



northern
beaches
council

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL MEETING

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

WEDNESDAY 24 JULY 2019

Beginning at 1.00pm for the purpose of considering and determining matters included in this agenda.

Peter Robinson
Executive Manager Development Assessment

Panel Members

Lesley Finn	Chair
Graham Brown	Town Planner
Peter Cotton	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

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

**Agenda for a Meeting of the Northern Beaches Local Planning Panel
to be held on Wednesday 24 July 2019
in the Council Chambers, Civic Centre, Dee Why
Commencing at 1.00pm**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Northern Beaches Local Planning Panel held 17 July 2019	
3.0	DEVELOPMENT APPLICATIONS	5
3.1	DA2019/0524 - 28 Lewis Street, Dee Why - Alterations and additions to a dwelling house including a spa pool	5
3.2	DA2019/0124 - 4 Augusta Road, Manly - Alterations and additions to the existing multi dwelling housing	35

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 17 JULY 2019

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 17 July 2019 were adopted by the Chairperson and have been posted on Council's website.

3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1	DA2019/0524 - 28 LEWIS STREET, DEE WHY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SPA POOL
AUTHORISING MANAGER	STEVE FINDLAY
TRIM FILE REF	2019/398458
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the applicant/land owner is a relative of the Mayor of Northern Beaches Council.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2019/0524 for Alterations and additions to a dwelling house including a spa pool on land at Lot 1 DP 861565, 28 Lewis Street, Dee Why subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0524
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Responsible Officer:	Geoff Goodyer (Planning Consultant)
Land to be developed (Address):	Lot 1 DP 861565, 28 Lewis Street DEE WHY NSW 2099
Proposed Development:	Alterations and additions to a dwelling house including a spa pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Bronwen Heather Regan
Applicant:	BBF Town Planners

Application lodged:	24/05/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	15/06/2019 to 19/06/2019 and 27/06/2019 to 11/07/2019
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 400,000.00
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Executive Summary

This report contains a detailed assessment of Development Application DA2019/0524 for alterations and additions to the existing dwelling at 28 Lewis Street, Dee Why. The assessment has been undertaken by independent Planning Consultant, Geoff Goodyer of Symons Goodyer.

The Development Application is being referred to the Northern Beaches Local Planning Panel as the Local Planning Panels Direction under S9.1 of the Environmental Planning and Assessment Act, 1979 requires it due to a relative of the land owner being the Mayor of Northern Beaches Council.

The application involves the ground floor of the existing dwelling house is to remain but reconfigured with internal changes, with a new first floor addition including balcony elements, a stand alone swim spa

and a new roof form. External works include a carport, associated hardstand area and new vehicle access and crossing from Lewis Street.

The application has been assessed against the planning controls of the Warringah Local Environment Plan 2011 and the Warringah Development Control Plan 2011, and whilst there are some minor variations to the built form as a result of the proposal, the Planning Consultants independent assessment report has found these variations to be generally consistent with the relevant requirements, subject to imposed conditions.

The proposed development was notified twice, each being for a period of 14 days. During these notification periods no submissions were received.

The independent Planning Consultant recommends that consent be granted to this application in accordance with recommended conditions.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D2 Private Open Space
 Warringah Development Control Plan - D3 Noise
 Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 1 DP 861565 , 28 Lewis Street DEE WHY NSW 2099
Detailed Site Description:	The site is located on the northern side of Lewis Street, 180 metres to the west of its intersection with Hogarth Avenue.

The site is rectangular in shape, with a southern frontage to Lewis Street of 13.74 metres, eastern and western side boundaries of 26.33 metres, and a northern rear boundary of 13.74 metres. The site area is 361.7m².

The lot is the front lot in a previous battle-axe subdivision, with a driveway running the length of the western boundary serving the lot at the rear. The site is burdened by a right of carriageway, an easement for drainage purposes and an easement to drain water.

The easements provide a shared driveway on the western side of the property, with access to the rear of the site and to the neighbouring site to the north (28A Lewis Street). The easement also provides for drainage from 28A Lewis Street.

The site is zoned R2 Low Density Residential and currently contains a single-storey dwelling house with a spa pool and shed in the rear yard.

The surrounding area has been developed for a variety of residential housing types including townhouses and dwelling houses in landscaped settings.

Map:



SITE HISTORY

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

- Development Application No. 994/0223 for the subdivision of 28 Lewis Street and approval for a dual occupancy was approved by Warringah Council on 23 July 1996.

- The subdivision of Numbers 28 and 28a Lewis Street was registered with the NSW Land Registry Services on the 8 August 1996.
- A Pre-lodgement Meeting (PLM2018/1442) was undertaken for the proposed development on 5 April 2018. The conclusion of the Council staff in the Pre-lodgement Advice was as follows:

"The proposal in its current form is not supported. The main concern is the proposed roof level structures, including the pool, decking and stairs.

These elements result in a built form that is unsatisfactory for the following reasons:

- *Excessive visual bulk*
- *Excessive height*
- *Potential loss of privacy for adjoining properties*
- *Out of character with development in the street.*

Additionally, the proposal is unacceptable in terms of:

- Car parking - intensification requires an additional car space (2 spaces overall)*
- Landscaping - additional landscaped area required to provide screening and softening of*
- Side Boundary Envelope - level of breach is excessive and should be reduced.*

Therefore, you are advised to thoroughly review these notes and consider pursuing other options. Fundamentally the site is small and limited in its ability to accommodate substantial additions. A more modest and conservative approach is required to find a more suitable and appropriate form and scale of development. Accordingly, you are advised not to lodge a Development Application based on the current scheme."

- Development Application No. DA2018/1442 for Alterations and Additions to a Dwelling-house and a Swimming Pool was lodged on the 31 August 2018. The Development Application was refused by the Northern Beaches Local Planning Panel on 20 February 2019. The Reasons for Refusal of the application are detailed in the Local Planning Panel minutes dated 20 February 2019. The minutes are as follows:

"The Panel has formed the view that alterations and additions to the current dwelling house may be possible. However, the current level of proposed alterations and additions are excessive given the site area of 361.7m² and the relevant matters contained within the development controls. The Panel was of the view that amendments were not possible through conditions of consent to address the concerns raised in the assessment report. Consideration could be given to a further application which is of a lower scale to better suit the context of the subject site area."

The Reasons for Refusal as shown within the Notice of Determination dated 26/03/2019 are as follows:

- *Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.*
- *Pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B1 Wall Height of the Warringah Development Control Plan 2011.*
- *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B3 Side Boundary Envelope of the Warringah Development Control Plan 2011.*

- Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B7 Front Boundary Setbacks of the Warringah Development Control Plan 2011.
- Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C3 Car Parking of the Warringah Development Control Plan 2011.
- Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D1 Landscaped area of the Warringah Development Control Plan 2011.
- Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D2 Private Open Space of the Warringah Development Control Plan 2011.
- Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D8 Privacy of the Warringah Development Control Plan 2011.
- Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan 2011.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to carry out alterations and additions to the existing dwelling house.

The following works are proposed:

- **Ground Floor Level** - internal alterations will be carried out on the bathroom and laundry and new stairs provided to the first floor. An external door and stairs will provide access from the laundry to the eastern side external pathway. Changes to windows are also proposed.
- **First Floor Level** - New first floor level containing a bedroom with ensuite, a powder room, a media room and an entertaining room with adjacent terrace and stand alone spa pool.
- **New Carport and Driveway Crossing** - A single carport with a green roof is proposed at the front of the site with access from Lewis Street.
- **Rain Water Tank** - A new rain water tank is proposed in the rear yard.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any	See discussion on “Environmental Planning
Section 4.15 Matters for Consideration'	Comments
environmental planning instrument	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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
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>

Section 4.15 Matters for Consideration'	Comments
	(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 from the 15/06/2019 to the 19/06/2019 and from the 27/06/2019 to the 11/07/2019.

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

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	There are no objections to the proposed development, subject to imposed 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 number A325614_03 dated 13 June 2019 has been submitted for the alterations and additions to the dwelling and construction of the pool and/or spa. The certificate demonstrates compliance with the state government's requirements for sustainability.

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	8.4m	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
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Zone R2 Low Density Residential

The development is considered to be consistent with the relevant objectives of the R2 Low Density Residential zone for the following reasons:

- The proposal continues to provide for the housing needs of the community.
- Subject to the retention of the front setback as a landscaped area, the proposal maintains the landscaped setting of the dwelling house.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	6.43m	-	Yes
B2 Number of storeys	2 storeys	2 storeys	-	Yes
B3 Side Boundary Envelope	4m + 45°	East – maximum 660mm outside envelope	10.6%	No
	4m + 45°	West - within envelope	-	Yes
B5 Side Boundary Setbacks	0.9m	East - 1.58m	-	Yes
	0.9m	West - 2.66m	-	Yes
B7 Front Boundary Setbacks	6.5m	Dwelling house – 6.19m Carport – 0.2m	4.8% 96.9%	No No
B9 Rear Boundary Setbacks	6.0m	6.3m	-	Yes
C3 Parking Facilities	2 spaces	2 spaces	-	Yes

D1 Landscaped Open Space (LOS) and Bushland Setting	40% (144.7sqm)	9.3% (34.2sqm)	76.4%	No
D2 Private Open Space	60sqm	Nil	100%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	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	No	Yes
D2 Private Open Space	No	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

Detailed Assessment

The proposal complies with the side boundary envelope control on the western elevation, however it breaches the control on its eastern elevation. The proposal exceeds the envelope control on the eastern elevation by 0.66m for a length of 8.0m.

