites, consideration has been given that the proposed works does not result in unreasonable additional impacts in terms of views loss for neighbours. It is further accepted that the proposed works will promote good sustainable design, provide for improved amenity within the second floor and not give rise to unacceptable amenity

impacts on the the surrounding built environment in terms of views, bulk and scale.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The subject site is on land that slopes from the rear of the road frontage. The proposal provides for the maintenance of the 11.15m building height and generally retains the pitched roof form the existing dwelling. Overall, the proposal is also consistent with the prevailing existing building height of adjoining dwellings and residential flat buildings. Furthermore, the new works proposed will not be dominant when viewed from the Lauderdale Avenue and it is considered the proposal continues to compliment the identified streetscape.

b) to control the bulk and scale of buildings,

Comment:

The proposal involves the reconfiguration, alterations and additions to an existing second floor.

These proposed works which maintains the existing ridge height, consist of a reduction in size of the existing roof eaves to western and southern elevations as well as an extension to the roofed area on the eastern elevation. Despite the maintenance of the existing breach in building height, the proposal does not result in any additional non-compliance's to built form controls relating to the bulk and scale of buildings.

c) to minimise disruption to the following:

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

Comment:

While the proposed development will result in view impacts for Unit 1, 2 and 3 at 1-3 Clifford St, Fairlight, an assessment utilising the four step planning principal established in *Tenacity Consulting v Warringah Council [2004] NSW LEC 140* considered the extent of this impacts as being minor. Considerations has been given that the occupants of 1-3 Clifford St, Fairlight will continue to have harbour and foreshore views from principal living areas and rear (south) facing decks. When assessing the extent of the view impact on each apartment and the level of compliance of the proposal, the development is considered to the minimise disruption on views.

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

Comment:

With the exception of a minor increase to shadowing to the balcony area of a south facing apartment of 12 Lauderdale Ave, Fairlight at 3pm on June 21, the proposal has demonstrated that the existing provision of adequate solar access will be maintained for public and private open spaces including the habitable rooms of adjacent dwellings. This is shown by the compliance with the numerical controls under the MDCP as they relate to Sunlight Access and Overshadowing.

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

Comment:

The subject site is located within land zoned R1 - General Residential Zone under the Manly LEP 2013 and therefore it is not considered that the proposed development is required to adhere to this particular objective.

Zone objectives

The underlying objectives of the R1 Low Density Residential zone are:

The underlying objectives of the R1 Low Density Residential zone:

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

Comment:

The proposal seeks to reconfiguration of the the existing bedroom, bathroom and walk-in robe on the second floor, ensuring that the dwelling continues to meet the housing needs to occupants. It is therefore considered that the proposal provides for the housing needs of the community.

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

Comment:

The proposed alterations and additions to the dwelling house ensures that this particular area of Fairlight maintains a provision for variety of housing types and densities. As discussed previously in this assessment, residential flat buildings adjoin the eastern and northern boundaries as well as adjacent to the south on Lauderdale Avenue.

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

Comment:

This outcome is not considered applicable in this instances as the proposed development maintains the use of the structure as a dwelling house.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel, for which Council has an exemption for dwelling houses that can be determined by the Development Determination Panel.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 734.9sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density:Max. 3 dwellings	1 dwelling	N/A	Unchanged to DA2018/0770

4.1.2.1 Wall Height	East: 6.9m (based on gradient 1:15)	Existing: 7.5m-6.3m	N/A	Unchanged to DA2018/0770
	West: 6.9m (based on gradient 1:15)	Existing: 7.7m-6m	N/A	Unchanged to DA2018/0770
4.1.2.2 Number of Storeys	2	Existing: 3	N/A	Unchanged to DA2018/0770
4.1.2.3 Roof Height	Height: 2.5m	3.1m	N/A	Unchanged to DA2018/0770
4.1.4.1 Street Front Setbacks	6m	Dwelling: 6.6m-9.6m (Existing) Garage: 1.755m-3.755m (Existing)	N/A	Unchanged to DA2018/0770
4.1.4.2 Side Setbacks and Secondary Street Frontages	Dwelling East 2.5m-2.1m West 2.6m-2m	Dwelling East 2.53m West 2.975m	N/A	Unchanged to DA2018/0770
	Windows: 3m	Windows: 4.7m-4.9m	N/A	Yes
4.1.4.4 Rear Setbacks	8m	<8m	N/A	Unchanged to DA2018/0770
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space 55% of site area (404.2sqm)	57% (425.2sqm)	N/A	Unchanged to DA2018/0770
	Open space above ground 25% of total open space	8.9% (38.1sqm)	N/A	Unchanged to DA2018/0770
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (148.82sqm)	45.4% (205.3sqm)	N/A	Unchanged to DA2018/0770
	3 native trees	Nil	N/A	Unchanged to DA2018/0770
4.1.5.3 Private Open Space	18sqm	97.7sqm	N/A	Unchanged to DA2018/0770
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Unchanged to DA2018/0770

