

# AGENDA

## DEVELOPMENT DETERMINATION PANEL MEETING

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

**WEDNESDAY 24 JULY 2019**



**Ashleigh Sherry**  
**Manager Business Systems and Administration**



**Agenda for a Meeting of the Development Determination Panel  
to be held on Wednesday 24 July 2019  
in the Walamai Room, Civic Centre, Dee Why**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Development Determination Panel held 10 July 2019	
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## **2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

### **2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 10 JULY 2019**

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Development Determination Panel held 10 July 2019 were approved by all Panel Members and have been posted on Council's website.

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### 3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2019/0165 - 35 OCEAN ROAD, MANLY - ALTERATIONS AND ADDITIONS TO A SEMI-DETACHED DWELLING
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2019/392855
ATTACHMENTS	<ul style="list-style-type: none"><li>1 Assessment Report</li><li>2 Site Plan &amp; Elevations</li><li>3 Clause 4.6</li></ul>

#### PURPOSE

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

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#### RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/0165 for alterations and additions to a semi-detached dwelling on land at Lot 2 DP 536348, 35 Ocean Road, Manly, subject to the conditions outlined in the Assessment Report.

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## DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0165
Responsible Officer:	Georgia Quinn
Land to be developed (Address):	Lot 2 DP 536348, 35 Ocean Road MANLY NSW 2095
Proposed Development:	Alterations and additions to a semi-detached dwelling
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Peter Hugh Tredinnick
Applicant:	Day Bukh Architects
Application lodged:	22/02/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	14/06/2019 to 28/06/2019
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.4 Floor space ratio: 28.3%
Recommendation:	Approval
Estimated Cost of Works:	\$ 800,000.00

The application is for alterations and additions to an existing semi-detached dwelling house including a first floor addition. The development proposes a variation to the Floor Space Ratio development standard of 28.3%. Despite the numeric non-compliance, the proposal is not considered to result in unreasonable bulk, scale or amenity impacts as viewed from the surrounding streetscape or adjoining properties.

One (1) submission was received on behalf of the adjoining property to the south (the owner of the adjoining semi-detached dwelling). The submission related to the height of the carport structure and notes that should the structure be lowered, such concern would no longer be of concern.

Following a preliminary assessment of the application, the applicant was requested to surrender their CDC consent and lodge the entire proposal as a development application. The applicant did so, and as part of the amended plans reduced the height of the boundary fencing and the carport structure. A full assessment of the amended proposal concluded that the development is reasonable and is supported.

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

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

## **ASSESSMENT INTRODUCTION**

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

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

## **SUMMARY OF ASSESSMENT ISSUES**

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
 Manly Development Control Plan - 3.1 Streetscapes and Townscapes  
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)  
 Manly Development Control Plan - 3.8 Waste Management  
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)  
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)  
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation  
 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  
 Manly Development Control Plan - 4.1.10 Fencing

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 2 DP 536348 , 35 Ocean Road MANLY NSW 2095
<b>Detailed Site Description:</b>	The subject site consists of one (1) allotment that obtains two (2) street frontages with a setback fronting a lane way. The site is located on the western side of Ocean Road, the southern side of Augusta Road and the eastern side of Ocean Lane.

The site is regular in shape with a frontage of 6.045m along Ocean Road and a frontage of 35.66m along Augusta Road. The site has a surveyed area of 214m<sup>2</sup>.

The site is located within the R1 General Residential zone and accommodates a semi-detached dwelling house.

The site is largely flat, with a very minor cross fall from west to northeast of approximately 0.5m.

The site is not known to contain any threatened species.

#### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by similar low density residential development within landscaped settings.

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:

##### Complying Development Certificate CDC1037

This CDC for alterations and additions to an existing dwelling was granted consent on 28 February 2019, however this consent was surrendered on 22 May 2019.

#### **Application History**

After the CDC consent was surrendered, the applicant provided amended plans on 3 June 2019,

seeking consent for the previously approved CDC development as well as the original elements the subject of this application. Therefore the entire first floor addition, carport structure, internal ground floor works, fencing and landscape treatments are proposed as part of this development application.

The application subsequently underwent re-notification in accordance with Manly DCP, between the 14th and 28th June 2019. As a result of the public re-notification period, Council received no submissions.

#### **PROPOSED DEVELOPMENT IN DETAIL**

The application seeks consent for alterations and additions to a semi-detached dwelling house.

In particular, the application includes:

- demolition of rear portion of existing dwelling;
- replace rear portion with new ground floor living/ kitchen/ dining room;
- construction of a carport/ bin storage/ BBQ area/ storage shed within rear yard;
- minor internal re-configuration;
- replace existing attic space with new first floor addition; and
- replace existing 1.8m timber fence with new brick and timber batten fence.

#### **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

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

<b>Section 4.15 Matters for Consideration'</b>	<b>Comments</b>
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations.</p>

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

**EXISTING USE RIGHTS**

Existing Use Rights are not applicable to this application.

**BUSHFIRE PRONE LAND**

The site is not classified as bush fire prone land.