The extent of the breach is shown in the following diagram, highlighted in orange:

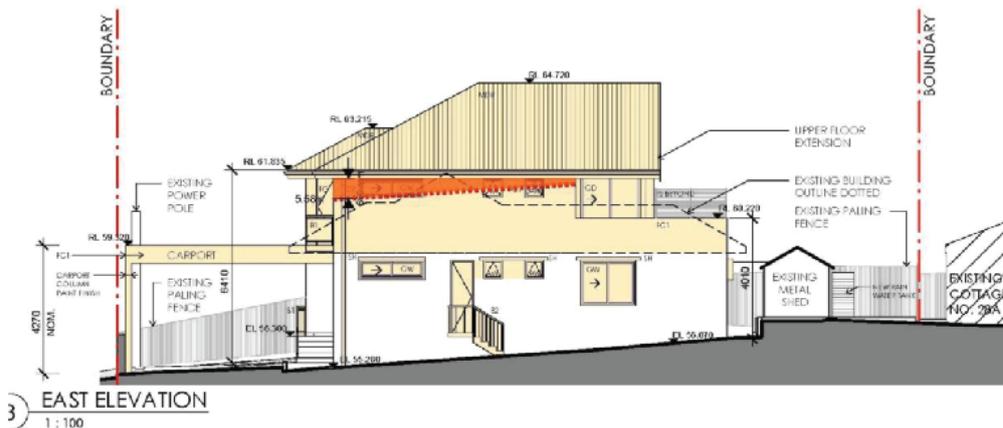


Figure 1: Extent of Envelope Breach on the Eastern Elevation

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

- To ensure that development does not become visually dominant by virtue of its height and bulk.

Comment:

The dwelling house is a relatively small building, reflecting the small size of the allotment. The building complies with the building height control under Clause 4.3 of WLEP 2011. The eastern façade is broken up by the rear terrace and appropriate fenestration to ensure the proposal is not visually dominant. The development is not considered to create unreasonable building bulk or amenity impact to the adjoining eastern property or be detrimental to the Lewis Street streetscape.

- To ensure adequate light, solar access and privacy by providing spatial separation between buildings.

Comment:

The orientation of the site is such that shadows generally fall towards the street front and the proposal satisfies the requirements of Part D6 Access to Sunlight of the WDCP 2011 with regards to solar access. The side boundary setback exceeds the requirements of Part B5 Side Boundary Setbacks of the WDCP 2011 and provides adequate spatial separation between buildings. The proposal maintains reasonable levels of privacy.

- To ensure that development responds to the topography of the site.

Comment:

The site is relatively level, with a gentle slope down to the street. Floor levels are established by

the existing building and respond in a reasonable manner to the topography of the land.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of 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.

B7 Front Boundary Setbacks

Detailed Assessment

The proposed additions to the dwelling house maintain the front setback of the existing dwelling, which involves a breach the front setback control by 0.31m.

The proposed additions when viewed from Lewis Street is a broken-up facade with a varied front setback. The first floor proposal demonstrates a front setback of 6.2m to 7.1m and is considered to be satisfactory given that it is consistent with the existing front setback non-compliance.

The proposed carport is located wholly within the 6.5m front building setback, having a front setback of 0.2m. The streetscape in the vicinity of the subject site is characterised by residential dwellings setback behind the 6.5m front setback which are landscaped with lawns and shrubs. There are no other carports or garages within the front setback area in the immediate vicinity of the site. The proposed carport reduces the landscaped open space on site and has a significant bearing on the overall visual bulk of the development and the sense of openness of the street.

The following assessment examines the consistency of the proposed carport with the objectives of the front boundary setbacks controls:

- *To create a sense of openness.*

Comment:

The proposed carport reduces the landscape open space area within the front setback and infringes on the sense of openness provided by the existing front setback on the site and on neighbouring and nearby sites.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The proposed carport is not consistent with the front setbacks and pattern of buildings and landscaped front setbacks in the vicinity of the site.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

The proposed carport infringes on the visual quality of the streetscape by introducing a built form in the front setback area that is inconsistent with development in the vicinity of the site. The green roof that is proposed does not satisfactorily address or overcome this concern. The

carport will have a significant bearing on the overall visual bulk of the development, such that it will have an unreasonable impact on the amenity of adjoining properties.

- *To achieve reasonable view sharing.*

Comment:

The proposed carport has no impact on views.

It is noted that the existing three bedroom dwelling house does not satisfy the requirements of Part C3 Parking Facilities of WDCP 2011, in that only one car space is provided whereas two car spaces are required. The proposed development does not exacerbate this situation as the plans indicate that the dwelling house will have only two bedrooms, although the home office, study or media room could be used as a third bedroom.

In balancing the requirements for off-street car parking and the requirement for a landscaped front setback, it is considered that the streetscape impacts are such that the carport and driveway should not be approved. A condition of consent is recommended which requires the deletion of the proposed carport and requiring the area to be maintained as landscaped open space.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of 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.

D1 Landscaped Open Space and Bushland Setting

Detailed Assessment

Part D1 of WDCP 2011 requires that 40% of the site be provided as landscaped open space.

The existing development on site does not comply with this control, providing only 14.0% (50.5m²) as landscaped open space.

The proposal, as a result of the proposed carport, will reduce this to 9.3% (34.2m²) of landscaped open space. The following diagrams show the calculation of these areas, noting that only areas with a minimum dimension of 2.0m and located on existing ground level are counted in the calculation.



Figure 2: Landscape Open Space Calculation Plans (green area is LOS)

The following assessment examines the performance of the proposal against the objectives of the control:

- To enable planting to maintain and enhance the streetscape.

Comment:

The loss of landscaped open space within the front setback area will have a negative impact on the streetscape, especially considering the existing streetscape is characterised by landscaped front setbacks.

- To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.

Comment:

The area of landscaped open space that is lost as a result of the proposed carport is lawned and does not comprise indigenous vegetation, topographical features or habitat for wildlife. The proposal has no impact with regards to this objective.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment:

The loss of landscaped open space within the front setback will reduce the extent to which landscaping (current and future) can assist in reducing and softening the apparent bulk and scale of the building when viewed from the street.

- *To enhance privacy between buildings.*

Comment:

The area of landscaped open space that is proposed to be removed is not an area that assists in providing privacy between buildings. The proposal has no impact with regards to this objective.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment:

The front setback area provides the only suitable space for ground level outdoor recreation as the rear setback area is dominated by the existing car space, metal shed and proposed rainwater tank. Therefore, it is vital that this area is maintained as a landscaped area.

- *To provide space for service functions, including clothes drying.*

Comment:

Service functions are provided in the rear yard and the front setback area is not a suitable location for clothes drying. The proposal has no impact with regards to this objective.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

The loss 16.3m² of landscaped open space will not have a discernible impact on water management on site.

It is considered that the failure of the proposal to satisfy the objectives of the landscaped open space control is such that the proposed carport should not be approved and that the area should be retained for soft landscaping purposes. A suitable condition for the removal of the carport and associated hardstand is included in the recommendation.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / 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.

D2 Private Open Space

Part D2 of WDCP 2011 requires that 60m² of private open space be provided for a for a three-bedroom dwelling. The private open space cannot be within the front setback area and must have a minimum dimension of 5.0m. There is currently no private open space on site that satisfies this criteria and this situation will be unchanged by the proposed development.

The proposal includes a new upper level terrace adjacent to the entertainment room together with a new portable spa pool. These facilities will improve the private recreational facilities on the site. In these circumstances, the lack of private open space satisfying the criteria in Part D2 of WDCP 2011 is not considered to be a reason for refusal of the application.

D3 Noise

The use of the dwelling house will generate domestic levels of noise only, and are unlikely to unduly affect the amenity of neighbouring properties.

The proposed portable spa pool located on the first floor terrace is a "stand alone" type design and the operating plant will be integrated into the pool such that it is unlikely to give rise to intrusive levels of noise. Therefore, the portable spa pool is not likely to give rise to any detriment to neighbours in terms of acoustic privacy.

D8 Privacy

The proposal provides a terrace and spa pool at the rear of the first floor level. A timber privacy screen is proposed on the western and northern sides of the spa pool to ensure that people using the spa pool will not be able to overlook neighbouring properties.

The terrace is located in a position where it will not overlook neighbouring private open space or living areas, being situated adjacent to the roof of the adjoining single storey dwelling house and with no clear line of sight to the rear yards of any neighbouring property.

The ground floor is raised above existing ground level by 300mm to 900mm. Privacy is maintained to the eastern neighbour through the use of high sills on the windows to the bathroom and bedroom on the ground and first floor. The larger window on the ground floor is to a study which has low levels of daytime usage and is unlikely to result in unreasonable privacy impacts. A door and stairs to the laundry on the eastern side of the house is unlikely to have high levels of usage and does not result in an unreasonable impact on the neighbour's privacy.

On the western elevation, the ground and first floor windows overlook the existing driveway and do not result in additional privacy impacts. The windows on the western elevation have also been treated with frosted glazing to ensure privacy impacts are minimised.

The driveway provides sufficient separation to ensure no unreasonable privacy impacts arise from the upper level west-facing windows.

In summary, the proposal retains reasonable levels of privacy for all neighbouring residents.

