



northern
beaches
council

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 10 JULY 2019

Ashleigh Sherry
Manager Business Systems and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 10 July 2019
in the Walamai Room, Civic Centre, Dee Why**

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 3 JULY 2019

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 3 July 2019 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1 **DA2019/0145 - 39 ADELAIDE STREET, CLONTARF -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**

REPORTING MANAGER **Daniel Milliken**

TRIM FILE REF **2019/363466**

ATTACHMENTS **1 Assessment Report**
 2 Site Plan & Elevations
 3 Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/0145 for alterations and additions to a dwelling house on land at Lot A DP 368257, 39 Adelaide Street, Clontarf, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0145
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot A DP 368257, 39 Adelaide Street CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling House
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Gina Minks Mark Tafft
Applicant:	Linked Project Mangement
Application lodged:	19/02/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	21/02/2019 to 11/03/2019
Advertised:	Not Advertised
Submissions Received:	3
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,184,285.00

Executive Summary

The application is for alterations and additions to an existing dwelling house including a first floor addition. The development proposes a variation to the floor space ratio development standard of 58.47%. Despite the numerical extent of the non-compliance, the proposal is not considered to result in unreasonable bulk or amenity impacts as viewed from the surrounding streetscape or adjoining properties.

Submissions were received on behalf of two (2) adjoining properties. One submission related only to the maintenance of safe vehicle access during construction works. The other objection raised a number of concerns relating to FSR and additional DCP non-compliances and amenity impacts.

Following preliminary assessment of the application, the applicant was requested to amend the



proposal and erect height poles on the site. A full assessment of the amended proposal and erected height poles concluded that the development and resulting view loss is reasonable, and is supported.

As the proposed variation to the FSR development standard is greater than 10%, the application is referred to the Development Determination Panel for determination.

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 Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.3.1 Landscaping Design
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)
 Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area

SITE DESCRIPTION

Property Description:	Lot A DP 368257 , 39 Adelaide Street CLONTARF NSW 2093
Detailed Site Description:	The subject site consists of one allotment located on the



south-eastern corner of Adelaide Street and Beatrice Street.

The site is regular in shape with a frontage of 21.21m along Adelaide Street and a secondary frontage of 21.335m to Beatrice Street. The site has a surveyed area of 452.6m².

The site is located within the R2 Low Density Residential zone and accommodates an existing dwelling house.

The site slopes 7.7m from north-east to south-west.

The site contains one significant tree and a variety of smaller planted vegetation within the secondary frontage to Beatrice Street.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached dwellings.

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:

DA2018/1380 - Construction of a swimming pool and landscaping works - Approved 25 October 2018.

CDC2018/0996 for Alterations and additions to existing dwelling - Approved 4 October 2018.

PROPOSED DEVELOPMENT IN DETAIL

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The proposal includes alterations and additions to the existing dwelling resulting in:

Lower ground:

- Lounge
- Wet bar
- Bed 1
- Bath 1
- Underfloor storage & subfloor
- Balcony

Ground:

- Kitchen, living & dining room
- Pantry
- Sitting room
- Bed 2 with ensuite
- Bath 2
- Laundry
- Garage
- Courtyard
- Terrace/Balcony

Level 1:

- Main Bed with ensuite and robe
- Bed 3
- Bed 4
- Bath 3
- Balcony

External:

- New western stairs
- Minor alteration to approved front/pool fence
- Reconfiguration of pool stair

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	Mainly Development Control Plan applies to this



Section 4.15 Matters for Consideration'	Comments
development control plan	proposal.
Section 4.15 (1) (a)(iii) – 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. 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 Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental</p>



Section 4.15 Matters for Consideration'	Comments
	social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	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 3 submission/s from:

Name:	Address:
Mr Michael Peter Bell	PO Box 387 FRENCHS FOREST NSW 1640
Mr Mark Raymond Shoebridge Ms Krystyna Louise Lojek	37 Adelaide Street BALGOWLAH HEIGHTS NSW 2093
Tomasy Planning	1073 Pittwater Road COLLAROY NSW 2097

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

- **Blocking of adjoining driveways by construction vehicles**
- **View loss**
- **FSR non-compliance / Clause 4.6, and precedent**
- **Tree removal**
- **Building height, number of storeys**
- **Setbacks**
- **Foreshore scenic protection area**
- **Engineering**



- **Proposed garage**

The matters raised within the submissions are addressed as follows:

- **Blocking of adjoining driveways by construction vehicles**

The submissions raised concerns that the driveway access to No. 12 Beatrice Street will be blocked by construction vehicles during the construction works.

Comment:

A condition of consent is included to ensure that adjoining driveways remain clear during construction.

- **View loss**

The submissions raised concerns that the proposal will result in unreasonable view loss impacts from No. 37 Adelaide Street.

Comment:

The proposed view loss is considered to be reasonable, with a full assessment undertaken under Part 3 General Principles of Development.

- **FSR non-compliance / Clause 4.6, and precedent**

The submissions raised concerns relating to the impact of the proposed FSR non-compliance, the Clause 4.6 written request justifying the development, and the potential for the proposal to set a precedent for development of the surrounding area.

Comment:

It is acknowledged that the proposal includes a significant variation to the FSR control. However, an assessment against the provisions of the Manly LEP and relevant case law has concluded that the proposal is consistent with the objectives of the FSR control and that there are sufficient environmental planning grounds to justify the variation. A full assessment is completed under Clause 4.6 Exceptions to Development Standards. An approval of the application is not considered likely to set a precedent for future development as the specific characteristics of the subject site, in terms of configuration, frontages and topography vary significantly from the predominant characteristics of the surrounding locality.

- **Tree removal**

The submissions raised concerns about the removal of trees on the subject site.

Comment:

No trees are proposed to be removed as part of the application. The proposal is also conditioned to minimise impacts on existing trees and vegetation.

- **Building height, number of storeys**

The submissions raised concerns about the increase to the existing building height and the non-compliant number of storeys.

Comment:

The building height of the amended proposal is calculated to be compliant as measured to the natural ground line. The proposal presents to Adelaide Street as a two-storey dwelling, and the three-storey presentation to Beatrice Street is consistent with the streetscape. Further, the proposed first floor addition is sited to step with the topography of the site and minimise the proportion of the dwelling that appears as three storeys.

- **Setbacks**

The submissions raised concerns about the compliance of the development with the setback controls.

Comment:

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The proposed front setback non-compliance is consistent with the objectives and will not unreasonably impact the existing streetscape of Adelaide Street. Further, additional physical separation to the garage is provided by the layout of the driveway access to the site. The proposed rear setback non-compliance is addressed in detail in this report. The proposed first floor addition side setbacks, including the eastern side setback to No. 37, are compliant with the DCP control. The existing driveway to No. 12 Beatrice Street provides further physical separation between the new development and the dwelling at No. 37.

- **Foreshore scenic protection area / views**

The submissions raised concern about the level of detail submitted with the application in relation to view loss.

Comment:

A full assessment of view loss has been completed in this report, including an assessment against the planning principle established by the NSW Land and Environment Court (*Tenacity Consulting vs. Warringah Council* [2004] NSWLEC 140). The applicant provided further assessment of views as part of the amended proposal. This information, along with the erection of height poles, has allowed a full assessment of the impacts on views to be undertaken.

- **Engineering**

The submissions raised concern about the initial referral response from Council's Development Engineer in relation to OSD details.

Comment:

A revised OSD plan was submitted by the applicant to satisfy the requirements of Council's stormwater management policy.

- **Proposed garage**

The submissions raised concern about the conversion of the existing carport to a fully enclosed garage.

Comment:

The proposed conversion of the existing carport to a garage utilises the existing boundary wall and the new works are generally limited to a new roof and the provision of a new garage door. The proposed changes are not considered to result in unreasonable impacts to the streetscape or any adjoining property.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><u>Landscaping Comments:</u></p> <p>The proposal, in terms of landscape outcome as illustrated on the site plans, is not acceptable and fails to satisfy the landscape controls of the Manly DCP.</p> <p>The proposal fails to provide the required tree planting in deep soil to satisfy 4.1.5.2 c) Minimum Tree Plantings. The site has one existing tree on site, and this is subject to impact from the proposed development.</p> <p>The proposed development will impact upon the retention of the existing Smooth Barked Apple location near the pool. This tree</p>



Internal Referral Body	Comments
	<p>displays good health and structure, and provides high amenity. The proposed stairs will impact the structural root zone of the tree, calculated as 2.5m from the trunk, and this is likely to destabilise the tree and result in adverse impacts requiring removal.</p> <p>The proposal fails to minimise the bulk and scale of the development, with the limited rear setback distance not able to support canopy trees. Under 3.3.1 (b) - i) Landscaped areas must be capable of supporting new native tree species that are typically expected to reach a mature height of 10m; ii) including the use of locally occurring native plant species.</p> <p><u>Planning comments:</u></p> <p>The proposed works are generally located within the footprint of the existing dwelling, with the exception of the lower ground and ground floor western balconies. The proposed western stairs referred to below are conditioned to be deleted from the plans due to the provision of insufficient arboricultural assessment. As such, the proposal is not considered to unreasonably impact the existing tree on the site, while further tree planting is not considered necessary or appropriate in the context of the site or this application. Further, the ground floor rear setback remains unchanged and an assessment of the bulk and scale of the development is undertaken by the assessing officer against the relevant planning controls. Relevant tree protection conditions are included by the assessing officer.</p>
NECC (Development Engineering)	<p><u>2nd engineering referral referral</u></p> <p>A new revised OSD plan has been submitted on 28/3/2019. Development Engineering has no objection to the application, subject to conditions of consent.</p> <p><u>1st referral</u></p> <p>An on site stormwater detention (OSD) system has been proposed in the application.</p> <p>However, the Permissible Site Discharge (PSD) has not been calculated in accordance with Council's Manly Specification for On site Stormwater Management 2003. The proposed tank is too small to control the discharge from the proposed development. The stormwater management plan shall be amended to comply with the above Specification.</p> <p>As such, Development Engineering cannot support the application.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</p>



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. A336453_03).

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	8.2m	N/A	Yes
Floor Space Ratio	0.4:1 181.04m ²	0.64:1 286.9m ²	58.47%	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
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 (181.04m ²)
Proposed:	0.64:1 (286.9m ²)
Percentage variation to requirement:	58.47%

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 (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:

- *"The upgrade to an existing dwelling will have a positive impact on the streetscape character of the area.*
- *The provision of high quality and well designed floor space without creating additional view impacts or amenity impost on adjoining properties.*
- *The location of floor space in locations which respond to the topography of the site and surrounding locality. The relocation of floor space from 'compliant' areas on the site to sit within the slope of the land creates opportunity to retain and enhance views which would otherwise be subject to impacts.*
- *The proposed development would not result in significant environmental or amenity impacts."*

The proposed first floor addition is constrained by the topography of the site and the irregular lot configuration resulting from the dual frontage. The site slopes steeply to the west at the Beatrice Street frontage which limits the provision of gross floor area at the lower level. Despite the extent of the proposed non-compliance, the proposed addition complies with the LEP building height control and the



setback controls, with the exception of the rear (southern) setback.

Due to the location of the site on a corner allotment, strict compliance with the 8m rear setback control would significantly restrict the development of the site. The siting of the dwelling is consistent with similar lot configurations at No. 34 Adelaide Street and Nos. 12 & 16 Beatrice Street. Given the undersized nature of the site and the irregular configuration, the proposal is considered to be a reasonable development in the context of the surrounding area, notwithstanding the proposed non-compliance.

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 dwelling is of a good design and amenity, 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 development is not excessive in bulk or scale and is generally consistent with the existing streetscape and surrounding locality. The subject site, like much of the surrounding area, is classified as an Undersized Lot under Clause 4.1.3.1 of the Manly DCP, with the maximum allowable gross floor area calculated in accordance with this provision being 460m². Furthermore, the site is located within the R2 Low Density Residential Zone and flexibility in this circumstance would allow a development that is reasonably consistent with that of the



surrounding area, which includes significant variations to the FSR control, as demonstrated by the below analysis of nearby approvals:

- No. 29 Adelaide Street - 37.2% - Approved 2010
- No. 30 Adelaide Street - 14.7% - Approved 2014
- No. 35 Adelaide Street - 38.9% - Approved 2017
- No. 13 Beatrice Street - 19.9% - Approved 2018
- No. 21 Beatrice Street - 10.2% - Approved 2015
- No. 23 Beatrice Street - 10% - Approved 2015
- No. 27 Alma Street - 43.4% - Approved 2018
- No. 30 Alma Street - 13.2% - Approved 2018
- No. 12 Moore Street - 34.7% - Approved 2018

The proposal seeks a variation of 58.47%. It is acknowledged that this variation significantly exceeds the FSR control for the site and the approved variations listed above. However, the proposal is considered to be acceptable on merit based on the resulting streetscape and amenity impacts, which are assessed in detail in this report.

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 bulk is reasonable in relation to the site area, given the constraints of the land and the context of the surrounding locality, as discussed above. The proposal will not unreasonably obscure 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 proposed development maintains an appropriate visual relationship with the existing character of the area as viewed from both the Adelaide Street and Beatrice Street frontages. The dwelling maintains a two-storey appearance to Adelaide Street and a three-storey appearance to Beatrice Street, consistent with the existing streetscape.

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

Comment:

The proposal will not unreasonably impact the use or enjoyment of adjoining land or 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:

N/A

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Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

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

Comment:

The proposal retains the existing low density residential use.

It is considered that the development satisfies this objective.

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

Comment:

The development will not prevent the provision of facilities or services on other sites.

It is considered that the development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low 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 where the variation is not greater than 10%. Following the release of PS-003, Council received correspondence from a delegate of the Secretary which granted Council staff, for a period of 30 months from 24 May 2019, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary a development standard by more than 10%.

6.2 Earthworks

No significant earthworks are proposed as part of the application.

6.9 Foreshore scenic protection area

The proposed development is for alterations and additions to an existing residence and will result in no unreasonable impacts in relation to visual aesthetic amenity or views to and from Sydney Harbour.

Mainly Development Control Plan

Built Form Controls

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Built Form Controls - Site Area: 452.6m²	Requirement	Proposed	Complies
4.1.2.1 Wall Height	East: 6.5m	6.5m	Yes
	West: 7.4m	Balcony (GF): 4m - 6.1m	Yes
		Dwelling (GF): 5.6m - 7.7m	No
4.1.2.2 Number of Storeys	2	2-3	No
4.1.2.3 Roof Height	Height: 2.5m	1.4m	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Garage: 5.2m	No
		Dwelling: 6.2m	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East: 2.167m	2.3m	Yes
	West (Balcony): 2.03m	2.1m	Yes
	West (Dwelling): 2.567m	5.7m	Yes
4.1.4.4 Rear Setbacks	8m	First floor: 4.2m	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area 271.56m ²	59% 266.8m ²	No
	Open space above ground 25% of total open space	23%	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space 106.7m ²	40.5% 108.1m ²	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	> 18m ²	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6.1m	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	Yes

Compliance Assessment

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

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Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.3.1 Landscaping Design

The proposed development, as conditioned, will result in negligible impact on existing vegetation and landscaped area on the site. See Planning Comments in relation to the Landscape Officer referral response.

3.4.1 Sunlight Access and Overshadowing

Compliance with control

The proposed development will result in negligible additional overshadowing of private open space areas or living room windows and is compliant with the relevant controls under this Clause. The proposal is assessed against the relevant objectives below.

Merit consideration:

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

Comment:

The proposal will result in no unreasonable overshadowing of adjoining properties. At 9am and 12pm there is minor additional overshadowing of the roof and front yard of No. 12 Beatrice Street. At 3pm there is additional overshadowing of the garage window and three ground floor bedroom windows of No. 37 Adelaide Street. Despite the extent of the additional overshadowing of No. 37 Adelaide Street, the proposal maintains compliance with the eastern wall height and setback controls, and the overshadowing/solar controls of 3.4.1.1 and 3.4.1.2. As such, the proposed impacts are considered to be reasonable. Further, sunlight access will be retained to the affected rooms in the early afternoon.

Objective 2) To allow adequate sunlight to penetrate:

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

Comment:

The proposal allows adequate sunlight access to the private open spaces and windows of the subject site and adjoining properties in accordance with the controls.

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

- encouraging modulation of building bulk to facilitate sunlight penetration into the development site



- *and adjacent properties; and*
• *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

The proposed additions are considered to be sufficiently set back and modulated to maximise sunlight penetration into adjoining properties.

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

3.4.2 Privacy and Security

Merit consideration:

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

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

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

Comment:

The proposed development is appropriately designed to maintain the privacy of the subject site and adjoining dwellings. The proposed Level 1 southern windows will overlook only the roof of the adjoining dwelling and the Level 1 eastern elevation contains only one recessed window. The proposed new balconies are orientated to the west towards the available harbour views.

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

Comment:

The proposal will provide sufficient privacy and sunlight access to the subject site and adjoining sites.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

Further opportunities for passive surveillance are provided.

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



3.4.3 Maintenance of Views

Merit consideration:

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

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Comment:

The proposal is considered to provide reasonable view sharing between existing and proposed development.

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:

Views over the subject site are currently available from No. 37 Adelaide Street. The available views include water views of Middle Harbour including the marina and land-water interface at Chinamans Beach, The Spit and Seaforth. Further available views include skyline/horizon views of Chatswood and St Leonards to the west, and district views of Clontarf and Seaforth to the north/north-west. The water views and skyline views are whole views, however it should be noted that the skyline views are located a considerable distance from the site. The district views and the water views gained from the front balcony are partial views as they are significantly obscured by the existing dwelling roof and surrounding vegetation.

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 views from No. 37 Adelaide Street are obtained across a side boundary from the upper level kitchen, living and dining room, and the adjoining rear balcony. Some views are also obtained from the front balcony to the front and rear of the subject dwelling. The whole views are enjoyed from sitting and standing positions, while the partial views are enjoyed generally only from standing positions.



The available views from No. 37 are shown in the below photographs, with the height poles erected on the existing roof indicating the views to be lost and retained.



Figure 1. View from No. 37 Adelaide Street living room to the west.



Figure 2. View from No. 37 Adelaide Street living room to the north-west.



Figure 3. View from No. 37 Adelaide Street dining room to the west/north-west.



Figure 4. View from No. 37 Adelaide Street dining room to the west.

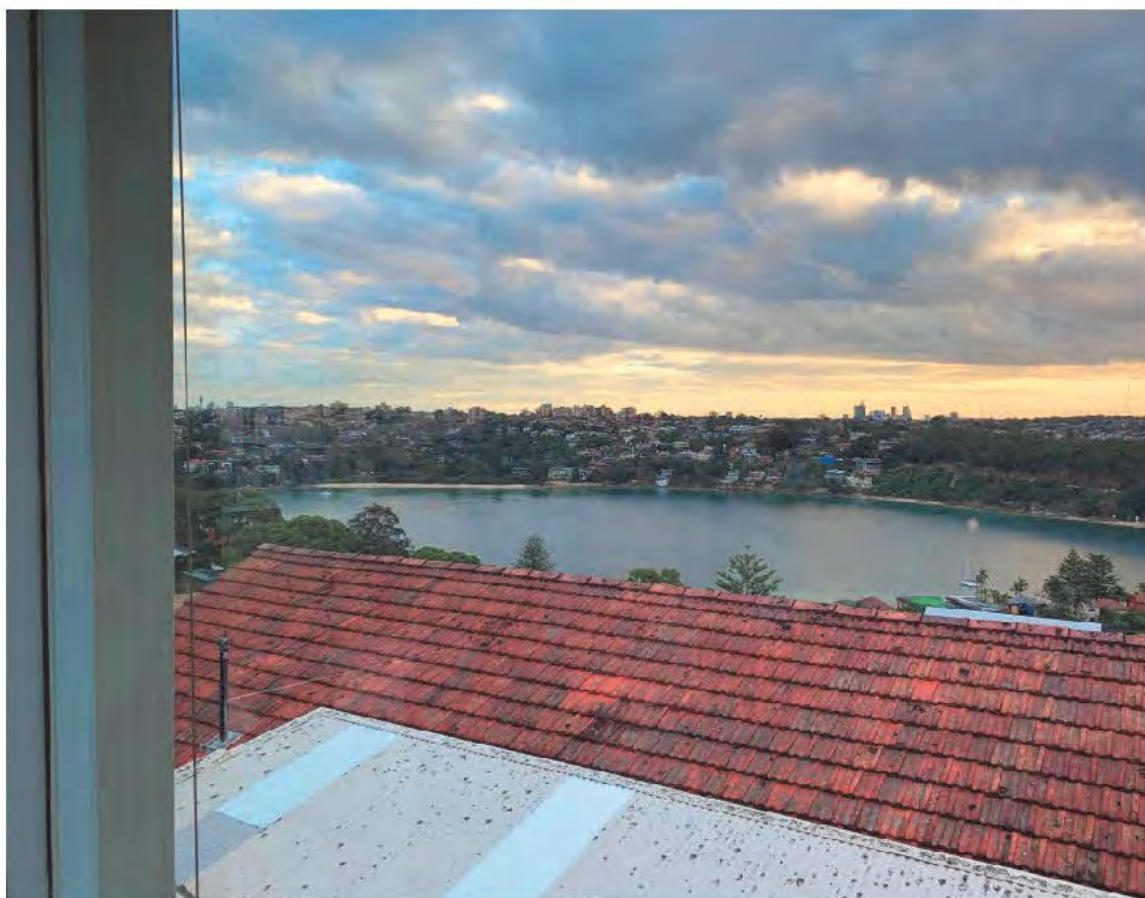


Figure 5. View from No. 37 Adelaide Street dining room to the south-west



Figure 6. View from No. 37 Adelaide Street front balcony to the west.



Figure 7. View from No. 37 Adelaide Street front balcony to the south-west

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 extent of the impact on views from No. 37 Adelaide Street varies depending on the room location, however the affected view areas are generally limited to the the skyline and district views. The Chatswood skyline view will be lost from the northern end of the living room (**Figure 1**), but will be retained from the remainder of the living.dining room and kitchen, and the adjoining rear balcony. The extent of the impact on district views is indicated in **Figures 2 & 3**. The partial views, including water views, available from the front balcony will also be affected past the front and rear of the subject dwelling (**Figures 6 & 7**). Notwithstanding the proposed impact on the existing views, the proposal will open up additional water views towards the marina and Spit Bridge as a result of the new flat roof form. The actual extent of the views to be gained is difficult to accurately determine but the proposal will result in a significant reduction to the bulk of the existing gable roof.



Considering the nature and extent (and associated value) of the views to be lost versus the additional water/marina views likely to be gained, the proposal is considered to be a reasonable outcome in relation to views/view sharing. Further to the additional views to be obtained, the primary view area from Middle Harbour Yacht Club to Chinamans Beach, which includes the majority of all available land-water interface, remains unaffected from the primary living areas and rear balcony (**Figures 3-5**).

Overall, the views lost are distant views of the Chatswood skyline, district/horizon views, and partial water views from the front balcony. The additional views obtained will increase the extent of primary water views at Middle Harbour, including land-water interface and marina views. Given the above assessment and the extent of views to be affected as indicated in the photos, the overall impact of the development is considered to be minor.

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

Comment:

The critical controls relating to view loss, in this particular case, are the overall height, and the setbacks to the northern (front) and southern (rear) boundaries, of the proposed first floor addition.

The proposal is fully compliant with the 8.5m height limit and the northern (front) setback. The setback to the southern boundary is non-compliant and is discussed as follows:

The proposed southern (rear) setback of approximately 4.0m is significantly non-compliant, however, as discussed above, the overall impact is considered to be minor given the actual extent and nature of the views to be lost. A compliant rear setback would only result in the retention of the lost views of the Chatswood skyline from the northern end of the living room (**Figure 1**) and the water views from the front balcony to the south-west (**Figure 7**).

The floor space ratio is also somewhat relevant with regard to view loss in this case. If the floor area of the first floor addition is relocated on the site it will result in greater amenity/streetscape impacts than the current proposal. Moving the bulk forward (north) on the site would create a front setback non-compliance and unreasonably impact the streetscape. Moving the first floor to the eastern side would result in a side setback non-compliance and bring the dwelling closer to the adjoining property, while to the western side would create a building height non-compliance in addition to a likely side setback non-compliance and streetscape impact to Beatrice Street. Alternatively, if floor space/rooms are deleted from the first floor, this would reduce the development potential of the site.

As such, the proposed development performs reasonably against the controls relevant to view loss. The above assessment has found that there is not a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours.

In this regard, the view loss is assessed as reasonable, and is supported.

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 proposal is considered to be reasonable in relation to view loss and all other relevant provisions of the Manly DCP.

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

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

Description of non-compliance

The proposed three-storey dwelling exceeds the number of storeys control (two) and western wall height up to 7.7m is non-compliant with the 7.4m control.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the LEP objectives for Clause 4.3 Height of Buildings:

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

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

Comment:

The proposed overall roof height is compliant and the dwelling steps down with the topography of the site.

b) to control the bulk and scale of buildings,

Comment:

The proposed new flat roof form minimises the bulk and scale of the dwelling. The proposed wall height non-compliance does not contribute significant bulk to the dwelling and the proportion of the dwelling that is three stories is minimal.

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 proposed non-compliance with the wall height and storey controls does not result in any unreasonable view loss to, from or between public spaces and residential development. A full assessment of view loss is completed under Part 3 General Principles of Development.

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 proposed wall height non-compliance occurs at the western elevation of the dwelling and the resulting overshadowing falls only on the Beatrice Street road reserve at 3pm.

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

Comment:

N/A

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

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

Description of non-compliance

The proposed garage front setback of 5.2m is non-compliant with the 6m control, and the Level 1 rear setback of 4.2m is non-compliant with the 8m control. The lower ground and ground floor rear setback non-compliances are existing and remain unchanged.

Merit consideration:

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

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

Comment:

The proposal maintains a sufficient front setback to the garage to ensure that the existing streetscape is maintained. The location of vehicle access from Adelaide Street to the site provides additional physical separation to the garage/dwelling. The remainder of the dwelling and proposed additions remain compliant with the front setback control.

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 will result in no unreasonable impacts in relation to privacy, sunlight access, views, streetscape character or traffic conditions. A full assessment of amenity impacts is completed under Part 3 General Principles of Development.

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

Comment:

The proposed non-compliance is limited to the garage element and is relatively minor in extent. The siting of the proposed first floor addition is constrained by the lot configuration and topography, and is considered to be an acceptable solution.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed setback non-compliances do not impact the existing vegetation or landscaped area on the site.

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

Comment:

N/A

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

4.1.5 Open Space and Landscaping

The proposal results in an overall increase to total open space on the site and the proposed landscaped area is compliant.

4.4.5 Earthworks (Excavation and Filling)

No significant earthworks are proposed as part of the application.

5.4.1 Foreshore Scenic Protection Area



The proposed development is for alterations and additions to an existing residence and will result in no unreasonable impacts in relation to visual aesthetic amenity or views to and from Sydney Harbour.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Manly Section 94 Development Contributions Plan

S94 Contributions are not applicable to this application.

CONCLUSION

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

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

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

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

- Consistent with the objectives of the DCP
- 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

In summary, a detailed assessment has been required for the following specific issues:

The proposal includes non-compliances in relation to wall height, number of storeys and garage front setback. These non-compliances are considered to result in minimal material impact to adjoining properties or the surrounding area, and are considered against the relevant objectives of each control.

The proposal also includes more significant non-compliances in relation to floor space ratio and the rear



setback to the first floor addition. The proposed floor space ratio non-compliance is considered in relation to the provisions of Manly LEP Clause 4.6 and the context of the site and surrounding locality, which includes a number of recent approvals including variations to the FSR control. While it is acknowledged that this is significant breach, the resulting impacts of the development on the amenity of the adjoining properties and the streetscape is assessed as reasonable. Similarly, the proposed rear setback is considered to be reasonable in this case where the configuration of the subject site is inconsistent with the context the surrounding area, and the breach does not unreasonably impact the adjoining properties.

The overshadowing impacts of the proposal on the western wall/windows of No. 37 Adelaide Street are assessed as reasonable given the compliance of the proposed additions with the eastern side wall height and setback. A full assessment of views is completed under Part 3 General Principles of Development.

The proposal will result in a minor loss of views from No. 37 Adelaide Street. However, the proposed new roof form will result in the provision of additional views of Middle Harbour from No. 37, including further land-water interface and marina views. On balance, the proposal is considered to result in a reasonable view sharing outcome. A full assessment of views is completed under Part 3 General Principles of Development.

Based on the above discussion and the full assessment undertaken, the proposal is considered to be acceptable in relation to all relevant Manly LEP and DCP controls, and is recommended for approval.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2019/0145 for Alterations and additions to a dwelling House on land at Lot A DP 368257, 39 Adelaide Street, CLONTARF, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA0200 Site Plan	Rev. D, 3 June 2019	Red Blue Architecture & Design
DA0201 Proposed Lower Ground Plan	Rev. D, 3 June 2019	Red Blue Architecture & Design
DA0202 Proposed Ground Floor Plan	Rev. D, 3 June	Red Blue Architecture &

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	2019	Design
DA0203 Proposed Level 1 Floor Plan	Rev. D, 3 June 2019	Red Blue Architecture & Design
DA0204 Proposed North & South Elevations	Rev. C, 3 June 2019	Red Blue Architecture & Design
DA0205 Proposed East & West Elevations	Rev. C, 3 June 2019	Red Blue Architecture & Design
DA0206 Section 01	Rev. C, 3 June 2019	Red Blue Architecture & Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A336453_03	3 June 2019	Red Blue Architecture & Design

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

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

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

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

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

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

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

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

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

5. **On-site Stormwater Detention**

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An On-site Stormwater Detention system must be designed and constructed in accordance with Northern Beaches Council's current MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003]" and generally in accordance with the concept drainage plans prepared by James Rose Consulting, drawing number 678-C-51, dated 18/3/2019.

Detailed drainage plans are to be prepared by a qualified experienced practicing Civil Engineer. The drainage plans must address the following:

- i) The OSD system must have at least 1 inspection access over the deck.
- ii) The outlet control device/ orifice plate must be determined in accordance with Council's Manly Specification for On site Stormwater Management 2003.

Detailed drainage plans, including engineering certification confirming the above requirements have been satisfied and complying with Council's requirements, 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 the disposal of storm water and storm water management arising from the development.

6. Delete stairs

The proposed western stair adjoining the lower ground floor balcony is to be deleted from the plans.

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

Reason: Insufficient aboricultural assessment of the works have been provided to Council to mitigate potential impacts on existing trees.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

7. Tree protection

(a) Existing trees which must be retained

- i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
- ii) Trees located on adjoining land

(b) Tree protection

- i) No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK



8. 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.

9. Trees Condition

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

- (a) A general decline in health and vigour.
- (b) Damaged, crushed or dying roots due to poor pruning techniques.
- (c) More than 10% loss or dieback of roots, branches and foliage.
- (d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- (e) Yellowing of foliage or a thinning of the canopy untypical of its species.
- (f) An increase in the amount of deadwood not associated with normal growth.
- (g) An increase in kino or gum exudation.
- (h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
- (i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

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

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

Reason: Protection of Trees.

10. Sandstone rock outcrop

The existing exposed sandstone boulders immediately to the west of the dwelling are not to be altered/removed and are to remain exposed to the Beatrice Street elevation.

Reason: To retain natural features on the site.

11. Construction vehicles/materials

The driveways of adjoining properties are to remain clear of construction vehicles, materials and other items at all times.

Reason: To maintain safe access to adjoining properties during works.

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

12. Authorisation of Legal Documentation Required for Onsite Detention

The original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and Compliance Certificate issued by an Accredited Certifier in Civil Works. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To create encumbrances on the land.



13. **Registration of Encumbrances for On-site Stormwater Detention**

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To identify encumbrances on land.

14. **On-Site Stormwater Detention Compliance Certification**

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council.

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 stormwater disposal is constructed to Council's satisfaction. (DACENF10)

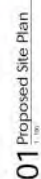
15. **Positive Covenant and Restriction as to User for On-site Stormwater Detention**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

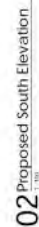
A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.

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 the on-site detention and/or pump system is maintained to an appropriate operational standard.



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Case	Date	Exhibit	Exhibit Date
06/02/19	As indicated	08 A1	
Log No.	Exhibit	CT#	
413	CBS	CT	
Exhibit	Drawing No.	Revision	
7240	DA0204	C	

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31 May 2019

Ref: WTJ19-214_Clause 4.6 (FSR)



Clause 4.6 Variation – Floor Space Ratio (FSR)

Alterations and Additions to an Existing Dwelling

39 Adelaide Street, Clontarf
Lot A DP368257

**Prepared by Willowtree Planning Pty Ltd on behalf
Of Linked Project Management**

May 2019



Clause 4.6 – Floor Space Ratio (FSR)

Alterations and Additions to an Existing Dwelling
39 Adelaide Street, Clontarf (Lot A DP368257)

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Clause 4.6 – Floor Space Ratio (FSR)
Alterations and Additions to an Existing Dwelling
39 Adelaide Street, Clontarf (Lot A DP368257)

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Alterations and Additions to an Existing Dwelling
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PART A PRELIMINARY

1.1 INTRODUCTION

This Clause 4.6 Variation Request has been prepared in support of a Development Application (DA) for the alterations and additions to the existing dwelling at 39 Adelaide Street, Clontarf (Lot A DP368257).

The proposed non-compliances are with the following development standards under the Manly Local Environmental Plan 2013 (MLEP 2013):

- Clause 4.4 Floor Space Ratio

This variation request has therefore been prepared in accordance with the requirements of Clause 4.6 of MLEP 2013, which includes the following objectives:

- (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.

1.2 PROPOSED NON-COMPLIANCES

Under the provisions of Clause 4.4 in MLEP 2013, the site is subject to a maximum FSR of 0.4:1. The proposed development would result in a maximum FSR of 0.64:1. The proposed development therefore exceeds the Clause 4.4 FSR control of 0.4:1 by 60% as shown in **Table 1** below.

Table 1. Variation Summary			
MLEP 2013	MLEP 2013 Development Standard	Existing Development Non Compliance	Proposed Development Non Compliance
Clause 4.4 - Floor Space Ratio	maximum FSR of 0.4:1	The proposal acknowledges an existing technical non-compliant FSR, as the site is currently 0.41:1 (variation of 2.5%)	The proposal seeks development consent for a maximum FSR of 0.64:1 which is 60% departure from the Council's development standards and a 56% increase in the existing FSR.

The site area is 452.8m² and therefore the total permissible GFA based on an FSR of 0.4:1 is a maximum GFA of 181m². The existing GFA is 187m² which equates to an existing FSR of 0.41:1 which constitutes a technical non-compliance. The proposed GFA is 288.7m² and has a GFA of 0.64:1 which equates to a 60% departure from the development standard and a 56% increase in the existing technically non-compliant FSR.

It is important to note that the maximum building height remains compliant and the proposed development will not result in a significant loss of private open space or landscaped area to accommodate the additional GFA. This is further illustrated in the ensuing sections.

1.3 STRATEGIC PLANNING JUSTIFICATION

This Clause 4.6 variation request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards under MLEP 2013. It considers various planning controls, strategic planning objectives and existing characteristics of the site, and concludes that



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the proposed FSR non-compliance is the best means of achieving the objects of encouraging orderly and economic use and development of land under the *Environmental Planning and Assessment 1979*.

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PART B THRESHOLDS THAT MUST BE MET

2.1 CLAUSE 4.6 OF MLEP 2013

In accordance with Clause 4.6 of the MLEP 2013 Council is required to consider the following Subclauses:

(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.*

(5) In deciding whether to grant concurrence, the Secretary must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

These matters are responded to in **Part D** of this Clause 4.6 variation.

2.2 CASE LAW

Relevant case law on the application of the standard Local Environmental Plan Clause 4.6 provisions have established the following principles:

- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, which emphasised that the proponent must address the following:
 - Compliance with the development standard is unreasonable and unnecessary in the circumstances;
 - There are sufficient environmental planning grounds to justify contravening the development standard;
 - The development is in the public interest;
 - The development is consistent with the objectives of the particular standard; and
 - The development is consistent with the objectives for development within the zone;
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7, which held that the degree of satisfaction required under Subclause 4.6(4) is a matter of discretion for the consent authority;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827, which emphasized the need to demonstrate that the objectives of the relevant development standard are nevertheless achieved, despite the numerical standard being exceeded. Justification is then to be provided on environmental planning grounds. Wehbe sets out five ways in which numerical compliance with a development standard might be considered unreasonable or unnecessary as follows:
 - The objectives of the standard are achieved notwithstanding the non-compliance with the standard;

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- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
- The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; or
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

These matters are responded to in **Part D** of this Clause 4.6 Variation.

Clause 4.6 – Floor Space Ratio (FSR)

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PART C STANDARD BEING OBJECTED TO

3.1 CLAUSE 4.4 FLOOR SPACE RATIO

The development standard being requested to be varied is **Clause 4.4 Floor Space Ratio** of MLEP 2013.

Table 2 outlines the proposed Clause 4.6 variation to MLEP 2013.

Table 2. Variation Summary			
MLEP 2013	MLEP 2013 Development Standard	Existing Development Non Compliance	Proposed Development Non Compliance
<i>Clause 4.4 - Floor Space Ratio</i>	maximum FSR of 0.4:1	The proposal acknowledges an existing technical non-compliant FSR, as the site is currently 0.41:1 (variation of 2.5%)	The proposal seeks development consent for a maximum FSR of 0.64:1 which is 60% departure from the Council's development standards and a 56% increase in the existing FSR.

The site area is 452.8m² and therefore the total permissible GFA based on an FSR of 0.4:1 is a maximum GFA of 181.9m². The existing GFA is 187m² which equates to an existing FSR of 0.41:1 which is technical non-compliance. The proposed GFA is 288.7m² and has a GFA of 0.64:1 which equates to a 60% departure from the development standard and a 56% increase in the existing FSR.

The proposed development which exceed the FSR development standard, does not:

- The maximum building height remains compliant; and
- The proposed development will not result in a significant loss of private open space or landscaped area to accommodate the additional GFA.