**NOTIFICATION & SUBMISSIONS RECEIVED**

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

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

Name:	Address:
Ms Jennifer Shilson-Josling	C/- Ray White Real Estate 45 Sydney Road MANLY NSW 2095

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

- **Solar Access**

The matters raised within the submissions are addressed as follows:

**Solar Access**

Concern was raised from the owner of the adjoining semi-detached dwelling in regard to the height of the roofed bin enclosure/ shed along the southern boundary. Concern was raised that should the roofed structure remain at a height of 2.7m, that unreasonable solar access impacts would arise, specifically for the rear yard of No. 33 Ocean Road.

It is stated that should such structure be lowered, the issues raised within the submission would no longer be of concern.

Comment:

The applicant has submitted amended plans for the development, of which included a reduction in the height of the above mentioned structure from a ridge line RL of 45.66 to an RL of 45.26. The carport structure initially obtained a height of 2.7m from the carport finished floor level; the amended height of the carport structure is 2.3m. The amended design is considered to be of an appropriate height, bulk and scale and furthermore satisfies the requirements for solar access (refer to Clause 3.4.1 and Clause 3.5.1 of MDCP).

It is noted that no objection was raised from the adjoining owner in response to the amended plans.

This matter does not warrant the refusal of the application.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The landscape component of the proposal is acceptable subject to the general protection of existing trees and vegetation, and the completion of landscaping.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types.</p> <p>A Landscape Plan is provided with the development application, and this satisfies the requirements of Manly DCP2013, subject to conditions.</p> <p>A Arboricultural Impact Assessment is not required for this development application as no significant trees nor vegetation are proposed for removal.</p>
NECC (Development Engineering)	Development engineering has no objections subject to conditions
Strategic and Place Planning (Heritage Officer)	<p>Further to a review of the available documents and site visit,</p> <p>The site of proposed development is not a listed heritage item in its own right, however, it is located in close vicinity of Pittwater Road heritage conservation area and in vicinity of heritage items, including: row of houses in Augusta Road (across the lane – about 4m away from the subject site) and historical kerb and pedestrian area on Ocean Road.</p> <p>In this context, the proposal will impact on views of the houses in Augusta Road from the East and North-East, and on historic streetscapes of Augusta Road and Ocean Road. Based on the above, I have major objections to this proposal from heritage perspective. Thus proposal should be redesigned in keeping with the following DCP controls:</p> <p>3.1.1.1 Complementary Design and Visual Improvement</p> <p>a) Development in the streetscape (including buildings, fences and landscaping) should be designed to:</p> <p>i) complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;</p> <p>ii) ensure the bulk and design of development does not detract from the scenic amenity of the area (see also <i>paragraph 3.4 Amenity</i>) when viewed from surrounding public and private land;</p> <p>iv) avoid elevated structures constructed on extended columns that</p>

Internal Referral Body	Comments
	<p>dominate adjoining sites such as elevated open space terraces, pools, driveways and the like. See also <i>paragraph 4.1.8 Development on Sloping Sites</i> and <i>paragraph 4.1.9 Swimming Pools, Spas and Water Features</i>;</p> <p>v) address and compliment the built form and style any heritage property in the vicinity to preserve the integrity of the item and its setting. See also <i>paragraph 3.2 Heritage Considerations</i>;</p> <p>3.2.1.1 Development in the vicinity of heritage items, or conservation areas</p> <p>b) Proposed development in the vicinity of a heritage item or conservation area must ensure that:</p> <p>ii) the heritage values or character of the locality are retained or enhanced; and</p> <p>iii) any contemporary response may not necessarily seek to replicate heritage details or character of heritage buildings in the vicinity, but must preserve heritage significance and integrity with complementary and respectful building form, proportions, scale, style, materials, colours and finishes and building/street alignments.</p> <p>3.1.1.3 Roofs and Dormer Windows</p> <p>See also <i>paragraph 4.1.7.2 Habitable Rooms in the Roof Structure</i>.</p> <p>See also <i>paragraph 3.4.3 Views</i> regarding roof forms to minimise view loss.</p> <p>b) Roofs should be designed to avoid or minimise view loss and reflectivity.</p> <p>c) Dormer windows and windows in the roof must be designed and placed to compliment the roof structure and reflect the character of the building. In particular, such windows are not permitted on the street frontage of the building where there is no precedent in the streetscape, especially on adjoining dwellings.</p> <p>Advice: which proposal should be amended to reflect these controls.</p> <p><b><u>Planner Comment:</u></b></p> <p>Whilst it is acknowledged the subject site is located within proximity to general heritage items (a row of houses along Augusta Road and historical kerb along ocean Road) it is considered the proposed development has been considerably designed so as to ensure no unreasonable or offensive impact is inflicted upon such items.</p> <p>The following assessment has been undertaken having regard to the underlying objectives of Clause 3.2 Heritage Considerations of MDCP.</p>