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 \$ 400,000		
Contributions	Levy Rate	Payable
Total Section 7.12 Levy	0.95%	\$ 3,800
Section 7.12 Planning and Administration	0.05%	\$ 200
Total	1%	\$ 4,000

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 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

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2019/0524 for Alterations and additions to a dwelling house including a spa pool on land at Lot 1 DP 861565, 28 Lewis Street, DEE WHY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A001 (Revision 2)	18.06.2019	Drew Dickson Architects
A100 (Revision 2)	18.06.2019	Drew Dickson Architects
A200 (Revision 2)	18.06.2019	Drew Dickson Architects

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

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

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

2. Deletion of Carport, Carspace and Driveway Crossing

The proposed carport, hardstand carspace and driveway crossing are not approved and are to be deleted from the plans with the front setback area retained as landscaped open space. Revised plans showing these deletions are to be included in the plans accompanying the Construction Certificate.

Reason: To maintain the streetscape, improve the appearance of the development and maintain the provision of landscaped open space.

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. 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 \$ 400,000.00		
Contributions	Levy	Payable

	Rate	
Total Section 7.12 Levy	0.95%	\$ 3,800.00
Section 7.12 Planning and Administration	0.05%	\$ 200.00
Total	1%	\$ 4,000.00

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 \$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

The Applicant is to demonstrate stormwater from the new development within this consent is disposed of to an existing approved system in accordance with Northern Beaches Council's Warringah Water Management Policy PL850. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

8. Deletion of Carport, Carspace and Driveway Crossing

The proposed carport, hardstand carspace and driveway crossing are not approved and are to be deleted from the plans with the front setback area retained as landscaped open space. Revised plans showing these deletions are to be included in the plans accompanying the Construction Certificate.

Reason: To maintain the streetscape, improve the appearance of the development and maintain the provision of landscaped open space.

9. Compliance with Standards

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

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

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

10. 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.

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:

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

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

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

12. Waste Management Plan

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

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

Reason: To ensure that any demolition and construction waste, including excavated material, is

reused, recycled or disposed of in an environmentally friendly manner.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

13. 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

14. Waste Management During Development

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

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

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

15. Survey Certificate

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

- (a) 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.

16. Installation and Maintenance of Sediment Control

Measures used for erosion and sediment control on building sites are to be adequately

maintained at all times and must be installed in accordance with Council's Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

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

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

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

17. 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.

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

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

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

Reason: To ensure bushland management. (DACPLF01)

19. Waste Management Confirmation

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

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

20. 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*.

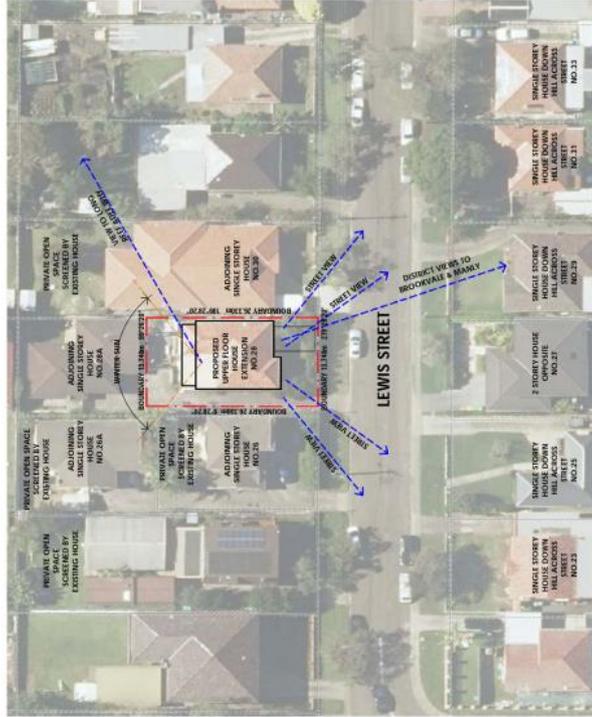
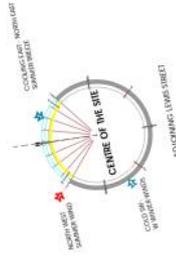
Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

Reason: To protect human life (DACPLF09)

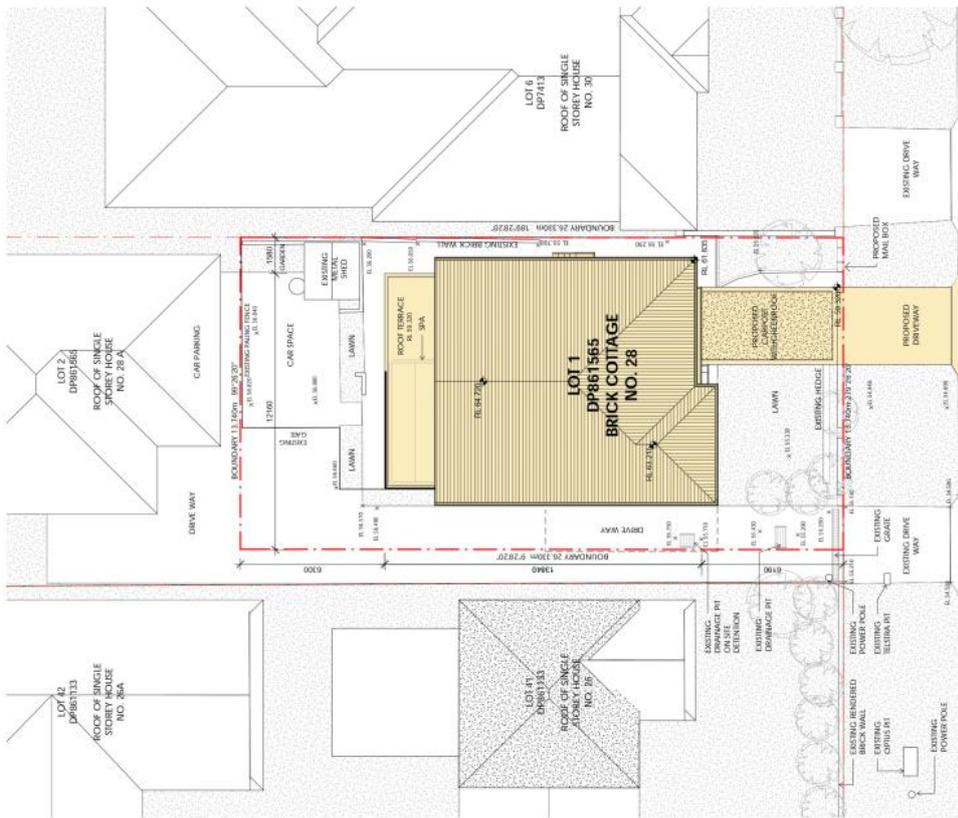
DEVELOPMENT APPLICATION 28 LEWIS STREET DEE WHY



2 LOCATION PLAN



3 SITE ANALYSIS PLAN



LEWIS STREET

SITE AREA - 361.7m²

LEGEND:
 PROPOSED NEW WORK
 EXISTING LEVEL
 × EL XX.XXX
 × RL XX.XXX
 PROPOSED LEVEL

1 SITE PLAN
1 : 100

<p>D.R. WICKS ARCHITECTS 1/110 BROADWAY, DEE WHY, NSW 1530 TEL: 02 9387 1111 FAX: 02 9387 1112 WWW.DRWICKSARCHITECTS.COM.AU</p>		<p>MR. JAMES MAREGAN MAREGAN CONSULTANTS</p>		<p>UPPER FLOOR EXTENSION TO RESIDENCE Project No. 2019/0001 SITE PLAN & LOCATION PLAN</p>		<p>Approved by: An Individual Date: FEB 2019</p>		<p>Prepared by: DEVELOPER/APPLICATOR Date: 2019</p>	
Scale	Date	Description	Drawn By	Issue	Drawn	Issue	Drawn	Issue	Drawn
1	06.06.2019	ISSUE FOR DEVELOPMENT APPLICATION		1					
2	06.06.2019	PROVIDE PANEL INFORMATION/LOADS/CLAND.		2					

ITEM 3.2	DA2019/0124 - 4 AUGUSTA ROAD, MANLY - ALTERATIONS AND ADDITIONS TO THE EXISTING MULTI DWELLING HOUSING
AUTHORISING MANAGER	MATTHEW EDMONDS
TRIM FILE REF	2019/397996
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6 - Height of Building 4 ↓ Clause 4.6 - Floor Space Ratio

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

Council is satisfied that:

- 1) the applicant's written request under clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of clause 4.3 Height of Buildings development standard and clause 4.4 Floor Space Ratio development standard, has adequately addressed and demonstrated that:
 - a) compliance with the standard is unreasonable or unnecessary in the circumstances of the case;and
 - b) there are sufficient environmental planning grounds to justify the contravention.
- 2) the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly, the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2019/0124 for Alterations and additions to the existing multi dwelling housing at Lot 2 DP 2428, 4 Augusta Road, Manly subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0124
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Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 2 DP 2428, 4 Augusta Road MANLY NSW 2095
Proposed Development:	Alterations and additions to the existing multi dwelling housing
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Oliver David Campbell Rees Jennifer Frances Rees
Applicant:	Oliver David Campbell Rees Jennifer Frances Rees

Application lodged:	14/02/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	22/06/2019 to 06/07/2019
Advertised:	22/06/2019
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 43.53% 4.4 Floor space ratio: 36.95%
Recommendation:	Approval

Estimated Cost of Works:	\$ 990,000.00
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EXECUTIVE SUMMARY

Development Application DA2019/0124 seeks consent for alterations and additions to the existing multi dwelling housing development at 4 Augusta Road, Manly.

The application proposes to vary both the Height of Buildings and Floor Space Ratio development standards of Manly Local Environmental Plans 2013 by more than 10%. As such, the application is referred to the Northern Beaches Local Planning Panel for determination.