Figure 1 demonstrates the extent of the variation from 0.4:1 maximum FSR.

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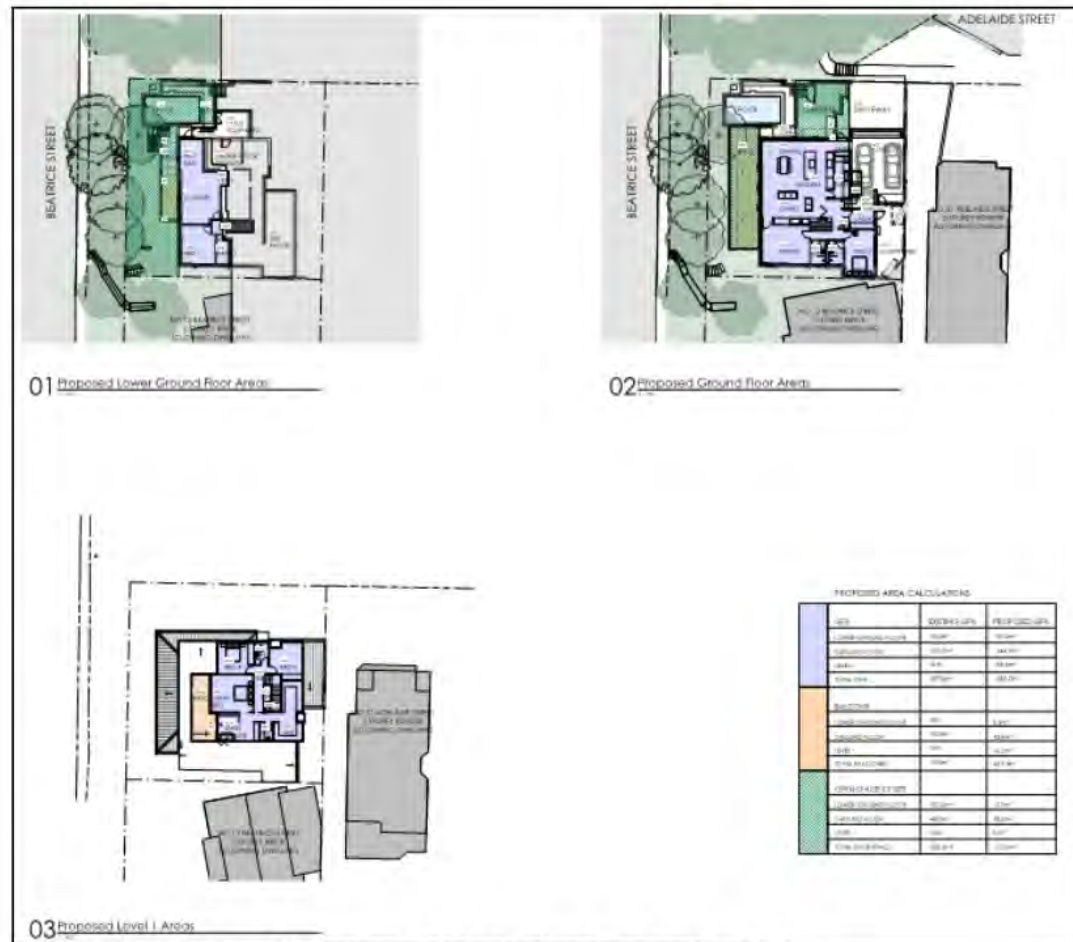


Figure 1: Proposed Area Calculations (Red Blue Architecture & Design, 2019)

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PART D PROPOSED VARIATION TO CLAUSE 4.4 FLOOR SPACE RATIO

4.1 OBJECTIVES OF CLAUSE 4.4 FLOOR SPACE RATIO STANDARD UNDER MLEP 2013

A key determination of the appropriateness of a Clause 4.6 variation to a development standard is the proposed development's compliance with the underlying objectives and purpose of that development standard. Indeed, *Wehbe v Pittwater Council* recognized this as one of the ways in which a variation to development standards might be justified (refer to **Section 2.2**). In *Four2Five Pty Ltd v Ashfield Council*, it was found that the proponent must demonstrate compliance with these objectives (refer to **Section 2.2**).

Therefore, while the site is subject to a specified numerical control for FSR, the objectives and underlying purpose behind the development standard are basic issues for consideration in the development assessment process.

4.1.1 Floor Space Ratio

The objectives of Clause 4.4 under MLEP 2013 are responded to as follows:

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

The proposed development seeks to undertake alterations and additions that would significantly renovate and rejuvenate the existing dwelling on site. The proposed development is considered compatible and consistent with the bulk and scale of the surrounding properties located along both Adelaide Street and Beatrice Street.

The site is characterised by a steep slope from the east of the site to the west of the site and the built form has carefully responded to the unique topography. The height complies with the MLEP 2013 and the built form reads as a two (2) storey dwelling from Adelaide Street which is consistent with the streetscape of Adelaide Street. Further to this, the proposed alterations and additions would read as three (3) storey stepped backed dwelling when viewed from Beatrice Street which is consistent with properties along Beatrice Street which are all constrained by a similar topography of the land.

The location of the additional floorspace creates an outcome that is consistent with both the existing and desired streetscape character of the locality having regard to the topography and building forms on adjoining properties.

The minimum lot size for the site is 1,150m² pursuant to Area U shown in the MLEP 2013. The site consists of an area of only 452.8m². Given the unique topography of the site and the small lot size (when considering minimum lot size pursuant to the MLEP 2013) the proposal has been thoughtfully designed to accord to the streetscape pattern of both Adelaide Street and Beatrice Street and would provide a renovation and rejuvenation of the existing property that is consistent with both streetscapes. Accordingly, the *Manly Development Control Plan 2013* (MDCP 2013) makes provisions for undersized lots and exceptions to the MLEP 2013 FSR controls. Section 4.1.3 of the MDCP 2013 states:

The undersized nature of a lot is a matter that Council may consider in determining whether 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' and 'there is sufficient environment planning grounds to justify contravening the development standard' under LEP clause 4.6(3).

The clause goes on to state:

- a) *The extent of any exception to the LEP FSR development standard pursuant to LEP clause 4.6 in this plan is to be no greater than the achievable FSR for the lot size indicated in Figure 30 - Extent of FSR Variation for Undersized Lots.*

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Figure 30 - Extent of FSR Variation for Undersized Lots	
Subzones on the LEP Lot Size (LSZ) Map	Maximum variation to FSR for undersized lots
Area 'C' on the LEP LSZ map	Calculation of FSR based on 250 sqm lot size/ site area
Area 'D' on the LEP LSZ map	Calculation of FSR based on 300 sqm lot size/ site area
Area 'I' on the LEP LSZ map	Calculation of FSR based on 500 sqm lot size/ site area
Area 'M' on the LEP LSZ map	Calculation of FSR based on 500 sqm lot size/ site area
Areas 'R', 'T' & 'U' on the LEP LSZ map	Calculation of FSR based on 750 sqm lot size/ site area

Figure 2: Figure 30 of MDCP 2013 (MDCP, 2019)

Therefore, based on the calculations identified within the Figure 30 of the MDCP 2013 extent of the GFA on an undersized lot in Area U is 300m² (0.4 x 750m²). The proposed GFA is 288.7m² which is below 300m².

The proposal is generally compliant with planning controls, except for the FSR and garage setback, and ensures the bulk and scale are consistent with the built form of the surrounding dwellings.

The proposal has been designed to generally comply with the height, building envelope and landscaping requirements with an exceedance in the FSR due to the existing undersized lot and unique topography. The proposal results in a building bulk and scale that is consistent with the desired outcome and objectives for the low density residential area. Given the proposals careful consideration of the streetscape character, it is considered that the proposal is compliant with the relevant objective.

(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,

A view analysis has been prepared by Myriad Consulting and a montage image showing the views from 37 Adelaide Street prepared by Red Blue Architecture & Design. Both the montage image and the view analysis has clearly demonstrated view loss and gain as a consequence of the proposal.

Planning Principle *Tenacity Consulting v Warringah* [2004] NSWLEC 140 sets out a four (4) step assessment when considering view sharing and the impact on neighbours, these are set out below:

1. The first step is the assessment of views to be affected.
2. The second step is to consider from what part of the property the views are obtained.
3. The third step is to assess the extent of the impact.
4. The fourth step is to assess the reasonableness of the proposal that is causing the impact.

The montage image prepared by Red Blue Architecture & Design clearly articulates the way in which the proposed development achieves view sharing and reinforces views from adjoining properties to important elements of the horizon, landscape and townscape features. Whilst there are minimal changes to the view, the montage shows that the view gained is a water view and the view lost is land view. The *Tenacity Consulting v Warringah* decision states that the water views are valued more highly than land views and therefore, it is considered that this would be acceptable when considering step 1. The view would be obtained from the existing living room which is identified as an important room when considering outlook. The extent of the view to the west would be increased as the mass and bulk has been shifted to the north of the site as part of the first floor extension. Additionally, as previously mentioned this results in an increase in a water view which is held in high regard. The proposed would raise the roof height by approximately 700mm on the northern side of the house reducing a small portion of the existing land view to the west. Therefore, it could be considered that the proposal would have positive impact by increasing a water view and only marginally reducing the land view. The fourth step is the reasonableness of the development impacting these views. It is considered that the development is reasonable, given that it is primarily compliant with planning controls except garage setbacks and the FSR, which this report seeks to justify.

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



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The layout and orientation of proposed alterations and additions have been configured to ensure an appropriate visual relationship between the new development and the existing character of the area.

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

The proposal has been carefully designed to minimise any impacts on adjoining land in terms of solar access, privacy, and view sharing. There will be no unreasonable impacts on the amenity of adjoining land or 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.

The proposed development is for alterations and additions to an existing dwelling and therefore this objective does not apply.

4.2 OBJECTIVES OF THE ZONE

The site is currently zoned R2 Low Density Residential under MLEP 2013. The proposed development is permissible with consent in the zone. The proposed development is consistent with the following R2 zone objectives:

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

The height and proportion of the building is commensurate of the character envisaged for the area and will achieve a high level of amenity for the occupiers.

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

The proposed development is for alterations and additions to an existing dwelling, therefore it is considered that the development would not increase, nor detract from local facilities or services.

Therefore, it is considered that the proposed development would adhere to the objectives of the R2 zone. However, flexibility is sought in order to achieve a design outcome that achieves the planning controls prescribed for the site whilst providing a high level of residential amenity for both the occupiers and adjoining properties.

4.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

Subclause 4.6(3)(a) and the judgement in *Four2Five Pty Ltd v Ashfield Council* (refer to **Section 2.2**) emphasise the need for the proponent to demonstrate how the relevant development standard is unreasonable or unnecessary in the circumstances.

As shown in **Section 4.1**, the proposed development is considered consistent with the objectives of **Clause 4.4**.

Compliance with the Clause 4.4 requirement is considered unnecessary given that the objectives of the site are achieved notwithstanding the non-compliance, and the underlying objective of the development standard would be defeated in the event a compliant scheme was proposed.

Clause 4.6 – Floor Space Ratio (FSR)

Alterations and Additions to an Existing Dwelling
39 Adelaide Street, Clontarf (Lot A DP368257)

4.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

As demonstrated in **Section 4.1**, the proposed development would result in a built form outcome which meets the future desired outcome of the site as prescribed by the MLEP 2013. The proposed development is permissible with consent at the site, maintains a suitable use of the site for residential purposes and is consistent with the objectives of the R2 zone.

The proposed development is justified on the following environmental planning grounds:

- The upgrade to an existing dwelling will have a positive impact on the streetscape character of the area.
- The provision of high quality and well designed floor space without creating additional view impacts or amenity impost on adjoining properties.
- The location of floor space in locations which respond to the topography of the site and surrounding locality. The relocation of floor space from 'compliant' areas on the site to sit within the slope of the land creates opportunity to retain and enhance views which would otherwise be subject to impacts.

Moreover, the Clause 4.6 variation to the development standard for FSR, is considered well founded on planning grounds notwithstanding the proposed non-compliance:

- The proposed development is consistent with the underlying objectives or purpose of the standards as demonstrated in **Section 4.1**;
- The proposed development is consistent with the underlying objectives or purpose of the R2 Low Density Residential zone as demonstrated in **Section 4.2**;
- The proposed development is consistent with the desired character of the site as part of the surrounding area; and
- The proposed development would not result in significant environmental or amenity impacts.

4.5 PUBLIC INTEREST

As outlined in **Section 2.2**, *Four2Five Pty Ltd v Ashfield Council* emphasised that it is for the proponent to demonstrate that the proposed non-compliance with the development standard is in the public interest. Subclause 4.6(4)(a)(ii) requires the proposed development 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.

Section 4.1 and **4.2** have already demonstrated how the proposed development is consistent with the objectives of both Clause 4.4 and the R2 zone under the MLEP 2013.

In *Lane Cove Council v Orca Partners Management Pty Ltd* (No 2) [2015] NSWLEC 52, Sheahan J referred to the question of public interest with respect to planning matters as a consideration of whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development.

The public advantages of the proposed development are as follows:

- The proposed built form will make a positive contribution to the surrounding locality; and
- Provide a development outcome that is compatible with the existing residential area and consistent with the land use zone objectives.

There are no significant public disadvantages which would result from the proposed development. The proposed development is therefore considered to be justified on public interest grounds.

4.6 MATTERS OF STATE AND REGIONAL SIGNIFICANCE

Clause 4.6 – Floor Space Ratio (FSR)

Alterations and Additions to an Existing Dwelling
39 Adelaide Street, Clontarf (Lot A DP368257)

The proposed non-compliances with Clause 4.4 would not arise any matters of significance for State or Regional Environmental Planning. It would also not conflict with any State Environmental Planning Policy or Ministerial Directives under Section 117 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

Planning circular PS 08-014, issued by the NSW Department of Planning, requires that all development applications including a variation to a standard of more than 10% be considered by Council rather than under delegation. The proposed development would result in exceedances of the relevant planning controls as follows:

- Variation of FSR control of 60% departure from the Council's development standards and a 56% increase in the existing FSR.

The non-compliance is more than 10% prescribed in this planning circular.

4.7 PUBLIC BENEFIT IN MAINTAINING THE STANDARD

Strict compliance with Clause 4.4 would result in:

- Minimising opportunities to develop the site for future occupiers; and
- Preventing the renovation and rejuvenation of the site;

As such, there is no genuine public benefit in maintaining the strict FSR control for the site.

4.8 SUMMARY

For the reasons outlined above, it is considered that the objection to Clause 4.4 of the MLEP 2013 are well-founded in this instance and the granting of a Clause 4.6 variation to this development standard is appropriate in the circumstances. Furthermore, the objection is considered to be well-founded for the following reasons as outlined in Clause 4.6 of the MLEP 2013, *Four2Five Pty Ltd v Ashfield Council* and *Wehbe v Pittwater Council*.

- Compliance with the development standard is unreasonable and unnecessary in the circumstances;
- There are sufficient environmental planning grounds to justify contravening the development standard;
- The development is in the public interest;
- The development is consistent with the objectives for development within the zone;
- The objectives of the standard are achieved notwithstanding the non-compliance with the standard;
- The development does not negatively impact on any matters of State and regional significance; and
- The public benefit in maintaining strict compliance with the development standard would be negligible.

Further to this, it is submitted that:

- Strict compliance with the standards would not result in a better planning outcome for the land as it may prevent the development of a well consider proposal;
- No unreasonable impacts are associated with the proposed development.

Overall it is considered that the proposed Clause 4.6 variation to the FSR control are appropriate and can be justified having regard to the matters listed above.



Clause 4.6 – Floor Space Ratio (FSR)

Alterations and Additions to an Existing Dwelling
39 Adelaide Street, Clontarf (Lot A DP368257)

PART E CONCLUSION

It is requested that Northern Beaches Council and the Northern Beaches Local Planning Panel exercise their discretion (as identified in *Randwick City Council v Micaul Holdings Pty Ltd* – refer to **Section 2.2**) and find that this Clause 4.6 variation adequately addresses the matters required to be demonstrated by Subclause 4.6(3) of the MLEP 2013 (refer to **Section 2.1**).

This is particularly the case given the proposed development's otherwise compliance with MLEP 2013 and the suitability of the site for the proposed development.

ITEM 3.2	DA2019/0125 - 82-84 BOWER STREET, MANLY - DEMOLITION WORKS AND CONSTRUCTION OF TWO GARAGES
REPORTING MANAGER	Anna Williams
TRIM FILE REF	2019/363409
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/0125 for demolition works and construction of two garages on land at Lot 5 DP 8075, 82-84 Bower Street, Manly, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0125
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 5 DP 8075, 82 - 84 Bower Street MANLY NSW 2095
Proposed Development:	Demolition works and construction of two garages
Zoning:	Manly LEP2013 - Land zoned E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Trustees Roman Catholic Church Archdiocese Sydney 82-84 Bower Street Pty Ltd
Applicant:	Smith & Tzannes - Stz
Application lodged:	14/02/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	18/02/2019 to 06/03/2019
Advertised:	Not Advertised
Submissions Received:	0
Recommendation:	Approval
Estimated Cost of Works:	\$ 450,000.00

Executive Summary

The application is for alterations and additions to the existing dual occupancy including the demolition of an existing garage and construction of two (2) double garages. The garage structure at No. 84 Bower Street also includes habitable rooms below and results in a further increase to non-compliant FSR on the site. The development is described as 2 x Class 1A buildings. As the variation is greater than 10%, the application is referred to the Development Determination Panel.

Notwithstanding the extent of the FSR non-compliance, the additional gross floor area is achieved within an existing undercroft area and the proposal does not result in excessive building bulk.

No further assessment issues are raised and the proposal is recommended for approval.



It is noted that a further application on the site (DA2019/0126) is currently under assessment by Council and includes a further variation to the floor space ratio development standard, which is calculated in the Principal Development Standards table in this report.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
 Manly Local Environmental Plan 2013 - 6.8 Landslide risk
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area
 Manly Development Control Plan - 5.4.2 Threatened Species and Critical Habitat Lands

SITE DESCRIPTION

Property Description:	Lot 5 DP 8075 , 82 - 84 Bower Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment (No. 82-84 Bower Street) located on the northern side of Bower Street.</p> <p>The site is irregular in shape with a frontage of 16.365m along Bower Street and a depth of 45.83m. The site has a surveyed area of 698.4m².</p>



The site is located within the E3 Environmental Management zone and accommodates an existing dual occupancy (attached).

The site slopes 7.57m from front (south) to rear (north).

The site planted vegetation generally within the front setback. No significant trees are located on the site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached dwellings, dual occupancies 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:

DA0034/2016 for Alterations and additions to an existing semi-detached dwelling including new upper level internal reconfiguration and new roof, reconstruction of the existing ground floor entry, partial demolition of rear of dwelling, new plunge pool, terrace, new double garage and landscaping - No 84 Bower Street, Manly only - Approved on 27 April 2016 by the former DAU.

DA0168/2017 for Alterations and additions to the existing dual occupancy - Approved on 14 November 2017 under staff delegation.

Mod2018/0547 - Modification of Development Consent No. DA168/2017 granted for alterations and additions to the existing dual occupancy - Approved 10 January 2019 under staff delegation.



DA2019/0126 - Alterations and additions to a dual occupancy - Under assessment.

It is noted that works associated with previously approved developments on the site are currently under construction.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes works as follows:

- Demolition of the existing double garage, laundry and bathroom at No. 84
- Construction of a new double garage at No. 82
- Construction of a replacement double garage, bathroom & laundry, and new gym at No. 84
- Demolition of existing path and new stepping stones at No. 84
- Demolition and construction of driveway crossing and footpath

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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>



Section 4.15 Matters for Consideration	Comments
	<p>Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions 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
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) - MLEP Clause 6.5 (Biodiversity) - MDCP Clause 5.4.2 (Threatened Species and Critical Habitat Lands) - MDCP Clause 3.3.1 (Landscape Design - Bandicoot Habitat) <p>The subject site is within declared habitat for the endangered population of Long-nosed Bandicoot at North Head. A 'five-part test' is therefore required under Section 7.3 of the NSW BC Act. However, given that the proposal will have a minimal impact on soft open space additional to the existing approved development, Council's Biodiversity Section has undertaken this assessment. Subject to appropriate mitigation measures during the construction phase, it is considered that the proposal is unlikely to result in impact to individual bandicoots or the endangered population. The proposal is considered to comply with the relevant controls.</p>
NECC (Coast and Catchments)	<p>The application has been assessed for impacts <i>to</i> the Coastal Environment and impacts <i>from</i> the Coastal Environment. The following planning controls have been considered; the Coastal Management Act, SEPP (Coastal Management), Manly LEP and Manly DCP.</p> <p>It has been determined the proposed development will not have a significant impact subject to conditions being applied.</p>
NECC (Development Engineering)	<p><u>Planning Comments:</u></p> <p>Council's Development Engineer has recommended the application for refusal based on the non-compliant width of the proposed garages and driveway. However, the proposed car parking configuration is consistent with the existing structure at No. 84 and previous DA approvals at No. 82. Further, the proposed new double garage will offset the loss of on-street car parking. As such, the proposal is considered to be acceptable on merit given the history of the site and context of the surrounding area, as detailed in this report.</p>



Internal Referral Body	Comments
	<p><u>Engineering Comments:</u></p> <p>2nd referral, The engineering conditions have been provided as requested.</p> <p>1st referral The application proposed to install two additional garages at the boundary and a new driveway.</p> <p>However, the frontage of the lot is only 16.36 m wide. In accordance with the section 4.1.6.1 of Manly DCP 2013, the maximum width of any garage is not to exceed a width equal to 50 percent of the frontage which up to a maximum width of 6.2m.</p> <p>The proposed driveway crossing is 16 m wide.</p> <p>As such, the proposed garages and the driveway cannot be supported.</p> <p>As the proposal will result in the loss of the on street parking space on Bower street, a referral shall be sent to Traffic Engineer for assessment.</p>
NECC (Riparian Lands and Creeks)	No objection to the proposed development with no additional conditions.
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 (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 generally within the existing/approved building footprint and will not unreasonably impact the coastal environment area.

- (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 proposal is consistent with 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:*

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- (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 will not unreasonably impact the coastal use area given the location and scale of the works.

As such, it is considered that the application does comply 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's Coastal Officer concluded that the proposal will not significantly impact the coastal area, subject to the recommended conditions of consent.

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	6.2m	N/A	Yes
Floor Space Ratio	0.45:1 314.28m ²	Inc. DA2019/0126: 0.7:1 487.5m ²	55.1%	No
		Ex. DA2019/0126 0.676:1 472.5m ²	50.3%	No

Compliance Assessment

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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
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.45:1 (314.28m ²)
Proposed:	0.676:1 (472.5m ²)
Percentage variation to requirement:	50.3%

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 (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:

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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 proposal is not an unreasonable attempt to gain additional floor space, views or open space for the proposal. The breach by the proposed additional floor space below the proposed garage on No.84 will be imperceptible to the public, does not overshadow any public open space and provides for an essential laundry and associated rooms to provide for the amenity of residents of the subject site without amenity cost to the locality.
- The requested variation is a consequence of the "new" garage at No. 82 Bower St having a built form that will result in an enclosed room, namely a gymnasium for residents."

The proposed additional gross floor area is contained within the footprint/envelope of the existing garage in an undercroft space. As such, the proposal will provide increased amenity to the residents of the site, while remaining essentially imperceptible to adjoining properties and the public domain. It is noted that a further application on the site (DA2019/0126) is currently under assessment by Council and includes a further variation to the floor space ratio development standard, which is calculated in the Principal Development Standards table in this report.

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:

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(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 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 additional GFA is contained within an existing undercroft area below street level and does not result in additional bulk or scale as viewed from the streetscape or adjoining properties.

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 proposal is not excessive in bulk and will not obscure 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 generally consistent with the existing/approved developments on the site, and maintains an appropriate visual relationship with the surrounding area.

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

Comment:

The proposed non-compliance will not impact on the use or enjoyment of adjoining land or 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:

N/A

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 proposed works are generally within the existing building footprint and are considered to be low impact.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

Comment:

The proposal will not unreasonably impact the ecological, scientific or aesthetic values of the site.

- *To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.*

Comment:

The proposed works will not impact the tree canopy or dominate the 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 contained within the existing building footprint will not unreasonably impact the surrounding natural environment.

- *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 sufficiently separated from the immediate foreshore area.

- *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 proposal does not contribute any significant bulk to the existing development.

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 where the variation is not greater than 10%. Following the release of PS-003, Council received correspondence from a delegate of the Secretary which granted Council staff, for a period of 30 months from 24 May 2019, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary a development standard by more than 10%.

6.5 Terrestrial biodiversity

Council's Biodiversity Officer raised no objection to the proposal, subject to recommended conditions of consent.

6.8 Landslide risk

The proposed excavations works under the existing garage location are minimal in depth and extent

6.9 Foreshore scenic protection area

The proposed works are located at and below ground level as visible from any public spaces. As such, the proposal will result in no unreasonable impacts in relation to visual aesthetic amenity and views to and from the Pacific Ocean.

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 698.4m²	Requirement	Proposed	Complies
4.1.2.1 Wall Height	Garage: 6.5m	East: 4.2m	Yes
		West: 5.5m	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.4m - 0.6m	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	0m - 1.5m	Yes (Streetscape)

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4.1.4.2 Side Setbacks and Secondary Street Frontages	East: 1.4m	1.1m	No
	West: 1.83m	0m	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 6.2m	16.4m	No
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	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
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The proposal is consistent with the existing streetscape of Bower Street in the vicinity of the subject site, which is dominated by garaging and car parking structures at the front property boundary. Further, the proposed garage locations are generally consistent with the existing structure at No. 84 and the previously approved structure at No. 82.

3.4.1 Sunlight Access and Overshadowing

The resulting additional overshadowing is negligible and generally falls on the adjoining road reserve.

3.4.2 Privacy and Security

The proposed habitable spaces are located within an existing undercroft area and the proposal will result in no unreasonable privacy impacts.



3.4.3 Maintenance of Views

The proposed garage structures are located below the ridge height of the associated dwellings behind, and will not result in any unreasonable view loss impacts.

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

Description of non-compliance

The proposed garage side setbacks are non-compliant. The proposed front setback is considered to be consistent with the streetscape.

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 streetscape in the vicinity of the site is characterised by garages/car parking at the front property boundary. The proposed garage setbacks maintain a consistent location and appearance to the existing streetscape.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposal will result in no unreasonable impacts in relation to privacy, sunlight access, views, streetscape character or traffic conditions.

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

Comment:

The proposed garage locations are consistent with the character of the surrounding area.

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 does not result in any reduction to landscaped area beyond that of previous approvals on the site.

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

Comment:

N/A

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

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

Description of non-compliance

The proposed garage structures are located forward of the building line and exceed the maximum allowable width of 6.2m. However, it is noted that the proposed driveway and garage location is consistent with previous approvals 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 provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

The proposal provides a compliant number of spaces for both dwellings on the site.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

The proposed reduction to on-street car parking is offset by the two additional spaces provided on the subject site.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to



minimise their visual impact in the streetscape.

Comment:

Given the previous approvals granted on the subject site and the existing context of Bower Street in the vicinity of the site, the proposed access and parking configuration is considered to be acceptable and will not unreasonably impact the streetscape. While it is acknowledged that the proposal does not result in the preferred outcome in relation to the relevant DCP controls, the extent to which existing garages and car parking structures dominate the streetscape ensures that the proposal remains consistent with existing development. See the below examples of driveway and garage locations in the immediate vicinity of No. 82-84 Bower Street.



Figure 1. Driveway and garage at No. 78 Bower Street.



Figure 2. Driveway and garage at No. 72 Bower Street.



Figure 3. Driveway and garage at No. 70 Bower Street.



Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment:

The proposed car parking spaces do not require any significant excavation.

Objective 5) To ensure the width and number of footpath crossings is minimised.

Comment:

The proposed driveway width is non-compliant, but is consistent with previous approvals and further existing examples within the streetscape.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

Access and parking is constrained due to the width of the site and the proposal is considered to be appropriate on merit in this case.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

N/A

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

5.4.1 Foreshore Scenic Protection Area

The proposed works are located at and below ground level as visible from any public spaces. As such, the proposal will result in no unreasonable impacts in relation to visual aesthetic amenity and views to and from the Pacific Ocean.

5.4.2 Threatened Species and Critical Habitat Lands

Council's Biodiversity Officer raised no objection to the proposal, subject to recommended conditions of consent.

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 DA2019/0125 for Demolition works and construction of two garages on land at Lot 5 DP 8075, 82 - 84 Bower Street, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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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 / Landscape Plan	11 February 2019	Smith & Tzannes
Basement & Lower Ground	11 February 2019	Smith & Tzannes
Ground & Level 1	11 February 2019	Smith & Tzannes
Roof	11 February 2019	Smith & Tzannes
Elevations	11 February 2019	Smith & Tzannes
Sections	11 February 2019	Smith & Tzannes

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

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

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

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

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

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

(a) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (i) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (ii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

(b) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being



the Council) has given the Council written notice of the updated information.

(c) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

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

Reason: Legislative Requirement.

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 (Demolition):**

- (a) Unless authorised by Council:
Demolition and excavation works are restricted to:
- o 8.00 am to 5.00 pm Monday to Friday only.

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

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

(c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

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

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

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



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

(i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

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

5. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and



machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
 - 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

6. Security Bond

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

7. Stormwater Disposal

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

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

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

8. Structural Adequacy and Excavation Work

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

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

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

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

Reason: To provide public and private safety.



9. **Vehicle Crossings Application**

A Driveway Levels and Formwork Inspections Application shall be made with Council subject to the payment of the fee in accordance with Council's Fees and Charges. Any proposal of the Utility services relocation must be submitted. 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.

10. **Structural adequacy**

A Certificate prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction must be provided prior to the issue of a Construction Certificate to the satisfaction of the Principal Certifying Authority. The certificate shall also include all details of the methodology to be employed in construction phases to achieve the above requirements without resulting in demolition of elements marked on the approved plans for retention.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

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

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

12. **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

13. **Geotechnical Hazards**

The subject property is identified in the Manly Landslide Risk Map in the LEP. The applicant is to demonstrate the suitability of the development in accordance with Clause 6.8 of the Manly LEP.

Reason: To ensure that the proposed works will not have any detrimental impacts within the



potential geotechnical landslip hazard area or on environmentally sensitive areas.

14. **Site Induction Required – Penguin and Bandicoot Habitat**

All workers, including site inspectors and sub-contractors, are to be made aware of the potential presence of relevant threatened species and endangered ecological communities through a site induction prior to commencement of works. The site induction is to include information about their conservation significance, potential activities on-site, means of identification and the measures to be implemented for their protection. A confirmation of induction is to be signed by every worker and the site manager.

Evidence of the site induction is to be documented and provided to the Principal Certifying Authority.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

15. **Dilapidation report**

A dilapidation report including a photographic survey of the following adjoining properties must be provided to Principal Certifying Authority prior to any demolition or works commencing on the site or the issue of a Construction Certificate (whichever comes first). The dilapidation report must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property	Structures / Area
86 Bower Street	Within 1m of the proposed works on the boundary

If excavation works are proposed the dilapidation report must report on the visible and structural condition of neighbouring structures within the zone of influence of the excavations. This zone is defined as the horizontal distance from the edge of the excavation face to twice the excavation depth.

The dilapidation report is to be prepared by a practicing Structural Engineer. All costs incurred in achieving compliance with this condition shall be borne by the applicant. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written correspondence from the owners of the affected properties or other evidence must be obtained and submitted to the Principal Certifying Authority in such circumstances that demonstrates such documentation has been received. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

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

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.



CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. Road Reserve

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

Reason: Public Safety.

17. Vehicle Crossings

The provision of one vehicle crossing 14 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.

18. Construction Hours – Manly LEP Clause 6.5

Construction hours are to be adhered to, with no construction vehicles or heavy machinery used outside the hours of 7:00am and 5:00pm.

Reason: Noise and vibration can disturb local native fauna (including threatened species) and prevent access to their natural habitats.

19. 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.

20. Fencing for Wildlife Passage

Any new fencing (with the exception of swimming pool fencing) is to be made passable to native wildlife. Hole dimensions are to be a minimum of 150mm wide x 100mm high at ground level spaced at 6 metre intervals.

Reason: Management of wildlife corridors

21. Pollution Control

All stockpiles, materials, waste and slurry associated with works (including excavated material)

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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.

22. **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.

23. **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**

24. **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.

25. **Appropriate landscaping - bandicoot habitat**

An area of at least 10 square metres in new landscaping is to be planted at an appropriate location on site to offset the loss of potential bandicoot foraging habitat. Species planted are to be consistent with Bandicoot Habitat guidelines in Manly DCP Clause 3.3.1. Compliance with this condition is to be certified by a qualified landscape architect and submitted to Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To offset removed endangered bandicoot habitat and achieve consistency with Manly DCP Clause 3.3.1.

26. **Second dilapidation report**

A second Dilapidation Report including photos of any damage evident at the time of inspection must be submitted after the completion of works. A copy of this Dilapidation Report must be given to the property owners referred to in this Development Consent. The report must:

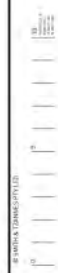
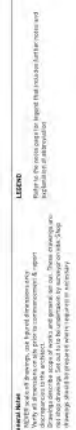
- Compare the post construction report with the pre-construction report required by these conditions,
- Clearly identify any recent damage and whether or not it is likely to be associated with the development works including suggested remediation methods.

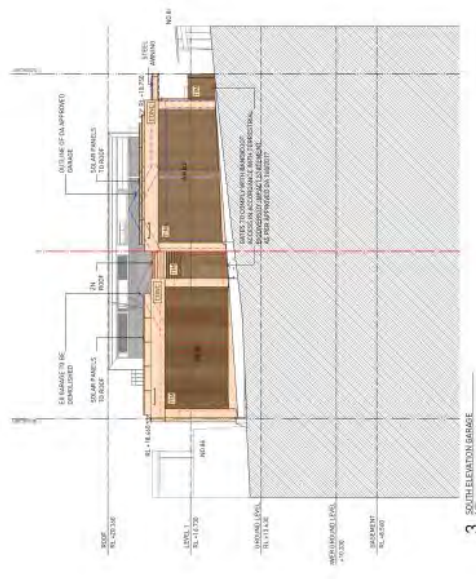
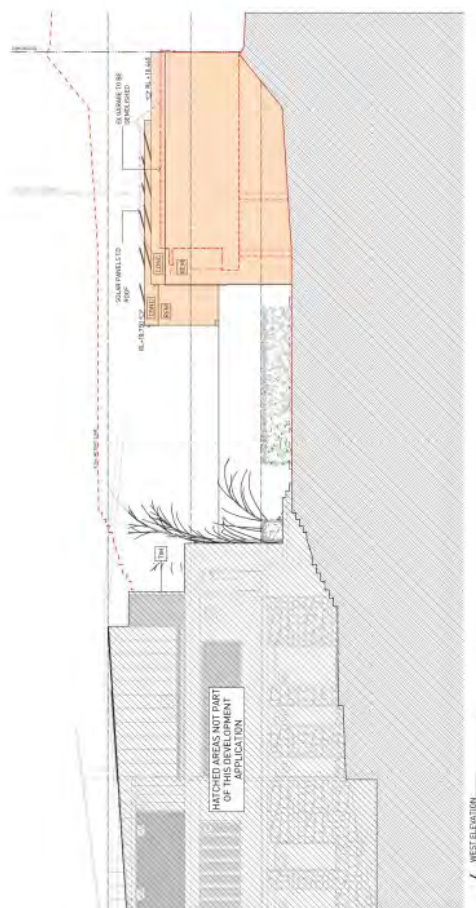


A copy must be lodged with Council and the Principal Certifying Authority prior to the issue of an Occupation Certificate. Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issuing of any Occupation Certificate

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

27. **Maintain Fauna Access and Landscaping Provisions – Manly LEP Clause 6.5**
All fauna access/movement and landscaping provisions specified in these conditions of consent are to be implemented and maintained for the life of the development.
- Reason:** To maintain fauna access to existing and proposed habitat within and surrounding the site.
28. **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.





DOCUMENT
ELEVATIONS
DOCUMENT
DEVELOPMENT APPLICATION
REV. 11.02.19
ATTACH
DA SUBMISSION

NOT PART OF DEVELOPMENT APPLICATION
PROPOSED ON 10/04/2014

General Notes

1. All drawings, including dimensions, are for information only. Verify all dimensions on the job prior to construction. Report all discrepancies to the architect.

2. Drawings show the scope of work and general location. These drawings are not shop drawings. Set out to field interpretation by contractor. Shop drawings should be prepared in accordance with the following:

LEGEND

Refer to the notes opposite the legend that indicate further notes and explanation of abbreviations.

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CLAUSE 4.6 – VARIATION REQUEST
FLOOR SPACE RATIO
DEVELOPMENT STANDARD
UNDER CLAUSE 4.4 OF MANLY LOCAL
ENVIRONMENTAL PLAN 2013
FOR
DEMOLITION OF
EXISTING GARAGE
AND ERECTION OF
TWO DOUBLE GARAGES
AT
PROPERTY
82-84 BOWER STREET, MANLY



Clause 4.6 – Exception to a Development Standard (FSR)
82-84 Bower Street, Manly

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Clause 4.6 – Exception to a Development Standard (FSR)
82-84 Bower Street, Manly

**CLAUSE 4.6 – EXCEPTION TO A DEVELOPMENT STANDARD IN RELATION TO
CLAUSE 4.4 FLOOR SPACE RATIO OF THE MANLY LOCAL ENVIRONMENTAL
PLAN 2013**

1.0 INTRODUCTION

This written request is made pursuant to the provisions of Clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013). A variation is sought in relation to the Floor Space Ratio development standard and associated maps of the MLEP 2013, in relation to the demolition and replacement of the existing garage at 84 Bower Street and the erection of a new garage at 82 Bower Street Manly.