Internal Referral Body	Comments
	<p><i>Objective 1) To retain and conserve environmental heritage and cultural significance of Manly including:</i></p> <ul style="list-style-type: none"> <li>▪ <i>significant fabric, setting, relics and view associated with heritage items and conservation areas;</i></li> <li>▪ <i>the foreshore, including its setting and associated views; and</i></li> <li>▪ <i>potential archaeological sites, places of Aboriginal significance and places of natural significance.</i></li> </ul> <p><u>Comment:</u></p> <p>The proposed development is sited largely above the existing building footprint and where the addition extends beyond such, measures including building articulation and landscaping have been incorporated so as to retain and conserve amenity and the streetscape identity as viewed from the public domain.</p> <p><i>Objective 2) To ensure any modification to heritage items, potential heritage items or buildings within conservation areas is of an appropriate design that does not adversely impact on the significance of the item of locality.</i></p> <p><u>Comment:</u></p> <p>Not applicable, as the subject site is not a listed or potential heritage item nor is it located within a conservation area.</p> <p><i>Objective 3) To ensure that development in the vicinity of heritage items, potential heritage item and/or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items.</i></p> <p><u>Comment:</u></p> <p>The replacement of the rear portion of the existing dwelling will retain the current setback, ie. measuring 8.3m from the rear boundary. The first floor addition will have a rear setback of 11.4m to the dwelling and 7.7m to the green roof. Such configuration provides a generous building separation between the subject site and those of heritage significance along Augusta Road. In this regard, the proposal is considered to provide an adequate area around the building to allow interpretation of the heritage item so as not to detract significance from such. Further, the built form will be softened and screened as a result of additional landscape treatments.</p> <p><i>Objective 4) To provide infrastructure that is visually compatible with surrounding character and locality/visual context with particular regard to heritage buildings/areas and cultural icons.</i></p> <p><u>Comment:</u></p>

Internal Referral Body	Comments
	<p>Not applicable.</p> <p><i>Objective 5) To integrate heritage management and conservation into the planning development process including incentives for good heritage management, adaptive reuse, sustainability and innovative approaches to heritage conservation.</i></p> <p><u>Comment:</u></p> <p>Not applicable.</p> <p>Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.</p>

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

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

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

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

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

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

##### SEPP 55 - Remediation of Land

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

### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. A337983\_03, dated 28 May 2019).

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	7.2m	N/A	Yes
Floor Space Ratio	FSR: 0.6:1 (128.4m <sup>2</sup> )	FSR: 0.77:1 (164.4m <sup>2</sup> )	28.3%	No

#### Compliance Assessment

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

#### Detailed Assessment

#### **4.6 Exceptions to development standards**

##### Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1 (128.4m <sup>2</sup> )
Proposed:	0.77:1 (164.4m <sup>2</sup> )
Percentage variation to requirement:	28.3%

##### Assessment of request to vary a development standard:

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

##### Clause 4.6 Exceptions to development standards:

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

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

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

##### Comment:

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

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

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

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

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

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

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

*(a) to promote the social and economic welfare of the community and a better environment by the*

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

The applicants written request argues, in part:

*"Pursuant to the objectives contained in Section 1.3 of the Environmental Planning and Assessment Act, 1979, the proposed alterations and additions to the existing semi-detached dwelling are innovative in design and sympathetic to the surrounding environment. The proposed works provide a site specific design response that respects the adjoining property (the development has been designed to match the rear building alignment of the adjoining semi) and location of the property being within vicinity of heritage items to the west. The proposed development has been carefully designed so as to maintain the visual integrity of the front portion of dwelling, as viewed from Ocean Road, with the first floor level addition generously setback behind the front facade. The proposed design furthermore ensures that residential amenity in terms of acoustic and visual privacy, solar access and view sharing is maintained to adjoining and surrounding residential properties."*

The above mentioned reasons provided within the Applicant's written request are considered well-founded in that the proposed development will maintain consistency with existing surrounding residential development and further, the variation does not result in unreasonable amenity impacts for occupants of adjoining and surrounding properties. The proposed development has been designed to maintain the visual integrity of the existing pattern of development within the streetscape and wider locale. It is acknowledged the subject site is located within an established residential area comprised of buildings that extend across multiple development eras thus contributing to an array of architectural styles, building forms and landscape treatments.

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

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

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

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

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

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

Comment:

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

**Objectives of development standard**

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

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

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

Comment:

The proposed first floor addition is appropriately setback from the street and the majority of the addition remains below the existing ridge level of the existing dwelling. The design will ensure that the additions are visually consistent and integrated with the existing building on site. As a result, the proposal will not be of an unreasonable bulk or scale nor will the built form appear dissimilar to that of surrounding development within the streetscape and locality. The proposal is of a suitable design to maintain the existing streetscape identity and character of the locality.

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

Comment:

The proposed first floor is well articulated and modulated so as to break down the visual appearance of the built form. The proposed development incorporates a vegetated green roof which will contribute to the built form not resulting in an unreasonable building density or bulk as viewed from the street. Furthermore, the modest design of the proposal will ensure it does not obscure important landscape and townscape features.

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

Comment:

The proposed development will appear consistent with that of surrounding development, with regards to height, bulk and scale. As viewed from Ocean Road, the front facade of the dwelling remains unchanged. The addition of the first floor roof and associated windows are not considered dominant; the proposal is suitable in design such that it maintains the character of the site and consistency with surrounding development.

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

Comment:

The proposed development is appropriately design so as to ensure no unreasonable amenity impacts including privacy, solar access and view sharing arise. The proposed development will furthermore minimise adverse environmental impacts on the use and enjoyment of adjoining land and the public domain.