Council received one submission raising concerns in regards view loss, solar access and privacy. No

height poles were requested to be erected on site as part of undertaking an assessment of view loss as the proposed impact could be accurately assessed without the need for the erection of poles.

An application for similar works was lodged with Council in 2018 (DA2018/551). The application was withdrawn by the applicant on 10 April 2018, following Council raising a number of concerns with the development following the preliminary assessment.

Council records reveal that the existing building has approval for the three (3) existing dwellings.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.4.1 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 - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.8 Development on Sloping Sites

SITE DESCRIPTION

Property Description:	Lot 2 DP 2428 , 4 Augusta Road MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Augusta Road with a rear access off Sheridan Place.

The site is regular in shape with a frontage of 13.715m along Augusta Road and a depth of 44m. The site has a surveyed area of 606.4m².

The site is located within the R1 General Residential zone and accommodates a three unit multi dwelling housing building.

The site slopes down from Augusta Road frontage the slope falls at an average angle of 5° degrees that gradually increases to the Sheridan Place secondary frontage.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by residential development typically single and multi dwelling residential development.

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:

Development Application No. 2018/0551- Withdrawn 5 June 2018

An application for alterations and additions to the existing building was lodged with Council on 10 April 2018. The development included a new dwelling, parking and alterations and additions to the existing building.

On 23 May 2018 Council raised a number of concerns regarding the proposal. The application was subsequently withdrawn on 5 June 2018.

DA492/2005- Alterations and additions (Approved 15 March 2005).

BA132/1993- Alterations and additions (Approved 17 June 1993).

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for alterations and additions to the existing three (3) dwelling multi dwelling housing development, including:

Lower Ground Floor

- Lower floor alterations to allow for new living and bathroom for both ground floor dwellings.
- New deck and outdoor living area.
- New common laundry.

Ground Floor

- Internal alterations.
- Extension of party wall.
- Planter box.
- Windows.

Upper Floor Addition

- Internal alterations including new internal access.
- Deck Alterations.
- New gas heater.
- New windows.

Loft Floor Plan

- Upper floor addition, incorporating;
 - Master bedroom.
 - Living room and study.
 - Balcony.
 - Dormer Windows.

Other

- Garage floor addition including 4 car garage and storage area.
- New driveway and crossover to the rear of the property.
- Associated Landscaping works.
- New external access.
- Partial Demolition.
- Roof alterations.

AMENDED PLANS

Amended plans were received by Council on 2 July 2019. The amended plans removed the the roof above the storeroom at garage floor level. The amendments were not notified to adjoining properties but was made available on Council's online Development Application tracker. The application was not re-notified as Council is of the opinion that the amended application differs only in minor respects from the original application, and does not result in a greater environmental impact in accordance with Clause 2.6 of the Manly DCP.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>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 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	(i) Environmental Impact

Section 4.15 Matters for Consideration'	Comments
the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	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. (ii) Social Impact The proposed development will not have a detrimental 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 1 submission/s from:

Name:	Address:
Jenny Kidnie	Po Box 117 MANLY NSW 1655

SECOND NOTIFICATION

Upon assessment, it was evident that an administrative error had resulted in the application being incorrectly notified and advertised as *Alterations and additions to an existing residential flat building*. The building by definition is multi dwelling housing. Accordingly, Council re-advertised and re-notified the application on 18 June 2019 until 6 July 2019 to ensure that use of the building was correctly notified as *Alterations and additions to the existing multi dwelling housing*.

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

- **Visual Privacy**
- **View Loss**
- **Solar Access**
- **Unreasonable bulkhead lighting.**

The matters raised within the submissions are addressed as follows:

- **Visual Privacy**

Comment:

Concern was raised about potential visual privacy impacts that result from the proposed works. The proposal has been assessed against the privacy provisions under Clause 3.4.2 of the Manly DCP in this report. In summary, the proposal complies with the relevant provisions and underlying objectives under Clause 3.4.2 of the Manly DCP. This matter is addressed in further detail elsewhere in this report.

Accordingly, this matter is resolved by way of condition.

- **View Loss**

Comment:

Concern was raised in regards to view loss from neighbouring dwellings to Sydney Harbour. The proposal has been assessed against the view loss provisions under Clause 3.4.3 of the Manly DCP and the Land and Environment Court Case of *Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC 140* in this report (refer to Clause 3.4.3 Maintenance of Views under the MDCP 2013 section of this report). In summary, the proposed development does not cause unreasonable view loss to and from public and private open spaces.

This matter does not warrant refusal of the application.

- **Solar Access**

Comment:

An assessment of the application against Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP reveals that the application complies with the requisite provisions for solar access and does not unreasonably overshadow adjoining properties.

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

- **Unreasonable bulkhead lighting**

Comment:

Concern is raised in regards to the proposed impact of the lighting along the path and steps adjacent to the lower floor along the side boundary. No lighting is proposed as part of this proposal to assess the potential impact upon neighbouring properties. Any future development would need meet the requirements of SEPP (Exempt and Complying Codes) 2008 .

This matter does not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Environmental Health (Solid Fuel/Oil Heater)	The fireplace on the plan is listed as 'natural fireplace'. Therefore, Environmental Health will assume this means 'natural gas fireplace' and recommend no conditions, as it can be installed as exempt development.
Landscape Officer	The landscape component of the proposal is acceptable subject to the protection of the existing Norfolk Island Pine fronting Sheridan Place. Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types, and specifically: 3.3.1 Landscaping Design; and 3.3.2 Preservation of Trees or Bushland Vegetation.
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following condition of consent.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated.

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A305042_02).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	12.2m	43.53%	No
Floor Space Ratio	FSR: 0.6:1	FSR: 0.82:1	36.95%	No
	363.84m ²	498.3m ²		

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Height of Buildings

Description of non-compliance:

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	12.2m
Percentage variation to requirement:	43.53%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard of Manly Local Environmental Plan 2013, has taken into consideration the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

(3) Development consent must not be granted for development that contravenes a development

standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *"Compliance with the height control is constrained by the siting of the building and sloping topography of the site.*
- *The proposed development is designed to respect the sloping topography of the site. The development does not result in a significant bulk when viewed from either the street or the neighbouring properties, and will not exceed the existing maximum ridge height of the dwelling.*
- *The development will maintain a compatible scale relationship with the existing residential development in the area. Development in the vicinity has a wide range of architectural styles and the given the variety in the scale of development, this proposal will reflect a positive contribution to its streetscape.*
- *The extent of the proposed new works where they are not compliant with Council's maximum height control do not present any significant impacts in terms of view loss for neighbours, loss of solar access or unreasonable bulk and scale."*

The proposed height non-compliance largely relates to the existing height of the building and the sloping nature of the site. The new works proposed which create the non-compliance serve to increase the amenity and useability of the site, while maintaining a building bulk and use that is suitable for the area. The works do not propose any unreasonable amenity impacts on adjoining properties and the majority of works proposed remain compliant with the height of buildings development standard. The proposal is considered to maintain a consistent height and appearance with surrounding development.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The proposed building height of the development is reasonable given the fall of land, the existing building and the height of other existing multi dwelling properties within the street. The proposed extended height of the building will not be readily visible from the primary frontage being Augusta Road, with the resultant bulk and scale only being viewed from Sheridan Place. The impact upon the streetscape will be negligible.

b) to control the bulk and scale of buildings,

Comment:

The bulk of the building is consistent with the desired character of the area from all viewpoints. The perceived bulk and scale of this proposal is concentrated to the rear or secondary frontage of the site towards Sheridan Place. This maintains a reasonable level of bulk visible from the primary frontage (Augusta Road) while maintaining the amenity of the overall building and adjoining properties.

c) to minimise disruption to the following:

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

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

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

Comment:

The impact on views from the proposed development are considered acceptable, having regard to *Tenacity Consulting V Warringah [2004] NSWLEC 140*.

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

Comment:

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

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

Comment:

The height of building non-compliance does not create unreasonable impacts over land in recreation in environmental protection zones, that might conflict with bush land and surrounding land uses.

Zone objectives

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

The underlying objectives of the R1 General Residential zone:

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

Comment:

The proposal will not affect the housing needs of the community.

It is considered that the development satisfies this objective.

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

Comment:

The proposal maintains housing variety within the residential area.

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:

Existing residential use remains unchanged

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

Floor Space Ratio

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1 363.84m ²
Proposed:	0.82:1 498.3m ²
Percentage variation to requirement:	36.95%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor Space Ratio development standard of Manly Local Environmental Plan 2013, 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 development is justified in this instance for the following reasons:

- Despite the variation to the floor space ratio control, the proposed alterations and additions to the existing multi dwelling development are considered to be in keeping with the bulk and scale of development in the locality and the desired future character of the locality.*
- The proposed development is designed to respect the sloping topography of the site. The development does not result in a significant bulk when viewed from either the street or the neighbouring properties, and will not exceed the existing maximum ridge height of the dwelling.*
- The development will maintain a compatible scale relationship with the existing residential development in the area. Development in the vicinity has a wide range of architectural styles and the given the variety in the scale of development, this proposal will reflect a positive contribution to its streetscape.*
- The proposed loft addition is to be within the proposed new roof form, and will therefore maintain consistency with the extent of development in the locality.*
- The proposed overall bulk and scale of the new works will maintain amenity and appropriate solar access for the subject site and neighbouring properties."*

It is agreed that the bulk and scale is not considered unreasonable against the streetscape. The works will improve internal amenity and useability for the occupants of all units. Notwithstanding the non-compliance, the proposal is not considered to result in any unreasonable visual or amenity impacts on the adjoining properties or surrounding area.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The bulk and scale of the building as viewed from both Augusta Road and Sheridan Place is consistent with the style of multi dwelling residential buildings identified in the street. The development will maintain a favorable bulk and scale relationship with other development in the close vicinity.