***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
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 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)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	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
4.4.2 Alterations and Additions	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

Two (2) submission were received from the rear adjoining properties Unit 1/1-3 Clifford St, Fairlight and Unit 2/1-3 Clifford St, Fairlight, seeking clarification regarding the impact on views as a result of the proposal. While no formal submission was lodged, a request was also made to assess view impacts from Unit 3/1-3 Clifford St, Fairlight. A view loss assessment was conducted on each property between the 22 - 29 January 2019 to understand the level of view impacts that would occur as a result of the proposal.

A view loss assessment from these properties were undertaken to assess the impacts of the proposal by utilising the four step planning principal established in *Tenacity Consulting v Warringah Council [2004] NSW LEC 140*.

Step 1 - Assessment of views to be affected

Unit 1/1-3 Clifford St, Fairlight - views from balcony (standing)



The inspection revealed that affected views is a water view containing Manly Cove, South Head, Dobroyd Head and North Harbour. View includes land/water interface.

Unit 2/1-3 Clifford St, Fairlight - views from balcony (standing)



The inspection revealed that affected views is a water view containing Manly Cove, South Head, Dobroyd Head and North Harbour. View includes land/water interface.

Unit 3/1-3 Clifford St, Fairlight - views from balcony (standing)



The inspection revealed that affected views is a water view containing Manly Cove, South Head (interrupted by the residential flat building) and Dobroyd Head. View includes land/water interface.

Step 2 - Consideration from what part of the property the views are obtained

Unit 1/1-3 Clifford St, Fairlight

The views are obtained across the rear boundary from a seated and standing position from the south facing balcony area and living areas.

Unit 2/1-3 Clifford St, Fairlight

The views are obtained across the rear boundary from a seated and standing position from the south facing balcony area as well as the living/dining area and kitchen.

Unit 3/1-3 Clifford St, Fairlight

The views are obtained across the rear boundary from a seated and standing position from the south facing balcony area and living areas.

Step 3 - Assess the extent of the impact for the entire property

Unit 1/1-3 Clifford St, Fairlight

The overall view impact arising from the proposed development at 14 Lauderdale Avenue is considered as minor, as a portion of water view of Manly Cove will be affected, but the remaining views of Manly Cove, South Head, Dobroyd Head and North Harbour are retained.

Unit 2/1-3 Clifford St, Fairlight

The overall view impact arising from the proposed development at 14 Lauderdale Avenue is considered as minor. While a portion of the water view of Manly Cove will be on the eastern side of the proposed development, the view will be improved on the western side. The remaining views are retained.

Unit 3/1-3 Clifford St, Fairlight

The overall view impact arising from the proposed development at 14 Lauderdale Avenue is considered as minor. While a minor portion of the existing water view of Manly Cove will be affected, the remaining views of Manly Cove, South Head (interrupted by the residential flat building) and Dobroyd Head are retained.

Step 4 - Assess the reasonableness of the proposal causing the impact

The commissioner of Tenacity Consulting v Warringah Council [2004] NSW LEC 140 indicates that a proposal complies with all controls is considered more reasonable than one that breaches them. As the proposed variation to the development standard (building height) (as detailed in the section of this report relating to Part 4 of the Manly LEP 2012 - Principal Development Standards), is acceptable and given the proposed development results in reasonable view sharing (as demonstrated by Steps 1-3 above), the proposed development is acceptable in relation to maintenance of views. Reducing the floor area or height to the proposed additions to the second floor, would not lead to a noticeable improvement in views. The occupants of 1-3 Clifford St, Fairlight will continue having views of Manly Cove, South Head, Dobroyd Head and North Harbour from principal living areas and rear facing decks. When accounting for the extent of the view impact on each apartment and the level of compliance of the proposal, the development is considered acceptable and the view sharing reasonable.