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

Comment:

Not applicable.

Conclusion

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

Zone objectives

The underlying objectives of the R1 General Residential zone are:

*a) To provide for the housing needs of the community.*

Comment:

The proposal will maintain the existing residential use of the site, with improved amenity.

*b) To provide for a variety of housing types and densities.*

Comment:

The proposal will maintain the existing housing type currently occupying the site.

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

Comment:

Not applicable.

Conclusion:

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

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

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

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

### Manly Development Control Plan

#### Built Form Controls

Built Form Controls - Site Area: 214m <sup>2</sup>	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	North: 6.5m (based on gradient nil)	7.2m	10.7% (0.7m)	No
	South: 6.5m (based on gradient nil)	5.9m <i>Common wall</i>	N/A	Yes
4.1.2.3 Roof Height	Pitch: maximum 35 degrees	12 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line (3.6m)	6.3m <i>Proposed additions</i>	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.4m (based on wall height of 7.2m) <i>North</i>	1.22m <i>Ground floor addition</i>	49.17%	No
		2.02m <i>First floor addition</i>	15.84%	No
	Windows: 3m	1.2m <i>Ground floor addition</i>	60%	No
		2.02m <i>First floor addition</i>	32.7%	No
4.1.4.4 Rear Setbacks	8m	Nil	100%	No
		<i>Carport Structure</i> 8.3m <i>Dwelling</i>	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (117.7m <sup>2</sup> ) of site area	31.9% (68.2m <sup>2</sup> )	43.3%	No
	Open space above ground 25% of total open space	7.6% (9m <sup>2</sup> )	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% (41m <sup>2</sup> ) of open space	35.1% (41.3m <sup>2</sup> )	N/A	Yes

	1 native trees	2 trees <i>As conditioned</i>	N/A	Yes
4.1.5.3 Private Open Space	18 sqm per dwelling	24 sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	3.0m (49.6% of rear boundary)	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	1 space	50%	No

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	No	Yes
3.1.1 Streetscape (Residential areas)	No	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

#### Detailed Assessment

### **3.1 Streetscapes and Townscapes**

The proposed development incorporates a brick wall and timber batten fence which measures between 1.58 and 1.94m in height above ground level. The fence is 1.94m in height only for a minor portion, whilst the large majority remains a standard 1.8m height.

Clause 4.1.10 Fencing under MDCP stipulates numeric controls for fencing whilst utilising the objectives of this Control. An assessment of the proposal against the objectives of Clause 3.1 has been provided within Part 4.1.10 of MDCP within this report. The assessment found the proposal, as conditioned, to be consistent with such objectives.

#### **3.1.1 Streetscape (Residential areas)**

Refer to Part 4.1.10 Fencing of WDCP for a detailed assessment with regard to the proposed fencing.

### **3.8 Waste Management**

No Waste Management Plan was submitted as part of this application. A condition of consent has been included in the recommendation of this report requiring a Waste Management Plan be prepared for this development. The Plan must be in accordance with the Development Control Plan.

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

##### Description of non-compliance

The proposed northern elevation has a maximum wall height of 7.2m, which represents a variation of 10.7% (0.7m) to the 6.5m wall height requirement.

##### Merit consideration

This Clause of the Manly DCP 2013 does not contain specific objectives, therefore the development is considered against the MLEP objectives for Clause 4.3 *Height of Buildings* as follows:

- *To provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future character in the locality.*

##### Comment:

The proposed wall height variation along the northern elevation relates only to the first floor addition. The overall building height notably remains well within the maximum allowable height Control of 8.5m and further, the proposed development is considered consistent and comparable to that of adjoining

and surrounding development. The proposed development is therefore not considered out of character within the streetscape and furthermore is capable of achieving the desired future character of the locality.

- *To control the bulk and scale of buildings.*

Comment:

The proposed development is well articulated and modulated such that the visual impact of the built form is reduced as a result. Further, the proposed development is of a bulk and scale not dissimilar to that of adjoining and surrounding development, therefore maintaining visual consistency.

- *To minimise disruption to the following:*
  - i) *views to nearby residential development from public spaces (including the harbour and foreshores)*
  - ii) *views from nearby residential development to public spaces (including the harbour and foreshores)*
  - iii) *views between public spaces (including the harbour and foreshores)*

Comment:

The proposal will not hinder views to, from or between residential development and public places.

- *To provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings.*

Comment:

The proposed development is of an appropriate bulk and scale and has been supported by certified shadow diagrams (drawing numbers 500a.03, 500b.03, 500c.03, dated 23 May 2019) which denote compliance with the relevant Clauses of MDCP in regards to solar access.

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

Comment:

Not applicable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP 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.

#### **4.1.3 Floor Space Ratio (FSR)**

The proposed development has a floor space ratio of 0.77:1, which represents a variation of 28.3% to the prescribed 0.6:1 FSR requirement.

Refer to Section 4.6 Exceptions to Development Standards of MLEP 2013 for a detailed assessment.

Part 4.1.3.1 Exceptions to FSR for Undersized Lots of this Control applies to the subject site, and such has been addressed under Section 4.6 of MLEP 2013.