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:

Existing landscape features to the front and rear of the site will be retained. No other important landscape features are proposed for removal as part of these works.

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

Comment:

The proposed new works maintain a built form consistent with the identified streetscape. The increase in gross floor area in conjunction with the other works proposed is will not unreasonably or substantially alter the existing character of the streetscape. A multi dwelling development that maintains an overall bulk and scale consistent with that of neighbouring properties is not unreasonable or undesirable.

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

Comment:

The proposed development will not result in any unreasonable amenity impacts upon adjoining properties in regards to views, privacy or overshadowing.

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.

Zone objectives

The underlying objectives of the R1 General Residential zone:

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

Comment:

The proposal will not affect the housing needs of the community.

It is considered that the development satisfies this objective.

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

Comment:

The proposal maintains housing variety within the residential area.

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:

Existing residential use remains unchanged

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Floor space ratio Development Standard is assumed by the Local Planning Panel.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 606.4m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	East: 8m (based on gradient 1:4)	7.2m- 10.3m	28.8%	No
	West: 8m (based on gradient 1:4)	7.7m- 9m	12.5%	No
4.1.2.2 Number of Storeys	2	4	50%	No
4.1.2.3 Roof Height	Height: 2.5m	3.2m	21.9%	No
	Pitch: maximum 35 degrees	31.5 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	1.6m- 4.8m, consistent with prevailing setback.	20- 74%	Yes, see comments throughout report.
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.4m- 3.43m (based on eastern wall height)	1.7m	50.4%	No
	2.73m- 3m (based on western wall height)	2.1m	70%	No
	Windows: 3m	1.7m- 2.1m- 3m	43%	No
	Secondary street frontage: Prevailing setback / 6m	6m, consistent with prevailing setback	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space	Open space 55% (333.52sqm) of site area	44.2% 268.2sqm	19.7%	No

Area: OS3	Open space above ground $\leq 25\%$ (67.05sqm) of total open space	46.5% 162.7sqm	70%	No
4.1.5.2 Landscaped Area	Landscaped area $\geq 35\%$ total of open space	39% 105.5sqm	-	Yes
	3 native trees	1 trees	66%	No
4.1.5.3 Private Open Space	12sqm per dwelling	29.2sqm (unit 1) 32sqm (unit 2) 30.9sqm (unit 3)	-	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	6.9m	10.1%	No
Schedule 3 Parking and Access	Dwelling 5 spaces	6 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 Landscaping	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Merit consideration:

The development is considered against the underlying objectives of the control as follows:

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

Comment:

The proposed development will allow for adequate levels of light and sunshine to penetrate the subject site and adjoining properties.

Objective 2) To allow adequate sunlight to penetrate:

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

Comment:

Clause 3.4.1.1 a) of the Manly DCP requires new development not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties between 9am and 3pm throughout the winter solstice. The primary living rooms of the two properties to the west of the subject site (No. 6 Augusta Road and 3 Sheridan Place), allow for significant levels of sunlight throughout the day. The proposed development will not significantly compromise the level of sunlight to living areas that this property currently enjoys throughout all hours of the winter solstice (9am to 3pm). The proposal is compliant with this clause.

Clause 3.4.1.2 b) of the Manly DCP requires at least 4 hours of solar access be retained to living room windows that currently enjoy sunlight between 9am and 3pm on the winter solstice. The proposed development will increase overshadowing to the east facing living room windows of No. 3 Augusta Road at 9am during the winter solstice, however the north facing living room windows remain unaffected by the proposed development. Living room windows of No. 3 Augusta Road retains existing sunlight for the rest of the day. The proposal is compliant with this clause.

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 proposal retains a compliant secondary frontage setback (6m) and increased setbacks at ground and first floor level to allow for suitable solar access to both outdoor living areas and living rooms windows of the adjoining western properties (No. 6 Augusta Road and 3 Sheridan Place).

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

3.4.2 Privacy and Security

Merit consideration:

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

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

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

Comment:

The balconies proposed on lower ground, ground and first floor level are partially screened to reduce the potential for overlooking between properties. The screening proposed minimises sight lines to adjoining properties while maintaining suitable amenity for living areas of both the subject site and adjoining properties.

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

Comment:

As noted above the application proposes screening along the eastern and western end of the lower ground, ground and first floor balconies/terraces. A submission has been received which raised concern with the overall height and impact in regards to shadowing of the privacy screen along the western side of the lower ground floor private open space (See image No. 1). In regards to the privacy screen it is noted that a screen at a reduced height would still mitigate any potential for direct overlooking between properties, while allowing for the bulk and scale of the proposal to be reduced. A suitable condition has been imposed as part of this recommendation to ensure the privacy screen is reduced in height from 1.8m above finished floor level to 1.6m above finished floor level.

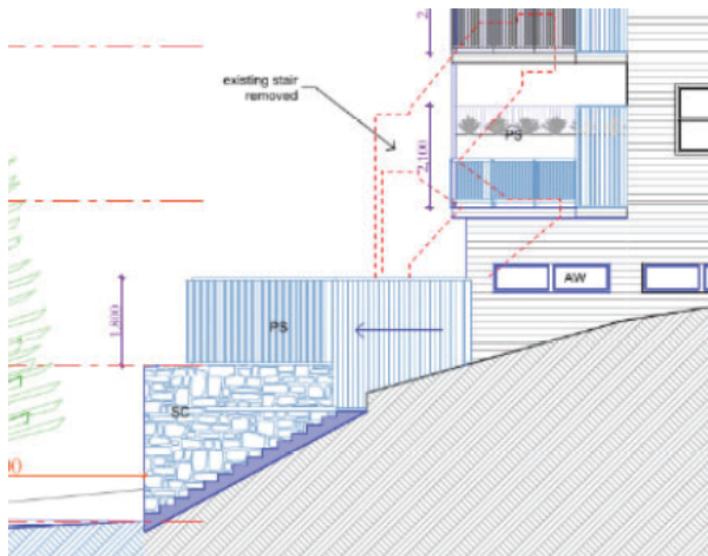


Image 1- Proposed western elevation.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development maintains an open frontage to allow for passive surveillance of both Augusta Road and Sheridan Place.

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

3.4.3 Maintenance of Views

Merit consideration:

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

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

Comment:

The proposed development will result in negligible loss of views from the adjoining western property No. 6 Augusta Road to North Steyne (Ocean views). The loss of views is not unreasonable and will maintain adequate view sharing between properties.

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

The proposal results in a disruption of views from neighbouring properties. The level of view loss is not unreasonable and has been assessed below with regards to the planning principle established by the

NSW Land and Environment Court.

Council received one (1) submission from a neighbouring property in relation to view loss from the original and amended plans submitted. The Manly DCP refers to the planning principle within *Tenacity Consulting v Waringah [2004] NSWLEC 140* when considering the impacts on the views of the adjoining properties. This is provided below:

1. Nature of the view affected.

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

Comment:

No. 6 Augusta Road

The nature of the views affected from this property would be beach and ocean views to the north-east. The views would be filtered through existing development and vegetation as shown in the images below. A large portion of the existing views are taken over the top of existing development.

2. What part of the affected property are the views obtained

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

Comment:

No. 6 Augusta Road

The views affected from this property are taken over the side boundary. The views are taken over the top of existing development. Views are obtained from a standing position from living rooms, bedrooms and private open space, filtered through existing development.

3. Extent of Impact

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

Comment:



Photo 1- First floor bedroom window



Photo 2- First floor balcony



Photo 3- First floor balcony



Photo 4- Ground floor private open space



Photo 5- Ground floor private open space

No. 6 Augusta Road, currently enjoys water views to the north-east. Views are taken from first floor bedrooms and the attached balcony area to the rear of the site and the private open space off the living rooms on the ground floor. In regards to the ground floor living rooms and private open space, the proposed privacy screens along the western side off the building at lower, ground and upper floor level may obstruct any district views to the east, however no water views will be interrupted. The bedroom to the north-east corner on the first floor of No. 6 Augusta Road, will to a minor extent lose views to the ocean (See photo No. 1). The first floor balcony area will retain existing views to the ocean, the level of impact is negligible.

4. Reasonableness of the proposal causing the impact

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

Comment:

The proposed development is inconsistent with both the Height of Buildings and Floor Space Ratio development standards under Clause 4 of the Manly LEP. In this instance however, a compliant proposal or an alternate/better design would not significantly benefit views from No. 6 Augusta Road.

The development as proposed responds accordingly to the existing views available, by ensuring existing views corridors from living areas and bedrooms are maintained. This is ensured by maintaining a compliant rear setback and ensuring additional bulk is maintained at lower floor level and within within the existing roof space. This ensures highly valued beach and ocean views are retained from principle private open space. The overall impact upon views on No. 6 Augusta Road, Manly is negligible to minor.

Accordingly, the development as proposed will have an acceptable impact on the existing provision of

views currently enjoyed by No. 6 Augusta Road, and that the design is reasonable in accordance with Step 4.

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

Comment:

The proposed works will not cause unreasonable loss of views. In regards to 'view creep' the proposal or neighbouring properties does include unreasonable bulk which could result in unreasonable future view loss.

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

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

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

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

Description of non-compliance

Clause 4.1.4.1 of the Manly DCP requires development be setback 6m from the front boundary.