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

CONCLUSION

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

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

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

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

considered to be:

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/2014 for Alterations and additions to an approved single dwelling on land at Lot CP SP 14778, 14 Lauderdale Avenue, FAIRLIGHT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA02, Issue C (Proposed Site & Roof Plan)	11 December 2018	Watershed Design
DA04, Issue C (First Floor Plan)	11 December 2018	Watershed Design
DA05, Issue C (Proposed Second Floor Plan)	11 December 2018	Watershed Design
DA07, Issue C (Section A-A)	11 December 2018	Watershed Design
DA08, Issue C (Section B-B)	11 December 2018	Watershed Design
DA09, Issue C (Elevation - West)	11 December 2018	Watershed Design
DA10, Issue C (Elevation - East)	11 December 2018	Watershed Design
DA10, Issue C (Elevation - South)	11 December 2018	Watershed Design
DA12, Issue C (Elevation - North)	11 December 2018	Watershed Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate, A336467	10 December 2018	Watershed Design

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:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Northern Beaches Council Waste Management Plan	14 December 2018	Adrian Le Mans

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).

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 Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

6. **Sydney Water "Tap In"**

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

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

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

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

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

7. **Stormwater Disposal**

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

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

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

8. **External Finishes to Roof**

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

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

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

9. **Construction Traffic Management Plan**

A Construction Traffic Management Plan (CTMP) is to be prepared and submitted to the satisfaction of the Certifying Authority, prior to the issue of the Construction Certificate. The CTMP is to address the overall management of the site during the construction process, including the provision of parking arrangements for all trade vehicles.

Reason: To ensure pedestrian safety and to manage traffic as a result of the construction of the proposed development.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

10. **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.

11. **Traffic Control During Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicle access to private properties is to be maintained at all times during works.

Reason: Public Safety

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

12. **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**13. Use as a Dwelling House**

The second floor is to remain associated with the use of the building for a dwelling house as granted under Development Consent No. DA2018/0070. The second floor is not to be used for the purposes of a dual occupancy.

Reason: To ensure the use of the building is consistent with Development Consent No. DA2018/0770.

NOTE:
STORMWATER TO CONNECT TO EXISTING SYSTEM



NOTES
1. All dimensions are to be taken to the finished surface.
2. All dimensions are to be taken to the finished surface.
3. All dimensions are to be taken to the finished surface.
4. All dimensions are to be taken to the finished surface.
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8. All dimensions are to be taken to the finished surface.
9. All dimensions are to be taken to the finished surface.
10. All dimensions are to be taken to the finished surface.

NO.	REVISIONS	DATE
1	PRELIM REVIEW ISSUE	28.08.18
2	PRELIM REVIEW ISSUE	05.12.18
3	DA ISSUE	11.12.18

WATERSHED DESIGN
architecture
interiors
landscapes
Phone: 02 9977 1076 Fax: 02 9976 5625 info@watersheddesign.com.au