Clause 4.6 – Exceptions to Development Standards

4.6 Exceptions to development standards

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

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless:*

Clause 4.6 – Exception to a Development Standard (FSR)
82-84 Bower Street, Manly

- (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.*
- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
 - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
 - (a) *a development standard for complying development,*

Clause 4.6 – Exception to a Development Standard (FSR)
82-84 Bower Street, Manly

- (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) *clause 5.4, (ca) clause 6.15,*
- (cb) *a development standard on land to which clause 6.19 applies.*

COMMENT

Clause 4.4 Floor Space Ratio of the MLEP 2013 is a development standard that is not subject to any of the specified exclusions from the operation of Clause 4.6. This request is composed and informed by decisions of the Land and Environment Court and in particular the judgments in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Micaul Holdings Pty Ltd v Randwick City Council* [2015] NSWLEC 1386, *Moskovich v Waverley Council* [2016] NSWLEC 1015 and *Wehbe v Pittwater Council* [2007] NSWLEC 827. The submission addresses the requirements of Clause 4.6. This written application seeks an exception to a development standard as the proposal will exceed the Floor Space Ratio Development Standard set at .45:1 under Clause 4.4 of the MLEP 2013 and maps thereunder.

Clause 4.6 – Exception to a Development Standard (FSR)
82-84 Bower Street, Manly

2.0 THE DEVELOPMENT STANDARD AND THE VARIATION SOUGHT

4.4 Floor space ratio

(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,*
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

COMMENT

The subject site is identified as being located within Area “C” under the provisions and Maps of the MLEP 2013 and is subject to a maximum FSR of 0.45:1, a maximum Gross Floor Area of 314 square metres. The requested variation to this standard is 0.68:1, a Gross Floor Area of 478.29 square metres.

Clause 4.6 – Exception to a Development Standard (FSR)
82-84 Bower Street, Manly

3.0 THE OBJECTIVES OF THE DEVELOPMENT STANDARD

The purpose of the Floor space ratio Development Standard is stated in the objectives in Clause 4.4 of the MLEP, and is as follows;

4.4 Floor space ratio

(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,*
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

COMMENT

The proposal satisfies the objectives of Clause 4.4 as follows-

- (a) The proposed garages will be consistent with the existing and desired streetscape character as evidenced by the approval of a similar garage at No.82 under DA 34/2016.
- (b) The proposed development will not obscure important landscape or townscape features as the proposed structures are below the height of the existing and approved garages.
- (c) The proposed garage structures will maintain the visual relationship between the proposal and the existing character which is typified by garaging on a nil setback to the front boundary.
- (d) The use and enjoyment of the public land will not be adversely impacted, in fact, the garaging will result in a lower demand for carparking in the locality.
- (e) This objective is not relevant for this assessment.

Clause 4.6 – Exception to a Development Standard (FSR)
82-84 Bower Street, Manly

4.0 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

The breach of the development standard cannot be described as minimal however, is an increase of 16 square metres over the approved gfa for the subject site, which is minimal.

The proposal is not an unreasonable attempt to gain additional floor space, views or open space for the proposal. The breach by the proposed additional floor space below the proposed garage on No.84 will be imperceptible to the public, does not overshadow any public open space and provides for an essential laundry and associated rooms to provide for the amenity of residents of the subject site without amenity cost to the locality.

The requested variation is a consequence of the “new” garage at No. 82 Bower St having a built form that will result in an enclosed room, namely a gymnasium for residents.

The resultant gross floor area does not result in any overshadowing or privacy impacts and provides for a sheltered area for residents to enhance their fitness in all weathers and as such, compliance is unnecessary in this instance.

Clause 4.6 – Exception to a Development Standard (FSR)
82-84 Bower Street, Manly

**5.0 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO
JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?**

As the proposal endorses the relevant MLEP Objectives by providing consistent character of the locality, I am of the view that there are sufficient environmental planning grounds to justify the contravention of the development standard.

Clause 4.6 – Exception to a Development Standard (FSR)
82-84 Bower Street, Manly

6.0 WILL THE PROPOSAL BE IN THE PUBLIC INTEREST?

In accordance with Clause 4.6(4)(a), Development Consent must not be granted to a development that contravenes a Development Standard unless Council is satisfied in relation to certain matters as follows;

(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 Director-General has been obtained.

COMMENT

The matters required to be addressed by subclause (3) are addressed in Parts 4 and 5 of this submission and is consistent with the objectives of the E3 Zone.

In terms of the Objectives of the standard, these are addressed in Part 3 of this request. In terms of the Objectives within the zone, the Objectives of the E3 Environmental Management zone are as follows;

1 Objectives of zone

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

The proposal will not impact upon the ocean front elevation of the subject site and will be consistent with aesthetic values of garages at a nil setback to the front boundary, similar to other garages along this portion of Bower Street.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

The development is limited as the proposed works, being two double garages with utility facilities below (No.84) satisfy the requirements for carparking under the Manly Development Control Plan

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

The proposed garages will not be visible from the foreshore, nor will the works require the removal of any trees or tree canopies.

- *To ensure that development does not negatively impact on nearby foreshores,*

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Clause 4.6 – Exception to a Development Standard (FSR)
82-84 Bower Street, Manly

significant geological features and bushland, including loss of natural vegetation.

The proposed garages to the street frontage of the subject site will have no negative impact upon nearby foreshores, 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.*

The immediate foreshore area will not be impacted upon by the subject proposal whilst stormwater from the subject site will be controlled by suitable on-site detention devices to enable the objective to be met.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

The structures to be erected on the subject site will require minimal excavation and have been crafted to avoid the loss of any vegetation and will be entirely compatible with surrounding land uses in terms of height, bulk and purpose.

Clause 4.6 – Exception to a Development Standard (FSR)
82-84 Bower Street, Manly

7.0 IS THE OBJECTION TO THE DEVELOPMENT STANDARD WELL FOUNDED?

I believe that the objection is well founded and the breach of the standard being minor with no material impacts is well founded and worthy of support and will not result in an undesirable precedent due to the merits of the proposal.



LANCE DOYLE

M. PLAN (UTS) B. APP SC. (UWS) MPIA

Dated: February 2019

ITEM 3.3	DA2019/0126 - 82 BOWER STREET, MANLY - ALTERATIONS AND ADDITIONS TO A DUAL OCCUPANCY
REPORTING MANAGER	Anna Williams
TRIM FILE REF	2019/363429
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/0126 for alterations and additions to a dual occupancy on land at Lot 5 DP 8075, 82 Bower Street, Manly, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0126
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 5 DP 8075, 82 Bower Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a dual occupancy
Zoning:	Manly LEP2013 - Land zoned E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Trustees Roman Catholic Church Archdiocese Sydney John Christopher Lake Anna Mairi Lake
Applicant:	Smith & Tzannes - Stz
Application lodged:	14/02/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	19/02/2019 to 07/03/2019
Advertised:	Not Advertised
Submissions Received:	0
Recommendation:	Approval
Estimated Cost of Works:	\$ 243,000.00

Executive Summary

The application is for alterations and additions to the existing dwelling and includes a variation of 44% to the floor space ratio development standard. The development is described as 2 x Class 1A buildings. As the variation is greater than 10%, the application is referred to the Development Determination Panel.

Notwithstanding the extent of the FSR non-compliance, the majority of the additional gross floor area is achieved within an below the natural ground level within the existing building footprint and the proposal does not result in excessive building bulk.

No further assessment issues are raised and the proposal is recommended for approval.



It is noted that a further application on the site (DA2019/0125) is currently under assessment by Council and includes a further variation to the floor space ratio development standard, which is calculated in the Principal Development Standards table in this report.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
 Manly Local Environmental Plan 2013 - 6.8 Landslide risk
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.3.2 Preservation of Trees or Bushland Vegetation
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)
 Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area
 Manly Development Control Plan - 5.4.2 Threatened Species and Critical Habitat Lands

SITE DESCRIPTION

Property Description:	Lot 5 DP 8075 , 82 Bower Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment (No. 82-84 Bower Street) located on the northern side of Bower Street.</p> <p>The site is irregular in shape with a frontage of 16.365m along Bower Street and a depth of 45.83m. The site has a surveyed area of 698.4m².</p> <p>The site is located within the E3 Environmental Management zone and accommodates two existing semi-detached</p>

DA2019/0126

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dwelling.

The site slopes 7.57m from front (south) to rear (north).

The site planted vegetation generally within the front setback. No significant trees are located on the site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached dwellings, dual occupancies 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:

DA0034/2016 for Alterations and additions to an existing semi-detached dwelling including new upper level internal reconfiguration and new roof, reconstruction of the existing ground floor entry, partial demolition of rear of dwelling, new plunge pool, terrace, new double garage and landscaping - No 84 Bower Street, Manly only - Approved on 27 April 2016 by the former DAU.

DA0168/2017 for Alterations and additions to the existing dual occupancy - Approved on 14 November 2017 under staff delegation.

Mod2018/0547 - Modification of Development Consent No. DA168/2017 granted for alterations and additions to the existing dual occupancy - Approved 10 January 2019 under staff delegation.

DA2019/0125 - Demolition works and construction of two garages - Under assessment.



It is noted that works associated with previously approved developments on the site are currently under construction.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes excavation works at lower ground floor level to provide the following:

- Bathroom
- Laundry
- Plant room
- Storeroom
- Drainage works

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iii)a – 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</p>



Section 4.15 Matters for Consideration'	Comments
	<p>requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions 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
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) - MLEP Clause 6.5 (Biodiversity) - MDCP Clause 5.4.2 (Threatened Species and Critical Habitat Lands) - MDCP Clause 3.3.1 (Landscape Design - Bandicoot Habitat) <p>The subject site is within declared habitat for the endangered population of Long-nosed Bandicoot at North Head. A 'five-part test' is therefore required under Section 7.3 of the NSW BC Act. However, given that the proposal will have a minimal impact on soft open space additional to the existing approved development, Council's Biodiversity Section has undertaken this assessment. Subject to appropriate mitigation measures during the construction phase, it is considered that the proposal is unlikely to result in impact to individual bandicoots or the endangered population. The proposal is considered to comply with the relevant controls.</p>
NECC (Coast and Catchments)	<p>The application has been assessed for impacts <i>to</i> the Coastal Environment and impacts <i>from</i> the Coastal Environment. The following planning controls have been considered; the Coastal Management Act, SEPP (Coastal Management), Manly LEP and Manly DCP.</p> <p>It has been determined the proposed development will not have a significant impact subject to conditions being applied.</p>
NECC (Development Engineering)	<p>The application proposed an additional room to the lower ground level of the existing building.</p> <p>Development Engineer has no objection to the application subject to the following conditions of consent.</p>
NECC (Riparian Lands and Creeks)	<p>No objection to the proposed development subject to conditions as recommended.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</p>



ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (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 located at basement level within the existing building footprint/envelope and will not unreasonably impact the coastal environment area.

- (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 proposal is consistent with 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 will not unreasonably impact the coastal use area given the location and scale of the works.

As such, it is considered that the application does comply 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's Coastal Officer concluded that the proposal will not significantly impact the coastal area, subject to the recommended conditions of consent.

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	No change proposed	N/A	N/A
Floor Space Ratio	0.45:1 314.28m ²	Inc. DA2019/0125: 0.7:1 487.5m ²	55.1%	No
		Ex. DA2019/0125 0.65:1 452.5m ²	44%	No

Compliance Assessment

Clause	Compliance with Requirements
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.45:1 (314.28m ²)
Proposed:	0.65:1 (452.5m ²)
Percentage variation to requirement:	44%

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:

DA2019/0126

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(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 (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:

- *The proposal is not an unreasonable attempt to gain additional floor space, views or open space for the proposal. The breach by the proposed additional floor space to the Lower Ground Floor level of No.82 will be imperceptible to the public, does not overshadow any public open space and provides for an essential laundry and associated rooms to provide for the amenity of residents of the subject site without amenity cost to the locality.*
- *The resultant gross floor area does not result in any overshadowing or privacy impacts and provides for additional residential accommodation and utilities in a sensitive design."*

Additional information provided by the applicant included a letter from a Hydraulic Engineer justifying the need for further excavation to construct necessary drainage works under the existing dwelling. The



opportunity to increase the gross floor area arises out of this required excavation work. The resulting additional gross floor area is achieved at the lower ground floor level within the existing footprint/envelope of the dwelling. The proposal provides a new bathroom and laundry (and plant/store rooms excluded from GFA) to service the lower level of the dwelling with negligible change to the external appearance of the dwelling. It is noted that a further application on the site (DA2019/0125) is currently under assessment by Council and includes a further variation to the floor space ratio development standard, which is calculated in the Principal Development Standards table in this report.

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 Height of Buildings 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 additional GFA is achieved largely below natural ground level within the existing building envelope. As such, the proposal will not result in additional bulk or scale as viewed from the streetscape or adjoining properties.

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 proposal results in no additional building bulk and will not obscure 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 will not materially alter the external appearance of the dwelling.

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

Comment:

The proposed non-compliance will not impact on the use or enjoyment of adjoining land or 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:

N/A

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 proposed works are generally within the existing building footprint and are considered to be low impact.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

Comment:

The proposal will not unreasonably impact the ecological, scientific or aesthetic values of the site.

- *To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.*

Comment:



The proposed works will not impact the tree canopy or dominate the 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 contained generally within the existing building footprint will not unreasonably impact the surrounding natural environment.

- *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 sufficiently separated from the immediate foreshore area.

- *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 proposal does not contribute additional bulk to the existing dwelling.

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 where the variation is not greater than 10%. Following the release of PS-003, Council received correspondence from a delegate of the Secretary which granted Council staff, for a period of 30 months from 24 May 2019, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary a development standard by more than 10%.

6.2 Earthworks

The proposed excavation reaches a maximum depth of approximately 3.6m and is generally contained within the footprint of the existing dwelling. The excavation provides additional floor area to accommodate a laundry, bathroom and service rooms at lower ground floor level. These works are also required to mitigate drainage issues currently affecting the property, as detailed in the Letter from Partridge Hydraulic Services dated 27 May 2019. A Geotechnical Inspection Report has also been



submitted in relation to the proposed works and includes several recommendations. A condition has been placed requiring further geotechnical assessment/detail be provided prior to completing the works, as recommended.

6.5 Terrestrial biodiversity

The proposed works are within the existing building footprint. Council's Biodiversity Officer raised no objection to the proposal, subject to recommended conditions of consent.

6.8 Landslide risk

A Geotechnical Inspection Report has also been submitted in relation to the proposed works and includes several recommendations. A condition has also been placed requiring further geotechnical assessment/detail be provided prior to completing the works, as recommended.

6.9 Foreshore scenic protection area

The proposed works are located at lower ground level and will result in no unreasonable impacts in relation to visual aesthetic amenity and views to and from the Pacific Ocean.

Manly Development Control Plan

Built Form Controls

As the proposed works are within the existing building envelope, there are no Development Controls under Part 4 of the Manly DCP to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	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
3.7 Stormwater Management	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.3.2 Preservation of Trees or Bushland Vegetation

The proposed works are within the existing building footprint and do not include any removal of trees or vegetation.

3.4.1 Sunlight Access and Overshadowing



The proposed works are contained within the existing building envelope and will not result in any additional overshadowing.

4.4.5 Earthworks (Excavation and Filling)

The proposed excavation reaches a maximum depth of approximately 3.6m and is generally contained within the footprint of the existing dwelling. The excavation provides additional floor area to accommodate a laundry, bathroom and service rooms at lower ground floor level. These works are also required to mitigate drainage issues currently affecting the property, as detailed in the Letter from Partridge Hydraulic Services dated 27 May 2019. A Geotechnical Inspection Report has also been submitted in relation to the proposed works and includes several recommendations. A condition has been placed requiring further geotechnical assessment/detail be provided prior to completing the works, as recommended.

5.4.1 Foreshore Scenic Protection Area

The proposed works are located at lower ground level and will result in no unreasonable impacts in relation to visual aesthetic amenity and views to and from the Pacific Ocean.

5.4.2 Threatened Species and Critical Habitat Lands

The proposed works are within the existing building footprint. Council's Biodiversity Officer raised no objection to the proposal, subject to recommended conditions of consent.

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 DA2019/0126 for Alterations and additions to a dual occupancy on land at Lot 5 DP 8075, 82 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
Site Plan	Rev. B, 17 June 2019	Smith & Tzannes
Basement & Lower Ground	Rev. B, 17 June 2019	Smith & Tzannes
Elevations	Rev. B, 17 June 2019	Smith & Tzannes
Sections	Rev. B, 17 June 2019	Smith & Tzannes

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Inspection Report	4 June 2019	Crozier Geotechnical Consultants
Hydraulic Letter	27 May 2019	Partridge Hydraulic Services



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

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

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

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. Geo-Technical Report

A Geo-Technical Report and certificate shall be prepared by an appropriately qualified Geo-technical Engineer certifying that the existing soil and rock formations and substrate on the site are capable of withstanding:

- the extent of the proposed excavation, including any recommendations for shoring works that may be required to ensure the stability of the excavation;
- protection of adjoining properties;
- the provision of appropriate subsoil drainage during and upon completion of construction works.

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

Reason: To ensure the structural integrity of the subject site and adjoining sites during the excavation process.



6. **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.

7. **Access to Undercroft Areas – Bandicoot Habitat**

Where concealing material is required for any undercroft areas (e.g. under the house, stairs or balcony), gaps are to be established to allow Long-nosed Bandicoot access. Gaps are to be at least 150mm high and 300mm wide.

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

Reason: To maintain bandicoot access to existing and proposed habitat within and surrounding the site.

8. **Structural adequacy**

A Certificate prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction must be provided prior to the issue of a Construction Certificate to the satisfaction of the Principal Certifying Authority. The certificate shall also include all details of the methodology to be employed in construction phases to achieve the above requirements without resulting in demolition of elements marked on the approved plans for retention.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of any Construction Certificate.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

9. **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)

10. **Geotechnical Hazards**

DA2019/0126

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The subject property is identified in the Manly Landslide Risk Map in the LEP. Due to the works proposed, a geotechnical assessment including a Landslide Risk Assessment is required prior to the commencement of works showing the suitability of the development in accordance with Clause 6.8 of the Manly LEP. Any recommendations made in the assessment are to be implemented.

Reason: To ensure that the proposed works will not have any detrimental impacts within the potential geotechnical landslip hazard area or on environmentally sensitive areas.

11. **Site Induction Required – Penguin and Bandicoot Habitat**

All workers, including site inspectors and sub-contractors, are to be made aware of the potential presence of relevant threatened species and endangered ecological communities through a site induction prior to commencement of works. The site induction is to include information about their conservation significance, potential activities on-site, means of identification and the measures to be implemented for their protection. A confirmation of induction is to be signed by every worker and the site manager.

Evidence of the site induction is to be documented and provided to the Principal Certifying Authority.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

12. **Geotechnical inspection of works**

Geotechnical inspection of the excavation is to be undertaken by a suitably qualified person directly prior to completion

Reason: To allow assessment of long-term stability conditions and provision of any required support design.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

13. **Road Reserve**

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

Reason: Public Safety.

14. **Construction Hours – Manly LEP Clause 6.5**

Construction hours are to be adhered to, with no construction vehicles or heavy machinery used outside the hours of 7:00am and 5:00pm.

Reason: Noise and vibration can disturb local native fauna (including threatened species) and prevent access to their natural habitats.

15. **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.

16. **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.

17. **Arborist Recommendations to be Implemented**

All pre-construction tree protection measures specified in Sections 8 and 9 of the submitted arborist report and these conditions of consent are to be implemented at the appropriate stage of development. Compliance with pre-construction measures is to be certified by the project arborist prior to issue of the Construction Certificate.

Reason: To confirm compliance with tree protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls.

18. **Geotechnical Inspection Report**

All recommendations included within the Geotechnical Inspection Report prepared by Crozier Geotechnical Consultants, dated 4 June 2019 are to be complied with during all excavation, demolition and construction works.

Reason: To ensure compliance with the geotechnical assessment of the site.

19. **Blank condition for during works work**

During the works, geotechnical inspections of the excavation is to be undertaken by a suitably qualified person directly in accordance with the Geotechnical Inspection Report prepared by Crozier Geotechnical Consultants dated 4 June 2019.

Reason: To allow assessment of long-term stability conditions and provision of any required support design.

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

20. **Documentation of Arborist Site Supervision Required**

Documented evidence of a qualified arborist supervising the works in proximity to trees being retained and ensuring that all tree protection measures as specified in the supplied arborist report is required. This documentation is to be provided prior to the issue of the Occupation Certificate.

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

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

21. **Maintain Fauna Access and Landscaping Provisions – Manly LEP Clause 6.5**

All fauna access/movement and landscaping provisions specified in these conditions of consent



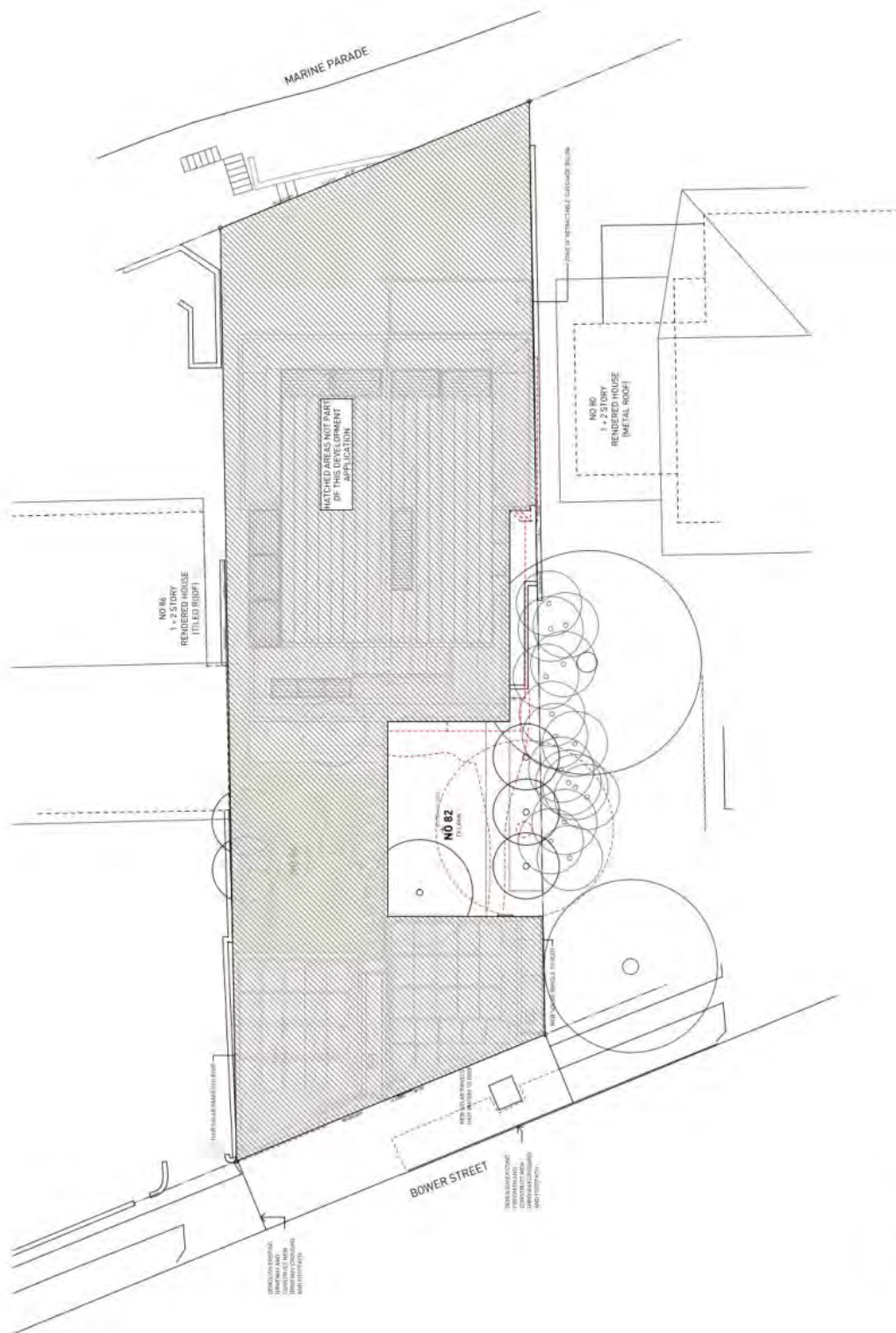
are to be implemented and maintained for the life of the development.

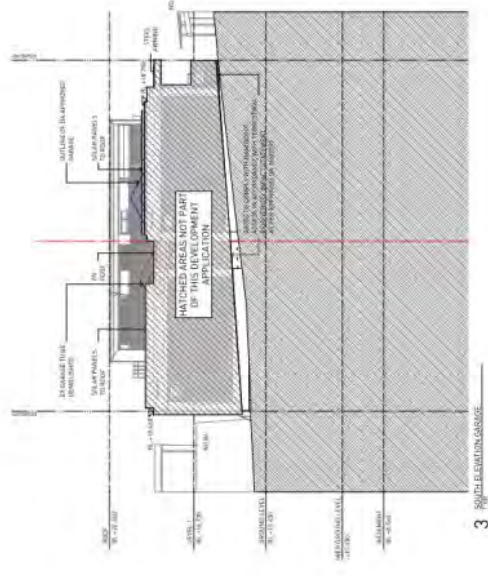
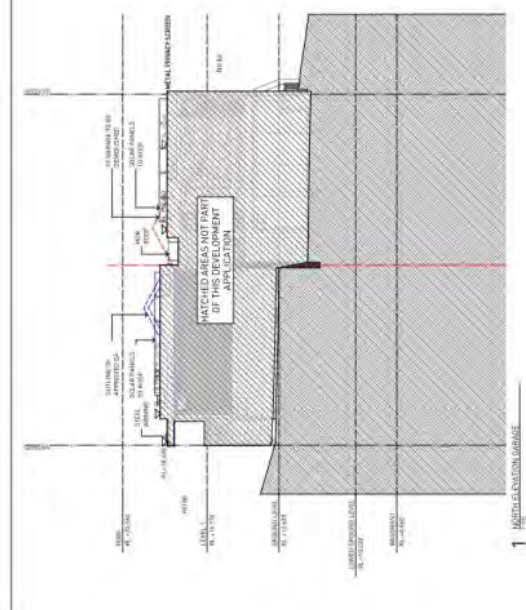
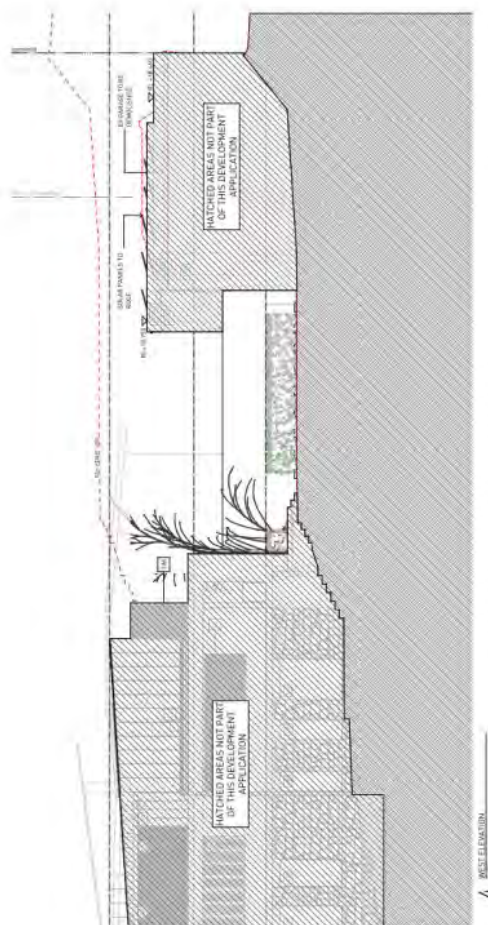
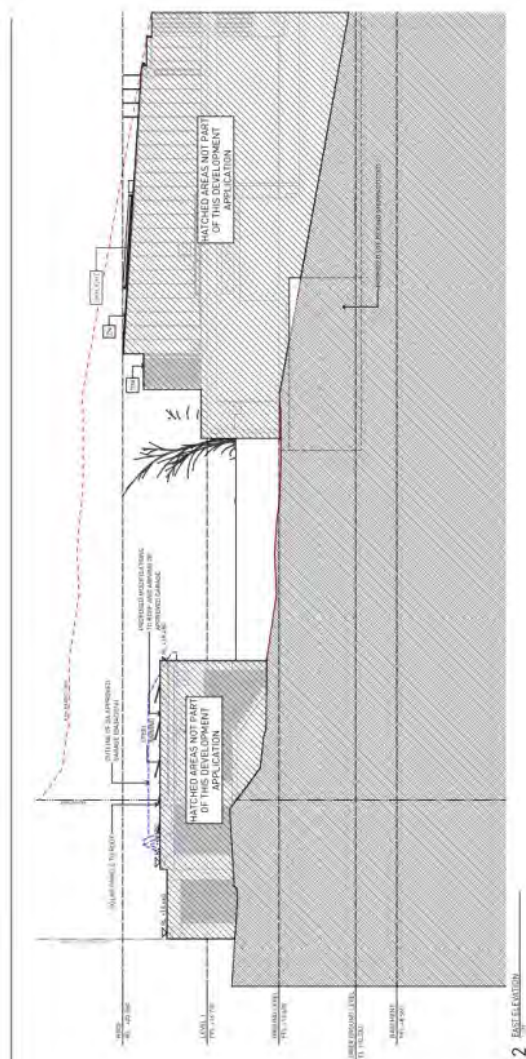
Reason: To maintain fauna access to existing and proposed habitat within and surrounding the site.

22. **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.





CLAUSE 4.6 – VARIATION REQUEST

FLOOR SPACE RATIO
DEVELOPMENT STANDARD
UNDER CLAUSE 4.4 OF MANLY LOCAL
ENVIRONMENTAL PLAN 2013
FOR
ALTERATIONS AND ADDITIONS
TO EXISTING DUAL OCCUPANCY
COMPRISING BASEMENT WORKS TO
NO.82 BOWER STREET,
MANLY
(LOT 5 DP 8075)

Clause 4.6 – Exception to a Development Standard (FSR)
82-84 Bower Street, Manly

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Clause 4.6 – Exception to a Development Standard (FSR)
82-84 Bower Street, Manly

**CLAUSE 4.6 – EXCEPTION TO A DEVELOPMENT STANDARD IN RELATION TO
CLAUSE 4.4 FLOOR SPACE RATIO OF THE MANLY LOCAL ENVIRONMENTAL
PLAN 2013**

1.0 INTRODUCTION

This written request is made pursuant to the provisions of Clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013). A variation is sought in relation to the Floor Space Ratio development standard and associated maps of the MLEP 2013, in relation to the provision of additional floorspace to the Lower Ground Floor of the approved dual occupancy at 84 Bower Street Manly.

Clause 4.6 – Exceptions to Development Standards

4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows:*
- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless:*

Clause 4.6 – Exception to a Development Standard (FSR)
82-84 Bower Street, Manly

- (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.*
- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
 - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
 - (a) *a development standard for complying development,*

Clause 4.6 – Exception to a Development Standard (FSR)
82-84 Bower Street, Manly

- (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) *clause 5.4, (ca) clause 6.15,*
- (cb) *a development standard on land to which clause 6.19 applies.*

COMMENT

Clause 4.4 Floor Space Ratio of the MLEP 2013 is a development standard that is not subject to any of the specified exclusions from the operation of Clause 4.6. This request is composed and informed by decisions of the Land and Environment Court and in particular the judgments in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Micaul Holdings Pty Ltd v Randwick City Council* [2015] NSWLEC 1386, *Moskovich v Waverley Council* [2016] NSWLEC 1015 and *Wehbe v Pittwater Council* [2007] NSWLEC 827. The submission addresses the requirements of Clause 4.6. This written application seeks an exception to a development standard as the proposal will exceed the Floor Space Ratio Development Standard set at .45:1 under Clause 4.4 of the MLEP 2013 and maps thereunder.

Clause 4.6 – Exception to a Development Standard (FSR)
82-84 Bower Street, Manly

2.0 THE DEVELOPMENT STANDARD AND THE VARIATION SOUGHT

4.4 Floor space ratio

(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,*
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

COMMENT

The subject site is identified as being located within Area “C” under the provisions and Maps of the MLEP 2013 and is subject to a maximum FSR of 0.45:1, a maximum Gross Floor Area of 314 square metres. The requested variation to this standard is 0.74:1, a Gross Floor Area of 515.01 square metres.

Clause 4.6 – Exception to a Development Standard (FSR)
82-84 Bower Street, Manly

3.0 THE OBJECTIVES OF THE DEVELOPMENT STANDARD

The purpose of the Floor space ratio Development Standard is stated in the objectives in Clause 4.4 of the MLEP, and is as follows;

4.4 Floor space ratio

(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,*
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

COMMENT

The proposal satisfies the objectives of Clause 4.4 as follows-

- (a) The proposed works to the Lower Ground Floor will be consistent with the existing and desired streetscape character as evidenced by the approval of the major work under DA 168/2017.
- (b) The proposed development will not obscure important landscape or townscape features as the proposed structures are below the existing ground level.
- (c) The proposed works to the Lower Ground Floor will maintain the visual relationship between the proposal and the existing character which is typified by dwellings of the configuration and form proposed.
- (d) The use and enjoyment of the public land will not be adversely impacted.
- (e) This objective is not relevant for this assessment.

Clause 4.6 – Exception to a Development Standard (FSR)
82-84 Bower Street, Manly

4.0 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

The breach of the development standard cannot be described as minimal however, is an increase of 52.98 square metres over the approved gfa for the subject site, which is minimal.

The proposal is not an unreasonable attempt to gain additional floor space, views or open space for the proposal. The breach by the proposed additional floor space to the Lower Ground Floor level of No.82 will be imperceptible to the public, does not overshadow any public open space and provides for an essential laundry and associated rooms to provide for the amenity of residents of the subject site without amenity cost to the locality.

The resultant gross floor area does not result in any overshadowing or privacy impacts and provides for additional residential accommodation and utilities in a sensitive design.

Clause 4.6 – Exception to a Development Standard (FSR)
82-84 Bower Street, Manly

**5.0 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO
JUSTIFY CONTRAVENTING THE DEVELOPMENT STANDARD?**

As the proposal endorses the relevant MLEP Objectives by providing consistent character of the locality, I am of the view that there are sufficient environmental planning grounds to justify the contravention of the development standard.

Clause 4.6 – Exception to a Development Standard (FSR)
82-84 Bower Street, Manly

6.0 WILL THE PROPOSAL BE IN THE PUBLIC INTEREST?

In accordance with Clause 4.6(4)(a), Development Consent must not be granted to a development that contravenes a Development Standard unless Council is satisfied in relation to certain matters as follows;

(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 Director-General has been obtained.

COMMENT

The matters required to be addressed by subclause (3) are addressed in Parts 4 and 5 of this submission and is consistent with the objectives of the E3 Zone.

In terms of the Objectives of the standard, these are addressed in Part 3 of this request. In terms of the Objectives within the zone, the Objectives of the E3 Environmental Management zone are as follows;

1 Objectives of zone

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

The proposal will not impact upon the ocean front elevation of the subject site and will be consistent with aesthetic values of the approved structure.

- To provide for a limited range of development that does not have an adverse effect on those values.*

The development is limited as the proposed works, are below ground level and will not have an adverse impact upon the defined values under the Manly Development Control Plan.

- To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

The proposed will not be visible from the foreshore, nor will the works require the removal of any trees or tree canopies.

- To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural*

Clause 4.6 – Exception to a Development Standard (FSR)
82-84 Bower Street, Manly

vegetation.

The proposed Lower Ground Floor works will have no negative impact upon nearby foreshores, 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.*

The immediate foreshore area will not be impacted upon by the subject proposal whilst stormwater from the subject site will be controlled by approved on-site detention devices to enable the objective to be met.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

The Lower Ground Floor works are below ground and will not contribute towards height or bulk visible to the surrounding locality.



Clause 4.6 – Exception to a Development Standard (FSR)
82-84 Bower Street, Manly

7.0 IS THE OBJECTION TO THE DEVELOPMENT STANDARD WELL FOUNDED?

I believe that the objection is well founded and the breach of the standard being minor with no material impacts is well founded and worthy of support and will not result in an undesirable precedent due to the merits of the proposal.

A handwritten signature in black ink, appearing to read 'Lance Doyle'.

LANCE DOYLE

M. PLAN (UTS) B. APP SC. (UWS) MPIA

Dated: February 2019

ITEM 3.4**DA2019/0064 - 11 KANANGRA CRESCENT, CLONTARF -
DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING
HOUSE INCLUDING SWIMMING POOL****REPORTING MANAGER****Steve Findlay****TRIM FILE REF****2019/363713****ATTACHMENTS**

- 1 Assessment Report**
- 2 Site Plan & Elevations**
- 3 Clause 4.6**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/0064 for demolition works and construction of a dwelling house including swimming pool on land at Lot 1 DP 876654, 11 Kanangra Crescent, Clontarf, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0064
Responsible Officer:	Danielle Deegan
Land to be developed (Address):	Lot 1 DP 876654, 11 Kanangra Crescent CLONTARF NSW 2093
Proposed Development:	Demolition works and construction of a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Ying Yin
Applicant:	JS Architects Pty Ltd
Application lodged:	29/01/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	01/02/2019 to 19/02/2019
Advertised:	Not Advertised
Submissions Received:	4
Recommendation:	Approval
Estimated Cost of Works:	\$ 3,484,683.03

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 - 4.4 Floor space ratio
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
 Manly Development Control Plan - 3.3.1 Landscaping Design
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)
 Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area

SITE DESCRIPTION

Property Description:	Lot 1 DP 876654 , 11 Kanangra Crescent CLONTARF NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the south-western side of Kanangra Cres.</p> <p>The site is irregular in shape with a frontage of 24.425m along Kanangra Cres and a depth of 35.66m (northern boundary) and 32.305 (southern boundary). The site has a surveyed area of 726.6m².</p> <p>The site is located within the R2 Low Density zone and accommodates a two storey brick and tile dwelling with detached triple space garage and swimming pool.</p> <p>The site is steeply sloping with a fall of approximately 7m from street level to the rear of the site.</p> <p>The site currently has very little vegetation. There are some small shrubs and trees in the front setback area.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by large, multi-storey dwellings on sloping sites. Views are</p>

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primarily orientated toward Middle Harbour and The Spit to the north-west.