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

##### Description of non-compliance

Clause 4.1.4.2 requires development to be setback at least one third of the adjoining wall height, in this instance being 2.4m for the northern elevation. The proposed development maintains a northern side setback of 1.22m to the ground floor addition and 2.02m to the first floor. This represents a variation of 49.17% and 15.84% respectively.

It is noted the existing ground floor setback (which is to remain unchanged as part of this application) is 0.74m however as this element of the dwelling does not form part of the application, no further assessment in regards to this matter is required as a result.

Clause 4.1.4.2 requires windows be setback at least 3m from any side boundary. The proposed development contains windows on the ground floor 1.22m from the side boundary and windows on the first floor located 2.02m from the northern side boundary. This represents a variation to the Control of 60% and 32.7% respectively.

Clause 4.1.4.4 requires a distance of 8m between any part of a building and the rear boundary. The proposed carport structure obtains a nil setback from the rear boundary given the nature of the rear access lane and the existing development along such lane.

##### 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 side setbacks do not result in an excessive built form that detracts from the streetscape or desired spatial portions, as the dwelling is semi-detached and the building footprint will remain relatively unchanged. The first floor is well articulated and generously setback from the northern side boundary, therefore providing visual interest and enhancing the existing streetscape character. Further, conditions of consent have been included in the recommendation of this report requiring two (2) street trees be planted within the Augusta Road road reserve. This will enhance the landscape character of the street.

*Objective 2) To ensure and enhance local amenity by:*

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

- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The proposed development includes the provision of fencing and screening vegetation so as to enhance privacy for the occupants of the subject site. The proposal remains well within the maximum allowable building height of 8.5m and furthermore incorporates a contemporary design that is well articulated and appropriately setback so as to ensure reasonable privacy and solar access to adjoining and surrounding properties. Given the subject dwelling is semi-detached, the dwelling remains adjoined along the common wall with No. 33 Ocean Road however reasonable amenity will be maintained for both properties. No views or vistas to or from private and public places will not be hindered as a result of the proposed development.

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

Comment:

The siting of the dwelling house is appropriate given the arrangement of the built form and further no unreasonable amenity impacts upon adjoining properties is considered likely to arise as a result of the application.

*Objective 4) To enhance and maintain natural features by:*

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

Comment:

The proposed development does not require the removal of any significant vegetation. Further, a landscape plan has been provided with the application and a condition of consent has been included in the recommendation of this report requiring the planting of two (2) street trees within the Augusta Road road reserve. The capacity of natural features and vegetation will therefore be enhanced as a result of this application.

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

Comment:

Not applicable, as the site is not classified as bush fire affected.

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

#### 4.1.5 Open Space and Landscaping

##### Description of non-compliance

The Control requires 55% (117.7m<sup>2</sup>) of the site area to be total open space.

The proposal provides 31.9% (68.2m<sup>2</sup>) of total open space, which represents a variation of 46.3% (49.5m<sup>2</sup>).

##### Merit consideration:

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

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

##### Comment:

The proposal includes planting along the northern side of the semi-detached dwelling as well as a flat lawn in the front of the site. Given the small, narrow nature of the allotment, it is considered the provided landscaping and open space is sufficient in the context of the site.

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

##### Comment:

A condition of consent has been included in the recommendation of the report requiring the planting of two (2) street trees within the Augusta Road road reserve which will enhance the streetscape identity and soften the built form. The proposal includes a vegetated green roof, which will furthermore enhance the visual appeal of the development.

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

##### Comment:

The proposed development incorporates sufficient landscaped area and vegetation to which enhance amenity for adjoining and surrounding properties.

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

##### Comment:

The proposal has been reviewed by Council's Development Engineer, having regard to provisions for stormwater management and has raised no objections to the proposed stormwater system subject to conditions included in the recommendation of this report. The proposal will sufficiently minimise stormwater run-off which is further achieved by the compliant portion of landscape area within the site.

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

Comment:

The proposal does not propose the planting of any noxious weeds and provides vegetation along the boundaries of the site to which will limit the opportunity for weeds to access the site.

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

Comment:

The proposed development includes the provision of additional landscaping and vegetation that what currently exists, therefore enhancing opportunity for wildlife habitat and wildlife corridors.

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

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

Description of non-compliance

The Control requires the provision of two (2) on-site parking spaces per dwelling.

The proposed development provides one (1) on-site parking space, which is an improvement as currently the site does not provide any on-site parking.

It is noted the Control allows for a variation where it is stated "*in relation to the provision of parking for dwelling houses, Council may consider the provision of one 1 space where adherence to the requirement of 2 spaces would adversely impact on the streetscape or on any heritage significance identified on the land or in the vicinity.*"

Merit consideration:

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

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

Comment:

The proposal will improve the current parking arrangement for the site, as there is no existing on-site provision. It is also noted ample street parking is available along both Ocean and Augusta Road for any over flow of parking the occupants may require. The proposed parking is considered to be adequate to service the dwelling and is accessible from within the site.