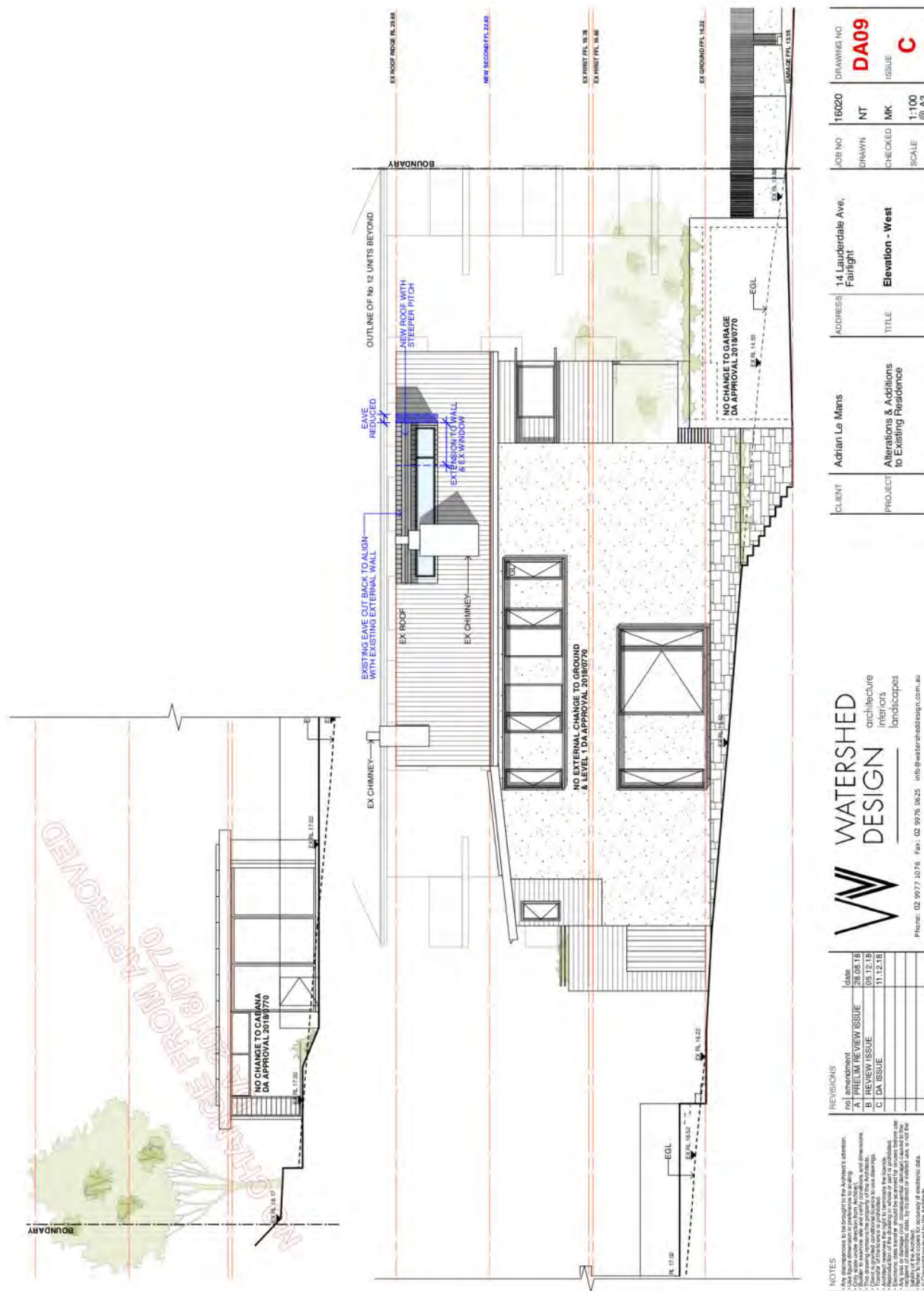


CLIENT
Adrian Le Mans
PROJECT
Alterations & Additions
to Existing Residence

ADDRESS
14 Lauderdale Ave,
Fairlight
TITLE
Proposed Site
& Roof Plan

JOB NO
16020
DRAWN
NT
CHECKED
MK
SCALE
1:100
@ A3

DRAWING NO
DA02
ISSUE
C





NOTES

1. All dimensions to be given to the Architect's attention.
2. All dimensions to be given to the Architect's attention.
3. All dimensions to be given to the Architect's attention.
4. All dimensions to be given to the Architect's attention.
5. All dimensions to be given to the Architect's attention.
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9. All dimensions to be given to the Architect's attention.
10. All dimensions to be given to the Architect's attention.

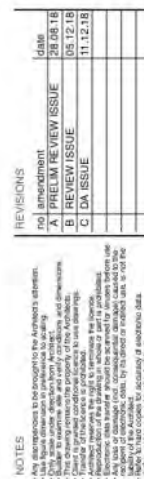
REVISIONS	DATE
A PRELIM REVIEW ISSUE	28.08.18
B REVIEW ISSUE	05.12.18
C DA ISSUE	11.12.18

WATERSHED DESIGN
architecture
interiors
landscapes

Phone: 02 9977 1076 Fax: 02 9976 0625 info@watersheddesign.com.au

CLIENT	Adrian Le Mans
PROJECT	Alterations & Additions to Existing Residence
ADDRESS	14 Lauderdale Ave, Fairlight
TITLE	Elevation - East

JOB NO	16020
DRAWN	NT
CHECKED	MK
SCALE	1:100 @ A3
DRAWING NO	DA10
ISSUE	C





NOTES

1. All dimensions to be given in the Architect's stream.
2. All dimensions to be given in the Architect's stream.
3. All dimensions to be given in the Architect's stream.
4. All dimensions to be given in the Architect's stream.
5. All dimensions to be given in the Architect's stream.
6. All dimensions to be given in the Architect's stream.
7. All dimensions to be given in the Architect's stream.
8. All dimensions to be given in the Architect's stream.
9. All dimensions to be given in the Architect's stream.
10. All dimensions to be given in the Architect's stream.

REVISIONS

NO	DESCRIPTION	DATE
A	PRELIM REVIEW ISSUE	28.08.18
B	REVIEW ISSUE	05.12.18
C	DA ISSUE	11.12.18

WATERSHED DESIGN architecture
interiors
landscapes

Phone: 02 9977 1076 Fax: 02 9976 5625 info@watersheddesign.com.au

CLIENT Adrian Le Mans

PROJECT Alterations & Additions to Existing Residence

ADDRESS 14 Lauderdale Ave, Fairlight

TITLE Elevation - North

JOB NO	DRAWN	CHECKED	SCALE
16020	NT	MK	1:100 @ A3

DRAWING NO DA12

ISSUE C