Map:



SITE HISTORY

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

No Pre-Lodgement Meeting was held in relation to this proposal.

The land has been used for residential purposes for an extended period of time. The dwelling house is currently vacant.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes demolition of the existing dwelling and construction of a three storey dwelling house with swimming pool comprising of:

Upper (street) Level

- double garage
- entry porch and hall
- study
- bathroom
- guest bedroom
- open plan living, dining and kitchen
- upper terrace with BBQ

Mid Level

- master bedroom suite
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- circular stairwell and gallery
- bedrooms 1 and 2
- bathroom
- mid level terrace

Lower Level

- sub-floor storage areas
- bedroom 3 with en-suite
- bathroom
- entertainment room with wet bar
- pool equipment room
- laundry
- ground level terrace

Other Aspects of the Proposal

- A swimming pool and spa are proposed in the rear yard.
- Excavation to a depth of the 4.5m is required to accommodate the rear of the lower level.
- Landscaping works including a terraced lawn area and boundary planting.
- Stormwater is proposed to be collected and drained to a stormwater detention tank located in the south-western corner of the site, which will discharge to an existing easement over the property to the rear.
- External Finishes include; aluminium glass stacking and sliding doors, white rendered walls, metal roofing, timber fencing, facade detailing and garage door.

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	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of

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Section 4.15 Matters for Consideration	Comments
Assessment Regulation 2000 (EP&A Regulation 2000)	<p>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 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</p>



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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Mr Richard Stanley Ryan	13 Kanangra Crescent CLONTARF NSW 2093
Mr Frederik Hoogeveen	9A Kanangra Crescent CLONTARF NSW 2093
Mr Thomas Clemens Maria Hillenaar	8 Heaton Avenue CLONTARF NSW 2093
Mr Nerina Musumeci	8 Plant Street CLONTARF NSW 2093

The following issues were raised in the submissions:

- Demolition impacts (asbestos, dust and noise)
- Excavation impacts
- Privacy concerns
- No landscape plan
- Retaining walls incorrectly shown on plans
- Easement not shown on plans
- Drainage and rock fall issues
- Finished height levels to be shown

The matters raised within the submissions are addressed as follows:

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- **Impacts of demolition**

Comment: In the event of approval, potential demolition impacts will be addressed by way of conditions of consent.

- **Ground stability resulting from excavation**

Comment: A Geotechnical Site Investigation Report has been prepared in support of the proposal. This report contains recommendations for construction to ensure site stability. In the event of an approval, the Geotechnical Report will form part of the approval documents.

- **Privacy screens on the southern ends of the middle and upper terraces to protect the privacy of 9 Kanangra Cres**

Comment: A condition of consent is recommended to require that privacy screens be erected on the southern ends of the middle and upper terraces.

- **No information to show how building bulk will be softened by greenery**

Comment: A landscape plan and planting schedule have been submitted. Council's Landscape Officer is generally supportive of the landscape proposal. However, a condition of consent is recommended to require the relocation of the three (3) native palms, currently shown as being located above the stormwater detention tank.

- **Retaining walls relative to the adjoining property to the north (13 Kanangra Cres) have been incorrectly shown on the plans**

Comment: The detail regarding the existing walls over the common boundary is satisfactory. The existing walls, which are located on the neighbouring property (13 Kanangra Cres), are not proposed to be demolished. All new works proposed are within site boundaries.

- **Easement going to Heaton Ave from 13 Kanangra Cres is currently built over by the existing development on 11 Kanangra Cres**

Comment: The drainage easement over the property to the north-west (10 Heaton Ave) is adjacent to part of the northern boundary of the subject site. The survey plan does not show existing encroachments over this easement. All new works proposed are within site boundaries.

- **Rock fall and water flow (stormwater and pool overflow) onto the property to the rear at 8 Heaton Ave**



Comment:

Council's Development Engineer is satisfied with the stormwater and geotechnical aspects of the proposal. The proposed swimming pool is legally required to be connected to the sewer and this will be required by a condition of consent.

▪ **Height poles**

Comment:

The proposal complies with Council's maximum building height controls. Adequate detail has been provided on the survey and architectural plans to enable an accurate assessment of building height impacts. Height poles are not warranted in the circumstances.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	No objections in general terms subject to conditions, however it is noted that proposed native palm and native shrub planting indicated on the landscape plan in the southern corner of the site would be directly over the proposed stormwater detention tank indicated in this location. It would appear that here is no soil depth to accommodate vegetation in this location. If this is the case, plans should be amended to enable incorporation of the planting on the site, particularly with regard to the native palms which are being proposed in lieu of tree planting on the site.
NECC (Development Engineering)	Development Engineer has no objection to the application subject to the following condition of the consent.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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



SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 965807S_02), dated 22 November 2018.

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	53

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
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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	0.45:1	0.53:1	17.8%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.4 Floor space ratio

In accordance with Clause 4.4, the maximum Floor Space Ratio (FSR) for the site is 0.45:1. As the site area is 726.60m², the FSR allows for a maximum Gross Floor Area (GFA) of 326.97m². The GFA proposed is 388.72m² which represents a non-complying FSR of 0.53:1.

A written Clause 4.6 request to vary the FSR development standard has been provided by the applicant and is addressed in the Clause 4.6 section below.

4.6 Exceptions to development standards

Description of non-compliance

Development standard:	Floor space ratio
Requirement:	0.45:1
Proposed:	0.53:1
Percentage variation to requirement:	17.8%

Assessment of request to vary a Development Standard

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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 (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.*

Applicants Written Request

The applicants written request argues, in part:

- *The building form complies with the primary setback controls*
- *The building adopts a single storey appearance to the street and additional levels are below, using the slope of the site*



- *This justification is consistent with the conclusions reached by SC Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, where I contend that observers would not find the proposed development by virtue of its floor area offensive, jarring or unsympathetic in a streetscape context. Nor are the built form characteristics within the site's visual catchment offensive or out of character with other homes.*
- *The floor space has been appropriately distributed across the site to maintain a contextually appropriate relationship with adjoining development, while complying with required setbacks and height controls.*
- *The floor space ratio proposed will not give rise to any adverse residential amenity impacts in terms of view loss, overshadowing, privacy or visual bulk.*

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 FSR 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 proposal is consistent with the prevailing building height and will appear as a single storey dwelling when viewed from the street. This will ensure that the proposal is of a built form that is consistent with surrounding development. The proposal is accompanied by perspectives that



demonstrate that the proposal has a bulk and scale that is consistent with the existing and desired streetscape character.

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

Comment:

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 is no defined building character within the locality. However, the proposal has a built form that is consistent with the development adjoining the site at Nos 9 and 13 Kanangra Street. The proposal has a built form that maintains an appropriate visual relationship between new and existing development.

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

Comment:

The proposal is of a reasonable design to maintain an adequate level of privacy and solar access to neighbouring properties. The proposal will not result in any unreasonable impacts on the use or enjoyment of the 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.

Objectives of the Zone

The underlying objectives of the R2 Low Density Residential zone are:

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

Comment:

The proposal will maintain the residential use of the site and ensure the site continues to provide for the housing needs of the community.

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

Comment:

Not applicable.

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Conclusion

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

6.1 Acid sulfate soils

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

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

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

The development proposes to excavate the site to approximately 4.0m below the natural ground level. As such, a Preliminary Acid Sulfate Soil Assessment has been undertaken by Geotesta dated 18 January 2019. In the assessment, Geotesta found that soil samples collected from the site were not acidic.

The proposal development will have no impact on acid sulfate soils.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 726.6sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 500sqm	1 dwelling	N/A	Yes
	Dwelling Size: 134sqm	>134sqm	N/A	Yes
4.1.2.1 Wall Height	NW: 8.0m (based on gradient 1:3.6)	7.52m	N/A	Yes

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	SE: 8.0m (based on gradient 1:3.8)	8.2m	2.5%	No
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	640mm	N/A	Yes
	Parapet Height: 0.6m	720mm	20%	No
	Pitch: maximum 35 degrees	3.2 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	Consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	NW First floor - Between 1.29m and 2.51m (based on wall height)	NW FF - Between 1.497m and 3.07m	Up to 16%	No
	Ground floor - Between 0.74m and 1.74m (based on wall height)	GF - Between 1.83m and 3.58m	N/A	Yes
	SE First floor - Between 1.95m and 2.73m (based on wall height)	SE FF - 2.533m	N/A	Yes
	Ground floor - Between 0.58m and 1.88m (based on wall height)	GF - 2.533m	N/A	Yes
	Windows: 3.0m	NW - 1.52m SE - 2.533m	49.3% 15.6%	No No
4.1.4.4 Rear Setbacks	8.0m	Dwelling - 9.99m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	55.35%	N/A	Yes
	Open space above ground 25% of total open space	41.03%	64.12%	No
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	68.59%	N/A	Yes
	3 native trees	4 trees	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	111sqm	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	32.77% - 8m	29.08%	No
4.1.9 Swimming Pools, Spas and Water Features	1.0m height above ground	1.13m	13%	No
	1m curtilage/1.5m water side/rear setback	Coping - minimum of 1.395m Water - minimum of	N/A	Yes



		1.61m		
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	N/A	N/A
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
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	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
3.9 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)	No	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	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes

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Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.1.10 Fencing	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.4.2 Awning supported from the ground	N/A	N/A
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.3.1 Landscaping Design

As noted in the Landscape Officer Referrals section above, the landscape plan shows three (3) x Cabbage Tree Palms (*Livistona australis*) in the location above the stormwater detention tanks. Given the inadequate soil depths in this location, a recommended condition of consent will require that the landscape plan be amended to relocate the three (3) Cabbage Tree Palms to a more suitable location within the rear yard.

3.4.2 Privacy and Security

The windows that are within 3.0m of the side boundaries will not result in any adverse privacy impacts. Those at ground level will be screened by boundary fencing. Those above ground level are limited in number and size. They all comprise of obscure glazing and therefore pose no privacy impacts.

In response to privacy concerns raised by the property owner to the south (9 Kanangra Cres), a recommended condition of consent will require the erection of privacy screens on the southern end of the mid and upper level terraces in order to restrict overlooking. Architectural screens must be fixed in position and suitably angled to protect visual privacy.

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

The proposal does not comply with the wall height, number of storeys and parapet height controls. These non-compliances are addressed below:

(i) Wall Height

Based on the site gradient of 1:3.8 (south-eastern elevation) and 1:3.4 (north-western boundary), the maximum wall height is 8.0m. The proposal complies with the wall height control along north-western elevation, however, the south-eastern elevation reaches a maximum height of 8.2m. The breach is minor, for a small section of the wall only and with no discernible impacts. It is therefore acceptable in the circumstances.

(ii) Number of Storeys

The DCP requires that buildings are not to exceed 2 storeys. The proposal is part 1/part 2/part 3 storeys due to sloping site topography. The 3 storey overlap is reasonable in the circumstances.



(iii) **Roof Height**

The DCP requires that roof parapets are not to exceed 0.6m above the actual wall height where Council considers that a parapet is considered to be appropriate to the design of the development and satisfies the objectives of this DCP and the LEP.

The proposed parapet is 0.72m and does not comply. The non-complying parapet is along the front facade and continuing around the sides for a length of approximately 10.0m. Given that this section of the building is predominantly single storey and well below the maximum building height, the proposed parapet height is acceptable.

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

There is a minor non-compliance with the side setback control to the north-western boundary where setbacks vary from 1.5m (garage) to 2.5m. The proposed side boundary setbacks provide adequate access to sunlight, spatial separation and privacy levels. The objectives of the control are satisfied and therefore the minor variation is acceptable in the circumstances.

4.1.5 Open Space and Landscaping

The proposal has 64.12% of total open space in the form of above ground terraces and therefore does not comply with the requirement that no more than 25% of total open space comprise of above ground open space.

This non-compliance is a result of the generous upper and mid level terraces. It is noted that the proposal complies with total open space and landscaped area requirements.

Given the proximity of the elevated terraces to the side boundaries (1.26m to the north-western boundary and 2.4m to the south-eastern boundary), their expansive size and their location adjacent the private open space areas of adjoining properties, they are considered to have potentially unacceptable impacts on the amenity of adjoining neighbours. This is contrary to the objectives for the above ground open space control.

Consequently, a recommended condition of consent will require a reduction in the size of both the upper and mid level terraces as follows:

- The upper level terrace is to be reduced in depth by 2.0m (i.e. it is to extend a maximum of 4.0m from the external face of the rear elevation);
- The mid level terrace is to be reduced in depth by 2.0m (i.e. it is to extend a maximum of 2.2m from the external face of the rear elevation);
- The supporting columns below the mid level terrace are to be adjusted accordingly.

The amendments are indicated Figure 1 below:

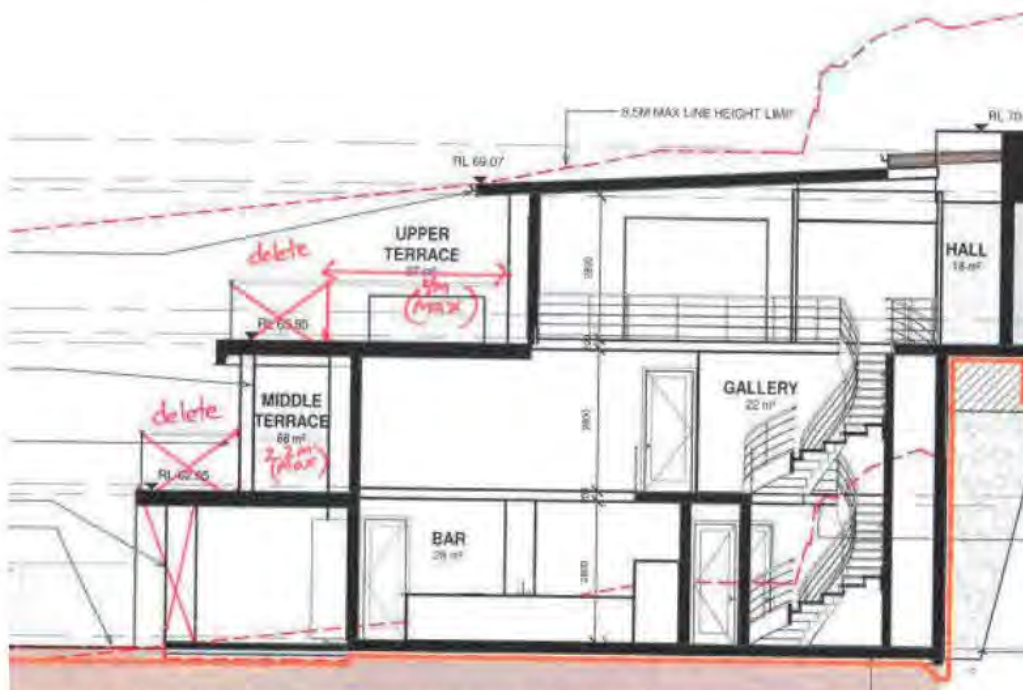


Figure 1: Sketch plan indicating recommended amendments to upper and mid level terraces

These amendments will reduce potential amenity impacts to adjoining properties, improve the balance between built form and landscaping on the site and reduce building bulk.

An additional recommended condition of consent will require the erection of privacy screens on the southern elevations of the terraces, in response to concerns raised by the neighbour to the south.

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

The proposed development includes a garage with a width of 8.8m which exceeds the maximum width of 6.2m required by the DCP. The DCP requires:

c) the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m.

The width of the proposed garage represents 36% of the 24.425m site frontage. Given the aesthetically pleasing presentation of the garage to the street (due to its low profile and timber garage door) the proposed garage width is acceptable in the circumstances.

4.1.9 Swimming Pools, Spas and Water Features

The swimming pool is elevated up to 1.13m above ground level at its southern end. This does not satisfy the DCP control that requires that pools not be elevated more than 1.0m above natural ground level. Given the breach is relatively minor and localised to the southern end of the pool, the non-compliance is reasonable in this instance.

The water line of the swimming pool is setback 1.4m from the northern boundary where a 1.5m setback is required.



It is noted that the commitments on the BASIX Certificate indicates that the swimming pool must not have a swimming pool volume of greater than 56 kilolitres. This is contrary to the DA plans which show that the swimming pool has a volume of 75 kilolitres. A recommended condition of consent will require that the volume of the swimming pool comply with BASIX Certificate commitment.

4.4.5 Earthworks (Excavation and Filling)

The DCP requires that excavation be generally limited to an area of 1.0m below natural ground level. Excavation is proposed to a depth of 4.5m at the rear of the lower floor plan. The subterranean area contains subfloor storage areas, the circular staircase and surrounding void area. The excavation is not within side boundary setback areas.

A Geotechnical Report has been submitted in support of the proposal. In the event of an approval, a condition of consent will require compliance with the recommendations contained in the Geotechnical Report.

5.4.1 Foreshore Scenic Protection Area

The DCP requires that development in the Foreshore Scenic Protection Area must not detrimentally effect the 'visual or aesthetic amenity of land in the foreshore scenic area nor must the development similarly effect the views of that land, including ridgelines, tree lines and other natural features viewed from the Harbour or Ocean from any road, park or land in the LEP for any open space purpose or any other public place.

The DCP requires that development in the Foreshore Scenic Protection Area must:

- i) minimise the contrast between the built environment and the natural environment;*
- ii) maintain the visual dominance of the natural environment;*
- iii) maximise the retention of existing vegetation including tree canopies, street trees, wildlife corridors and habitat;*
- iv) not cause any change, visually, structurally or otherwise, to the existing natural rocky harbour foreshore areas;*
- v) locate rooflines below the tree canopy;*
- vi) consider any effect of the proposal when viewed from the harbour / ocean to ridgelines, tree lines and other natural features; and*
- vii) use building materials of a non-reflective quality and be of colours and textures that blend with the prevailing natural environment in the locality.*

The proposed white rendered external walls will not blend with the surrounding natural environment and are inconsistent with the requirements of this Section of the DCP. Consequently, a recommended condition of consent will require all external finishes of the building to be muted or natural colour tones.

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

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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 DA2019/0064 for Demolition works and construction of a dwelling house including a swimming pool on land at Lot 1 DP 876654, 11 Kanangra Crescent, CLONTARF, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

- a) Approved Plans
DA2019/0064



Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A020 Demolition Plan	12 November 2018	JS Architects Pty Ltd
A030 Excavation and Fill Plan	12 November 2018	JS Architects Pty Ltd
A100 Site Plan and analysis	12 November 2018	JS Architects Pty Ltd
A200 Upper Floor Plan	12 November 2018	JS Architects Pty Ltd
A201 Mid Floor Plan	12 November 2018	JS Architects Pty Ltd
A203 Roof Plan	12 November 2018	JS Architects Pty Ltd
A300 North West Elevation	12 November 2018	JS Architects Pty Ltd
A301 South East Elevation	12 November 2018	JS Architects Pty Ltd
A302 North East / South West Elevation	12 November 2018	JS Architects Pty Ltd
A310 Section AA	12 November 2018	JS Architects Pty Ltd
A315 Section B and Swimming Pool Section	12 November 2018	JS Architects Pty Ltd
A316 Retaining Wall Sections	12 November 2018	JS Architects Pty Ltd
A500 Doors, Windows Schedule	12 November 2018	JS Architects Pty Ltd
A700 Landscape	12 November 2018	JS Architects Pty Ltd
A900 Schedule of external colours and finishes	12 November 2018	JS Architects Pty Ltd

Engineering Plans		
Drawing No.	Dated	Prepared By
A110 Sediment control/construction management plan	12 November 2018	JS Architects Pty Ltd
A111 Erosion and sediment control plan details	12 November 2018	JS Architects Pty Ltd
C001 Concept stormwater drainage plan	17 January 2019	SDS Engineering
C002 Stormwater drainage/OSD Details	17 January 2019	SDS Engineering

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Statement of Environmental Effects	January 2019	DDC
BASIX Certificate	22 November 2018	Outsource ideas
Geotechnical Site Investigation Report	25 May 2018	Geotesta Pty Ltd
Waste Management Plan	29 January 2019	JS Architects Pty Ltd
Bushfire Assessment	21 January 2019	Peterson Bushfire
Arboricultural Impact Assessment	21 January 2019	MacKay Tree Management
Acid Sulfate Assessment Report	18 January 2019	Geotesta



- b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.
- c) Any plans and / or documentation submitted to satisfy the Conditions of this consent.
- d) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
A700 Landscaping Plan	12 November 2018	JS Architects Pty Ltd
A701 Landscaping Detail	12 November 2018	JS Architects Pty Ltd

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

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

2. Amendments to the approved plans

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

- a) The upper level terrace is to be reduced in depth by 2.0m (i.e. it is to extend a maximum of 4.0m from the external face of the rear elevation).
- b) The mid level terrace is to be reduced in depth by 2.0m (i.e. it is to extend a maximum of 2.2m from the external face of the rear elevation).
- c) Further to (b), the supporting columns below the mid level terrace are to be adjusted accordingly.
- d) Privacy screens are to be installed on the southern ends of the upper and mid-level terrace to a height of 1.8m. They must be fixed in position and suitably angled to protect visual privacy to the adjoining property at 9 Kanangra Cres.
- e) The swimming pool shall be reduced in size so that the volume of the swimming pool is consistent with the volume contained in BASIX Certificate commitments.
- f) An amended landscape plan is required which shows the relocation of the three (3) native palms from the south-western corner of the site to a location within the rear yard with appropriate soil depth. The new location must be selected such that it does not interfere with views from neighbouring properties.

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 sewerred areas or managed on-site in unsewerred 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 \$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. **Required Canopy Tree Planting**

Details are to be provided of the existing or proposed native trees for the site which are typically expected to reach a height at maturity of 10 metres, to bring the proposal into compliance with Figure 37 of the Manly Development Control Plan 2013. A list of appropriate native trees for the Manly area may be obtained at Council's Customer Service desk and the Manly Council website. Details of new planting are to include appropriate siting and pot size (minimum of 25 litres) in accordance with section 2.1.3 of the Manly Development Control Plan 2013, and schedule 4, Part B, Native Tree Selection.

Details are to be submitted with the Construction Certificate to the satisfaction of the Council/Accredited Certifier.

Reason: This is to ensure the planting of endemic trees back onto the site.

7. **On slab landscape planting and associated works**

- a) Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing to all internal walls and slab, and drainage of the concrete slab over which soil and planting is being provided.
- b) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil volume, soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

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

8. **On-site Stormwater Detention Compliance**

Certification of Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003 and the concept drawing by SDS Engineering, drawing number 18394 dated 17/1/2019. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

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



9. Vehicle Crossings Application

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

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

Reason: To facilitate suitable vehicular access to private property.

10. Amendments to the approved plans

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

- a) The upper level terrace is to be reduced in depth by 2.0m (i.e. it is to extend a maximum of 4.0m from the external face of the rear elevation).
- b) The mid level terrace is to be reduced in depth by 2.0m (i.e. it is to extend a maximum of 2.2m from the external face of the rear elevation).
- c) Further to (b), the supporting columns below the mid level terrace are to be adjusted accordingly.
- d) Privacy screens are to be installed on the southern ends of the upper and mid-level terrace to a height of 1.8m. They must be fixed in position and suitably angled to protect visual privacy to the adjoining property at 9 Kanangra Cres.
- e) The swimming pool shall be reduced in size so that the volume of the swimming pool is consistent with the volume contained in BASIX Certificate commitments.
- f) An amended landscape plan is required which shows the relocation of the three (3) native palms from the south-western corner of the site to a location within the rear yard with appropriate soil depth. The new location must be selected such that it does not interfere with views from neighbouring properties.

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.

11. 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.



12. **Dilapidation Survey**

A dilapidation survey of adjacent buildings (Nos. 9A Kanangra Cres, 13, Kanangra Cres and 8 Heaton Ave, Clontarf) must be conducted prior to any site work. The lateral extent of the survey must cover the likely "zone of influence" of any excavation or construction induced vibration. The survey must be properly documented. The dilapidation report must be submitted to Council and the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Proper management of records.

13. **Colours and Materials**

Roofing materials, wall, guttering and trim colours shall be non-reflective and muted, natural tones. Details of appropriate colours and finishes to be provided with the documentation provided with the Construction Certificate.

Reason: To minimise visual impacts on properties overlooking the site and views from the harbour

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

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

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

15. **Tree protection**

(a) Existing trees which must be retained

- i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
- ii) Trees located on adjoining land

(b) Tree protection

- i) No tree roots greater than 30mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 30mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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



CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. **Road Reserve**

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

Reason: Public Safety.

17. **Vehicle Crossings**

The provision of one vehicle crossing 5.5 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.

18. **Survey Certificate**

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

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

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

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

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

Reason: To determine the height of buildings under construction comply with levels shown on approved plans. (DACPLE01)

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

19. **Required Canopy Tree Planting**

At least three (3) locally native canopy trees are to be provided on site to achieve a mature height of 13 metres, and visually reduce the height, bulk and scale of the development, with two (2) in the front yard and one (1) in the rear yard, unless otherwise conditioned. These shall be planted at minimum 75 litre size. Each tree planted is to have a minimum area of 3 metres x 3 metres and a minimum 8m³ within this area to ensure growth is not restricted. Canopy trees are to be located a minimum of 5 metres from existing and proposed built structures, or minimum of 3 metres where pier and beam footings are used.

Reason: To enable the long term retention of local native tree canopy.



20. **Authorisation of Legal Documentation Required for Onsite Detention**

The original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and Compliance Certificate issued by an Accredited Certifier in Civil Works. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To create encumbrances on the land.

21. **Registration of Encumbrances for On-site Stormwater Detention**

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To identify encumbrances on land.

22. **Reinstatement of Kerb**

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

Reason: To facilitate the preservation of on street parking spaces

23. **On-Site Stormwater Detention Compliance Certification**

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council.

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 stormwater disposal is constructed to Council's satisfaction. (DACENF10)

24. **Positive Covenant and Restriction as to User for On-site Stormwater Detention**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services.



Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.

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 the on-site detention and/or pump system is maintained to an appropriate operational standard.

25. **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)

26. **Post-Construction Dilapidation Report**

The applicant must prepare and submit a post-construction dilapidation report. The report must clearly detail the final condition of all the adjoining properties, infrastructure, natural and manmade features that were originally recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties



Reason: To ensure security against possible damage to Council and private property.

NOTES

1. ALL WORKS ARE TO BE IN ACCORDANCE WITH THE ARCHITECTURAL DRAWINGS, STRUCTURAL DRAWINGS AND THE ENGINEERING DRAWINGS.

2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE CORRECT LOCATION OF EXISTING SERVICES. SERVICES SHALL BE RELOCATED AT THE CONTRACTOR'S EXPENSE. THE CONTRACTOR SHALL MAINTAIN ALL EXISTING SERVICES AND PROVIDE ADEQUATE PROTECTION TO REMAINING SERVICES.

3. THE CONTRACTOR SHALL MAINTAIN SAFE PEDESTRIAN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.

4. THE CONTRACTOR SHALL EFFECT TEMPORARY DRAINAGE MEASURES TO PREVENT FLOODING OF ADJACENT PROPERTIES AND ROADWAYS. DRAINAGE SHALL BE DESIGNED TO MAINTAIN ALL DETAILS LEVELS, GRAVING AND TO PREVENT OVERFLOW OF ADJACENT PROPERTIES.

5. THE CONTRACTOR SHALL PROVIDE ADEQUATE PROTECTION TO ALL EXISTING SERVICES AND PROVIDE ADEQUATE PROTECTION TO REMAINING SERVICES.

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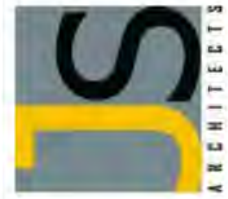
100. THE CONTRACTOR SHALL PROVIDE ADEQUATE PROTECTION TO ALL EXISTING SERVICES AND PROVIDE ADEQUATE PROTECTION TO REMAINING SERVICES.

CLIMATIC SITE ANALYSIS.

SCALE: 1 : 200



NOTE: THE ANALYSIS PLAN IS TO BE READ IN CONJUNCTION WITH THE ARCHITECTURAL DRAWINGS AND THE ENGINEERING DRAWINGS. THE ANALYSIS PLAN IS TO BE USED TO DETERMINE THE ENVIRONMENTAL EFFECTS, INCLUDING THE PHOTOGRAPHIC & STREET SCAPES ELEVATION.



PROJECT
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ABN 79 119 046 575
Registered Architect: Symon Chudzawa (6441603)

CLIENT
YING YIN

DRAWING TITLE
SITE PLAN AND ANALYSIS

SCALE @ A1
1 : 200

DATE
12/11/18

PROJECT NUMBER
042/15-16

DRAWING No.
A100

ISSUE
F

NORTH POINT



THIS DRAWING ISSUE HAS BEEN REVIEWED BY
DIRECTOR - S. OCHUDZAWA
PROJECT ARCHITECT - HC

SITE PLAN

SCALE: 1 : 200



REVISION SCHEDULE

ISSUE	DESCRIPTION	ISSUED BY	DATE
A	CLIENT REVISION	MT	24/09/18
B	CLIENT REVISION	MT	12/10/18
C	CLIENT REVISION	MT	23/10/18
D	CLIENT REVISION	MT	31/10/18
E	CLIENT REVISION	MT	06/11/18
F	CLIENT REVISION	MT	12/11/18

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DRAWINGS NOTES

- STAIR FLOOR FINISHES ARE REQUIRED TO COMPLY WITH PART 3.9.2.3 OF THE NCC (BCA - SLIP RESISTANCE IN ACCORDANCE WITH AS 4586).

- EXTERNAL WINDOWS TO THIS MAIN ENTRY WINDOW ARE TO COMPLY WITH PART 3.9.2.3 OF THE NCC (BCA - SLIP RESISTANCE IN ACCORDANCE WITH AS 4586).

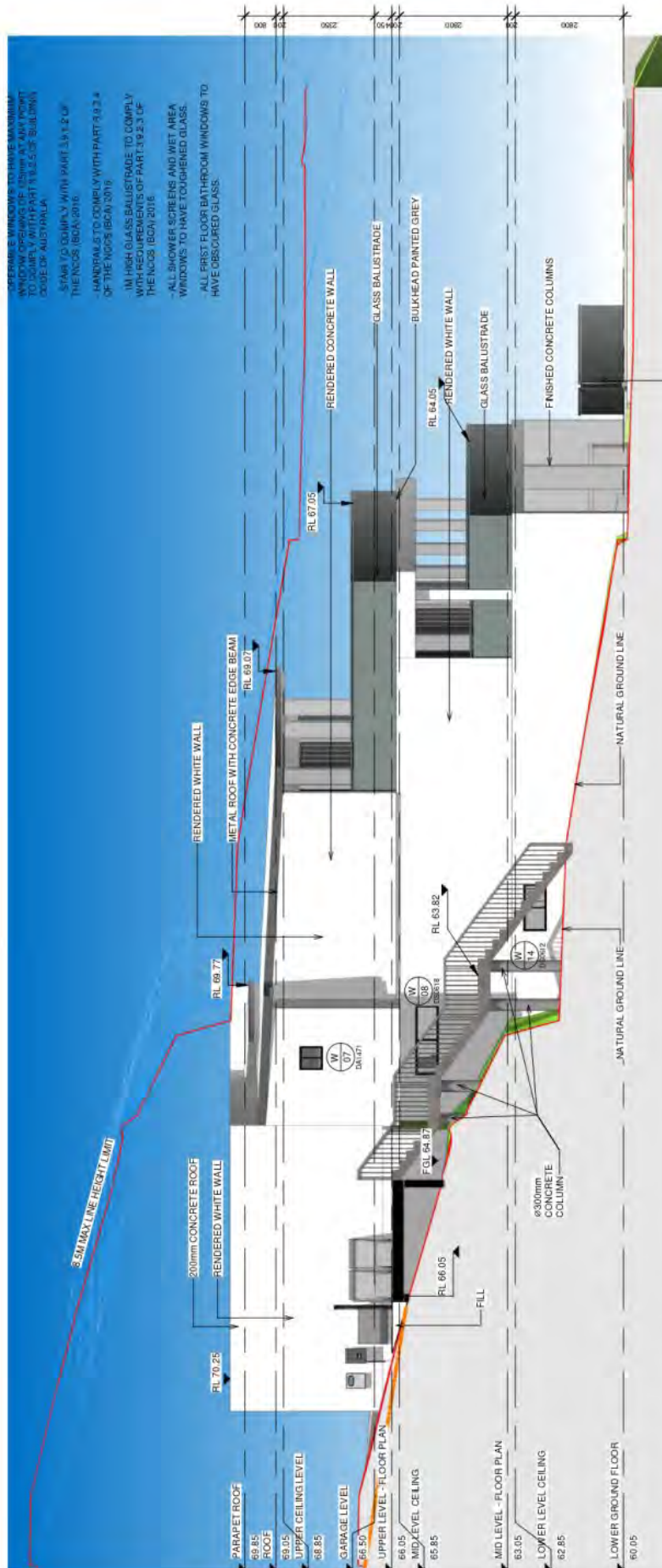
- STAIRS TO GARAGE WITH PART 3.9.2.3 OF THE NCC (BCA 2016).

- HANDRAILS TO COMPLY WITH PART 3.9.2.3 OF THE NCC (BCA 2016).

- ALL HIGH GLASS BALUSTRADE TO COMPLY WITH REQUIREMENTS OF PART 3.9.2.3 OF THE NCC (BCA 2016).

- ALL DOWNER SCREWS AND NUT AREA WINDOWS TO HAVE TOUGHENED GLASS.

- ALL FIRST FLOOR BATHROOM WINDOWS TO HAVE TOUGHENED GLASS.



NORTH WEST ELEVATION

SCALE: 1 : 100



PROPOSED 1.2m HIGH
FRAMELESS GLASS
BALUSTRADE AND LOCKABLE
GATES TO POOL AREA AS PER
AS 1926.1

PRELIMINARY
DO NOT USE FOR CONSTRUCTION



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ABN 70 119 940 575
Nominated Architect - Sydney - Chudzawa (RAA 4465)

CLIENT
YING YIN
DRAWING TITLE
NORTH WEST ELEVATION

SCALE @ A1
1 : 100

DATE
12/11/18

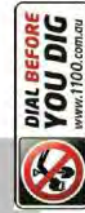
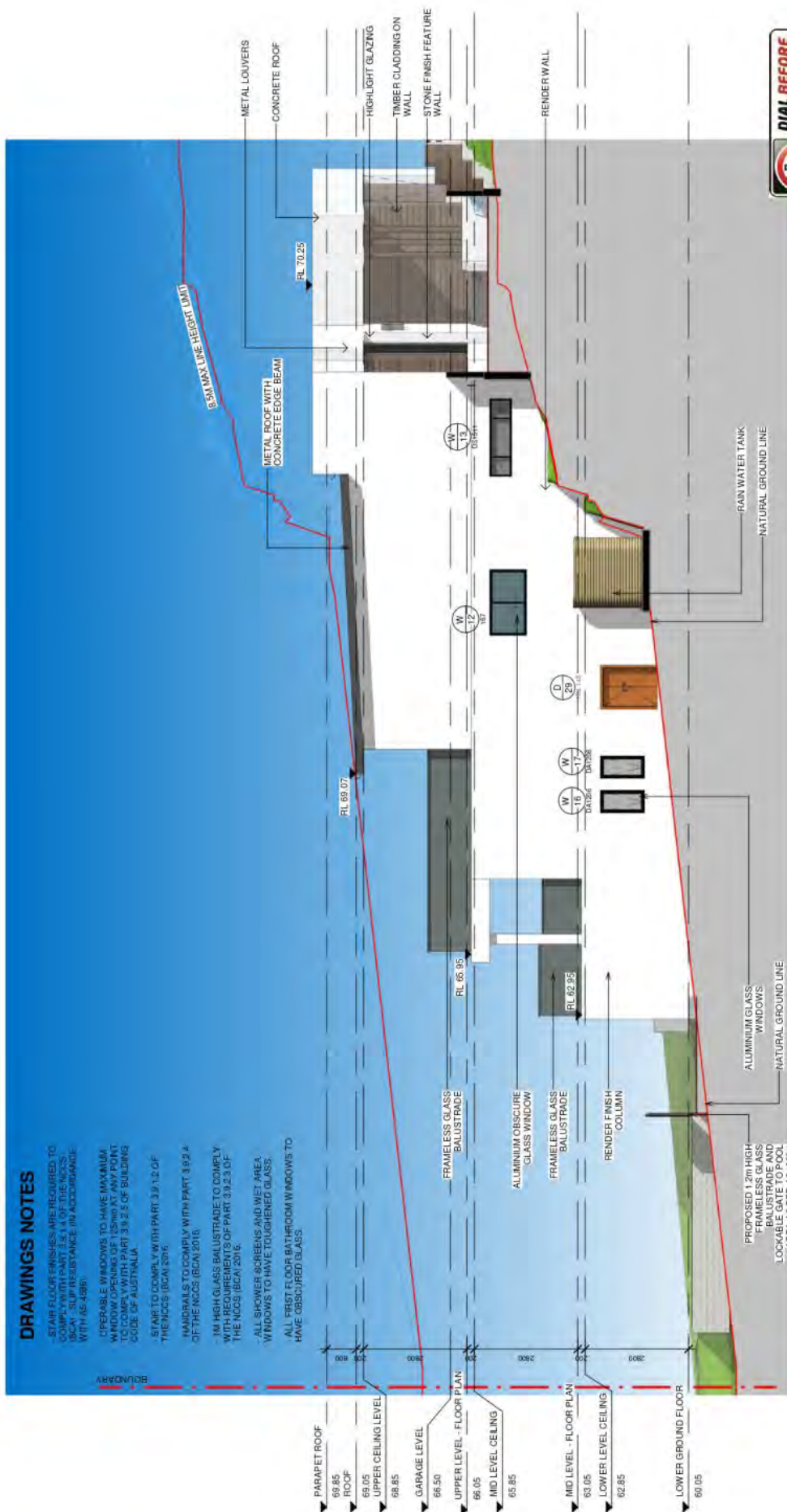
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042/15-16
DRAWING No.
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ISSUE
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NORTH POINT

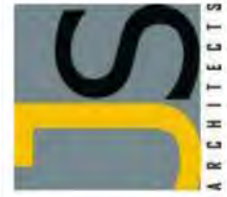
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HAS BEEN REVIEWED BY
DIRECTOR - S. OCHUDZAWA
PROJECT ARCHITECT - HC

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Nominated Architect - Sydney - Chudzawa (RAA 44665)

CLIENT
YING YIN

DRAWING TITLE
SOUTH EAST ELEVATION

SCALE @ A1
1 : 100

DATE
12/11/18

ISSUE
F

NORTH POINT

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DIRECTOR - S. OCHUDZAWA
PROJECT ARCHITECT - HC

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DRAWINGS NOTES

- STAIR FLOOR FINISHES ARE REQUIRED TO COMPLY WITH PART 3.9.1.4 OF THE NCCS (BCA) - SLIP RESISTANCE (IN ACCORDANCE WITH AS 4586).
- OPERABLE WINDOWS TO HAVE MAXIMUM WINDOW OPENING OF 125mm AT ANY POINT. TO COMPLY WITH PART 3.9.2.5 OF BUILDING CODE OF AUSTRALIA.
- STAIR TO COMPLY WITH PART 3.9.1.2 OF THE NCCS (BCA) 2016.
- HANDRAILS TO COMPLY WITH PART 3.9.2.4 OF THE NCCS (BCA) 2016.
- 1M HIGH GLASS BALUSTRADE TO COMPLY WITH PART 3.9.2.3 OF THE NCCS (BCA) 2016.
- ALL SHOWER SCREENS AND WET AREA WINDOWS TO HAVE TOUGHENED GLASS.
- ALL FIRST FLOOR BATHROOM WINDOWS TO HAVE OBSCURED GLASS.