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

Comment:

The proposal will reduce the demand for on-street parking as the current site arrangement does not allow for any on-site parking. Given the small nature of the allotment, the provision of two (2) parking

spaces would dominate the streetscape and would not appear consistent with adjoining and surrounding developments. The proposed development will result in an acceptable impact on the streetscape, given the carport is sited and access via the lane way that abuts the rear boundary. Such lane way is predominately utilised as an access/ service lane for similar purposes ie. multiple carports/ garages front the lane way to provide on-site parking for the properties along it. It is therefore appropriate in this circumstance to apply the prescribed variation to the parking requirement.

*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:

The proposed parking arrangement is safe and most convenient for the occupants of the subject site. The carport design is consistent with that along Ocean Lane and furthermore integrated into the contemporary design of the development such that the visual impact on the streetscape is minor.

*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 proposal does not require any significant excavation nor will it result in the disruption of groundwater flows.

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

Comment:

A kerb layback already exists along Ocean Lane and only a minor driveway crossover within the road reserve is required as the carport has a nil setback. There is no footpath along Ocean Lane as it is predominantly used as a service lane only. As such, the development will not result in any additional footpath crossings.

*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 parking arrangement is consistent with adjoining and surrounding development along Ocean Lane. It is noted the hard stand surface within the site allocated for parking is to be finished in grass reinforcing mesh, therefore limiting the amount of impervious surface within the site. Further, the site is to be fenced and landscaped along the northern boundary, so as to provide screening of internal accesses from public view.

*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:

Not applicable.

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

#### 4.1.8 Development on Sloping Sites

The subject site is classified as Area G4 on the Landslip Hazard Map of MDCP. No preliminary geotechnical report was requested given the subject site has a cross fall of only 0.5m approximately, over a width of 35.66m. Further, no significant excavation is required to facilitate the proposed development.

#### 4.1.10 Fencing

##### Description of non-compliance

The Control requires front fences to be a maximum of 1m or 1.5m with 30 percent transparency.

The proposed fence has a maximum height of 1.94m and runs along the northern boundary fronting Augusta Road, which in this instance is considered to be a secondary frontage.

##### Merit Consideration

With regard to the consideration for a variation, the development is considered against the underlying objectives of Clause 3.1 Streetscapes and Townscapes of MDCP as follows:

- *To minimise any negative visual impacts of walls, fences and carparking on the street frontage.*

##### Comment:

The subject site is largely exposed due the nature of the allotment having three (3) road frontages. The proposal includes the provision of a timber batten fence that incorporates a low masonry wall along the northern elevation so as to provide privacy for the occupants of the subject site. The proposed fence measures between 1.58m at the front boundary to 1.94m at the start of the masonry wall. It is considered a fence higher than 1.8m will inflict an unreasonable impact upon the streetscape, therefore a condition of consent has been included in the recommendation of this report requiring the maximum height of the fence not to exceed 1.8m from the ground level on the street side of the fence. Various properties within the surrounding streetscape incorporate similar style fencing therefore the proposed fence (to a maximum height of 1.8m as conditioned) will appear consistent and visually compatible with the existing streetscape character.

- *To ensure development generally viewed from the street compliments the identified streetscape.*

##### Comment:

The proposed fence, as conditioned, will compliment surrounding and adjoining development within the streetscape.

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

Comment:

The proposed planter boxes along the northern boundary in conjunction to the unchanged front garden is considered suitable in this instance. It is noted a vegetated green roof is proposed as part of the application which is considered to contribute to the softening of the built form.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in s1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, subject to conditions, in this particular circumstance.

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

#### **POLICY CONTROLS**

##### **Northern Beaches 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 \$8,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$800,000.

#### **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

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

The proposal includes numeric non-compliances with the following Clauses:

- 4.1.2 Height of Buildings (wall height non-compliance)
- 4.1.3 Floor Space Ratio
- 4.1.4 Setbacks (side and Rear setback non-compliance)
- 4.1.5 Open Space and Landscaping (open Space non-compliance)
- 4.1.6 Parking, Vehicular Access and Loading (on-site parking space non-compliance)
- 4.1.10 Fencing

The above mentioned non-compliances are considered to result in minimal material impact to adjoining properties and the surrounding streetscape and wider locale, and are considered reasonable when assessed against the relevant objectives of each control.

The proposal includes a more significant non-compliance in relation to Floor Space Ratio. The proposed FSR non-compliance is considered in relation to the provisions of Manly LEP 2013 Clause 4.6 and the context of the site and surrounding locality, which includes a number of recent approvals including variations to the FSR Controls. While it is acknowledged that the proposed FSR represents a significant breach, the resulting impacts of the development on the amenity of the adjoining properties and the streetscape is assessed as reasonable.

Based on the above discussion and the full assessment undertaken, the proposal is considered to be acceptable having regard to all relevant Manly LEP 2013 and Manly DCP controls, and is therefore recommended for approval.