Clause 4.1.4.2 of the Manly DCP requires development be setback at least 3.56m from the eastern boundary, 2.17m from the western boundary. Further new windows facing side boundaries are to be setback at least 3m from the side boundary.

The development proposes the following:

Front setback- 1.6m- 4.8m from primary frontage boundary (20-74% variation to the numeric control).

East side setback- 1.7m (50.4% variation to the numeric control).

West side setback- 2.1m (70% variation to the numeric control).

Windows- 1.7m (43% variation to the numeric control).

Merit consideration:

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

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

Comment:

The proposed development will have more desirable visual impact to both Augusta Road and Sheridan Place than the existing development. The development proposes a significant setback to both the front and secondary boundaries of the property to ensure the development does not unreasonably dominate

the site and 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:

Amenity considerations including privacy, views and solar access are all maintained to adjoining properties and the public domain.

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

Comment:

Flexibility is provided in this circumstance as the proposed development will have no unreasonable impact upon the streetscape or amenity (privacy, solar access and views) of adjoining properties

Objective 4) To enhance and maintain natural features by:

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

Comment:

Suitable areas of deep soil and planting are proposed on site. The level of landscaping is consistent with the streetscape.

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

Comment:

The subject site is not located in a bush fire zone.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5.2 of the Manly DCP requires at least 55% (333.52m²) of site area be total open space. The development proposes 44.2% (268.2m²), non-compliant with the numeric control. This represents a 19.7% variation to the numeric control.

Merit consideration:

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

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

Comment:

The proposed development proposes a minor reduction of landscaped open space, however no important landscape features are proposed to be removed.

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

Comment:

Significant landscaping is proposed at both ends of the building to reduce the visual impact of the building and parking structure.

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

Comment:

The reduction of landscaping does not unreasonably compromise the amenity of adjoining properties.

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

Comment:

The development proposes sufficient porous area to allow adequate stormwater management across the site.

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

Comment:

As noted above, the development proposes sufficient porous area to ensure the potential spread of weeds and degradation of the private open space.

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

Comment:

The subject site is not in the close vicinity of any wildlife corridors or habitats.

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

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

Description of non-compliance

Clause 4.1.6.1 requires the maximum width of any garage not exceed 50 percent of the frontage, up to a maximum width of 6.2m.

The application proposes a garage width along Sheridan Place of 6.9m, not compliant with the numeric control. This represents a 10.1% variation to the numeric control.

Merit consideration:

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

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

The proposed development is consistent with the numeric requirement for on site parking under this clause.

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:

Not applicable.

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:

Subject to conditions of consent provided by Council's development engineer, the proposed on site parking is suitable in regards to safety. The proposed on site parking reduces the demand for parking along the 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 level of excavation proposed for the garage level is not unreasonable in this circumstance, subject

to conditions outlined with the geotechnical Report.

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

Comment:

The proposed width of the driveway crossover is 5m, reasonable for a multi dwelling residential development.

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

Comment:

The proposed new garage fronts an street primarily used as an access lane (Sheridan Place), a suitable location for any new on site parking for the site.

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

Comment:

The subject is not located in a identified Manly DCP townscape centre.

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

4.1.8 Development on Sloping Sites

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

The application does unreasonably disrupt the natural topography across the site. Accordingly, the development satisfies this objective.

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 Section 7.12 Contributions Plan 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$9,900 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$990,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 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

Council is satisfied that:

1) the applicant's written request under clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of clause 4.3 Height of Buildings development standard and clause 4.4 Floor Space Ratio development standard, has adequately addressed and demonstrated that:

a) compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and

b) there are sufficient environmental planning grounds to justify the contravention.

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

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2019/0124 for Alterations and additions to the existing multi dwelling housing on land at Lot 2 DP 2428, 4 Augusta Road, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Fireplace**

The fireplace shown in the Approved Plans referenced in Condition 1 of this consent is to be a gas fireplace.

Reason: To minimise impact upon the surrounding environment.

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
DA3/ Site Analysis Plan	19 June 2019	sketchArc
DA4/ Garage Floor Plan	19 June 2019	sketchArc
DA5/ Lower Floor Plan	19 June 2019	sketchArc
DA6/ Ground Floor Plan	19 June 2019	sketchArc
DA7/ Upper Floor Plan	19 June 2019	sketchArc
DA8/ Loft Floor Plan	19 June 2019	sketchArc
DA9/ Roof Plan	19 June 2019	sketchArc
DA10/ North and South Elevation	19 June 2019	sketchArc

DA11/ East Elevation	19 June 2019	sketchArc
DA12/ West Elevation	19 June 2019	sketchArc
DA13/ Section A-A	19 June 2019	sketchArc
DA14/ Section B-B	19 June 2019	sketchArc
DA15/ Section C-C	19 June 2019	sketchArc
DA16/ Section D-D	19 June 2019	sketchArc

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A305042_02	24 January 2019	Phil Brown Drafting
Geotechnical Report	19 December 2017	White Geotechnical Group
Arboricultural Report	13 January 2019	Peake Arboriculture

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

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

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

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

3. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the

following information:

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

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

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

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

Reason: Legislative Requirement

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are

- breaking up/removing materials from the site).
- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
 - (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
 - (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
 - (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
 - (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
 - (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
 - (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
 - (j) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished
- The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including

but not limited) to:

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

5. **Solid Fuel Heater**

No approval is given for the installation of any solid wood fired heater which would need a separate application for consideration.

Reason: To ensure compliance with Section 68 of The Local Government Act.

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$9,900.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$990,000.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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 the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

7. **Security Bond**

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

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

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

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

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

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

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 that the existing approved system can accommodate the additional flows or compliance with the Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003 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. **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 (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)

12. **Final Survey**

All works are to be contained wholly within the subject site.

A final identification survey prepared by a Registered Surveyor identifying and marking the boundaries of the subject site and all existing and proposed structures/buildings on site is to be completed and details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

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

13. **Privacy screen**

The proposed privacy screen located on the western side of the lower floor plan is to be reduced in height from 1.8m above finished floor level to 1.6m above finished floor level.

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

Reason: To ensure privacy without unreasonably compromising access to light and air.

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. **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 Peake Arboriculture for the following tree:

- o tree 1 - Norfolk Island Pine,
- 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 the Arboricultural Impact Assessment report, including documentation certifying that project arborist supervision, as listed in section 8 - Recommendations, and section 9.2 Development Stage, 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.

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 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. **Tree Protection**

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

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

B) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4,
- ii) 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.

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

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

19. **Condition of retained vegetation**

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

- i) compliance to Arborist recommendations for tree protection and excavation works.
- ii) extent of damage sustained by vegetation as a result of the construction works.
- iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: to ensure compliance with the requirement to retain and protect significant planting on development sites.

20. **Stormwater Disposal**

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

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

21. **Fire Safety Upgrade**

The fire upgrading measures and works to upgrade the building as detailed and recommended in the Fire Safety and Building Code of Australia Audit Report Ref:173210B prepared by Private Building Certifiers dated 31/1/2019.

Details demonstrating implementation are to be submitted to the Principal Certifying Authority prior to the issue of the Interim / Final Occupation Certificate.

Reason: To ensure adequate provision is made for fire safety in the premises for building occupant safety.

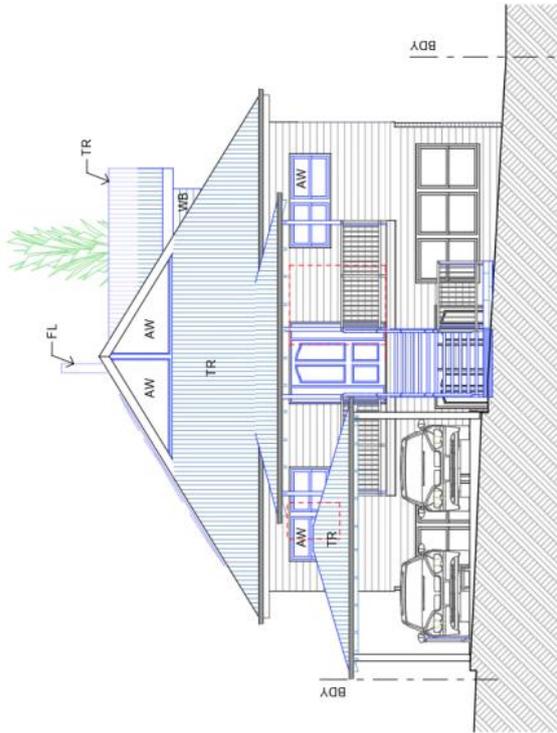
22. **Fire Safety Matters**

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 Assessment Regulation 2000.