PRELIMINARY
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No. 11 KANANGRA CRESCENT
CLONTARF, NSW

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CLIENT
YING YIN

DRAWING TITLE
NORTH EAST / SOUTH WEST ELEVATION

DATE
12/11/18

SCALE @ A1
1 : 100

PROJECT NUMBER
042/15-16

DRAWING No.
A302

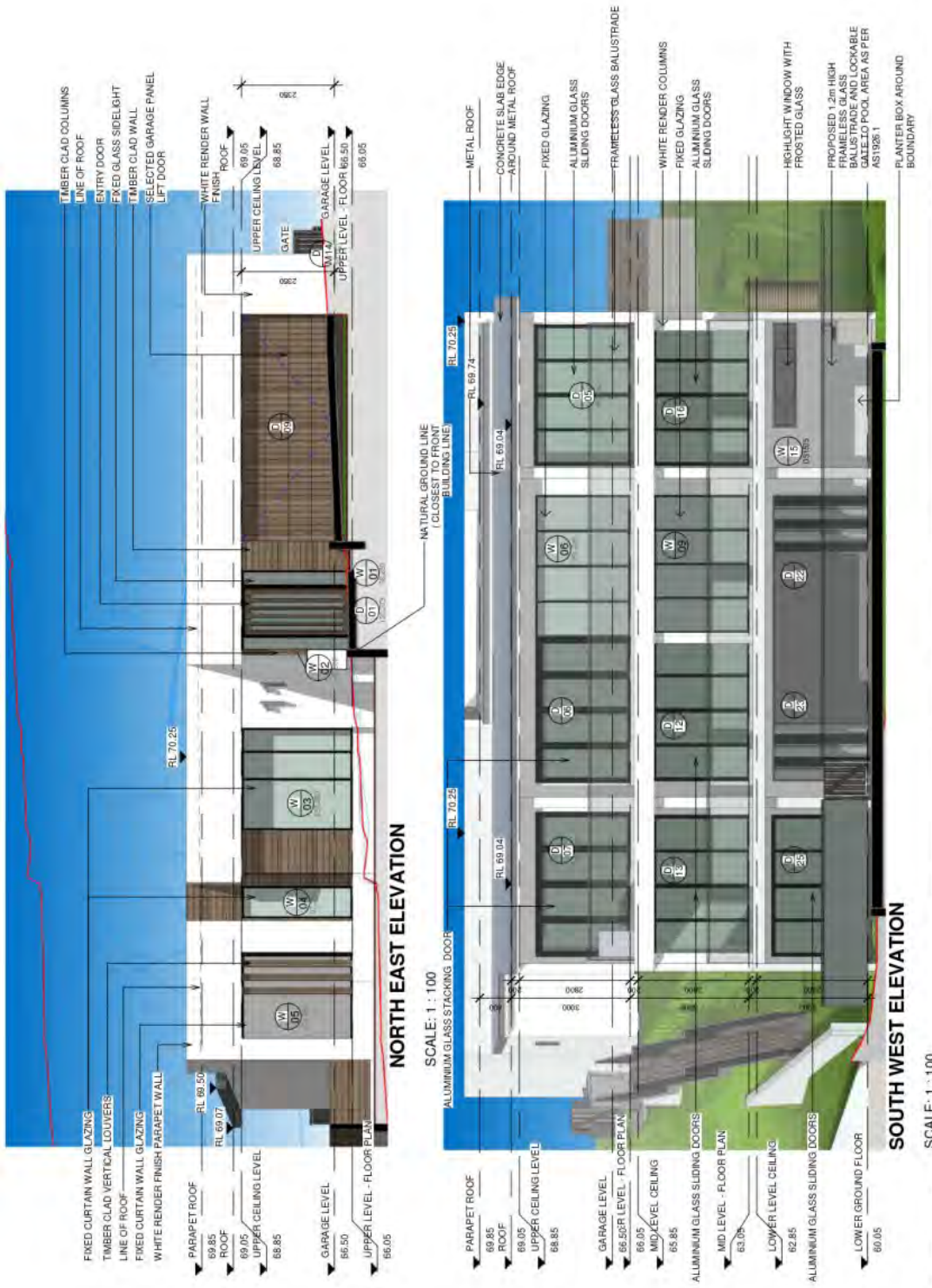
ISSUE
F

THIS DRAWING ISSUE HAS BEEN REVIEWED BY
DIRECTOR - S. OCHUDZAWA
PROJECT ARCHITECT - HC

REVISION SCHEDULE

ISSUE	DESCRIPTION	ISSUED BY	DATE
A	CLIENT REVISION	MT	24/09/18
B	CLIENT REVISION	MT	12/10/18
C	CLIENT REVISION	MT	23/10/18
D	CLIENT REVISION	MT	31/10/18
E	CLIENT REVISION	MT	06/11/18
F	CLIENT REVISION	MT	12/11/18

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Clause 4.6 Exception to Development Standard – Height of Building

11 Kanangra Crescent Clontarf

January 2019

1 Introduction

1.1 The variation being requested

Summary of Proposed Variation	
Address:	11 Kanangra Crescent, Clontarf
Proposal:	To demolish the existing dwelling and construct a new dwelling house.
EPI applicable:	Manly Local Environmental Plan 2013
Zoning:	R2 – Low Density Residential
Standard being varied:	Floor Space Ratio (Clause 4.4)
Numeric measure of variation:	Allowed: 0.45m Proposed: 0.53:1
Variation:	The site area is 726.6m ² . The FSR would allow for a maximum GFA of 326.97m ² . The GFA proposed is 388.72m ² . The variation is 61.75m ² (8.5% of site area)

This report demonstrates that there are no impacts that are so significant that they warrant strict compliance with the control. It demonstrates consistency with the objectives of the development standard. It demonstrates sufficient environmental grounds to justify the variation. To summarise, the key justification for the breach are:

- The building form complies with the primary setback controls and adopts a very generous rear setback. The building adopts a single storey appearance to the street and additional levels are below, using the slope of the site. The gross floor area is simply the resulting area from the proposed building form.
- Strict compliance would essentially remove floor area from the lower ground level, most of which is subterranean. This serves no advantage to any adjoining site.
- This justification is consistent with the conclusions reached by SC Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191, where I contend that observers would not find the proposed development by virtue of its floor area offensive, jarring or unsympathetic in a streetscape context. Nor are the built form characteristics within the site's visual catchment offensive or out of character with other homes.

This application has been prepared in accordance with the NSW Department of Planning and Environment guidelines ("Varying development standards: A guide", published by the NSW Department of Planning and Infrastructure (DoPI) dated August 2011 and Circulars PS 08-003 & PS 18-003) and has incorporated relevant principles identified in recent Land and Environment Court decisions, some of which are noted in this report. The particularly focuses on the findings of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] and

Court of Appeal decision: *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 at [21]-[24]].

1.2 Clause 4.6 Operation

The Objectives of Clause 4.6 are:

- (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.*

Clause 4.6(3)(a) and 4.6(3)(b) require that 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.*

Clause 4.6(4) requires that 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(5) requires that in deciding whether to grant concurrence, the Secretary must consider:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

As set out in *Gejo Pty Ltd v Canterbury-Bankstown Council* [2017] NSWLEC 1712 (at [27-29]) clause 4.6 operates as follows:

- 27. *Clause 4.6 of the CLEP 2012 [a standard instrument LEP] allows development standards to be applied flexibly in certain circumstances. In Randwick City*

Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7, Preston CJ found that in applying the provisions of cl 4.6, the power to allow an exception to a development standard can be exercised where the Commissioner is satisfied that:

1. *the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)) (at [7]),*
 2. *the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)) (at [7]),*
 3. *the written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a) and cl 4.6(4)(a)(i)) (at [38]), and*
 4. *the written request adequately demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)) (at [38]).*
28. *Clause 4.6(4)(a)(ii) presumes that if the proposed development is consistent with the objectives of the zone and of the standard (i.e. meets (1) and (2) above), then it is in the public interest. I also note that nothing in cl 4.6 requires the consistency with the objectives to be established in or by the written request.*
29. *Further, in outlining (3) and (4) above, regarding the requirements for the written request, Preston CJ stated that the Court need not be directly satisfied that compliance is unreasonable or unnecessary and sufficient environmental planning grounds exist, but rather "only indirectly by being satisfied that the applicant's written request has adequately addressed" those matters.*

The consent authority retains a broad discretion under clause 4.6 and there are no numerical limits placed upon the dispensing power, either by clause 4.6 or by the interpretation of clause 4.6 by the Courts.

In summary, clause 4.6(3) requires that it be demonstrated in writing:

1. *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a))*
2. *sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b))*
3. *that the exception is in the public interest because it is consistent (note Moskovich v Waverley Council [2016] below) with the objectives of the development standard and the objectives of the zone (clause 4.6(4)(a)(ii)), and*
4. *that the concurrence of the Director-General has been obtained (clause 4.6(4)(b)).*

In determining "consistency" of the standard, Moskovich v Waverley Council [2016] NSWLEC 1015 found:

53. *The threshold of "consistency" is different to that of "achievement". The term "consistent" has been considered in a judgements of the Court in relation to zone objectives and has been interpreted to mean "compatible" or "capable of existing together in harmony" (Dem Gillespies v Warringah Council (2002) 124 LGERA 147; Addenbrooke Pty Ltd v Woollahra Municipal Council [2008] NSWLEC 190) or "not being antipathetic" (Schaffer Corporation v Hawkesbury City Council (1992) 77 LGRA 21). Whichever interpretation is adopted the test of "consistency" is less onerous than that of "achievement".*

This report adopts the methodology set out by the courts. While the court has found it is not essential to do so, comments are made in relation to consistency with the objectives of the zone and the standard, as per *Wehbe v Pittwater Council*. This request suggests that:

- compliance with the development standard is unreasonable and unnecessary in the circumstances of the case,
- that there are sufficient environmental planning grounds (flooding, heritage and remediation) to justify contravening the development standard,
- it is consistent with the objectives of the particular standard and the zone in which the development is proposed to be carried out, and
- it is in the public interest to allow a departure from the numerical standard in this case.

This report addresses these issues as required to justify the proposal.

2 General Assessment of the Variation

2.1 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The planning principle set out in *Wehbe v Pittwater Council (2007)* provides an accepted method for justifying that compliance with the development standard is unreasonable or unnecessary. This method is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the numerical standard. It essentially notes that "...development standards are not ends in themselves but means of achieving ends". Chief Justice Preston expressed the view that there are five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. These five ways are examined below.

2.1.1 The objectives of the standard are achieved notwithstanding non-compliance with the standard.

Some clarity is provided Preston CJ in his judgment delivered in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [87] (applied by the Court of Appeal in *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 at [189]):

"Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development."

The SEE has carried out a visual assessment and impact assessment of the site. It found that the site is not easily visible from distant areas and that it is highly consistent with other buildings around it.

The current proposal is consistent with objectives, which are specifically addressed in Section 3.1.

2.1.2 The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

The standard's purpose and objectives remain relevant.

2.1.3 The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

The *underlying* intent of the Floor Space Ratio objectives relates to site capability and providing an appropriate bulk and scale for the setting, specifically noting streetscape character, landscape and visual relationship. Obviously, the objectives seek to minimize impacts on neighbouring sites but also ensure a compatible building into the overall context.

The overall design concept has given careful consideration to the underlying objectives hence the way the building responds to the slope of the land. Strict compliance would not thwart the objectives, however it would be overly harsh on a site capable of accommodating the proposed building.

2.1.4 The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

The standard has not been abandoned. There have been examples of large homes being approved which exceed the FSR based on a compatible building form. One example is 23 Beatrice Street, Clontarf (DA 130/2015). Council's assessment was refreshingly balanced in examining the merits of that case. The approved building was very similar in design to this proposal, with three storeys and a similar floor area exceedance. Council's findings are entirely applicable to this proposal. It found in support of the variation request:

- *Accordingly it can be reasonably concluded that the proposal is compatible with its surroundings when viewed from the harbour, foreshore areas, public domain and surrounding residential properties.*
- *Having regard to the matter of 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.*
- *The height, bulk, scale and finished roof level of the building are entirely consistent with the built form characteristics established by the adjoining dwelling to the south and development generally within the sites visual catchment.*

This proposal complies with height, whereas 23 Beatrice Street exceeded height. The bulk and scale is identical to nearby homes and visual appropriateness from surrounding public areas has been demonstrated. Any reduction in floor area would serve no real benefit and is not the "difference between good and bad design". The floor area is appropriately distributed across the site having regard to a building envelope that complies with height and key setback requirements.

2.1.5 Compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental

character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

The zoning is appropriate.

2.2 Are there sufficient environmental grounds to justify contravening the development standard?

Yes. Sufficient environmental planning grounds exist to justify contravening the development standard.

The slope of the site allows for excavation towards the rear of the site. This places a single storey form at the street with two levels below. The location of this excavation is critical to the placement of the stairwell, upper level living/ dining room (with optimum views) and the meaningful use of the remaining site. The resulting floor area is simply what results from this approach to site design.

A development proposal that was forced to be compliant with the standard would:

- Compromise the amenity of this home without any change in the upper level floorplate or reduction in impact;
- Compromise the quality of entertainment spaces at the level where the pool and courtyard is located;
- No result in any significant change to the overall building envelope.

In terms of streetscape, character and impact, there are no environmental benefits that would result from enforcing strict compliance.

3 Assessment of Planning Grounds for Variation

- 3.1 The proposed development 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.**

3.1.1 Objectives of the standard

The Clause 4.4 objectives are:

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

Refer also to contextual comments in 2.2.1.

Comment on Objective a):

The visual assessment study in the SEE has demonstrated the appropriateness of the building form in the context. The single storey form to the street is consistent.

Comment on Objective b):

The bulk is consistent with other homes around. The setbacks and height all comply with controls. The FSR is the mathematical number that results from this permissible envelope. The proposal is consistent with objective (b).

Comment on Objective c):

Strict compliance in this sense would not further reduce any impact relating to any matter noted in objective (c). Therefore, the objective of "minimizing" impact has been achieved.

It is appropriate to revisit the legal framework for satisfying "consistency" with the objectives of the standard. Consistency has been interpreted to mean "compatible" or "capable of existing together in harmony" (Dem Gillespies v Warringah Council (2002) 124 LGERA 147; Addenbrooke Pty Ltd v Woollahra Municipal Council [2008] NSWLEC 190) or "not being antipathetic" (Schaffer Corporation v Hawkesbury City Council (1992) 77 LGRA 21). Consistency is less onerous than that of achievement.

This section has demonstrated that the proposal sits appropriately along-side the buildings around it. This has been well demonstrated in the visual impact assessment in the SEE. On this basis, the development "exists in harmony" with the objectives of the standard and is therefore "compatible".

3.1.2 Meeting the Objectives of the Zone

The objectives of the R2 zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal supports the objectives for the zone as explained below.

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

No new dwellings are proposed. The dwelling is an appropriate response to the sloping site and the desire for an appropriately sized and designed home that responds to a site of significant value. Where additional floor area can be provided in such a way that has no impact, it can be allowed. Where compliance is achieved with setbacks and height, then the floor area is simply the result of such a form.

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

N/A.

3.2 Whether contravention of the development standard raises any matter of significance for State or regional environmental planning?

The contravention of the development standard in this case will not raise an issue of State or regional planning significance as it relates to local and contextual conditions.

3.3 Would the contravention raise any significant matter or hinder the attainment of the objects of the Act?

The objects specified in Section 1.3(a)(i) and (ii) of the 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 SEE notes compliance with the provisions of the Act. The proposed development is consistent with the provisions of orderly and economic development, environmental protection, health and safety, cultural heritage and a good built environment. This proposal will not hinder the objects of the Act.

3.4 Is there public benefit in maintaining the development standard?

No. Maintaining the standard would result in no advantage to any adjoining site. All setbacks and heights are compliant meaning the building envelope is appropriate. Floor area could be stripped out of the lower floors in order to comply, but this would change nothing of the building. No benefit results from strict compliance.

3.5 Matters relating to concurrence?

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained.

4 Conclusion

4.1 Is the objection well founded?

This report has examined the standard objectives and impacts. Strict compliance is both unreasonable and unnecessary for the following reasons:

- The floor space has been appropriately distributed across the site to maintain a contextually appropriate relationship with adjoining development, while complying with required setbacks and height controls.
- The height, bulk and scale are entirely consistent with the built form characteristics established by adjoining development and development generally within the site's visual catchment.
- It has been determined that the floor space ratio proposed will not give rise to any adverse residential amenity impacts in terms of view loss, overshadowing, privacy or visual bulk.
- Consistent with the conclusions reached by SC Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, I content that most observers would not find the height, bulk or scale of the proposed development as reflected by the FSR of the development offensive, jarring or unsympathetic in a streetscape context nor within the overall visual catchment.

A strictly compliant building achieves no greater outcome in terms of amenity and will not significantly reduce any impact to adjoining sites.

The objectives of the FSR control creates a deliberate tension between site potential, constraints, impacts and desired streetscape. Without clear impacts bringing necessary limitation, the objectives also aim to facilitate site yield. This submission demonstrates that site constraints can allow for a breach in FSR because of the appropriate building envelope. This required variation is not so great that it should be refused on the basis of streetscape or visual quality.

Consider that FSR is a *general* planning control relevant only when a detailed design analysis of a site has not yet been carried out. FSR does not need to be forcefully applied *after* a detailed site design has been agreed upon and the impacts are understood. Consider, the achievable FSR will always vary from site to site depending on its topography, size, shape, width, location, nearby buildings, community perceptions, context and the future vision for the area. Some sites are naturally suited to higher FSR than others and able to accommodate larger buildings with less impact.

It is rare to hear anyone comment on a building by saying: "that building has an FSR which is too high". Conversely, it is quite common to hear people say a building is: "too tall" or "too close to the street" or "plain ugly". The presence of and FSR moves focus away from all the important planning issues. Crafting a good building utilises height,

setbacks, design, open space and the design capabilities of architects. The presence of an FSR too often sends consent authorities on a quest for equality and mathematics. This does not benefit our communities. An unnecessarily and unreasonably strict reliance on FSR fails to identify and discern an attractive and appropriate building in its context, whatever its FSR.

Agreeing on the best building for the site should be the focus of the design process, not removing amenity in order to comply with an FSR control. To satisfactorily examine whether the FSR is too high, it is primarily relevant to look at the 'performance' of a building within its context that informs whether there is too much floor space being proposed.

A detailed examination of impacts, bulk, relative scale, appearance, internal amenity and context, show that the presentation of this building is acceptable.

This submission has examined compliance with all relevant objectives and has examined all impacts. The granting of an exception to the development standard can be supported in this case, as there are no obvious reasons to refuse it. Some flexibility is required to create a viable outcome for a project such as this.

This application is well founded.

4.2 Final remarks

Recent case law (Moskovich and Micaul) established that the consent authority has a broad discretion under clause 4.6(4) as to the degree of satisfaction required by that clause.

Strict compliance would serve no environmental outcome and make no meaningful improvement to any outcome or improve the character of the area. Indeed, the only reason that could be given for refusal is that numeric compliance simply *must* be adhered to. This would contravene the very intent of flexible planning provisions. It also contravenes the findings in *Wehbe v Pittwater Council* (2007) where it notes that compliance must not be considered an end in its own right but a means to an end.

Further, in line with the findings of *Veloshin v Randwick City Council* [2007] NSWLEC 428, the difference between compliance and non-compliance is not the difference between a good or a bad design.

Commissioner Morris in *Jubilee Properties v Warringah Council* [2015] NSWLEC 1042 further clarified:

65. *In accordance with the principles in Wehbe v Pittwater Council [2007] NSWLEC 827, a common way of establishing whether compliance with the development standard is unreasonable or unnecessary is to determine whether the objectives of the standards are met notwithstanding non-*

compliance with the standard, a similar but a lesser test to the third test in clause 4.6.

Sufficient site specific environmental planning grounds exist to justify the variation in circumstances where the topography of the site requires a considerable amount of floor space to be taken up with offset internal stairs, foyers and long hallways to provide connectivity between floors. Further, much of the floor area is below the street level within a complying building form.

This application has demonstrated consistency with all required objectives and compatibility with streetscape. For this reason, strict compliance with the development standard is unreasonable and unnecessary and the use of Clause 4.6 is available to Council in this instance.

ITEM 3.5

**DA2018/2001 - 5 DRESS CIRCLE ROAD, AVALON BEACH -
DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING
HOUSE INCLUDING SWIMMING POOL AND SPA**

REPORTING MANAGER

Steve Findlay

TRIM FILE REF

2019/363736

ATTACHMENTS

- 1 Assessment Report**
- 2 Site Plan & Elevations**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2018/2001 for demolition works and construction of a dwelling house including swimming pool and spa on land at Lot 79 DP 11462, 5 Dress Circle Road, Avalon Beach, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/2001
Responsible Officer:	Monique Perera
Land to be developed (Address):	Lot 79 DP 11462, 5 Dress Circle Road AVALON BEACH NSW 2107
Proposed Development:	Demolition works and construction of a dwelling house including a secondary dwelling, swimming pool and spa
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Jane Kathryn Seberry Christopher Paul Hourigan
Applicant:	Blue Sky Building Designs Pty Ltd
Application lodged:	17/12/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	28/12/2018 to 29/01/2019
Advertised:	Not Advertised
Submissions Received:	3
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,630,000.00

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

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- 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 - 5.9 Preservation of trees or vegetation
 Pittwater 21 Development Control Plan - C1.4 Solar Access
 Pittwater 21 Development Control Plan - C1.5 Visual Privacy
 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

SITE DESCRIPTION

Property Description:	Lot 79 DP 11462 , 5 Dress Circle Road AVALON BEACH NSW 2107
Detailed Site Description:	<p>The site is legally identified as Lot 79 DP114962, known as Number 5 Dress Circle Avalon Beach.</p> <p>The subject site consists of one(1) allotment located on the southern side of Dress Circle Road. The proposed site is steep and accommodates one and two storey stone and timber dwelling within a vegetated setting. The slope of the fall descends from rear to front of the property, equating to 17m drop (RL50.0 to RL33.0). The gradient of the terrain is 18%.</p> <p>The proposed allotment is rectangular in shape, with a total area of 1,144sqm and site dimensions are as follows:</p> <p>Southwest front boundary is 20.115m. Northeast rear boundary is 20.29m. Southwest side boundary is 58.33m. Northwest side boundary is 55.70m.</p> <p>The proposed site is within the Avalon Beach Locality. The subject site is zoned E4 Environmental Living pursuant to the provisions of the Pittwater Local Environmental Plan 2014. The site is not affected by key environmental factors like heritage, bushfire, coastal planning considerations and flooding. The property is identified that the site is affected by acid sulfate soils, biodiversity and geotechnical risks.</p> <p>The surrounding precinct consists of one and two storey</p>



recently renovated and new dwellings within a landscape 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 application:

Record Number	Description of the proposal	Conditions of Consent
T0147/15	Removal of four Spotted Gum trees	13/04/2015

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes the demolition of the existing dwelling and associated structures on the site and the construction of a four bedroom dwelling, an attached secondary dwelling, a swimming pool and a spa.

Details of the proposal are as follows:

New Dwelling - Lower Ground level, Ground Level and Upper Level:

- A Rumpus Room and a Media Room with a Balcony
- A Master Bedroom with attached Walk-in-Robe, Ensuite and Laundry
- Home Office
- Two Bedrooms and two Bathrooms
- A Laundry and Lift
- A swimming Pool and a Spa
- A double garage
-

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Attached Secondary Dwelling (43sqm) - Lower Ground Level :

- A Bedroom
- A Bathroom and a Laundry
- A Living and a Kitchenette

Other Parts of the Proposal:

- New Driveway
- Covered deck area at the rear
- Associated landscaping



Figure 1 - Photomontage showing street elevation

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 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of	None applicable.



Section 4.15 Matters for Consideration'	Comments
any planning agreement	
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This 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 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</p>



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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Mr Duncan John Swift Mrs Jennifer Wendy Swift	7 Dress Circle Road AVALON BEACH NSW 2107
Mr Andrew Michael Earl Mrs Verity Jaye Earl	3 Dress Circle Road AVALON BEACH NSW 2107
Mrs Chelsey Baker	24 Old Barrenjoey Road AVALON BEACH NSW 2107

The following issues were raised in the submissions:

- Height
- Privacy
- Front setback
- Overshadowing
- Building Envelope
- Excavation
- Removal of trees
- Sediment and Waste Management

The matters raised within the submissions are addressed as follows:



- ***There is concern that the proposed height and the building envelope will cause overshadowing to the adjoining property No. 7 and No.3 Dress Circle Road, located to east and west of the proposed site.***

Comment:

Height and building envelope of the proposed dwelling:

The submissions raised concern that the height of the proposed dwelling exceeds the required height of 8.5m. The proposal complies with the requirements specified in Clause 2D of the PLEP 2014. Refer to the PLEP 2014 Principal Development Standards section in this report for the detailed assessment.

Overshadowing:

No. 7 Dress Circle Road:

The adjoining property No.7 Dress Circle Road, raised concerns in regards to overshadowing. Based on the assessment, the proposal complies with the solar access requirements in PDCP 2014 Part C1.4 Solar Access and it is not considered to be unreasonable.

No. 3 Dress Circle Road:

Concern has been raised regarding potential impacts of overshadowing to the adjoining property No. 3 Dress Circle.

Based on the assessment, the development complies with requirements of the control.

Refer to Cl.4 Solar Access in this report for the detailed assessment.

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

- ***Concern was raised in regards to loss of visual privacy to the rear and front open spaces of the adjoining properties No.7 Dress Circle Road and No.3 Dress Circle Road. located to the Northwest and Southeast of the subject site.***

Comment:

The submissions raised concerns in regard to privacy and overlooking into the adjoining properties. Adequate privacy screens are proposed to the northeast and northwest sides of the dwelling. The proposal achieves an acceptable level of privacy for residents and users, also protects the sense of territory for neighbours. A condition will be imposed to ensure visual privacy is provided to achieve the required outcome. Refer to Cl.5 Visual Privacy in the report for the detailed assessment.

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

- ***The submissions raised concerns that the front building line of the proposed development would result in loss of privacy to the adjoining property Number 3 Dress Circle Road, Avalon Beach.***



Comment:

Concern has been raised regarding the front setback of the proposed dwelling that would result in loss of privacy to the property No. 3 Dress Circle Road. The proposed building is on a 6.5m front setback and it does not create any unnecessary invasion of privacy to the adjoining property. It is considered that the proposal satisfies the merit consideration and is consistent with the provisions of the PDGP. Refer to D1.8 Front Building Line in this report for the detailed assessment.

This matter does not warrant the refusal of the application.

- ***There is concern that there will be risks associated with the excavation and construction of the proposed site may cause subsurface and ground movement to the adjoining property No.3 Dress Circle.***

Comment:

The submission raised concerns that excavation and construction of the site might cause ground movement and a risk to the adjoining properties. It is recommended that the ground support for the proposed site is to be installed prior any commencement of earthworks or excavations.

The concerns are addressed by conditions requiring protection and to retain the integrity of the neighbouring properties. A separate condition will be imposed to carry out a dilapidation report for both adjoining properties No.3 and No.7 Dress Circle.

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

- ***Concern was raised over removal of trees in relation to the proposed development that may cause environmental degradation to the precinct and the adjoining properties.***

Comment:

Concern has been raised regarding potential impacts upon adjoining properties as a result of tree removal. An amended Landscape Plan and an Arboricultural Impact Assessment were provided with the application and both were deemed satisfactory. It is recommended that the proposal in terms of landscape outcome, is acceptable. Suitable conditions will be imposed to protect nominated trees and vegetation for retention and replacement.

Refer to 'Preservation of Trees and Vegetation' in the report for the detailed assessment.

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

REFERRALS

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Internal Referral Body	Comments
Landscape Officer	<p>The proposal, in terms of landscape outcome, is acceptable subject to the protection of existing trees and vegetation nominated for retention, and completion of landscaping.</p> <p>Council's Landscape section has assessed the proposal against the following Pittwater 21 DCP 2014 Controls: B4.22 Preservation of Trees or Bushland Vegetation C1.1 Landscaping</p> <p>A Landscape Plan and a Arboricultural Impact Assessment are provided as required to assess this development proposal, and both are deemed satisfactory, subject to conditions.</p>
NECC (Bushland and Biodiversity)	<p><u>Final Assessment:</u> Revised Arborist report (prepared by Tree Survey, dated 14 April 2019) states T2 will be subject to a major encroachment of approximately 17% within the TPZ, however the encroachment will not impact upon the SRZ and is unlikely to impact the overall health or condition of the tree providing the mitigation measures in the report are implemented. Conditions will be imposed to comply with the Arborist recommendations.</p> <p><u>Second Assessment:</u> Revised Arborist report (prepared by Tree Survey, dated 27 March 2019), Architectural plans (prepared by Blue Sky Designs, Rev 3 dated 22/03/2019), and Landscape Plan (prepared by Space Landscape Designs, Rev F, dated 03/04/2019) were provided. The plans show:</p> <ul style="list-style-type: none"> ▪ Redesign of the spa at the rear of the proposed dwelling to retain T11 (Corymbia maculata). Whilst the redesign results in a major encroachment (16%) in to the TPZ, the design is supported by the Arborist and concludes the tree can be retained. The redesign demonstrates the proposal has been designed, scaled and sited to avoid and mitigate impact to the Pittwater Spotted Gum EEC. ▪ Redesign of the driveway at the front of the property to reduce the encroachment of T3 (Corymbia maculata) from a major level (14%) to a minor level (<10%), as specified in the Arborist report. The redesign demonstrates the proposal has been designed, scaled and sited to avoid and mitigate impact to the Pittwater Spotted Gum EEC. ▪ Removal of T2 (Corymbia maculata) at the front of the dwelling due to severe defects. It is noted this tree is on the border with the neighbours property and would require neighbours consent. ▪ Pruning T18 (Corymbia maculata) at the rear of the site to ensure it is retained as a habitat stag. A condition will be imposed to ensure the hollow is retained.



Internal Referral Body	Comments
	<ul style="list-style-type: none"> Planting seven <i>Corymbia maculata</i> (four in the front and three in the rear) - to comply with T0147/15 and replace trees proposed for removal under this DA Landscaping that complies with P21DCP B4.7. <p>A 'test of significance' (5-part test) was not prepared by the applicant as required under Section 7.3 of the Biodiversity Conservation Act 2016 to assess impacts on the Pittwater Spotted Gum Forest EEC. Council has undertaken an internal assessment and has concluded a non-significant impact on the EEC as a result of the Development Application. The proposal is considered to meet the legislative requirements and the Pittwater LEP/DCP controls subject to conditions.</p> <p><u>Initial Assessment:</u> The proposal has been assessed against the NSW Biodiversity Conservation Act 2016 (BC Act), Pittwater LEP 7.6 and Pittwater DCP B4.3, B4.7, and B4.22. The proposal includes demolition of an existing dwelling, construction of a new dwelling and secondary dwelling, and the removal of 9 trees (3 <i>Corymbia maculata</i> and 6 exempt species). Council's Biodiversity Section does not support the proposed development, as discussed below.</p> <p><u>Pittwater Spotted Gum EEC</u> The Arborist report (prepared by Tree Survey, dated 5 December 2018) assessed 26 trees on the subject site and neighbours' sites, including 11 <i>Corymbia maculata</i> (Spotted Gum), 3 of these are proposed for removal. T2 and T18 have trunk decay and are classified as having a short Useful Life Expectancy (ULE) which is classified as an acceptable level of risk. Whilst the Arborist recommends considering these for removal, it is noted the trees were not classified as a high level of risk/imminent danger to life and property as prescribed under B4.22. T2 is on the boundary line with the neighbours' property at 7 Dress Circle Road and would require owner consent for removal. Pursuant to PLEP E4 zone and Section 7.6, T2 and T18 have ecological value as they contain hollows that may be utilised by native fauna, and contribute to canopy cover.</p> <p>The subject site is mapped as containing the Pittwater Spotted Gum Endangered Ecological Community (EEC) as listed under the BC Act. Accordingly, a flora and fauna report incorporating a 5-part test is required to be prepared in accordance with Section 7.3 of the BC Act. The assessment must include discussion of how the proposal has been designed, scaled and sited to avoid and mitigate impact to the Pittwater Spotted Gum EEC and wildlife habitat (including tree hollows and T2 and T18).</p> <p><u>Proposed Design</u> Pursuant to PLEP 7.6 and DCP B4.7, the applicant is to demonstrate that the development has been designed to minimise any impact on</p>

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Internal Referral Body	Comments
	<p>the Pittwater Spotted Gum Forest and pursuant to B4.22, development is to be sited and designed to minimise the impact on remnant native vegetation, including canopy trees.</p> <p>T3 (<i>Corymbia maculata</i>) on the neighbours' property to the north-west will have a major encroachment (14%) due to being within 3.5m of excavation for the driveway. As there is an existing driveway on the north-western side, the proposed major encroachment into the TPZ of T3 is not supported as it is inconsistent with the abovementioned controls. It is considered the design could be altered to reduce the encroachment level to minor, which would demonstrate the proposal has been designed to minimise the impact on the Pittwater Spotted Gum Forest.</p> <p>T11 (<i>Corymbia maculata</i>) is a mature tree in good health, however is within 3m of the proposed spa and retaining wall. The spa is considered to be an element that is not ancillary to operation of a primary dwelling, and the proposed removal of T11 to accommodate the spa is inconsistent with the objectives and outcomes of the abovementioned controls, and is therefore not supported. The design of the dwelling should be altered to allow for retention of T11.</p> <p>Any proposed re-design should be developed in consultation with the project Ecologist to minimise impact on the Pittwater Spotted Gum EEC.</p> <p><u>Landscape Plan</u></p> <p>DCP B4.7 stipulates 80% of plantings to be from the Pittwater Spotted Gum EEC and development should result in no net loss in native canopy trees and B4.22 requires suitable compensatory tree planting for any trees that must be removed.</p> <p>The Landscape Plan (L-01 dated 09/10/2018), shows one replacement tree Blueberry Ash (<i>Elaeocarpus reticulatus</i>) and various non-locally native and non-native species. This does not constitute no net loss and does not meet the outcomes of the controls, and is therefore not supported.</p> <p>It is noted 6 <i>Corymbia maculata</i> were required to be planted on the site under Tree Works Consent T0147/15 (dated 13/04/2015). These plantings were not identified in the plans or on the site survey.</p> <p><u>Summary of additional information required:</u></p> <ol style="list-style-type: none"> 1. Flora and Fauna Report and a 5-part test in accordance with Section 7.3 of the BC Act. The assessment must include discussion of how the proposal has been designed, scaled and sited to avoid and mitigate impact to the Pittwater Spotted Gum EEC and wildlife habitat (including tree hollows and T2 and T18) and propose measures to retain hollows used by native fauna. The report must be prepared by a suitably



Internal Referral Body	Comments
	<p>qualified Ecologist and be based on the amended plans and Arborist report as specified below.</p> <ol style="list-style-type: none"> 2. Amended Architectural Plans developed in consultation with the project Ecologist and project Arborist, to enable safe retention of T11 and reduced encroachment into the TPZ of T3 (to minor level). 3. Amended Landscape Plan based on the amended Architectural Plans and developed in consultation with the project Ecologist. The Landscape Plan must show: <ul style="list-style-type: none"> • Retention of the tree hollows (T2 and T18) • Retention of T11 • Reduction of the impact on T3 to <10% and/or classified as "minor encroachment" • The location of the 6 <i>Corymbia maculata</i> plantings required under T0147/15 • Replacement planting of any <i>Corymbia maculata</i> proposed for removal under the current DA • 80% of plantings to be native species from the Pittwater Spotted Gum Endangered Ecological Community • Removal of the <i>Acer palmatum</i> (Cutleaf Weeping Maple) and <i>Drepanostachyum falcatum</i> (Blue Bamboo) 4. Amended Arborist Report based on the amended Architectural Plans and Landscape Plan.
NECC (Development Engineering)	<p>The proposal includes the reconstruction of the driveway up to the proposed new garage. A review of the submitted plans and section indicates that the maximum allowable grade of 1 in 4 will be exceeded with the proposed garage level and as a result the garage will need to be lowered. This will increase the proposed excavation required and this must be reviewed by the Geotechnical Engineer. Also the drainage plans indicate a below ground tank under the driveway which has not been assessed by the Geotechnical Engineer. It is considered long sections on both sides of the proposed driveway from the kerb in Dress Circle to the proposed garage must be provided for assessment. The sections must include chainages, existing and proposed levels and proposed grades for assessment.</p> <p>The proposed development cannot be supported by Development Engineering due to insufficient information to in accordance with Clauses B3.1, B6 and B8.1.</p> <p>Amended plans and information received 8/04/2019</p> <p>The revised driveway plan has been assessed and is satisfactory. The revised Geotechnical report addresses the relevant DCP controls. No objection to approval, subject to conditions as recommended.</p>

External Referral Body	Comments
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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 (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

Division 2: Secondary dwellings

Clause 19: Definition

Development for the purposes of a secondary dwelling includes the following:

- (a) the erection of, or alterations or additions to, a secondary dwelling,
- (b) alterations or additions to a principal dwelling for the purposes of a secondary dwelling.