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

## RECOMMENDATION

Accordingly Council as the consent authority grant Development Consent to DA2019/0165 for Alterations and additions to a semi-detached dwelling on land at Lot 2 DP 536348, 35 Ocean Road, MANLY, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. Approved Plans and Supporting Documentation

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

##### a) Approved Plans

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<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
100.03, Issue 03 - Site Plan and Site Analysis/ Waste Management Plan/ Construction Plan/ Erosion and Sediment Control Plans	23 May 2019	Day Bukh Architects
200.03, Issue 03 - Proposed Ground Floor & Landscape Plan	23 May 2019	Day Bukh Architects
201.03, Issue 03 - Proposed First Floor Plan	23 May 2019	Day Bukh Architects
202.03, Issue 03 - Proposed Roof Plan	23 May 2019	Day Bukh Architects
300.03, Issue 03 - Proposed North Elevation	23 May 2019	Day Bukh Architects
301.03, Issue 03 - Proposed West Elevation	23 May 2019	Day Bukh Architects
302.03, Issue 03 - Proposed East Elevation	23 May 2019	Day Bukh Architects
303.03, Issue 03 - Proposed Augusta Road Elevation	23 May 2019	Day Bukh Architects
400.03, Issue 03 - Proposed Section A-A & BASIX	23 May 2019	Day Bukh Architects
401.03, Issue 03 - Proposed Section B-B	23 May 2019	Day Bukh Architects

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
BASIX Certificate (Cert. No. A337983_03)	28 May 2019	Day Bukh Architects

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

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

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

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

## 2. Prescribed Conditions

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon

- plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative Requirement

### 3. General Requirements

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

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

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

## FEES / CHARGES / CONTRIBUTIONS

### 4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$8,000.00 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 \$800,000.00.

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](http://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.

## 5. Security Bond

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

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

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

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

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

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

### 6. On Slab landscape works

- i) Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing to all internal walls and slab, and drainage of the green roof concrete slab over which soil and planting is being provided,
- ii) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule,
- iii) The following soil depths are required to support landscaping as proposed:

-300mm for groundcovers and tall grasses,

iv) Design certification shall be submitted to the Certifying Authority by a structural engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting), and in accordance with the extent as shown on drawing 201.03.

Reason: to ensure appropriate and secure waterproofing and drainage is installed to direct water flow into the drainage system.

7. **Stormwater Disposal**

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

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

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

8. **Vehicle Crossings Application**

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

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

Reason: To facilitate suitable vehicular access to private property.

9. **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.

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. **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](http://www.sydneywater.com.au) for:

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

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

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

13. **Gate Opening**

The pedestrian gate from Augusta Road is to open entirely within the property boundaries.

Reason: To ensure pedestrian safety and that the development remains within the subject site.

14. **Amendments to the approved plans**

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

- o The fencing along the northern boundary is not to exceed 1.8m in height from ground level on the street side of the fence.

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

Reason: To maintain consistency within the streetscape.

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

15. **Vehicle Crossings**

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

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

Reason: To facilitate suitable vehicular access to private property.

16. **Maintenance of Road Reserve**

The public footways and roadways adjacent to the site shall be maintained in a safe condition at

all times during the course of the work.

Reason: Public Safety.

**17. Maintenance of Sediment**

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

Reason: To ensure sediment controls are effective

**18. Site Fencing**

The site must be fenced throughout construction and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.

Reason: To ensure public safety.

**19. 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.

**20. Tree and vegetation protection**

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

- i) all trees and vegetation within the site as shown on the Survey Plan, excluding exempt vegetation under the relevant planning instruments of 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, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
- iii) existing ground levels shall remain under the tree protection zone of trees to be retained, unless authorised by AQF Level 5 Arborist,
- iv) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an AQF Level 5 Arborist. Details including photographic evidence of works undertaken shall be submitted to the Certifying Authority,
- v) 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,
- vi) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a AQF Level 5 Project Arborist on site,
- vii) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
- viii) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist, including advice on root protection measures,

ix) should either or all of vi), vii) and viii) 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,

x) 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,

xi) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

c) All protected trees are to be retained for the life of the development, or for their safe natural life. Trees that die or are removed by approval must be replaced with a locally native canopy tree.

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

##### 21. **Landscape works**

Landscaping is to be implemented in accordance with the Landscape Plan 200.03 and 201.03 prepared by Day Bukh Architects, inclusive of the following requirements:

- i) all groundcover and tall grasses planting shall be installed at a minimum container size of 150mm, and planted no more than 500mm apart,
- ii) all shrub planting shall be installed at a minimum container size of 200mm, and planted no more than 1m apart,
- iii) all planting on the green roof shall consist of sun-hardened species, and installed at a minimum container size of 150mm, and planted no more than 500mm apart.

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

Reason: to ensure that the landscape treatments are installed to provide landscape amenity and soften the built form.

##### 22. **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.

##### 23. **Street tree planting**

In accordance with the Manly Council Street Tree Master Plan, two (2) *Caesalpinia ferrea* shall be planted within the Augusta Road verge. Each tree shall be installed at 75 litre container size, accompanied by a tree guard consisting of 4 x 50 x 50 x 1800 timber posts, with 30 x 70 top and med rails.

A tree planting hole 700 x 700 x 500 depth shall be prepared and backfilled with sandy loam

soilmix. Each tree shall be mulched at the surface. Each tree shall be planted at least 1 metre from the kerb and at least 6 metres apart.

An establishment period of 12 months applies to the tree planting, requiring watering and fertilising.