South Elevation
1:100

LEGEND

- AW Aluminium window
- SC Stone cladding
- WB Timber framed roof with weatherboard cladding
- RA Full to BCA
- TR Timber framed roof with Colorbond cladding
- SK Skylight
- PS Privacy screen
- FL Natural Fireplace Flue



North Elevation
1:100

STATURE	DA	PROJECT NUMBER	1635
DATE	19/06/19	SCALE	1:100@A3
DRAWN/DESIGNED	DA	STAGE	PB/MP
ISSUE		FORWTRN NO	DA10
#Keywords			

PROJECT	4 Augusta Rd, Manly, 2095, NSW Additions & Alterations LOT 2 in Section 11 in DP 2428 - 606 4m2
CLIENT	Private

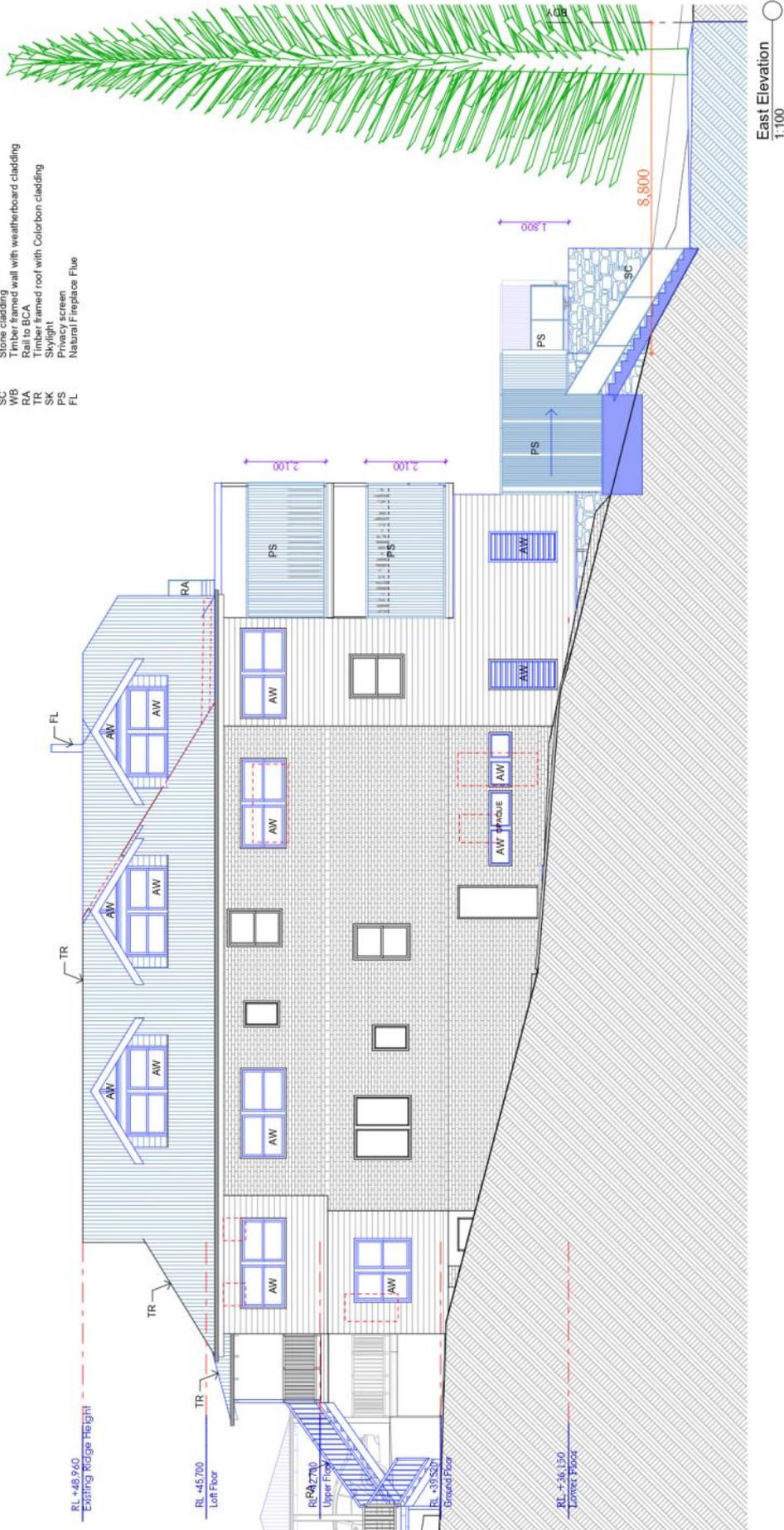
sketchArc
P o Box 377 Manly 1655
m : 0422 521 871
e : power@sketcharc.com.au
w : www.sketcharc.com.au

DO NOT SCALE DRAWINGS. CHECK ALL DIMENSIONS ON SITE. FIGURED DIMENSIONS TAKE PRECEDENCE.
The builder shall check and verify all dimensions on site. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.

REV	DATE	DESCRIPTION

sketchArc

- LEGEND**
- AW Aluminium window
 - SC Stone cladding
 - WB Timber framed wall with weatherboard cladding
 - RA Rail to BCA
 - TR Timber framed roof with Colorbond cladding
 - SK Skylight
 - PS Privacy screen
 - FL Natural Fireplace Flue



East Elevation
1:100



STATUS	DA	PROJECT NUMBER	1635
DATE	19/06/19	SCALE	1:100@A3
DRAWN/ISSUED	DA	STAGE	PB/ MP
FORWARD NO.	DA11	ISSUE	#Keywords

PROJECT	4 Augusta Rd, Manly, 2095,
NSW	
Client	Private

sketchArc
P o B o x 3 7 7 M a n l y 1 6 5 5
m : 0 4 2 2 5 2 1 8 7 1
e : p o w e r @ s k e t c h a r c . c o m . a u
w : w w w . s k e t c h a r c . c o m . a u

PROJECT: 4 Augusta Rd, Manly, 2095,
NSW
Additions & Alterations
LOT 2 in Section 11 in DP 2428 - 606 4m2

DO NOT SCALE DRAWINGS. CHECK ALL DIMENSIONS ON SITE. FIGURED DIMENSIONS TAKE PRECEDENCE.

The builder shall check and verify all dimensions on site. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.

REV	DATE	DESCRIPTION

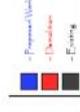
sketchArc

LEGEND

- AW Aluminium window
- SC Stone cladding
- WB Timber framed wall with weatherboard cladding
- RA Rail to BCA
- TR Timber framed roof with Colobon cladding
- SK Skygig
- PS Physigig screen
- FL Natural Fireplace Flue



West Elevation
1:100

		DATE: 19/06/19 SCALE: 1:100@A3 PROJECT NUMBER: 1635 DRAWING/REVISION: DA STAGE: DA DRAWING NO: PB/MP #Keywords: #Keywords FORMING NO: DA12
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PROJECT: 4 Augusta Rd, Manly, 2095,
NSW
Additions & Alterations
LOT 2 in Section 11 in DP 2428 - 606 4m2
CLIENT: Private

sketchArc
P o Box 377 Manly 1655
m : 0422 521 871
e : power@sketcharc.com.au
w : www.sketcharc.com.au

DO NOT SCALE DRAWINGS. CHECK ALL DIMENSIONS ON SITE. FIGURED DIMENSIONS TAKE PRECEDENCE. The builder shall check and verify all dimensions on site. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.

REV	DATE	DESCRIPTION



Vaughan Milligan Development Consulting Pty Ltd

OBJECTION PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

4 AUGUSTA ROAD, MANLY

**FOR PROPOSED ADDITIONS AND ALTERATIONS TO THE EXISTING MULTI DWELLING
DEVELOPMENT INCLUDING CONSTRUCTION OF A NEW GARAGE AND CARPORT WITH
ASSOCIATED LANDSCAPING**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM BUILDING HEIGHT
AS DETAILED IN CLAUSE 4.3 OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013**

For: Additions and alterations to the existing multi dwelling development including construction of a new garage and carport and associated landscaping
At: 4 Augusta Road, Manly
Owner: Oliver & Jennifer Rees
Applicant: Oliver & Jennifer Rees
C/- Vaughan Milligan Development Consulting Pty Ltd

1.0 Introduction

This objection is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP 2013).

2.0 Background

Clause 4.3 restricts the height of a building within this area of the Manly locality and refers to the maximum height noted within the "*Height of Buildings Map.*"

The relevant building height for this locality is 8.5m and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

Due to the siting of the existing building and sloping topography of the site, the proposed new works will be up to approximately 12.8m in height.

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

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3.0 Purpose of Clause 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 118* have been considered in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for alterations and additions to an existing multi dwelling development which is consistent with the stated Objectives of the R1 General Residential Zone, which are noted as:

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

As sought by the zone objectives, the proposal will provide for alterations and additions to an existing multi dwelling development which are sensitive to the location and the topography of the locality.

The proposal includes modulated wall lines and a consistent palette of materials and finishes in order to provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum height control, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood.

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5.0 Onus on Applicant

Clause 4.6(3) provides that:

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.*

This submission has been prepared to support our contention that the development adequately responds to the provisions of 4.6(3)(a) & (b) above.

6.0 Justification of Proposed Variation

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 11* & *Samadi v Council of the City of Sydney [2014] NSWLEC 1199*.

Paragraph 27 of the judgement states:

Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

Precondition 1 - Consistency with zone objectives

The site is located in the R1 General Residential Zone. The objectives of the R1 zone are noted as:

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

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Comments

It is considered that the proposed development will be consistent with the desired future character of the surrounding locality for the following reasons:

- The proposal will be consistent with and complement the existing residential development within the locality.
- The proposed development respects the scale and form of other new development in the vicinity and therefore complements the locality.
- The setbacks maintain compatibility with the existing surrounding development.
- The proposal does not have any unreasonable impact on long distance views.

Accordingly, it is considered that the site may be developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

Precondition 2 - Consistency with the objectives of the standard

The objectives of Clause 4.3 are articulated at Clause 4.3(1):

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

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) to control the bulk and scale of buildings,*
- (c) to minimise disruption to the following:*
 - (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) views between public spaces (including the harbour and foreshores),*
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Comments

Despite the variation to the statutory height control which occurs as a result of the siting of the existing multi dwelling development and the sloping topography of the site, the proposed new development is considered to be in keeping with the desired future character of the locality.

The proposed new works to the existing multi dwelling development are subject to a maximum overall height of 8.5m, and the proposal will provide for a height of up to 12.8m.