Note: The standard instrument defines secondary dwelling as follows:

"secondary dwelling means a self-contained dwelling that:

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- (a) is established in conjunction with another dwelling (the principal dwelling), and
(b) is on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling, and
(c) is located within, or is attached to, or is separate from, the principal dwelling."

Comment:

The proposed use is defined under PLEP 2014 as "Secondary Dwelling" and satisfies this definition.

Clause 20: Land to which this Division applies:

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones, but <i>only if</i> development for the purposes of a dwelling house is permissible on the land:	
(f) Zone E4 Environmental Living	Consistent. The site is located within the Zone E4 Environmental Living and, as such, the proposed use is permissible with consent under Pittwater Local Environmental Plan 2014.

Clause 21: Development to which this Division applies

Requirement	Comment
This Division applies to development, on land to which this Division applies, for the purposes of a secondary dwelling.	Consistent. The development involves the construction of an attached secondary dwelling, as defined by the Standard Instrument. Therefore, this Division applies.

Clause 22: Development may be carried out with consent

Development to which this Division applies may be carried out with consent.

Requirement	Comment
(2) A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.	The proposal is for a split level four bedroom principal dwelling with an attached one bedroom secondary dwelling. The proposed development complies with this requirement.
(3) A consent authority must not consent to development to which this Division applies unless: (a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and (b) the total floor area of the secondary dwelling is	The proposed site area is 1,144sqm. Total build upon area is 178sqm. The floor area of the proposed attached Secondary Dwelling is 45.9 sqm. Therefore the proposed floor area of the secondary dwelling is less than 60sqm. The proposal complies with this clause.

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no more than 60m ² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.	
(4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds: (a) site area if: (i) the secondary dwelling is located within, or is attached to, the principal dwelling, or (ii) the site area is at least 450 square metres. (b) parking if no additional parking is to be provided on the site.	(a) (i) The proposed Secondary Dwelling is attached to and located within the proposed Principal Dwelling. (b) One additional off street parking space will be provided.

Note: A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (4).

Clause 24: No subdivision

Requirement	Comment
A consent authority must not consent to a development application that would result in any subdivision of a lot on which development for the purposes of a secondary dwelling has been carried out under this Division.	Consistent. This application does not propose any subdivision of the existing allotment.

Conclusion

The proposal satisfies the assessment criteria and requirements for approval under SEPP ARH.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Revised Certificate Number 983547M_03 Dated 01/04/2019). The BASIX Certificate is supported by the NaHERS Certificate (see Certificate Number 0003432788-03 Dated 01/04/2019).

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

Commitment	Required Target	Proposed
Water	40	42 - Pass
Thermal Comfort	Pass	Pass
Energy	50	63 - Pass

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



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

Part 4.3 - Height of Buildings

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	Clause 2 - 8.5m Clause 2D - 10m	9.3m	N/A	Yes Complies in accordance with 2D

Height of the Proposed dwelling:

Under the Pittwater Local Environmental Plan 2014, pursuant to Clause 4.3 Height of Buildings, the proposal meets the following requirements and objectives as follows:

- The proposed design encourage and responds sensitively to the natural steep topography.
- The proposal is consistent with the desired character of the locality, by virtue of its design, bulk, height and scale.
- The proposal is compatible with the height and scale of surrounding and nearby development.
- No adverse impacts are identified by overshadowing and sharing views of neighbouring properties.
- No adverse visual impact on the natural environment.

Part 4.3 - Under Clause (2):

The height of a building on any land is not to exceed the maximum building height of 8.5m shown for the land on the Height of Building Map.

Part 4.3- Under Clause (2D):

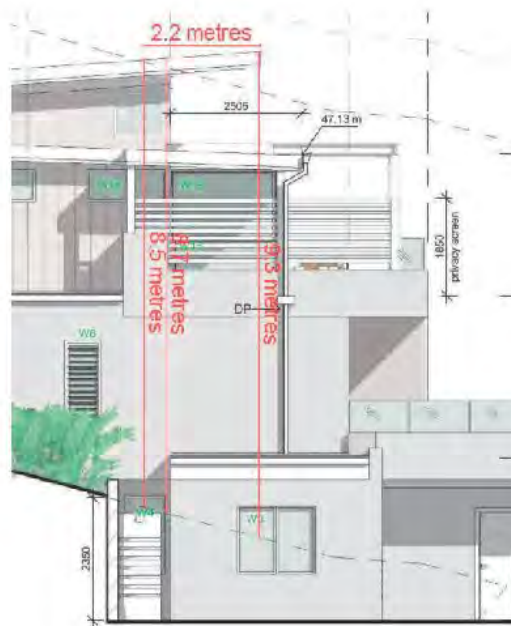
Despite the subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Building Map may exceed a height of 8.5 metres, but not be more than 10m if:

Objectives

- (a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Building Map is minor.

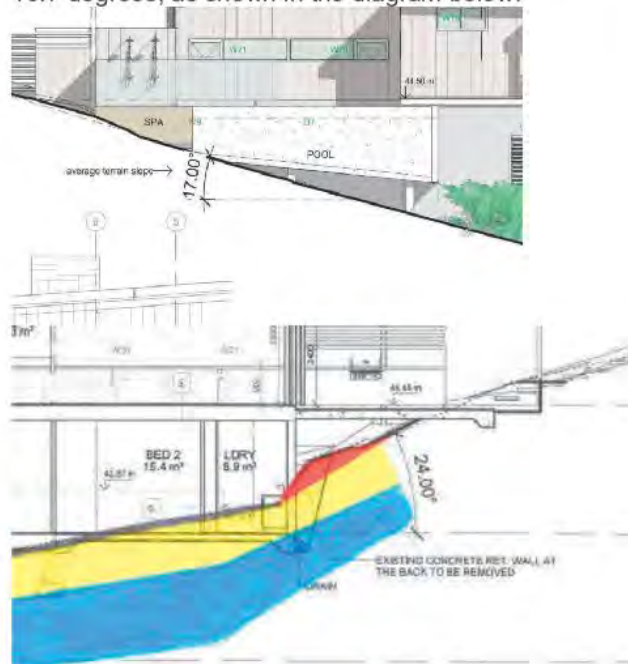
Comments

The proposed dwelling height of 9.3m will exceeds the required height of 8.5m shown on the Height of Building Map. The exceedance of the height variation is 0.8m or a 9.4%. The non-compliance part is the eave of the roof of the dwelling. The extended part of the roof acts as a shading device of the design. The proposed height of 9.3m which is less than 10m is below.



(c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is 30%),

The proposed building footprint is situated on a 17 to 24 degree slope of 16.7 degrees, as shown in the diagram below:



(d) the buildings are sited and designed to take into account the slope of the

The steep slope of the proposed site has been taken in to consideration in the proposed design. The proposal is sited to minimise the need for the design to step down the slope of the site.



land to minimise the need
for cut and fill by
designs that allow
the building to step down the
slope.

Therefore, the proposed development is consistent with the requirements and objectives of the building height control and the desired future character of the locality.

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
5.9 Preservation of trees or vegetation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes

Detailed Assessment

5.9 Preservation of trees or vegetation

Council's Landscape Unit and Council's Natural Environment Unit - Bushland and Biodiversity section assessed the proposal against the NSW Biodiversity Conservation Act 2016, PLEP 2014. Also assessed against Clause 5.9, Preservation of Trees or Vegetation and likely potential environmental impacts arising from the development have been considered and addressed. It is recommended that the proposal, in terms of landscape outcome, is acceptable subject to protection of existing trees and vegetation nominated for retention, replacement and completion of landscaping.

A revised Arborist report, amended Architectural Plans, and amended Landscape Plan were provided in response to the comments and recommendations. The amended documents were deemed satisfactory, subject to conditions.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m, or established building line, whichever is the greater Established Building lines: Adjoining property to North - No. 7 Dress Circle Rd - 22.7m (North) Adjoining property to South - No.3 Dress Circle Rd - 20.8m (swimming pool 13.1m) No.1 Dress Circle Rd - 20.8m	19m	(3m)13.7%	No

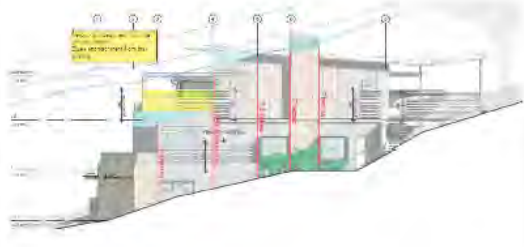
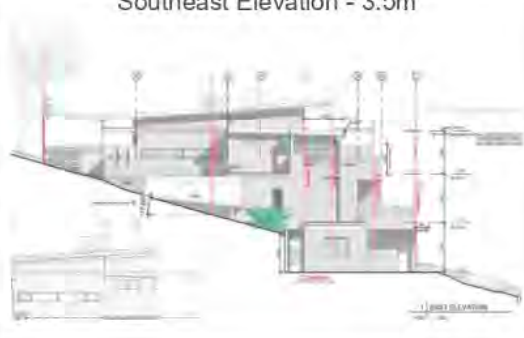
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	No.9 Dress Circle Rd - 23.7m Average establish building line - 22m			
Rear building line	6.5m	14m	N/A	Yes
Side building line	South-east side boundary - 2.5m	Level 0 Secondary Dwelling 2.6m Level 1 Dwelling 4.2m Level 2 Swimming Pool and Spa 1.4m Dwelling 4.2m	1.1m (44%) Swimming Pool and Spa	No
	North-west- 1m	Level 0 Garage 1m Wall of the Secondary Dwelling 10.1m Level 1 Primary dwelling balcony 1m Primary wall of the Dwelling 2.9m Level 2 Wall of the Fire Place 3.5m Primary wall of the Dwelling 4m Primary Dwelling-Deck 4m	N/A	Yes
Building envelope	Northwest Elevation - 3.5m	Primary dwelling - Parapet	Parapet 18.75%	No



		(Level 2) Primary Dwelling - Living (Level 2) Primary Dwelling - Fire Place (Level 2)	Living 14.8% Fire Place 17.1%	
	Southeast Elevation - 3.5m 	Within the building envelope	N/A	Yes
Landscaped area	60%	61.8% (707sqm)	N/A	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
B3.1 Landslip Hazard	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	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



Clause	Compliance with Requirements	Consistency Aims/Objectives
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
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.4 Scenic protection - General	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D1.16 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

C1.4 Solar Access

The following constraints apply to the site and reasonable solar access to the main private open space and to windows to the principal living area assessed on a merit basis addressed below:

- The adverse slope or topography,
- There is existing vegetation and obstruction that overshadow, and
- Landscape controls have priority, e.g. heritage and landscaping considerations.

Reasonable solar access will be maintained to the main private open space and to windows to the principal living area of the proposed dwelling.

Solar Access to No. 7 Dress Circle Road:

The amended Shadow Diagrams submitted on 27 March 2019, Drawing Numbers A113 to A115, by the applicant have been reviewed. It has been determined that there is no additional overshadowing



impacts to the adjoining property Number 7 Dress Circle Road during Winter Solstice. Nevertheless, this assessment shows that the adjoining dwelling No.7 located to the west receives sunlight during mornings and through the mid day to afternoons even in mid winter day 21 June. The proposal is consistent with the Pittwater Development Control Plan Part C1.4 Solar Access and it is not considered to be unreasonable.

Solar Access to No. 3 Dress Circle Road:

The amended Shadow Diagrams have been reviewed. It is demonstrated that a reasonable level of solar access is maintained during winter to the adjoining property unhindered by the proposal. During the shortest day in winter 21 June, adjoining property No.3 receives direct sunlight for 3 hours from 9.00am to 12.00pm, complying with the PDCP - C1. The main private open space of this adjoining dwelling will not be hindered by the proposal at any given time during winter. Therefore, it is noted that the proposed development is sited and designed to maximise solar access during mid- winter. The significant steep slope, vegetation and rock outcrops of the proposed site has been taken into merit consideration. Also the priority controls such as retention of trees and landscape considerations have restricted the proposal.

Therefore, the development is consistent with the controls in relation to solar access.

C1.5 Visual Privacy

The north-west and south-east elevations of the proposed dwelling includes privacy screens to obscure direct view to the adjoining property No. 7 and No.3 Dress Circle Road. Facing north-west, 1.85m high privacy screens are proposed to level one windows, (W26, W12 and W27) to provide a sense of territories and privacy for the residents and the neighbours . Furthermore, privacy screens to a height of 1.85m are proposed to the rear deck and the front balcony that overlooks the rear yard and the front yards of the neighbouring properties. Additionally, the ground level balcony located to the front of the dwelling to be fixed with a privacy screen to a height of 1.8m facing north-west. The average eye level of a person does not exceed the proposed height of privacy screens.

Proposed privacy screens to obscure private open space areas including swimming pools will be provided. The living area of the proposed dwelling will be protected from direct overlooking within 9m radius by the building layout. Therefore the proposal will not create any unnecessary invasion of privacy to the adjoining properties.

Therefore, It is demonstrated that habitable rooms and outdoor living areas of the proposed dwelling optimised visual privacy through an innovative design. The proposal achieves an acceptable level of privacy for residents and users as well as protects the sense of territory for neighbours.

A condition has been imposed to ensure privacy screens and obscure glazing is provided to achieve the required outcome, before the issue of the Construction Certificate.

Given the above it is considered that the proposal satisfies the merit consideration and consistent with the general principles of the development control adhering to the desired future character of the locality and the streetscape

D1.8 Front building line

The proposed property is within the D1 Avalon Beach Locality under the Pittwater Development Control Plan. Therefore the control specifies that the requirement of the front setback should be 6.5 or the established building line of the adjoining properties, whichever is greater.

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The proposed front setback for the development is 19m. The prevailing average front setback of adjoining properties is 22m. The non-compliance variation is 3m. The percentile variation is 13.7%. The front setback of the existing pool of the adjoining property No.3 is 13.2m.

Considerations of Variations under D1.8 Front building line:

Where the outcomes of this control are achieved, Council may accept variation to these building lines in the following circumstances:

- considering established building lines:

The non-compliance percentile variation to the establish building line is 13.7%. This m

- degree of cut and fill:

The degree of cut and fill will be significant and it is considered that the proposal demonstrates consistency with this merit objective.

- retention of trees and vegetation;

The proposal will create ample opportunities for retention of trees and vegetation.

- where it is difficult to achieve acceptable levels for building;

Due to steep slope of the proposed site it is difficult to achieve acceptable levels for the development. Usage of the existing relatively flat area of the site has been utilised to reduce cut and fill contributing to waste reduction, landslide, and stormwater management.

- where the topographic features of the site need to be preserved;

Located to the rear and the front of the property topographic features of the site have been considered that the proposal demonstrates consistency with this merit objective.

However, the proposal achieves objectives of this control. Based on site merit, a variation to the control has been considered as addressed above.

D1.9 Side and rear building line

Description of non-compliance

South-east Side Boundary Setback:

The proposed setback for the Swimming Pool and the Spa is 1.4m. The control for the side boundary is 2.5m. The non-compliance variation is 1.1m equating to a percentile variation of 44%.

Merit Consideration



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

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

Comment:

Articulated stepped formation of the proposed dwelling address the site topography to reduce cut and fill. The form and the module emphasised the environmentally sensitive design and construction. The proposed site specific custom design dwelling would achieved the desired future character of the locality.

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

Comment:

The development is considered to adequately respond to the substantial landscaping of the site in accordance with the prevailing environmental controls. The mature tree canopies are located to the rear of the property. Adequate landscaping to the front of the property will provide an attractive streetscape.

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

Comment:

The proposal strategically positioned the front and rear balconies, patios and varandhas to capture views and vistas to and from public/private places. The positioning of windows to the front and the rear of the dwelling will preserve views and vistas to and from public/private places.

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

Comment:

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

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

Comment:

The development is considered to adequately respond to the topography of the site. The proposal is well modulated with flexibility in the siting of the building and access.



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

Comment:

Council's Landscape Unit and Council's Natural Environmental Unit assessed the proposal and the potential environmental impacts arising from the development been addressed. Suitable conditions have been imposed to retain the vegetation which will enhance to visually reduce the built form.

D1.11 Building envelope

Description of non-compliance

The development exhibits minor non-compliance to the south-west boundary envelope. The non-compliant areas vary in extent as a result of the sloping topography of the site. The proposed development encroaches only the South-west boundary envelope on west elevation.

South-west boundary envelope:

- Encroachment at a height of up to 0.9m and for a length of 4.9m (Parapet located to the front - level 2)
- Encroachment at a height of up to 7.4m and for a length of 2.6m (Front wall of the living area - level 2)
- Encroachment at a height of up to 7m and for a length of 1.8m (Wall of chimney - level 2)

Merit consideration:

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

The non-compliance is heavily influenced by the sloping topography of the site. The developr

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

The minor encroachment is considered satisfactory in regards to the design, scale, bulk and th

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

The articulation along the western elevation respond well to spacial characteristics of the exist
The areas of encroachment are minor in size and demonstrates consistency with the surround

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



The stepped formation and articulation of the proposal reduces bulk, scale and height of the development.

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

It is considered that the non-compliance does not have an unreasonable impact upon views arising from the development.

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

It is considered that the adjoining properties receive a minimum of 3 hours of sunlight between the development and the adjoining properties.

Therefore a variation to this control will be considered on a merit basis and the proposal compliant.

D1.14 Landscaped Area - Environmentally Sensitive Land

Council's Landscape Unit and Council's Natural Environment Unit assessed the proposal and likely potential environmental impacts arising from the development has been considered and addressed. Revised Arborist report, Amended Architectural Plans, and Amended Landscape Plans were provided adhering to the comments and recommendations. Conditions will be imposed to comply with the recommendations.

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.

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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 DA2018/2001 for Demolition works and construction of a dwelling house including a secondary dwelling, swimming pool and spa on land at Lot 79 DP 11462, 5 Dress Circle 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
LVL0 - Lower Ground Level (Amended Plan) - A104	22/03/2019	Blue Sky Building Design
LVL1 - Ground Level (Amended Plan) - A105	22/03/2019	Blue Sky Building Design
LVL2 - Upper Level (Amended Plans) - A106	22/03/2019	Blue Sky Building Design
North Elevation and Material Schedule (Amended Plans)- A107	22/03/2019	Blue Sky Building Design
East Elevation and Pool Section (Amended Plans) - A108	22/03/2019	Blue Sky Building Design
West and South Elevation (Amended Plans)- A109	22/03/2019	Blue Sky Building Design

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Section through the Garage (Amended Plans) - A110	22/03/2019	Blue Sky Building Design
Sections (Amended Plans) - A111	22/03/2019	Blue sky Building Design
Sediment and Waste Management Plan (Amended Plans) - A112	22/03/2019	Blue Sky Building Design
Driveway Profile (Amended Plan) - A117	22/03/2019	Blue Sky Building Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Stormwater Management Plan (Amended)	13/12/2018	Stellen
Geotechnical Investigation Report (Revised)	03/04/2019	White Geotechnical Group
Arboricultural Impact Assessment (Revised)	27/03/2019	Tree Survey Pty Ltd
NatHers Certificate - 0003432788-03 (Revised)	01/04/2019	Jane Chris Seberry
Basix Certificate - 983547M-03 (Revised)	01/04/2019	Certified Energy

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 (Amended)	09/10/2018	Space Landscape Design

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	25/10/2016	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. Prescribed Conditions

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



- (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 (Demolition):

(a) Unless authorised by Council:

Demolition and excavation works are restricted to:

- o 8.00 am to 5.00 pm Monday to Friday only.

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

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

(c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

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

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

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

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

(i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

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

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 \$5,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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 3 April 2019 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. On-site Stormwater Detention Compliance

Stormwater drainage plans are to be prepared by a suitably qualified and practicing Civil Engineer, detailing the provision of On-site Stormwater Detention in accordance with Northern Beaches Council's Pittwater DCP 21 Clause B5.7 and the concept drawing by Stellen, drawing number DR-000, 001, 002, 003 and 004 dated 5/04/2019. 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 the disposal of stormwater and stormwater management arising from development.

8. Vehicle Driveway Gradients

Driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure suitable vehicular access to private property

9. 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.

10. Shoring of Adjoining Property

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

Council approval is required if temporary ground anchors are to be used within Council land. A



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

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

11. **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.

12. **Soil and Water Management Program**

A Soil and Water Management Plan prepared in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and implemented on site until the works are completed.

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

Reason: To protect the environment from the effects of sedimentation and erosion from development sites. (DACHPC02)

13. **Tree retention**

Prior to the issue of the Construction Certificate, a revised Landscape Plan is to be provided to the Principal Certifying Authority that shows retention of T2 (*Corymbia maculata*).

Reason: Biodiversity conservation and management (DACNECPCC1)

14. **Compliance with Arborist's Recommendations**

All pre-construction tree protection measures specified in Section 4 and the Appendices of the submitted Arborist report (prepared by Tree Survey, dated 14 April 2019) and these conditions of consent are to be implemented at the appropriate stage of development. Compliance with pre-construction measures is to be certified by the project arborist prior to issue of the Construction Certificate.

Reason: To confirm compliance with tree protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls. (DACNECPCC2)

15. **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.



16. 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)

17. 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.

18. Dilapidation Report

Dilapidation report shall be prepared by a suitably qualified engineer for both adjoining properties at Number 3 and 7 Dress Circle, Avalon Beach. Particular attention and detailed photographs must be made of the current boundary wall and adjoining structures in the vicinity of the proposed Swimming Pool and the On Site Detention Tank. Copies of the report are to be made available to the owner of the adjoining properties prior to Construction Certificate.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

19. Project Arborist

A Project Arborist with AQZ Level 5 qualification in horticulture is to be appointed to supervise and certify tree protection measures identified in the Arboricultural Impact Assessment report prepared by Tree Survey Arboricultural Consultants for the following trees:

- o tree numbers 3 and 26 located within No. 7 Dress Circle Road;
- o tree numbers 4 and 5 within the site front setback the subject of a new driveway and off street parking area;
- o tree numbers 10 and 11 located in the rear of the property near new dwelling construction including excavation works for the spa; and
- o any other site or adjoining property tree that may be impacted by the works.

The Project Arborist is to supervise and certify tree protection works as proposed in Appendix II - Tree Protection Plan and Appendix III - Tree Protection Map of the Arboricultural Impact Assessment report prepared by Tree Survey Arboricultural Consultants, including documentation certifying that the recommended Hold Points as listed in Table 1: Schedule of Work, have been carried out accordingly.

The Project Arborist is to supervise all excavation and construction works near all trees,



including recommending the construction methods near existing trees to protect tree roots, trunks, branches and canopy.

Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Reason: to ensure the protection of the existing landscape amenity

20. **Approved tree removal**

In consideration of the assessment of tree health and condition, the following existing trees are approved for removal, based on the recommendations of the Arboricultural Impact Assessment report prepared by Tree Survey Arboricultural Consultants: tree numbers 6, 7, 8, and 9, all assessed with Low Retention Value. Tree number 18 shall be retained as a Stag for habitat, with suggested pruning as shown in Appendix V.

Tree removal of tree number 2, located on common boundary between No. 5 and No. 7, is approved subject to Owners Consent for removal by the Owner of No. 7.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

21. **Vehicle Crossings**

The provision of one vehicle crossing 3.5 metres wide at the kerb to 4.5 metres wide at the boundary in accordance with Northern Beaches Council Drawing No A4-3330/4 EH 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.

22. **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.

23. **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 report, being tree numbers 1, 4, 5, 10 to 13 inclusive, and 15 to 22 inclusive, excluding exempt trees under the relevant planning instruments or legislation,
- ii) all trees and vegetation located on adjoining properties, including tree numbers 3, 14, 23, 24, 25, and 26,
- iii) all road reserve trees and vegetation.

B) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4, and the requirements as listed in Section 4 - Recommendations of the Arboricultural Impact Assessment report prepared by Tree Survey Arboricultural Consultants,

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- 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, to provide for root protection measures,
- 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 as follows:

- i) The Project Arborist shall be in attendance for excavation works for the dwelling and spa near existing trees numbered 10 and 11, and provide tree protection measure recommendations as required to be undertaken to ensure tree protection in accordance with AS4970- 2009 Protection of Trees on Development Sites,
- ii) the existing retaining wall near existing tree number 11 must be retained in place, with only repair work permitted,
- iii) the existing ground levels under existing tree number 11 must be retained,
- iv) The Project Arborist shall be in attendance for excavation works for the driveway and off-street car space near existing trees numbered 4 and 5, and provide tree protection measure recommendations as required to be undertaken to ensure tree protection in accordance with AS4970- 2009 Protection of Trees on Development Sites,

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

24. **Compliance with Arborist's Recommendations**

All tree protection measures specified in Section 4 and the Appendices of the submitted Arborist report (prepared by Tree Survey, dated 14 April 2019) and these conditions of consent are to be implemented at the appropriate stage of development. Compliance with these measures is to be certified by the project arborist prior to issue of the Occupation Certificate.

Reason: To confirm compliance with tree protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls. (DACNEEDW1)

25. **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.

26. Tree Hollow Inspection by Ecologist

All trees with hollows, that are proposed for removal or pruning, are to be inspected by an accredited Ecologist prior to works being undertaken. Inspection of tree hollows is to be facilitated by a qualified and experienced tree climber or arborist with the use of an elevated work platform where necessary. Details prepared by the project ecologist in writing demonstrating compliance are to be submitted to the Principal Certifying Authority prior to commencement of tree works.

Reason: To protect native wildlife in accordance with Section 2.1 of the NSW Biodiversity Conservation Act 2016 and relevant Natural Environment LEP/DCP controls. (DACNEEDW2)

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

27. Landscape works

Landscaping is to be implemented in accordance with the landscape plan L-01, prepared by Space Landscape Designs, inclusive of the following requirement:

- i) the mulched bed located under existing tree number 11, and adjacent to the proposed spa, labelled 'steppers in mulch' shall be mass planted with a groundcover,
- ii) the mulched bed located under existing tree number 11, and adjacent to the proposed spa, labelled 'steppers in mulch' may not be paved in the future, and must remain as soft landscape area to assist with the retention of existing tree 11,
- iii) all other areas on the landscape plan labelled 'steppers in mulch' shall be mass planted with a groundcover, and maintained as soft landscape area,
- iv) the proposed seven (7) tree planting species (*Corymbia maculata*) shall be planted at 75 litre pot size minimum and shall be dispersed throughout the site, with four (4) to be planted in the front setback, and all are to be planted at least 5 metres from existing and proposed building structures.

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 amended landscape plan and the conditions of consent.

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

28. Condition of retained vegetation

Prior to the issue of an Occupation Certificate, a report prepared by a Arborist with AQZ Level 5 qualification in horticulture, 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 retain and protect significant planting on development sites.

29. **Authorisation of Legal Documentation Required for Onsite Detention**

The original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan) and hydraulic engineers certification. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To create encumbrances on the land.

30. **Registration of Encumbrances for On-site Stormwater Detention**

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To identify encumbrances on land.

31. **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)

32. **Positive Covenant and Restriction as to User for On-site Stormwater Detention**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.



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 the on-site detention and/or pump system is maintained to an appropriate operational standard.

33. **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.

34. **Tree Protection to be Certified by Arborist**

All tree protection measures specified in Section 4 and the Appendices of the submitted Arborist report (prepared by Tree Survey, dated 14 April 2019) and these conditions of consent are to be implemented at the appropriate stage of development. Compliance with these measures is to be certified by the project arborist prior to issue of the Occupation Certificate.

Reason: To confirm compliance with tree protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls.

35. **Tree Planting**

At least seven (7) *Corymbia maculata* are to be planted onsite as per the approved Landscape Plan. All native trees are to be retained for the life of the development, or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree. Tree replacement plantings are to be certified by the project arborist.

Reason: Tree replacement.

36. **Practical Completion of Landscape Works**

A landscape practical completion report/certificate is to be prepared by a Landscape Architect and submitted to the Principal Certifying Authority with the Occupation Certificate application. This report is to certify that all landscape works have been completed in accordance with the Landscape Plan and proposed Plant Schedule (prepared by Space Landscape Designs, Rev F, dated 03/04/2019).

Reason: To ensure landscaping is adequate and consistent with approved plans.

37. **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

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

Reason: To prevent pollution of the environment and to protect the amenity of the area.
(DACPLF03)

38. **House / Building Number**

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



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

Reason: Proper identification of buildings.

39. **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)

40. **Privacy Screens**

Details demonstrating the proposed privacy screens are installed in accordance with the approved plans are to be submitted to the Certifying Authority prior to the issue of Occupation Certificate.

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

41. **Landscape maintenance**

All landscape components are to be maintained for the life of the development.

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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.

42. **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.

43. **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.

44. **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.

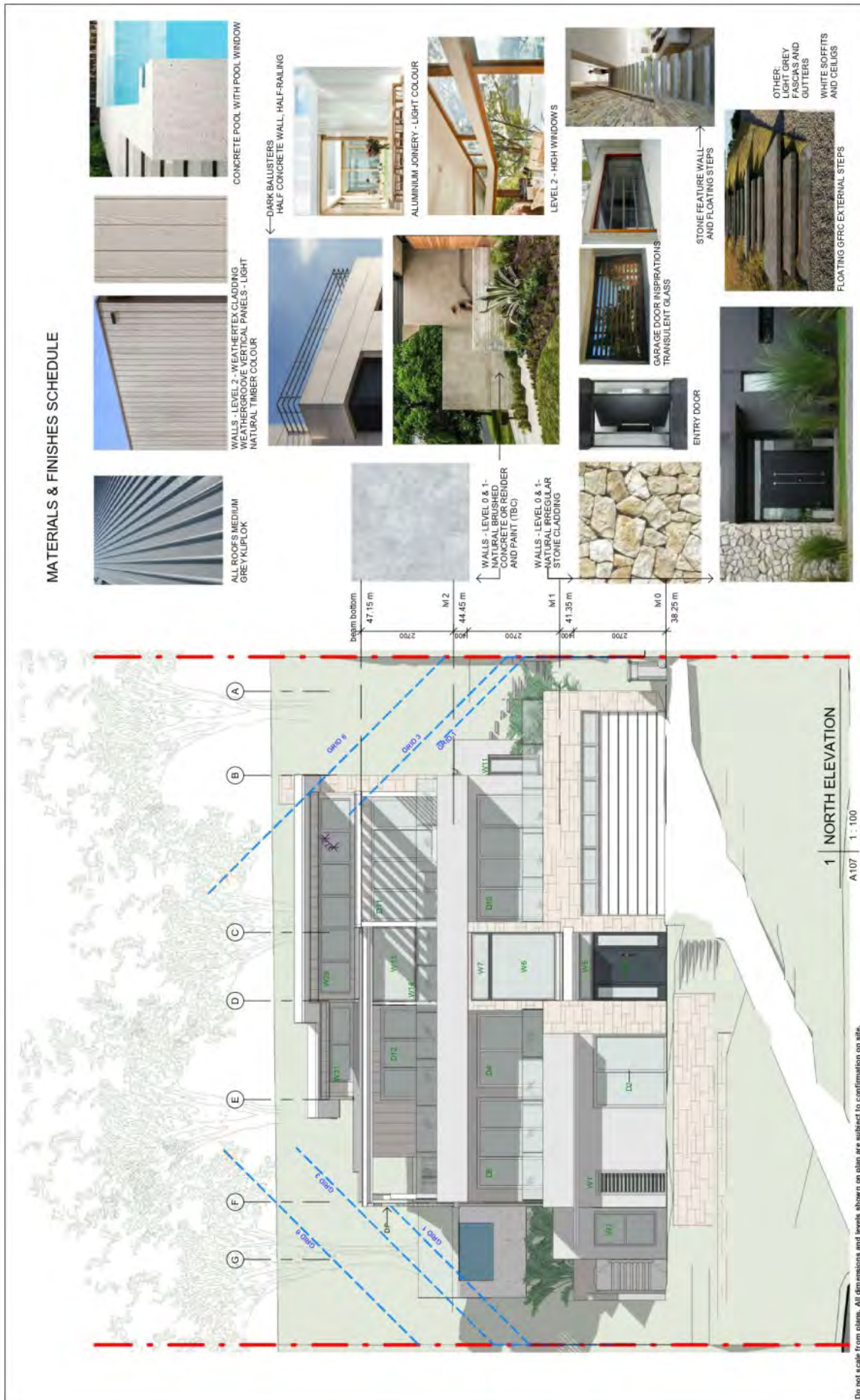
Reason: To protect Aboriginal Heritage.

45. **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.





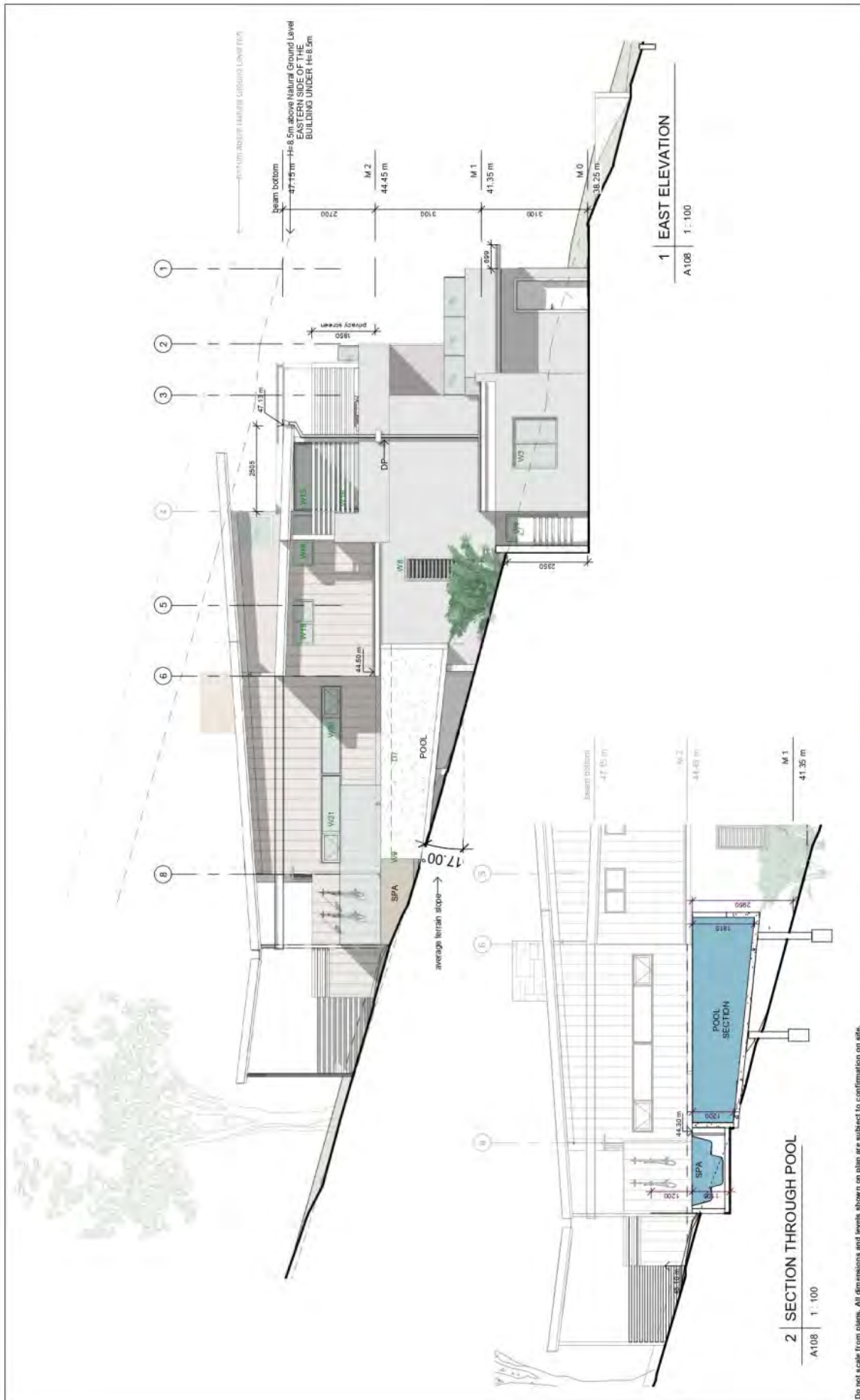
PROJECT TITLE:	NEW CONSTRUCTION	SHEET TITLE:	NORTH ELEVATION & MATERIAL SCHEDULE
PROJECT NO.:	2018089	SHEET NO.:	A107
AT:	5 Dress Circle Rd, Avalon	SCALE A3:	1:100
FOR:	Jane Sabery		

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REV.	DATE	DESCRIPTION	DRWN	CHKD
-	25.10.2018	CONCEPT DESIGN	MW	
2-3	31.10.2018	PRELIMINARY	MW	
3	09-15.11.2018	PRELIMINARY	MW	
	22.03.2019	DA PLANS	MW	KM

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SHEET TITLE: EAST ELEVATION & POOL SECTION
SHEET NO: A108
SCALE A3: 1:100

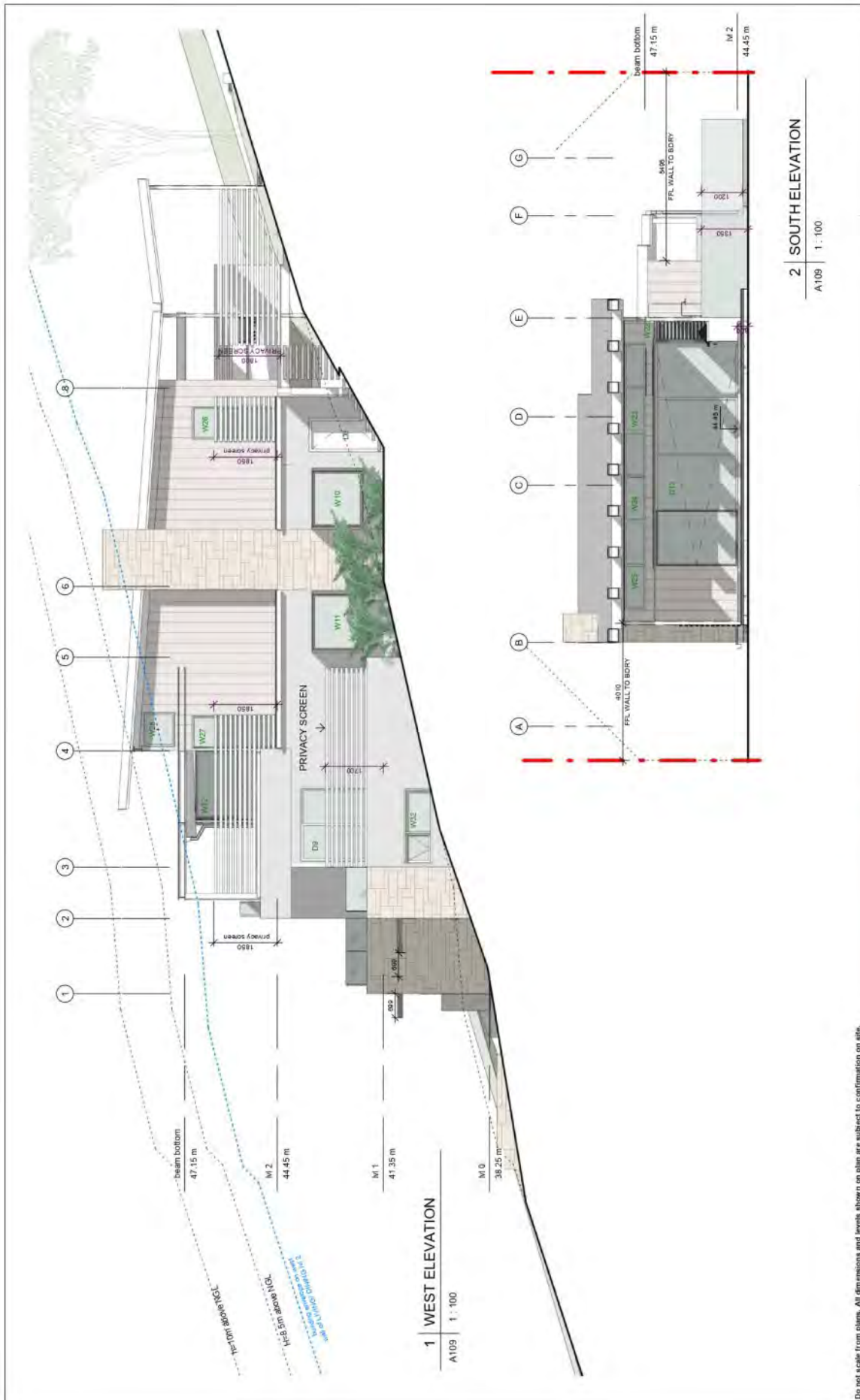
PROJECT TITLE: NEW CONSTRUCTION
PROJECT NO.: 2018069
AT: 5 Dress Circle Rd, Avalon
FOR: Jane Seberry

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REV.	DATE	DESCRIPTION	DRWN	CHKD
-	25.10.2016	CONCEPT DESIGN	MW	
2-3	31.10.2016	PRELIMINARY	MW	
3	09-15.11.2016	PRELIMINARY	MW	
	22.03.2019	DA PLANS	MW	KM

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SHEET TITLE: WEST & SOUTH ELEVATION
SHEET NO: A109
SCALE A3: 1:100

PROJECT TITLE: NEW CONSTRUCTION
PROJECT NO: 2018069
AT: 5 Dress Circle Rd, Avalon
FOR: Jane Seberry

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REV.	DATE	DESCRIPTION	DRWN	CHKD
-	26.10.2016	CONCEPT DESIGN	MW	
2-3	31.10.2016	PRELIMINARY	MW	
3	09-15.11.2016	PRELIMINARY	MW	KM
	22.03.2019	DA PLANS	MW	

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ITEM 3.6**DA2019/0056 - 7 HIGHVIEW AVENUE, QUEENSCLIFF -
DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING
HOUSE****REPORTING MANAGER****Daniel Milliken****TRIM FILE REF****2019/363444****ATTACHMENTS**

- 1 Assessment Report**
- 2 Site Plan & Elevations**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/0056 for demolition works and construction of a dwelling house on land at Lot 11 DP 17127, 7 Highview Avenue, Queenscliff, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0056
Responsible Officer:	Danielle Deegan
Land to be developed (Address):	Lot 11 DP 17127, 7 Highview Avenue QUEENSCLIFF NSW 2096
Proposed Development:	Demolition works and construction of a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Andrew Timothy Collins Marguerite Eleanor Therese Collins
Applicant:	Studio Prineas
Application lodged:	24/01/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	30/01/2019 to 15/02/2019
Advertised:	Not Advertised
Submissions Received:	7
Recommendation:	Deferred Commencement Approval
Estimated Cost of Works:	\$ 2,835,637.00

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

Warringah Development Control Plan - C4 Stormwater
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 11 DP 17127 , 7 Highview Avenue QUEENSCLIFF NSW 2096
Detailed Site Description:	<p>The subject site consists of one allotment located on the northern side of Highview Ave.</p> <p>The site is irregular in shape with a frontage of 13.41m to Highview Avenue and a variable depth of 54.23m - 61.16m. The site has a surveyed area of 764.2m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a part 1/part 2/part 3 storey, rendered brick dwelling house with a pitched metal roof.</p> <p>The front half of the site is relatively flat, while the rear half is steeply sloping. The site falls approximately 8m from the front of the boundary to the rear. The site contains rocky outcrops, embankments and sandstone retaining walls primarily within the heavily terraced backyard. Much of the backyard is inaccessible comprising of overgrown rocky outcrops.</p> <p>The site contains a mixture of native mature vegetation and exotic species. There are no significant trees on the site or the adjoining property that will be affected by the proposed development.</p> <p>The site is affected by the following easements/restrictions (as marked on the survey):</p> <ul style="list-style-type: none"> • X - easement 1m wide located at the south-west corner of the site (right of carriageway, letterbox and/or street number structure) • Y - 1.8m wide and variable (to drain water, water tanks, screen fencing, electricity wires, conduits,



- irrigation, timber decking, landscaping and for use of outdoor furniture);
- Z - 16m wide and variable (for same purpose as Y)
- Area of restricted use in the area marked D, E, H and J - any building structure or other improvement to a height greater than RL 46.15 will not be permitted without the written consent of the owner benefited

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached dwelling houses, some with swimming pools on both sides of Highview Ave.

The exception being a two storey red-brick duplex, adjoining the site to the west (fronting Highview Ave). A two storey contemporary masonry and metal dwelling house with a 'wavy' metal roof at 9 Highview Avenue is located to the site's west (a battleaxe lot). A large modern and contemporary part one/ part two/ part three storey rendered dwelling house with a parapet metal roof is located to the east of the site at 5 Highview Ave.

Map:



SITE HISTORY

On 6 September 2004, Development Application DA2004/1123 for alteration and additions to dwelling including family room addition and deck at the front of the house and internal alterations was approved by Council.

On 16 November 2007, Development Application DA2007/940 for alterations and additions to a dwelling house including a new study, entry, extensions to the lounge, garage and ensuite, new
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covered footpath and concrete driveway was approved by Council.

On 4 February 2008, Complying Development Certificate PCA2008/0151 for alteration and additions to dwelling Including Family Room Addition and Deck at the Front of the House and Internal Alterations was issued by a private certifier.

On 29 November 2011, Development Application DA2008/0226 for a boundary adjustment between two existing allotments was approved by Council.

On 30 March 2011, Development Application DA2010/1943 for demolition works and alterations and additions to a dwelling house was approved by Council.

Current Application:

On 21 September 2018, prior to the lodgement of the current DA, a meeting was held with Council to discuss the proposed stormwater drainage easement. A letter was sent to the applicant advising the following:

- 1. In principle, Council raises no objections to the proposed stormwater drainage design from a hydraulics perspective. How the pipeline is to be strapped/attached/camouflaged within the adjoining neighbouring is subject to negotiations between all affected property owner(s).*
- 2. Please note an easement to drain water through the downstream property is to be created on the Title over the stormwater drainage pipeline, prior to the installation of the stormwater drainage pipeline within the adjoining neighbouring property.*
- 3. Stormwater is to be discharged to the kerb and gutter system in Undercliff Road.*
- 4. Independent geotechnical assessment should be obtained with respect to the feasibility to strap/attach the stormwater pipeline to any structures and rock outcrop.*

On 29 April 2019, a letter was sent to the applicant to advise that Council could not support the application in its current form. The following issues were identified:

- Non-complying building height and resultant view loss
- Non-complying side boundary envelope
- Potential privacy impacts
- Insufficient information regarding the rear elevated 'garden terrace'

On 27 May 2019, in response to issues raised by Council, amended plans and additional information was submitted to Council. The amended proposal complies with building height and side boundary envelope controls. Timber screening has been added to the upper windows and further detail has been provided in relation to the elevated deck. It is the amended proposal that is the subject of this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of:

- Demolition of the existing dwelling house, garage and associated structures
- Construction of a new dwelling house with an integrated double garage
- Landscaping and associated site works including approximately 250m³ of excavation

The proposed dwelling house comprises of:

DA2019/0056

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Lower ground floor level:

- master bedroom with walk-in-robe and en-suite, study and deck
- hallway, lift-shaft and stairs providing access to the levels above
- storage room, services area and plant room (for OSD and rainwater tanks)

Ground floor level:

- double garage
- dwelling entry
- playroom
- laundry
- guest bathroom
- storage
- open plan kitchen with pantry
- dining and living room leading to a rear deck
- a central courtyard adjoining the living room and the play room
- lift-shaft and stairs providing access to the levels above and below

First floor level:

- bedrooms 1, 2 and 3
- main bathroom
- study
- guest bedroom and bathroom
- lift-shaft and stairs providing access to the levels below

Roof:

- non-trafficable green (planted) roofs
- 7 skylights

External:

- timber batten front fence and gate
- Retention of existing crossover and layback and new concrete driveway
- terraced landscaping including perimeter hedge, climbing and screen planting and lawn within the front and back yards
- stepping stones, concrete pathways, timber decking, decorative pebbles (to internal central courtyard)
- outdoor shower
- screened waste storage area
- paling and block retaining wall fencing, lattice fencing
- existing rocky outcrops retained
- low stone and masonry retaining walls
- raised rear timber deck with steel palisade balustrade, with stairs leading down to garden level



The proposed external materials and finishes are neutral in colour and non-reflective. Materials include bronze anodized aluminium framed glazing, timber batten screens, off-form concrete walls and board form concrete.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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 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</p>



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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 7 submission/s from:

Name:	Address:
Mrs Jane Esma Singleton	5 Highview Avenue QUEENSCLIFF NSW 2096
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Name:	Address:
Mrs Tracey Elizabeth Oates	3 Highview Avenue QUEENSCLIFF NSW 2096
Pamela Bray	9 Highview Avenue QUEENSCLIFF NSW 2096
Ante Sedelic	13 Highview Avenue QUEENSCLIFF NSW 2096
Ms Keryn Jane Clark	2 / 11 Highview Avenue QUEENSCLIFF NSW 2096
Mr Neil Andrew Shackelford Ms Judith Ann McDonald	46 Ilford Road FRENCHS FOREST NSW 2086
David George Jones Mrs Pamela Joy Bray	9 Highview Avenue QUEENSCLIFF NSW 2096

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

- No 13 Highview Avenue was not notified
- Non-complying building height
- View impacts
- Privacy impacts
- Shadowing impacts
- Design is out of character with the area
- Excessive bulk and scale, lack of articulation
- Excavation/demolition risks
- Construction impacts
- Parking impacts

The matters raised within the submissions are addressed as follows:

- **No 13 Highview Avenue was not notified**
Comment: The proposed development was notified in accordance with the requirements of Part A.7 of the WDCP. As No 13 Highview Ave is not located immediately adjoining the subject site, a notification letter was not sent directly to this property. Nevertheless, they have been made aware of the application and have made a submission. The potential impacts on this property from the proposed development have been considered throughout the assessment of this application. The issues raised in the submission have been addressed.
- **The northern end of the proposed development will exceed the 8.5m maximum building height which has been measured incorrectly on the plans.**
Comment: The original plans did marginally exceed the 8.5m maximum building height. After additional survey work in relation to the rock outcrop below the overhanging upper level, the application has been amended to reduce the overhanging element. The amended proposal now complies with the 8.5m height of buildings development standard.
- **The proposed development will block views**
Comment: An assessment under Section D7- Views in this report has found that the proposal is consistent with the NSW Land and Environment Court established planning principle for view sharing. In particular, the maintenance of views to the rear of the site and the nature of the views lost



(distant water views over a side boundary) provide a situation in which the impact on views from the neighbouring property is not unreasonable.

- **The design is out of character with the area and lacks articulation along side facades**

Comment:

The proposed development utilises a contemporary design which is complementary to the wide range of architectural styles in the area. The variety of materials, varied setbacks and native landscaping provide satisfactory articulation and visual interest.

- **Given the demolition and excavation proposed, an independent structural report is requested before and after construction.**

Comment:

A recommended condition of consent will require the submission of dilapidation reports for adjoining properties.

- **Privacy impacts to adjoining properties**

Comment:

An assessment of privacy has been completed under Section D8 - Privacy. This assessment has found that appropriate levels of privacy are achieved through sufficient physical separation, obscure glazing and appropriate screening.

- **Overshadowing of mid-level windows of No 5 Highview Ave and No 11 Highview Ave**

Comment:

The compliant rear setback and side boundary envelope will result in reasonable opportunity for sunlight access to adjoining properties. The shadow diagrams submitted with the application do not identify any unacceptable additional shadowing impacts.

- **Use of non-trafficable rooftop gardens**

Comment:

These rooftop gardens are not accessible and do not have the required balustrading for use. Compliance action may be instigated should these rooftop gardens become trafficable in the future.

- **Excessive bulk and scale**

Comment:

The amended proposal has reduced building bulk and the proposal is now compliant with all of Council's built form controls. The proposed building bulk is similar (albeit re-distributed) to the existing and surrounding dwellings in the area.

- **Parking impacts during construction**

Comment:

Parking during construction will be subject to existing traffic regulations.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Additional comment 26/04/2019 Following on from discussions about the retention of a small tree
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Internal Referral Body	Comments
	<p>adjacent to the adjoining property, I don't think that the plans indicate any works in the location of the tree behind the lattice fence, so I didn't think it was to be removed.</p> <p>However, if it assists in alleviating concerns raised in submissions, I'd word it as follows into the Tree Protection condition already in Assess:</p> <p><i>Tree protection</i></p> <p><i>(a) Existing trees which must be retained</i></p> <p><i>i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation</i></p> <p><i>ii) Trees located on adjoining land</i></p> <p><i>iii) The native tree located adjacent to the north-western corner of the existing building is required to be retained as it provides privacy screening to the adjoining property.</i></p> <p><i>(b) Tree protection</i></p> <p><i>i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.</i></p> <p><i>ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.</i></p> <p><i>iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.</i></p> <p><i>iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees</i></p> <p><i>v) All tree protection measures, including fencing, are to be in place prior to commencement of works.</i></p> <p><i>Reason: To ensure compliance with the requirement to retain and protect significant planting on the property</i></p> <p><u>Original comment</u></p> <p>No objections to the proposal in general terms, however it is noted that reference is made in one of the submissions regarding the location of a proposed <i>Banksia serrata</i> in the rear yard shown on the landscape plans Sheet Number L-04. If required following view loss assessment, the tree may be deleted by condition.</p> <p>The site contains significant rock outcrops in the rear, the majority of which are clear of proposed works however it is noted that sites of potential Aboriginal significance have been identified on sites located on this escarpment. As such a referral to the AHO may be required.</p> <p>Recommended conditions have been included if the proposal is to be</p>



Internal Referral Body	Comments
	approved.
NECC (Development Engineering)	No objections are raised to the proposed development, subject to conditions.

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. 984438S dated 18 December 2018).

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

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

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.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings:	8.5m	8.5m	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
5.3 Development near zone boundaries	N/A
5.8 Conversion of fire alarms	N/A
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

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Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	Complies
B1 Wall height	7.2m	5.65m to 6.95m	Yes
B3 Side Boundary Envelope	5m and 45 degrees	within envelope	Yes
	5m and 45 degrees	within envelope	Yes
B5 Side Boundary Setbacks	0.9m	> 0.9m	Yes
	0.9m	> 0.9m	Yes
B7 Front Boundary Setbacks	6.5m	6.5m	Yes
B9 Rear Boundary Setbacks	6m	25.7m	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	42.1%	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes

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Clause	Compliance with Requirements	Consistency Aims/Objectives
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

C4 Stormwater

The proposed development relies on a proposed easement to drain water from the site over the adjoining property to the north (39 Undercliff Road). The owners of this site and the subject site have a signed agreement in relation to the future provision of an easement. This agreement is submitted separately and will enable the drainage of stormwater from the site through 39 Undercliff Road to the existing Council stormwater infrastructure.

Stormwater Drainage Plans, prepared by Clapham Design Services, incorporate the following:

- site drainage is designed to cater for up to and including the 1 in 100 year ARI
- all in ground stormwater drainage is to be installed prior to the installation of roofing, and upon completion of roofing, all gutters are to be immediately connected to the pipe system
- project construction relative to drainage is not to occur until a valid easement to drain water from the site through 39 Undercliff Road is registered on title documents
- 495m² of effective built upon area (excluding the 3m deep mid site depression and natural rock outcrops)
- 9.9m³ site storage proposed
- maximum PSD = 400 LIS / hectare = 19.8 LIS
- 1,710 litre Rainwater tanks
- 2 x 5,050 litre On-site Detention Tanks

In the event of any approval, a condition of deferred commencement will require evidence of the created easement on the title of 39 Undercliff Road, prior to the activation of the consent.

D7 Views

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 to Principle 1:

The views affected are distant ocean views towards the north-east from the upper level duplex at 11 Highview Street.

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 to Principle 2:

The views are available from the rear deck and rear living room. The views are across a side boundary and predominantly from a standing position.

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 to Principle 3:

The water views comprise of a small portion of the overall outlook from this dwelling. The proposed development will result in the loss of 10-30% of the available water view, depending on the position of the viewer within the dwelling.

4. Reasonableness of the proposal that is causing the impact

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"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 amended proposal complies with the building height, side boundary envelope and side and rear setback controls. It is therefore considered a reasonable development. The architects have responded to the 'more skilful design' question by reducing the height and width of the upper level. Reasonable view sharing has been achieved.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposed development represents an innovative design which is complementary to the surrounding urban environment.

- *To ensure existing canopy trees have priority over views.*

Comment:

Not applicable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 and WDCP 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.

D8 Privacy

Merit consideration

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

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

The proposed windows and balconies have been sufficiently setback and positioned away from neighbouring living spaces so as to provide satisfactory levels of privacy for the adjoining dwellings. In particular, the windows are within a compliant building envelope and are off-set from neighbouring windows so as to prevent overlooking. Additionally, the balconies are orientated away from neighbouring private open space. The amended plans have introduced battened timber privacy screens to the first floor northern elevation opening from W12 to W11 (corridor) in response to concerns raised by neighbours.

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- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The modulation of the dwelling including complying setbacks and the use of privacy screens provide satisfactory levels of privacy. The proposal incorporates innovative design solutions to that contribute positively to the urban environment.

- *To provide personal and property security for occupants and visitors.*

Comment:

The proposal provides for appropriate levels of security of occupants and visitors.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011/ WDCP 2011 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Council Contributions Plan 2018

The proposal is subject to the application of Council's Section 7.12 Development Contributions Plan.

The following monetary contributions are applicable:

Northern Beaches Council Contributions Plan 2018		
Contribution based on a total development cost of \$ 2,835,637		
Contributions	Levy Rate	Payable
Total Section 7.12 Levy	0.95%	\$ 26,939
Section 7.12 Planning and Administration	0.05%	\$ 1,418
Total	1%	\$ 28,356

CONCLUSION

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

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

DEFERRED COMMENCEMENT APPROVAL

A. THAT Council as the consent authority grant a Deferred Commencement Development Consent being subject to a Five (5) year time frame for Deferred Commencement Consents detailed within Section 95 of the EPA Act 1979 to DA2019/0056 for Demolition works and construction of a dwelling house on land at Lot 11 DP 17127,7 Highview Avenue, QUEENSCLIFF, subject to the conditions printed below:

B. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part A of this recommendation.

DEFERRED COMMENCEMENT CONDITIONS

1. Stormwater Drainage Easement

As the natural fall of the land is towards the rear of the site the disposal of stormwater drainage is to be in accordance with the drainage plan submitted by Clapham Design Services, drawing number HQ100-EA01, issue 1, dated 19/12/18. An easement for drainage is to be created under Sections 88B and/or 88K of the Conveyancing Act 1919. The applicant must provide Council with evidence of the created easement on title in order to activate the consent.

Reason: To ensure adequate provision is made for stormwater drainage from the site in a
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proper manner that protects adjoining properties.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within five (5) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

2. 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
02-01 Demolition plan	14.11.2018	Studio Prineas
02-02A Site Plan	14.11.2018	Studio Prineas
02-04A Lower ground floor plan	13.05.2019	Studio Prineas
02-05A Ground floor plan	15.05.2019	Studio Prineas
02-06A First floor plan	13.05.2018	Studio Prineas
02-07A Roof plan	13.05.2019	Studio Prineas
02-08 South elevation	14.11.2018	Studio Prineas
02-09A North elevation	13.05.2019	Studio Prineas
02-10A East elevation	13.05.2019	Studio Prineas
02-11A West elevation	13.05.2019	Studio Prineas
02-12A Section A	13.05.2019	Studio Prineas
02-13A Section B	13.05.2019	Studio Prineas
02-14A Section C	13.05.2019	Studio Prineas
02-15A Section D	13.05.2019	Studio Prineas
02-16 Schedule of materials	14.11.2018	Studio Prineas
02-20 Terrace Plan	13.05.2019	Studio Prineas
02-21 Terrace Elevations	13.05.2019	Studio Prineas
02-22 Section E	13.05.2019	Studio Prineas
02-23 Section F	13.05.2019	Studio Prineas
04-04 Excavation and fill diagrams	14.11.2018	Studio Prineas
04-05 Rock Crop diagrams	13.05.2019	Studio Prineas
03-01 Waste Management Plan	14.11.2018	Studio Prineas

Engineering Plans

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Drawing No.	Dated	Prepared By
HQ100-H01-3 (3 sheets) Stormwater drainage	19.12.2018	Clapham Design Services Pty Ltd
HQ100-EA01 Proposed Easement drainage	19.12.2018	Clapham Design Services Pty Ltd
HQ100 - SC01 Sediment control measures	undated	Clapham Design Services Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Statement of Environmental Effects	22.01.2018	Lockrey Planning and Development Solutions
Geotechnical Investigation	18.12.2018	AssetGeo
Waste Management Plan	12.12.2018	Studio Prineas
NatHERS and BASIX Assessment	18.12.2018	Efficient Living

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

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
18492 L-01 Landscape site and calculations plan	18.12.2018	Serenescapes
18492 L-02 Zone A Landscape Plan	18.12.2018	Serenescapes
18492 L-03 Zone B Landscape Plan	18.12.2018	Serenescapes
18492 L-04 Zone C Landscape Plan	18.12.2018	Serenescapes
18492 L-05 Rooftop Landscape Plan	18.12.2018	Serenescapes
18492 L-06 Landscape specifications and details	18.12.2018	Serenescapes

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
03-01 Waste Management Plan	14.11.2018	Studio Prineas

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.

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the
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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. Policy Controls

Northern Beaches Council Contributions Plan 2018

The proposal is subject to the application of Council's Section 7.12 Development Contributions Plan.



The following monetary contributions are applicable:

Northern Beaches Council Contributions Plan 2018		
Contribution based on a total development cost of \$ 2,835,637.00		
Contributions	Levy Rate	Payable
Total Section 7.12 Levy	0.95%	\$ 26,938.55
Section 7.12 Planning and Administration	0.05%	\$ 1,417.82
Total	1%	\$ 28,356.37

The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

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

Reason: To provide for contributions in accordance with Northern Beaches Council Contributions Plan 2018.

6. 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

7. On slab landscape planting and associated works

- Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing to all internal



walls and slab, and drainage of the concrete slab over which soil and planting is being provided.

- b) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil volume, soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

- c) The following soil depths are required in order to be counted as landscaping:

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

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

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

8. **On-site Stormwater Detention**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention and interallotment drainage pipeline in accordance with Northern Beaches Council's Warringah Water Management Policy PL850, and generally in accordance with the concept drainage plans prepared by Clapham Design Services, drawing number HQ100-H01 to H03, issue 1, dated 19/12/18 and drawing number HQ100-EA01, issue 1, dated 19/12/18. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. Any Discharge Control devices/pits and emergency overflow points shall be relocated to be external to the dwelling to ensure that any overflows can be safely directed away.
- ii. The stormwater pipeline crossing the road reserve in Undercliff Road shall be amended to remove the bend in the pipeline and exit from the boundary at an angle towards the kerb east of the existing driveway.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of storm water and storm water management arising from the development.

9. **Shoring of Adjoining Property**

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

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

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the



protection of adjoining properties and Council land.

10. **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.

11. **External Finishes to Roof**

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

Details demonstrating compliance are to be submitted to the 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.

12. **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.

13. **Dilapidation Survey**

A dilapidation survey of adjacent buildings (Nos. 5, 9 and 11 Highview Ave, Queenscliff) must be conducted prior to any site work. The lateral extent of the survey must cover the likely "zone of influence" of any excavation or construction induced vibration. The survey must be properly documented. The dilapidation report must be submitted to Council and the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Proper management of records.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

14. **Tree protection**

- (a) Existing trees which must be retained
 - i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
 - ii) Trees located on adjoining land
 - iii) The native tree located adjacent to the north-western corner of the existing building is required to be retained as it



provides privacy screening to the adjoining property.

(b) Tree protection

- i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. Road Reserve

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

Reason: Public Safety.

16. Stormwater Connection

The Applicant shall connect the interallotment drainage pipeline to the kerb in Undercliff Road in accordance with the approved Engineering Plans and shall reconstruct all affected kerb and gutter, vehicular crossings and grass verges to suit the works. All works shall be undertaken at the applicant's cost.

Reason: To ensure compliance of drainage works with approved engineering plans.

17. Civil Works Supervision

The Applicant shall ensure all interallotment drainage works approved in the Construction Certificate are supervised by an appropriately qualified and practising Civil Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

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

18. 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.

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

19. **Stormwater Disposal**

The Applicant shall submit a certificate from a suitably qualified person that the stormwater drainage works have been constructed/installed in accordance with all relevant Australian Standards and Codes. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

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

20. **Positive Covenant and Restriction as to User for On-site Stormwater Detention**

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan, including both the on-site stormwater detention system and interallotment drainage pipeline), hydraulic engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater detention structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for on-site storm water detention is to be submitted.

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

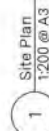
Reason: To ensure the on-site stormwater detention system is maintained to an appropriate operational standard

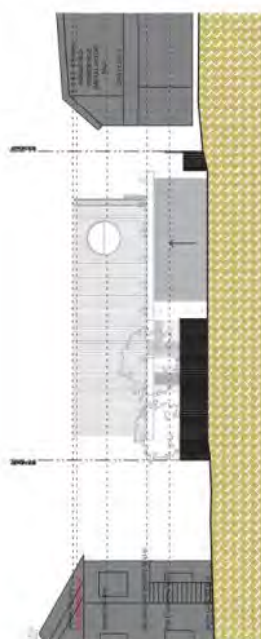
21. **Post-Construction Dilapidation Report**

The applicant must prepare and submit a post-construction dilapidation report. The report must clearly detail the final condition of all the adjoining properties, infrastructure, natural and manmade features that were originally recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

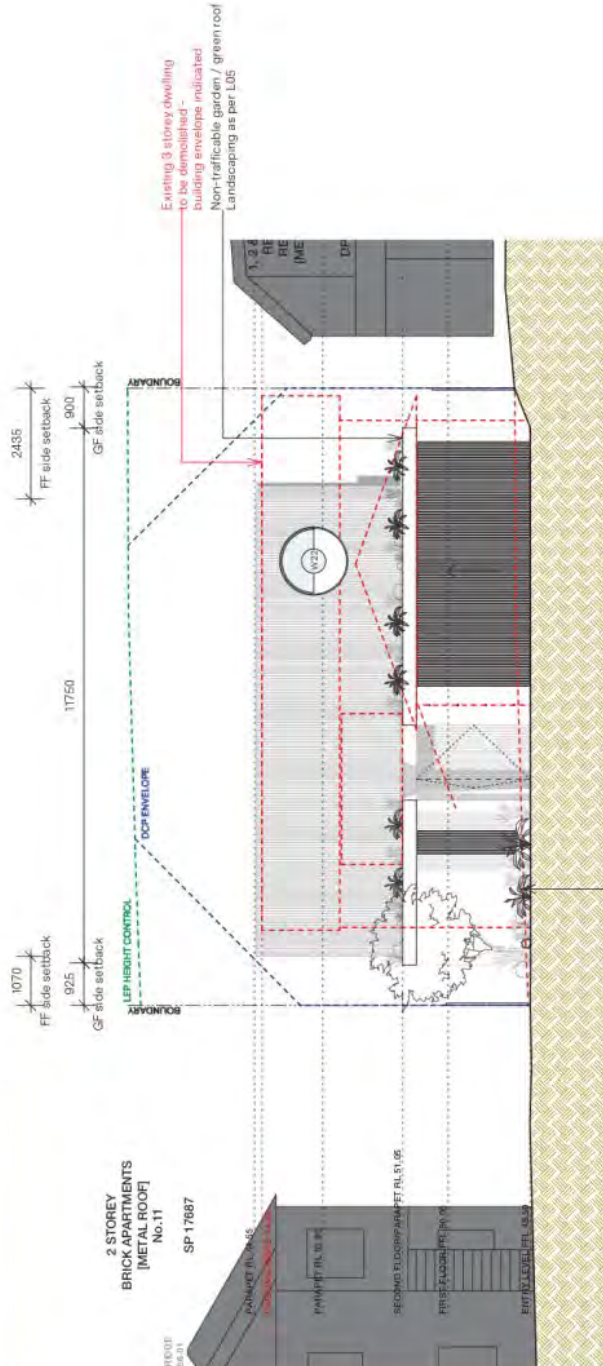
Reason: To ensure security against possible damage to Council and private property.







2 South Elevation (Street)
1:200 @ A3



New landscaping, as per xx-xx

1 South Elevation
1:100 @ A3



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Revisions

Notes

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Abbreviations

VOS Verify On Site
FHL Finished Floor Level
FCL Finished Ceiling Level
APFL Above Floor Level
NA Not Applicable
AFS As Further Specified
EQ Equal
C/L Centreline
EXTG Existing

17206

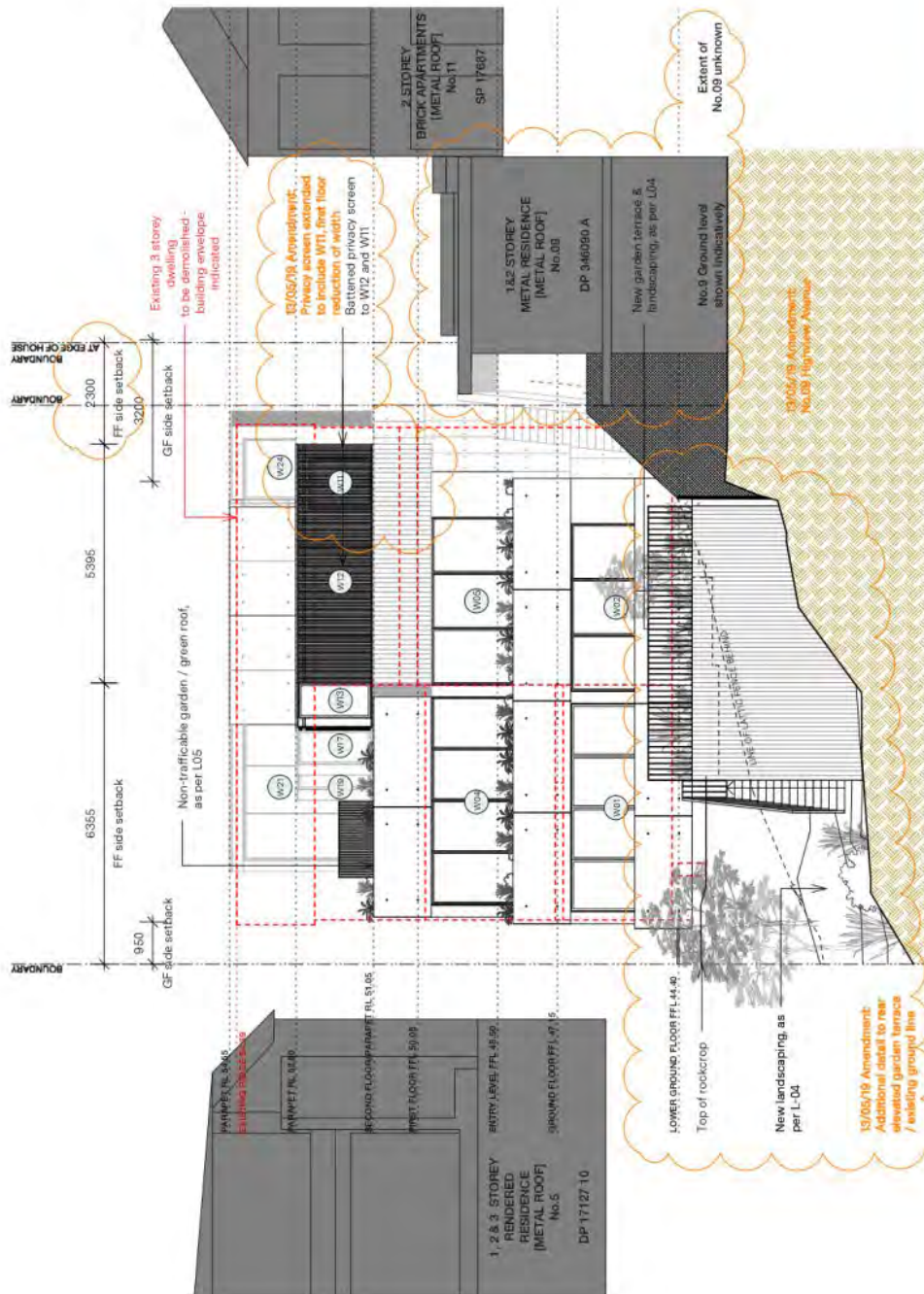
Collins Quenscliff
Marguerite & Andrew Collins
7 Highview Avenue, Queenscliff

Drawing Title

South Elevation
Scale 1:100 @ A3
Drawn By JLC
Date 14.12.2018

Development Application
Not For Construction
02-08





Note: 13/05/19 Amendments shown in bold orange

Development
Application
Not For Construction
02-09 A

Drawing
Title
Scale
Drawn By
Date

17206
Collins Quenscliff
Marguerite & Andrew Collins
7 Highview Avenue, Queenscliff

Abbreviations
VOS: Verify On Site
FPL: Finished Floor Level
APFL: Above Floor Level
NA: Not Applicable
AFS: As Further Specified
EQ: Equal
CL: Centreline
EXTG: Existing

Notes
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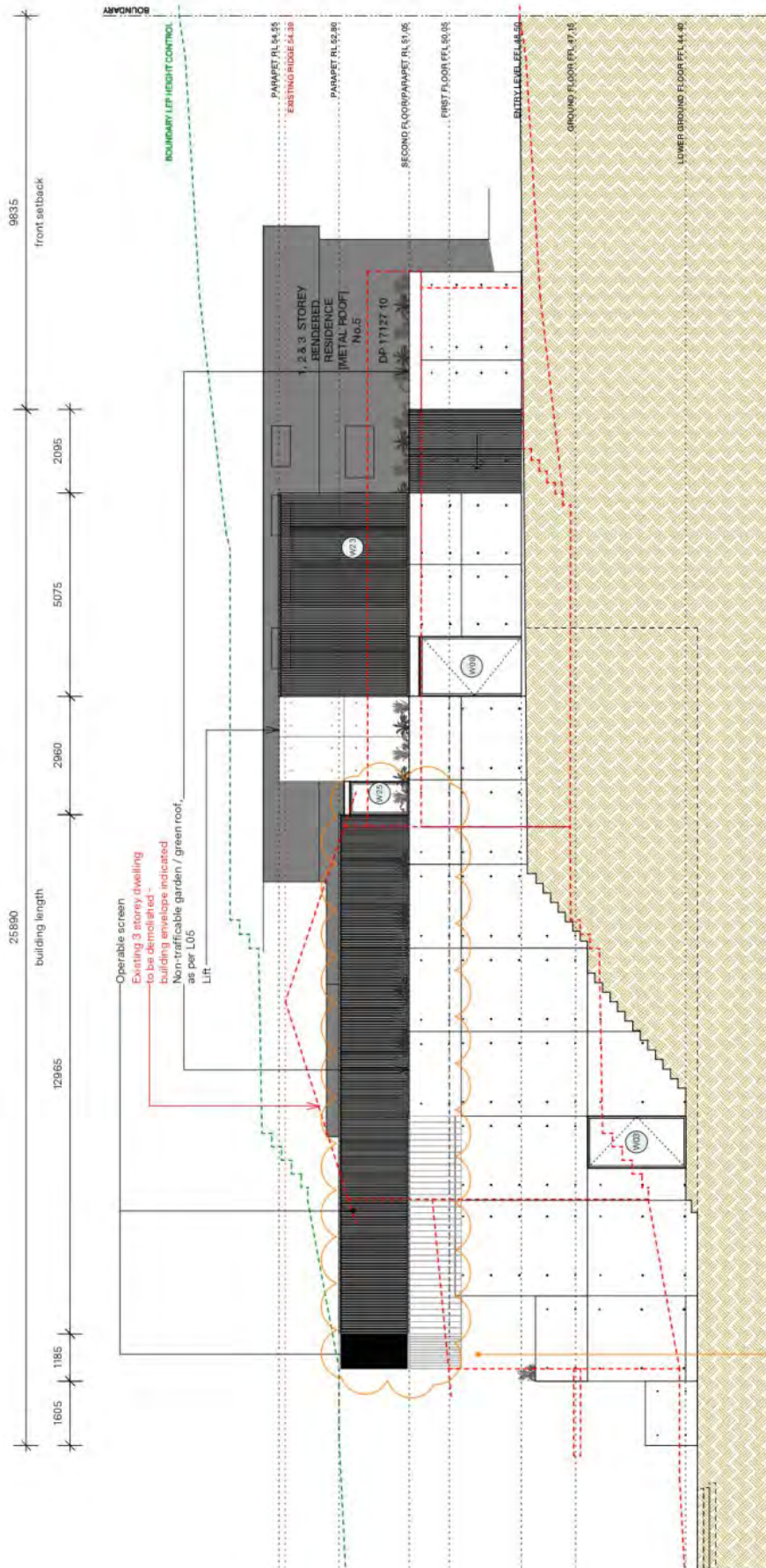
Revisions
A 13/05/19
No.09 Highview included in elevation. Additional detail to rear elevated garden terrace & existing ground line. Privacy screen to include W11, but lower reduction in width.