The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

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The proposal is generally consistent with the height and scale of newer development in the locality, with the modest extent and stepped nature of the new works to minimise the visual impact of the development.

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for additions and alterations to an existing multi dwelling development, which are constrained by the siting of the existing building and sloping topography of the site.

Council's controls in Clause 4.3 provide a maximum overall height of 8.5m.

It is considered that the proposal achieves the Objectives of Clause 4.3 and that the development is justified in this instance for the following reasons:

- The proposed works will maintain consistency with the general height and scale of residential development in the area and the character of the locality.
- The proposed works have been designed to respect the sloping topography of the site.
- The proposed height and the overall scale of the new works will maintain amenity and appropriate solar access for the subject site and neighbouring properties.

For the above reasons it would therefore be unreasonable and unnecessary to cause strict compliance with the standard.

Precondition 4 - To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

Council's controls in Clause 4.3 provide a maximum overall height of 8.5m for the subject development.

Due to the existing overall building height and sloping topography of the site, the proposed new works will be up to approximately 12.8m in height.

The development is justified in this instance for the following reasons:

- Compliance with the height control is constrained by the siting of the building and sloping topography of the site.

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- The proposed development is designed to respect the sloping topography of the site. The development does not result in a significant bulk when viewed from either the street or the neighbouring properties, and will not exceed the existing maximum ridge height of the dwelling.
- The development will maintain a compatible scale relationship with the existing residential development in the area. Development in the vicinity has a wide range of architectural styles and the given the variety in the scale of development, this proposal will reflect a positive contribution to its streetscape.
- The extent of the proposed new works where they are not compliant with Council's maximum height control do not present any significant impacts in terms of view loss for neighbours, loss of solar access or unreasonable bulk and scale.

Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for maximum building height.

In the recent 'Four2Five' judgement (*Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

The recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February of this year the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the *Four2Five v Ashfield* decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means:

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“the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant’s written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary”.

Accordingly, in regards to the proposed development at 4 Augusta Road, Manly, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The development is constrained by the siting of the existing development and sloping topography of the site.
- The variation to the height control is inconsequential as it will not result in any unreasonable impact to the streetscape and the amenity of neighbouring properties.

The above are the environmental planning grounds which are the circumstance which are particular to the development which merit a variation to the development standard.

In the *Wehbe* judgment (*Wehbe v Warringah Council [2007] NSWLEC 827*), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded and that approval of the Objection may be consistent with the aims of the policy. These 5 questions may be usefully applied to the consideration of Clause 4.6 variations: -

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

Comment: Yes. Refer to comments under ‘Justification of Proposed Variation’ above which discusses the achievement of the objectives of the standard.

2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

Comment: It is considered that the purpose of the standard is relevant but the purpose is satisfied.

3. *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

Comment: Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development.

Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b).

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;*

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Comment: Not applicable.

5. *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Comment: The development standard is applicable to and appropriate to the zone.

7.0 Conclusion

This development proposed a departure from the maximum building height development standard, with the proposed alterations and additions to the existing multi dwelling development to provide a maximum overall height of 12.8m.

This variation occurs as a result of the siting of the existing building and sloping topography of the site.

This objection to the maximum building height specified in Clause 4.3 of the Manly LEP 2013 adequately demonstrates that that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum building height control would be unreasonable and unnecessary in the circumstances of this case.



VAUGHAN MILLIGAN
Town Planner

Vaughan Milligan Development Consulting Pty Ltd

OBJECTION PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

4 AUGUSTA ROAD, MANLY

**FOR PROPOSED ADDITIONS AND ALTERATIONS TO THE EXISTING MULTI DWELLING
DEVELOPMENT INCLUDING CONSTRUCTION OF A NEW GARAGE AND CARPORT WITH
ASSOCIATED LANDSCAPING**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM FLOOR SPACE RATIO
AS DETAILED IN CLAUSE 4.4 OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013**

For: Additions and alterations to the existing multi dwelling development including construction of a new garage and carport and associated landscaping
At: 4 Augusta Road, Manly
Owner: Oliver & Jennifer Rees
Applicant: Oliver & Jennifer Rees
C/- Vaughan Milligan Development Consulting Pty Ltd

1.0 Introduction

This objection is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard it is requested Council support a variation with respect to compliance with the maximum floor space ratio as described in Clause 4.4 of the Manly Local Environmental Plan 2013 (MLEP 2013).

2.0 Background

Clause 4.4 restricts the floor space ratio of a building within the subject locality and refers to the maximum floor space ratio noted within the "Floor Space Ratio Map."

The maximum floor space ratio for this locality is 0.6:1 and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposal seeks to provide a floor space ratio of 483.5m² or 0.79:1 which presents a variation to the control of 119.66m².

The controls of Clause 4.4 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

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3.0 Purpose of Clause 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 118* have been considered in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for alterations and additions to an existing multi dwelling development which is consistent with the stated Objectives of the R1 General Residential Zone, which are noted as:

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

As sought by the objectives of the R1 zone, the proposal will provide for construction of alterations and additions to an existing multi dwelling development, to meet the housing needs of the multi dwelling development's occupants.

The new works provide a suitable bulk and scale, with a consistent palette of materials and finishes, in order to provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum floor space ratio control, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood.

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5.0 Onus on Applicant

Clause 4.6(3) provides that:

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.*

This submission has been prepared to support our contention that the development adequately responds to the provisions of 4.6(3)(a) & (b) above.

6.0 Justification of Proposed Variation

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 11* & *Samadi v Council of the City of Sydney [2014] NSWLEC 1199*.

Paragraph 27 of the judgement states:

Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

Precondition 1 - Consistency with zone objectives

The site is located in the R1 General Residential Zone. The objectives of the R1 zone are noted as:

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

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Comments

It is considered that the proposed development will be consistent with the desired future character of the surrounding locality for the following reasons:

- The proposal will be consistent with and complement the existing varied style of residential development within the locality.
- The proposed development respects the scale and form of other new development in the vicinity and therefore complements the locality.
- The setbacks are compatible with the existing surrounding development.
- The proposal does not have any unreasonable impact on long distance views.

Accordingly, it is considered that the site may be developed with a variation to the prescribed maximum floor space ratio control, whilst maintaining consistency with the zone objectives.

Precondition 2 - Consistency with the objectives of the standard

The objectives of Clause 4.4 are articulated at Clause 4.4(1):

- (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.*

Comments

Despite the variation to the floor space ratio control, the proposed alterations and additions to the existing multi dwelling development are considered to be in keeping with the bulk and scale of development in the locality and the desired future character of the locality. The proposal will not exceed the existing overall ridge height of the dwelling, and the new works will be in keeping with the siting and scale of existing surrounding development.

The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

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Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for the construction of alterations and additions to an existing multi dwelling development, which is constrained by the extent of the existing development on site.

It is considered that the proposal achieves the Objectives of Clause 4.4 and that the development is justified in this instance for the following reasons:

- The proposed loft addition is to be within the proposed new roof form, and will therefore maintain consistency with the extent of development in the locality.
- The proposed overall bulk and scale of the new works will maintain amenity and appropriate solar access for the subject site and neighbouring properties.

For the above reasons it would therefore be unreasonable and unnecessary to cause strict compliance with the standard.

Precondition 4 - To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

Council's controls in Clause 4.4 provide a maximum floor space ratio of 0.6:1 for the subject development.

The proposal seeks to provide a floor space ratio of 483.5m² or 0.79:1 which presents a variation to the control of 119.66m².

The development is justified in this instance for the following reasons:

- The proposed loft addition is to be contained within the proposed new roof form and will not exceed the existing maximum ridge height of the building, and is therefore considered to maintain consistency with bulk and scale of development in the locality.
- The development will maintain a compatible scale relationship with the existing residential development in the area. Development in the vicinity has a wide range of architectural styles and the given the variety in the scale of development, this proposal will reflect a positive contribution to its streetscape.
- The proposed alterations and additions do not present any unreasonable impacts for neighbours in terms of view loss, loss of solar access or bulk and scale.

Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for maximum floor space ratio.

In the recent 'Four2Five' judgement (*Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are

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particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

The recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February of this year the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the floor space ratio and FSR controls.

While the judgment did not directly overturn the *Four2Five v Ashfield* decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means:

"the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".

Accordingly, in regards to the proposed development at 4 Augusta Road, Manly, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The variation to the floor space ratio control is inconsequential as it is of negligible impact to the streetscape and the amenity of neighbouring properties.

The above are the environmental planning grounds which are the circumstance which are particular to the development which merit a variation to the development standard.

In the *Wehbe* judgment (*Wehbe v Pittwater Council [2007] NSWLEC 827*), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded and

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that approval of the Objection may be consistent with the aims of the policy. These 5 questions may be usefully applied to the consideration of Clause 4.6 variations: -

6. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

Comment: Yes. Refer to comments under 'Justification of Proposed Variation' above which discusses the achievement of the objectives of the standard.

7. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

Comment: It is considered that the purpose of the standard is relevant but the purpose is satisfied.

8. *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

Comment: Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development.

Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b).

9. *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;*

Comment: Not applicable.

10. *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Comment: The development standard is applicable to and appropriate to the zone.

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7.0 Conclusion

This development proposes a departure from the maximum floor space ratio standard, with the proposed alterations and additions to the existing multi dwelling development to provide a maximum floor space ratio of 0.79:1.

This variation occurs as a result of the siting and extent of the existing development on site.

This objection to the maximum floor space ratio specified in Clause 4.4 of the Manly LEP 2013 adequately demonstrates that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum floor space ratio would be unreasonable and unnecessary in the circumstances of this case.



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