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1 North Elevation
1:100 @ A3

 Studio
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1 West Elevation
1:100 @ A3

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Revisions
A 13/05/19

Amended first floor
width, privacy screen to
be added to W11

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and relevant Australian Standards.


Abbreviations
VDS: Verify On Site
FPL: Finished Floor Level
FCL: Finished Ceiling Level
APFL: Above Floor Level
NA: Not Applicable
AFS: As Further Specified
EQ: Equal
C/L: Centreline
EXTG: Existing

17206
Collins I Quenscliff
Marguerite & Andrew Collins
7 Highview Avenue, Queenscliff

Drawing
Title West Elevation
Scale 1:100 @ A3
Drawn By JL
Date 14.11.2018

Development
Application
Not For Construction
02-11

Note: 13/05/19 Amendments shown in bold orange

 A

ITEM 3.7**DA2019/0083 - 29-33 PITTWATER ROAD, MANLY -
ALTERATIONS AND ADDITIONS TO AN EXISTING MIXED USE
DEVELOPMENT****REPORTING MANAGER****Matthew Edmonds****TRIM FILE REF****2019/363454****ATTACHMENTS**

- 1 Assessment Report**
- 2 Site Plan & Elevations**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/0083 for alterations and additions to an existing Mixed Use Development on land at Lot 1 DP 76807, 29-33 Pittwater Road, Manly, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0083
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 1 DP 76807, 29 - 33 Pittwater Road MANLY NSW 2095
Proposed Development:	Alterations and additions to an existing Mixed Use Development
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Jsalt Pty Ltd
Applicant:	Jsalt Pty Ltd
Application lodged:	04/02/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	08/02/2019 to 26/02/2019
Advertised:	Not Advertised
Submissions Received:	3
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,492,359.00

Northern Beaches Council is in receipt of Development Application DA2019/0083 for alterations and additions to an existing mixed use development at 29-33 Pittwater Road, Manly. The proposed development includes a cost of works of greater than \$1 million and has received three objections, requiring referral to the Development Determination Panel for determination.

The proposed development is compliant with the relevant development standards within Part 4 of the Manly Local Environmental Plan 2013. The proposed development is not compliant with the requirements of Clause 4.2.5.4 Car Parking and Access and Clause 4.4.4.1 Awnings in LEP B1 and B2 Business Zones of the MDCP 2013, though these non-compliances are acceptable on merit. The proposed development received three submissions relating to parking, gym operating hours, amenity, sustainability, colours and finishes, tree planting, and encroachment onto neighbouring land.

The application has been assessed against the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979), *Environmental Planning and Assessment Regulations 2000* (EP&A Regulations



2000), relevant Environmental Planning Instruments (EPIs) and Council policies. Based on a detailed assessment of the proposal against the applicable planning controls, the proposal is suitable and is an appropriate development for the subject site. Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be **approved**.

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 Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.2.5.4 Car Parking and Access
 Manly Development Control Plan - 4.4.4.1 Awnings in LEP B1 and B2 Business Zones

SITE DESCRIPTION

Property Description:	Lot 1 DP 76807 , 29 - 33 Pittwater Road MANLY NSW 2095
Detailed Site Description:	<p>The Assessing Officer inspected the site on 25 June 2019.</p> <p>The subject site consists of one (1) allotment located on the western side of Pittwater Road, Manly.</p> <p>The site is irregular in shape with frontages of 14.02m along Pittwater Road and 14.325m along Kangaroo Lane, and an average depth of 48.35m. The site has a surveyed area of 665.3m².</p> <p>The site is located within the B2 Local Centre zone and accommodates a three-storey commercial development,</p> <p>The site is relatively level and does not include any</p>



significant vegetation.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by mixed use developments, including some residential uses.

Map:



SITE HISTORY

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

- Pre-lodgement meeting PL42/2017 for alterations and additions to the existing building was held on 19 September 2017

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the following works:

- New entry from Pittwater Road;
- Construction of new shop with new shopfront window;
- New garbage storage area;
- Onsite detention system;
- Reconfiguration of existing stairs, including fire stairs;
- Construction of new stairs and lift;
- Recommission of existing lift;
- Widening of garage doors to Denison Street frontage;
- Façade refurbishment including reconfiguration of window openings and rationalisation of external pipework;

DA2019/0083

Page 3 of 27



- Reconfiguration of existing serviced apartments; and
- Addition of a fourth storey, comprising four commercial suites.

On 10 May 2019, the Applicant provided amended plans removing the proposed onsite detention system, in accordance with comments from Council's Development Engineer that onsite detention is not required. These plans were not notified publicly, in accordance with Clause 2.6 Notification of Amended Development Applications of the MDCP 2013 - the amended plans differed from the original plans in minor aspects only, and were of lesser environmental impact with the removal of the onsite detention plan.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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



Section 4.15 Matters for Consideration	Comments
	<p>consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</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 process council is in receipt of 3 submission/s from:

Name:	Address:
Mr Luke Malcolm Maxwell	38 Denison Street MANLY NSW 2095
Ms Keinwen Marion Shephard	34 Denison Street MANLY NSW 2095
Boston Blyth Fleming Pty Ltd	Suite 1 9 Narabang Way BELROSE NSW 2085

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

- Inadequate parking and construction may impact on existing on-street parking.
- Privacy and noise impacts, including on approved development DA2017/1229 at No. 27 Pittwater Road.
- Special conditions regarding operating hours of the gym should be considered.
- Concerns regarding sustainability. BASIX rules have not been applied, but the boarding house component of the development could be considered residential.
- Proposed colours and finishes are not in keeping with the streetscape.
- Concern regarding the cost of works accuracy.
- Trees should be planted as per the photomontage.
- The existing building encroaches onto the neighbouring property - Owners consent has not been provided for this. Fire safety measures may also encroach on neighbouring property.

The matters raised within the submissions are addressed as follows:

- **Parking**
Comment:
The proposed development is acceptable in relation to parking for the reasons detailed in the section of this report relating to Clause 4.2.5.4 Car Parking and Access of the MDCP 2013.
- **Amenity - Privacy / Overshadowing / View Sharing / Noise**
Comment:
The proposed development is assessed in relation to amenity impacts in the section of this report relating to Clause 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise) of the MDCP 2013. The proposed development is acceptable in relation to these matters.
- **Gym Operating Hours**
Comment:
The proposed development does not impact upon the approved operation of the gym. Any existing conditions of consent remain applicable.
- **Sustainability**
Comment:
The proposed development supported by a report providing an assessment of the energy efficiency of the proposed development in accordance with the requirements of Section J of the National Construction Code (formerly the Building Code of Australia). The report details that the proposed development is acceptable, subject to application of recommendations. This report has been applied as a consent document to be complied with. The proposed development and
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the energy efficiency have been reviewed by Council's Building Surveyor, who raised no objections in relation to this matter.

- Colours and Finishes

Comment:

The subject site is located on a section of Pittwater Road that is comprised of varying development types, styles, colours and finishes. The proposed colours and finishes are consistent with the streetscape and are acceptable in this context. The proposed development has been reviewed by Council's Heritage Advisor, who raised no objections to the proposal from a heritage perspective, considering the site is located within the Pittwater Road Conservation Area.

- Cost of Works

Comment:

The estimated cost of works of the proposed development is supported by a registered quantity surveyor's cost report, detailing how the estimate was achieved.

- Trees

Comment:

There is no requirement for the subject site to provide any landscaping or vegetation. The proposed development does not impact upon the existing street trees along Denison Street adjacent to the subject site.

- Encroachment on Neighbouring Land

Comment:

No works are proposed on adjoining land. The proposed wall encroachment is on airspace only and does not include built structures on neighbouring land. Notwithstanding this, conditions of consent have been applied to require that the southern wall of the subject site be rectified to be located wholly on the subject site and certified as structurally sound, and to require all works (including those in relation to fire safety measures) to be wholly within the property boundary.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Code of Australia (BCA) and the Fire and Disability Department. There are no objections to approval of the development subject to the conditions of approval and consideration of the notes below.</p> <p><i>Note: The proposed development may not comply with some requirements of the BCA and the Fire and Disability Department. Issues such as this however may be determined at Construction Certificate Stage.</i></p>



Internal Referral Body	Comments
	<p>Change of Use/Fire Safety Upgrade</p> <p>The existing levels of fire safety within the premises are to be upgraded to achieve an ad in accordance with the provisions of clause 94 of the Environmental Planning and Asses:</p> <p>The fire safety upgrading works are to be included in the Construction Certificate and be occupation of the new building or part.</p> <p>Reason: To ensure adequate provision is made for fire safety in the premises for building</p>
NECC (Bushland and Biodiversity)	<p>The proposed development adjoins a vegetation Council reserve. Measures for the prote therefore be in place during the construction phase.</p>
NECC (Development Engineering)	<p><u>Original Development Engineering Referral Comments:</u></p> <p>The subjected site is classified as a low and medium flood risk in accordance with Council Flood study 2018."</p> <p>No on site stormwater detention system is required when the property is affected by flood. The collected on site stormwater shall be discharged into the street kerb.</p> <p>The application must be referred to Council's Floodplain Planning & Response team for a the flood issue.</p> <p>Secondly, the proposed awnings along Pittwater Road and Denison Street do not comply Development Control Plan 2013.</p> <p>The designs must be amended in accordance with the section 4.4.4 of Manly DCP 2013. As a signage 'Blade' are proposed in this development, a referral should be sent to Coun comment.</p> <p>Development Engineer cannot provide conditions in this application at the moment. Please re-referred the application to Development Engineer when the above issues are r</p> <p><u>Assessing Officer's Comment:</u></p> <p>In response to the issues above:</p> <ul style="list-style-type: none"> On 10 May 2019, the Applicant provided amended plans deleting the proposed o The proposal was referred to Council's Stormwater & Floodplain Engineering team objections to the proposal, subject to conditions of consent. The proposed signage and awnings are assessed by the Assessing Officer and d from Council's Urban Designer. <p>The above matters were clarified with Council's Development Engineer, who commented follows.</p> <p><u>Amended Development Engineering Referral Comments:</u></p> <p>Development Engineering has no objection to the application subject to the following con</p>



Internal Referral Body	Comments
NECC (Stormwater and Floodplain Engineering – Flood risk)	
Strategic and Place Planning (Heritage Officer)	The submitted documents indicate that the proposed works will not be visible from the public domain. The proposal is supported.
Traffic Engineer	<p>The proposal increases the commercial floor area by some 280 square metres resulting in a total floor area of 1114 square metres. In addition the serviced apartment component of this development will remain.</p> <p>Loading Facilities The commercial and serviced apartment components will both generate a demand for loading facilities. It is considered essential that an offstreet loading bay capable of accommodating at least some vehicles be provided. The applicant has worked with Council to achieve this aim. It is noted that the floor height of the bay and as such that it is not feasible to achieve the 3.5m clearance height to allow access by small rigid vehicles</p> <p>Parking There is a high demand for on-street parking around the development site and it is therefore essential that the development meets the DCP parking requirements. After applying the 50% reduction out of (b) of the Manly DCP a parking requirement for the site of 10 spaces is evident. The proposal provides 10 spaces including 1 disabled space and 1 loading space is considered acceptable. While the spaces utilise a car stacker, which is not generally favoured, the use is considered acceptable given the constrained nature of the site.</p>
Waste Officer	Commercial building not serviced by Council Waste Management services.

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 commercial 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 commercial land use.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

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:	15m	12.8m	N/A	Yes
Floor Space Ratio	2.5:1 (1,663.25sqm)	2.49:1 (1654.8sqm)	N/A	Yes
Gross floor area in Zone B2	Min. 25% GFA for commercial purposes Max. 1,000sqm retail GFA	67.67% (1,119.9sqm) No retail GFA	N/A N/A	Yes Yes



Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes
6.15 Tourist and visitor accommodation	Yes
6.16 Gross floor area in Zone B2	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 665.3sqm	Requirement	Proposed	% Variation*	Complies
4.2.1 FSR (Consideration of Exceptions including Arcades)	2.5:1 (1,663.25sqm)	2.49:1 (1654.8sqm)	N/A	Yes
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	15m	12.8m	N/A	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Nil	Nil	N/A	Yes
4.2.5.4 Car Parking and Access Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles	1 space per 40sqm commercial GFA (8 spaces required for new works, up to 50% of which to be provided on site, with contribution applicable in lieu of remaining 50%)	3 spaces	25%	No
4.4.3 Signage (Projecting Wall Sign)	Max. 2 signs per frontage	1 sign on northern frontage	N/A	Yes
	Max. 800mm projection from wall	600mm projection	N/A	Yes
	Must not exceed wall height	Below wall height	N/A	Yes
	Min. 2.6m above ground	3.6m above	N/A	Yes

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		ground		
	Not less than 600mm from kerb	600mm from kerb	N/A	Yes
	Max area 10.8sqm	8sqm	N/A	Yes
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	Min. 3.5m above ground	Eastern awning: Min. 3.2m above ground Northern awning: Min. 2.4m above ground	8.5-34.2%	No
	Not less than 600mm from kerb	600mm from kerb	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
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	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
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
4.2.1 FSR (Consideration of Exceptions including Arcades)	Yes	Yes
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	Yes	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	Yes	Yes
4.2.5.4 Car Parking and Access	Yes	Yes
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	No	Yes
5 Special Character Areas and Sites	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

The proposed development is assessed as compliant with the requirements of Clause 3.4.1 Sunlight Access and Overshadowing. However, a submission has been received objecting to the impact of the proposed development on the approved development to the south at No. 27 Pittwater Road, Manly in relation to overshadowing. It is important to note that at the time of writing this report, the consent is not yet operational. A full overshadowing assessment is not able to be completed at the site, as the development is yet to be constructed. The proposed development is acceptable in relation to the relevant objectives of this clause, as follows:

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

Comment:

No. 27 Pittwater Road to the south of the subject site is currently developed with a part one- and part two-storey detached dwelling house. The proposed development results in negligible additional overshadowing to No. 27 Pittwater Road, with all additional shadowing falling to the roof of the existing building. No. 27 Pittwater Road benefits from Development Consent No. DA2017/1229, which includes a five-storey residential flat building on the western portion of the lot. In consideration of the approved development at No 27 Pittwater Road, the existing development on the subject site was assessed as acceptable and in accordance with this clause under DA2017/1229. The proposed development is likely to result in a minor increase to this impact, but not to an unacceptable level, as the increase in overall building height is not significant. Additional overshadowing is experienced at Nos. 25 and 19 Pittwater Road throughout the day, though this is a minor increase. In this way, the proposal retains equitable access to light and sunshine for nearby sites to the south in their existing forms, and in consideration of the potential future state of No. 27 Pittwater Road.

Objective 2) To allow adequate sunlight to penetrate:

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

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and the adjoining properties.

Comment:

The proposed development does not result in additional overshadowing impact to the private open spaces and windows at No. 27 Pittwater Road in its current state, as all additional overshadowing falls to the existing roof of the existing building. In consideration of the approved development at No. 27 Pittwater Road, the proposed development is likely to result in a minor increase to overshadowing of windows and private open spaces, but not to an unacceptable level, as the increase in overall building height is not significant. The proposed development will result in minor additional overshadowing to the private open space of No. 25 Pittwater Road during the middle of the day, but will not increase overshadowing to windows on that property. The proposed development will result in minor overshadowing to the windows of the existing property at No. 19 Pittwater Road. No private open space exists at No. 19 Pittwater Road.

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

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

Comment:

The proposed new third floor addition is adequately sited and designed so as to minimise overshadowing impact on the properties to the south, while retaining adequate privacy for properties to the north. The addition is sited to minimise overlooking to the north and to ensure the addition is not visible from the streetscape, so to increase the southern setback and shift the addition to the north would result in a less desirable outcome.

3.4.2 Privacy and Security

The proposed development is assessed as compliant with the requirements of Clause 3.4.2 Privacy and Security. However, a submission has been received objecting to the impact of the proposed development on the approved development to the south at No. 27 Pittwater Road, Manly in relation to visual privacy. Another submission raised objection in relation to visual privacy to properties across Denison Street and in relation to noise from operation of the site. The proposed development is acceptable in relation to the relevant objectives of this clause, as follows:

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

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

Comment:

The proposed development includes changes to windows on the northern and southern elevations. These changes are effectively refurbishments of existing windows, so do not significantly increase overlooking from the subject site to adjacent sites, nor in consideration of the approved development at No. 27 Pittwater Road. The windows to the proposed third floor addition are acceptable in that they are designed and sited with the roof parapet to mitigate overlooking of nearby properties.

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



Comment:

As above, the proposed development does not present an unreasonable impact on privacy for adjacent or nearby sites. As such, the proposed development provides adequate privacy, while allowing for suitable access to light and air and outlook for the subject site.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development includes windows to the street elevations, thereby encouraging neighbourhood security via passive surveillance.

3.4.3 Maintenance of Views

The proposed development is assessed as compliant with the requirements of Clause 3.4.3 Maintenance of Views. However, a submission has been received objecting to the impact of the proposed development on the approved development to the south at No. 27 Pittwater Road, Manly in relation to view sharing. No. 27 Pittwater Road is currently developed with a part one- and part two-storey detached dwelling house. No significant views are currently available from this property. No. 27 Pittwater Road benefits from Development Consent No. DA2017/1229, which includes a five-storey residential flat building on the western portion of the lot. It is important to note that at the time of writing this report, the consent is not yet operational. A full view loss assessment is not able to be completed, as the development is yet to be constructed and views are in concept only at this stage. The proposed development will not impact upon views to the ground, first, second and third floors of the approved development, as the existing development on the subject site already obstructs any potential views. The proposed development is assessed in relation to the relevant objectives of this clause, in regards to the fourth and fifth floors only, as follows:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Comment:

In consideration of the approved development at No. 27 Pittwater Road, the proposed development is acceptable in relation to view sharing. It is likely that the approved development will gain views to the north-east, east and south-east. The proposed third floor addition will likely impact upon views that may be gained from the fourth floor of the approved development to the north and north-east, but not to the east, in the direction of the beach and ocean. This is reasonable in that the proposed development is compliant with the maximum height of building, and the most significant aspect of view is retained. The proposed development will not impact upon views to the fifth floor of the approved development, as views will be gained over the top of the proposed development. This demonstrates acceptable view sharing for the approved development to the south.

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).

Comment:

The proposed development will predominantly retain views to the beach and ocean for the fourth floor, and wholly retain these views to the fifth floor.

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 development is acceptable in relation to view sharing, and does not result in view creep.

4.2.5.4 Car Parking and Access



Clause 4.2.5.4 of the MDCP 2013 provides that no more than 50 percent of the required car parking spaces is permitted to be provided onsite, with the remainder being provided by way of monetary contribution in accordance with the former Manly Council's Section 94 Contributions Plan.

The subject site currently includes eight parking spaces, with three spaces paid for by way of contribution, totalling 11 spaces accounted for for the existing scenario. The proposed development includes 286.3sqm of additional commercial floor space, triggering a requirement for an additional eight parking spaces. In accordance with this clause, no more than four spaces (being 50 percent of eight required) are to be provided on site. Three additional spaces are proposed via this development application. As such, the shortfall of five spaces (to account for the total of eight spaces required) is to be provided by way of monetary contribution in accordance with the former Manly Council's Section 94 Contributions Plan.

A condition of consent has been applied accordingly.

4.4.4.1 Awnings in LEP B1 and B2 Business Zones

Clause 4.4.4.1 of the MDCP provides that awnings are to be a minimum of 3.5m above street level. The proposed development includes an awning 3.2m above the ground along the Pittwater Road frontage, extending around the corner into Denison Street, and a separate awning along Denison Street at 2.4m above ground. Clause 4.4.4.1 does not have corresponding objectives under which a merit assessment may be conducted. Instead, an assessment is carried out in regards to the requirements of the clause, as follows:

In particular, awnings may be permitted where:

- a) development abuts pedestrian ways;*
- b) aligned with adjoining awnings in height and width;*
- c) it can be demonstrated the specific need for protection of goods or from weather and sun;*
- d) through site links are not obscured; and where*
- e) lighting under the awnings is provided for pedestrian safety and security.*

Comment:

The proposed awnings are located above pedestrian pathways and pedestrian entries to the proposed building. The awning height non-compliance arises due to the window dimensions and levels of the floor above. The awnings are each at or above the minimum height required of a habitable room according to the National Construction Code, thus providing sufficient headroom. The adjoining site to the south does not currently include an awning along the street frontage, and will not in its completed state after construction of approved works under DA2017/1229. As such, the proposed awning has no adjacent awning to align with. Being 1.8m and 1.2m wide respectively, the proposed awnings along the Pittwater Road and Denison Street frontages provide shelter from weather for pedestrians accessing the site. No through site links exists on site. No additional lighting under the awnings is proposed. However, the subject site is located on a main road, which is sufficiently lit for safety and security.

In accordance with the above, the proposed awnings are acceptable on merit.

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

The proposed development includes 286.3sqm of additional commercial floor space, triggering a requirement for monetary contribution for the increase on demand for public services.

The additional commercial floor space also triggers the requirement for an additional eight parking spaces. In accordance with Clause 4.2.5.4 of the MDCP 2013, no more than four spaces (being 50 percent of eight required) are to be provided on site. Three additional spaces are proposed via this development application. As such, the shortfall of five spaces (to account for the total of eight spaces required) is to be provided by way of monetary contribution.

Conditions of consent have been applied accordingly.

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

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;
- Manly Local Environment Plan 2013;
- Manly Development Control Plan 2013; 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. The proposed development is compliant with the relevant development standards within Part 4 of the Manly Local Environmental Plan 2013. The proposed development is not compliant with the requirements of Clause 4.2.5.4 Car Parking and Access and Clause 4.4.4.1 Awnings in LEP B1 and B2 Business Zones of the MDCP 2013, though these non-compliances are acceptable on merit. In this regard the application is considered to be acceptable and is recommended for approval.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2019/0083 for Alterations and additions to an existing Mixed Use Development on land at Lot 1 DP 76807, 29 - 33 Pittwater Road, 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
PR-SA1 Site Analysis Construction + Erosion	May 2019	Alastair Robb
PR-01 Floor Plans (1)	May 2019	Alastair Robb
PR-02 Floor Plans (2) + South Elevation	May 2019	Alastair Robb
PR-03 Elevations	May 2019	Alastair Robb
PR-04 Roof Plan & Finishes	May 2019	Alastair Robb
PR-05 Cross Section	May 2019	Alastair Robb

Engineering Plans		
Drawing No.	Dated	Prepared By
D01 Stormwater Management Drainage Plan - Sheet 1	4 June 2018	NB Consulting Engineers
D02 Stormwater Management Drainage Plan - Sheet 2	4 June 2018	NB Consulting Engineers
D03 Stormwater Management Drainage Plan - Sheet 3	4 June 2018	NB Consulting Engineers
D04 Sections & Details - Sheet 1	4 June 2018	NB Consulting Engineers

Reports / Documentation – All recommendations and requirements contained

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within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Traffic and Parking Assessment	25 June 2018	Ray Dowsett Traffic and Transport Planning Pty Ltd
Plan of Management (Serviced Accommodation)	August 2018	Applicant
Statement of Heritage Impact	August 2018	Hector Abrahams Architects
Fire Safety Statement	11 April 2018	Applicant
Part J BCA Report	Undated	Frys Energy Wise

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
Waste Management Plan	1 February 2019	Vaughan Milligan

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. **Construction Traffic Management Plan**

Given the site constraints and limitation on vehicular access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person outlining procedures and systems to be in place and practised during the course of the project to manage construction vehicle impacts and ensure safety and minimise the effect of construction on pedestrians and vehicular traffic in the surrounding area. These procedures and systems must be in accordance with AS 1742 - Manual of Uniform Traffic Control Devices and RMS Manual Traffic Control at Work Sites. The CTMP is to be submitted for assessment and approval by Council with the relevant fee's as outlined in Council's Schedule of Fee's and Charges to be paid at the time the plan is submitted.

Reason: To ensure pedestrian and vehicular safety and efficient operation of the road network.

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.

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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.

6. Development Contribution - Commercial

A contribution is to be paid for the provision, extension or augmentation of traffic and parking, environmental programs, streetscape and landscaping, community facilities and administration that will, or are likely to be, required as a consequence of development in the area. Total contribution for this development for alterations and additions to an existing Mixed Use Development shall be in accordance with the contribution charges as at the date of the payment. The charges may vary at the time of payment in accordance with Council's Contributions plan to effect changes in land values, construction costs and the Consumer Price Index. This contribution shall be paid to Council prior to the release of the Construction Certificate and the amount payable shall be in accordance with Council's Contributions Plan effective July 2009 as follows;

The calculations for DA2019/0083 are as follows:

\$28,036.34 per 100m² GFA in Manly CBD precinct

Additional Floor Area = 286.3m²

$\$28,036.34 \times 2.863$
= \$80,268.04

Total Contribution applicable = \$80,268.04

Note: Contribution fees are adjusted on the 1st July each year and are based on the March CPI figures.

Reason: To enable the provision of public amenities and services required/anticipated as a consequence of increased demand resulting from the development.

7. Development Contribution - Car Parking

Payment of contribution in lieu of five car parking spaces which cannot be provided on a site within Zone B2 Local Centre under the Manly Local Environmental Plan 2013, shall be made in accordance with the provisions of Council's Contributions Plan 2004, pursuant to Section 7.11 of the Environmental Planning and Assessment Act 1979. The current amount of contribution for each parking space not provided on site is \$37,392.78 per space. The charges may vary at the time of payment in accordance with Council's Contributions plan to effect changes in land values, construction costs and the Consumer Price Index.

Total contribution for this development of alterations and additions to an existing Mixed Use Development at 29-31 Pittwater Road, Manly is \$186,963.90. The amount of the payment shall be in accordance with the Contribution charges as at the date of the payment and must be paid prior to issue of the Construction Certificate.

The calculations for DA2019/0083 are as follows: $5 \times \$37,392.78 = \$186,963.90$

Reason: To enable the provision of public amenities and services required/anticipated as a



consequence of increased demand resulting from the development.

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

8. 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.

9. Vehicle Crossings Application

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

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

Reason: To facilitate suitable vehicular access to private property.

10. Flooding

In order to protect property and occupants from flood risk the following is required:

Building Components and Structural Soundness – C1

All new development shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

Building Components and Structural Soundness – C2

All new development must be designed and constructed to ensure structural integrity up to the Flood Planning Level of 6.13m AHD, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion. Structural certification shall be provided confirming the above.

Building Components and Structural Soundness – C3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 6.13m AHD. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed cut electricity supply during flood events.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-



prone property and reduce public and private losses in accordance with Council and NSW Government policy.

11. **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.

12. **Rectification and Certification of Southern Wall**

The existing southern wall is to be rectified to be wholly within the subject site's property boundaries. Certification by a suitably qualified structural engineer that the existing southern wall is structurally sound is required. Details demonstrating compliance with this condition are to be provided to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure development is wholly contained within the relevant property boundaries.

13. **No Boundary Encroachment**

No portion of the proposed building or works, as approved within the subject site, are to encroach upon any other land. Details demonstrating compliance with this condition are to be provided to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure structures are contained within the site.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. **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.

16. **Vehicle Crossings**

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The provision of two vehicle crossings 9.7 metres wide and 5 metres 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.

17. **Pre-clearance Survey Required – Bandicoot Habitat**

A pre-clearance survey for wildlife presence is required prior to the removal of any vegetation, material or debris stockpiles. Clearing may only proceed if the survey concludes that wildlife are present within the area to be cleared. 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 wildlife which may be utilising stockpiles of vegetation, materials or debris.

18. **Protection of Road Reserve**

The applicant shall be responsible for ensuring that the road reserve remains in a serviceable state throughout the course of the project.

Reason: To ensure safety and useability of the road and footpath.

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

19. **Stormwater Disposal**

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

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

20. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

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

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and
DA2019/0083



Assessment Regulation 2000.

21. **Vehicular Access and Parking**

All driveways, vehicle turning areas, garages and vehicle parking space/ loading bay dimensions must be designed and constructed to comply with the relevant section of AS 2890 (Offstreet Parking standards).

Reason: Compliance with standards.

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

22. **Dead or Injured Wildlife – Manly LEP Clause 6.5**

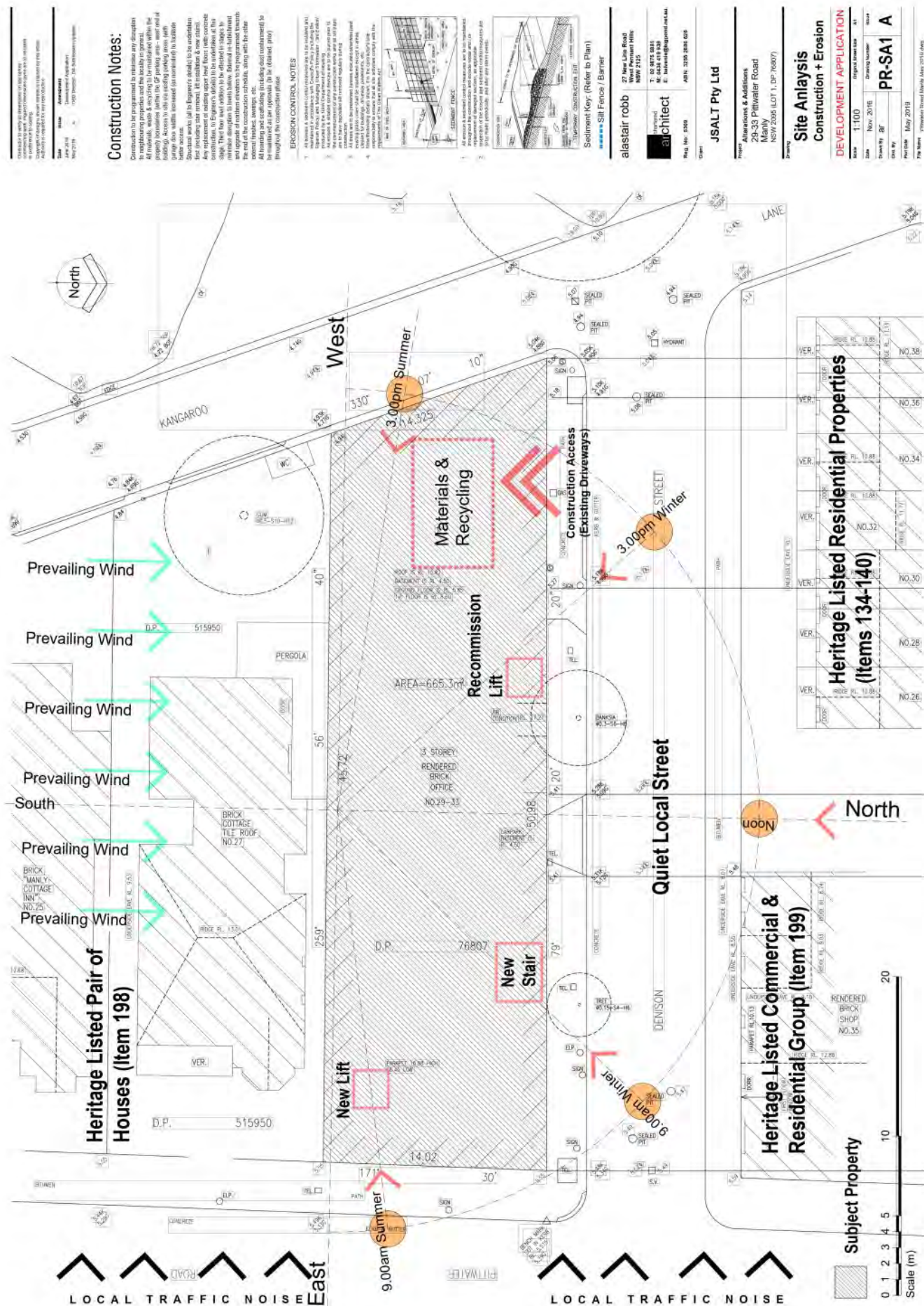
If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity

23. **Allocation of Stacked Parking Spaces**

Each stacked parking space pair be allocated to the same tenancy.

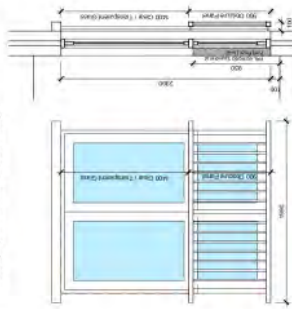
Reason: Effective operation of parking spaces.



DATE	REVISION	DESCRIPTION
April 2015	A	Final version submitted and approved by Council
April 2015	B	Final version submitted and approved by Council
May 2015	C	Final version submitted and approved by Council
May 2015	D	Final version submitted and approved by Council

Materials & Finishes:

Existing building fabric to be retained where possible, redressed where required, with elements removed and replaced (to match existing) where appropriate.
The new face brick and rendered treatment to the northern elevation is proposed to improve and 'tidy' the appearance in relation to the heritage properties opposite, while presenting a more sympathetic scale to the building.



Window Detail (1:25)

Proposed window treatment to present the appearance of a four balcony, but the lower portion of the glazing assembly is to be fixed, obscure / opaque with only the upper portion operable and clear / transparent (with a transom set behind the external railing). At first floor level, the lower portion of glazing shall have an internal splender to achieve an FRL of 120 minutes, to 300mm high. The window detail at second floor level to include an external shading device to bedroom windows. This element is intended to provide articulation to the facade as well as order and rhythm.

alastair robb architect	27 King Lane Road West Pennant Hills NSW 2125 T: 02 9275 8841 M: 0411 123 456 E: alastair@alastairrobb.com.au
Reg No: 5490	ABN: 3208 2806 626
JSALT Pty Ltd	29-33 Pittwater Road Manly NSW 2095 LOT 1, DP 760071

Elevations

DEVELOPMENT APPLICATION	
Scale: 1:100	Original Date: 01/04/15
Date: Nov 2016	Revised Date: 01/04/15
Drawn by: JR	Project: PR-03 B
Drawn by: JR	Project: PR-03 B
Project: PR-03 B	Project: PR-03 B
Project: PR-03 B	Project: PR-03 B

Windows Approved in 1993



Fenestration Calculation:

Existing & Approved (1993) window areas, at 1st & 2nd Floor Levels = 54.25m²
Proposed, clear / transparent window areas, at 1st & 2nd Floor Levels (excluding obscure / opaque lower panels) = 46.4m²
Therefore, a reduction in 7.85m²

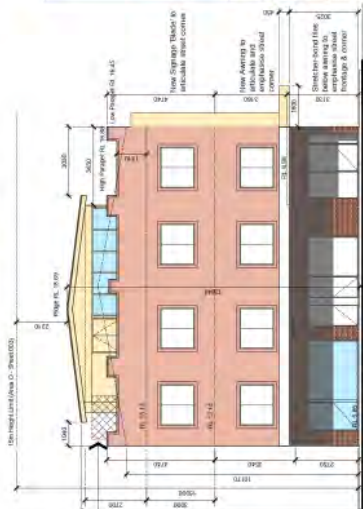
North Elevation (Existing, with previously approved, but not installed, window locations shown)

New / Revised Works

New & Altered Windows (Becker / Deemed Windows shown coded)



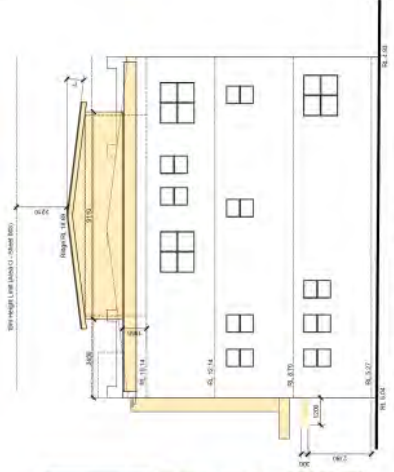
North Elevation (Proposed)



East Elevation (Front / Pittwater Road)



North East Corner (Google Street View)



West Elevation (Kangaroo Lane)