Reason: to enhance canopy trees within the Manly area.

24. **House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

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

25. **Landscape maintenance**

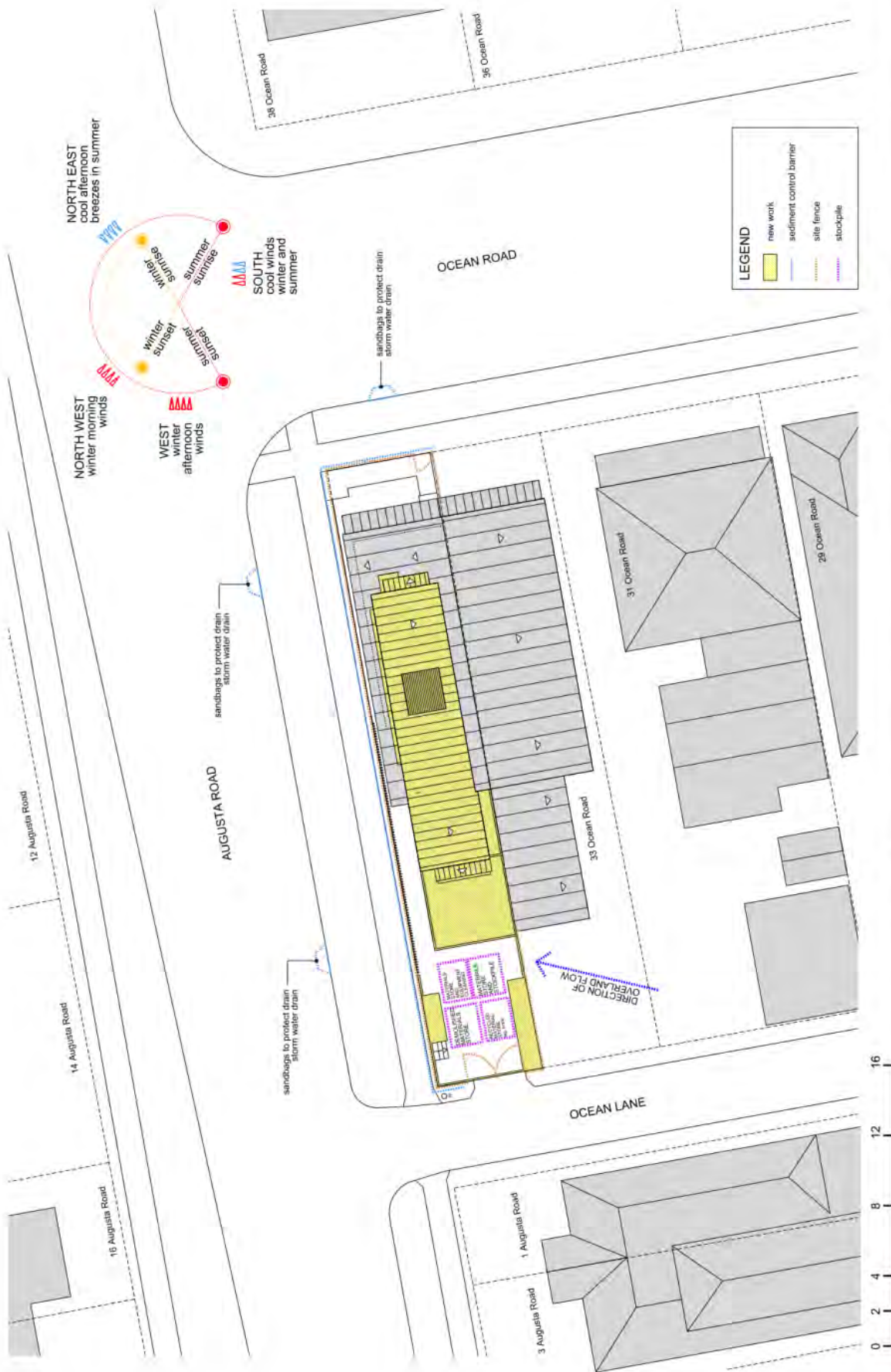
All landscape components are to be maintained for the life of the development. A 12 month establishment period shall apply for all new landscaping. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components and species to maintain the landscape theme of the landscape plan.

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

26. **Environmental and priority weed control**

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: preservation of environmental amenity.



<div>DAY BUSH ARCHITECTS</div> <div>10 Riverside Street, Manly NSW 1560 8103</div> <div>www.daybusharchitects.com.au</div> <div>ph: 02 9987 4397 fax: 0403 811 786</div> <div>registered architect, email day no. 7748</div>	<p>The proposed building works must comply with all relevant Australian Standards and the Building Code of Australia. Do not scale drawings. Use figured dimensions only. Check and verify levels and dimensions. Do not alter, reproduce or transmit in any form, or by any means without the express permission of Day Bush Architects.</p>		TRUE NORTH	Project:	35 Ocean Road, Manly NSW 2095	drawing: Site Plan and Site Analysis Waste Management Plan Construction Plan Erosion and Sediment Control Plans	DA	100.03	scale: 1 : 200 @ A3	ISSUE 03: 23.05.2019
				Client:	Fowler Tredinnick					
				Job no.:	1806					

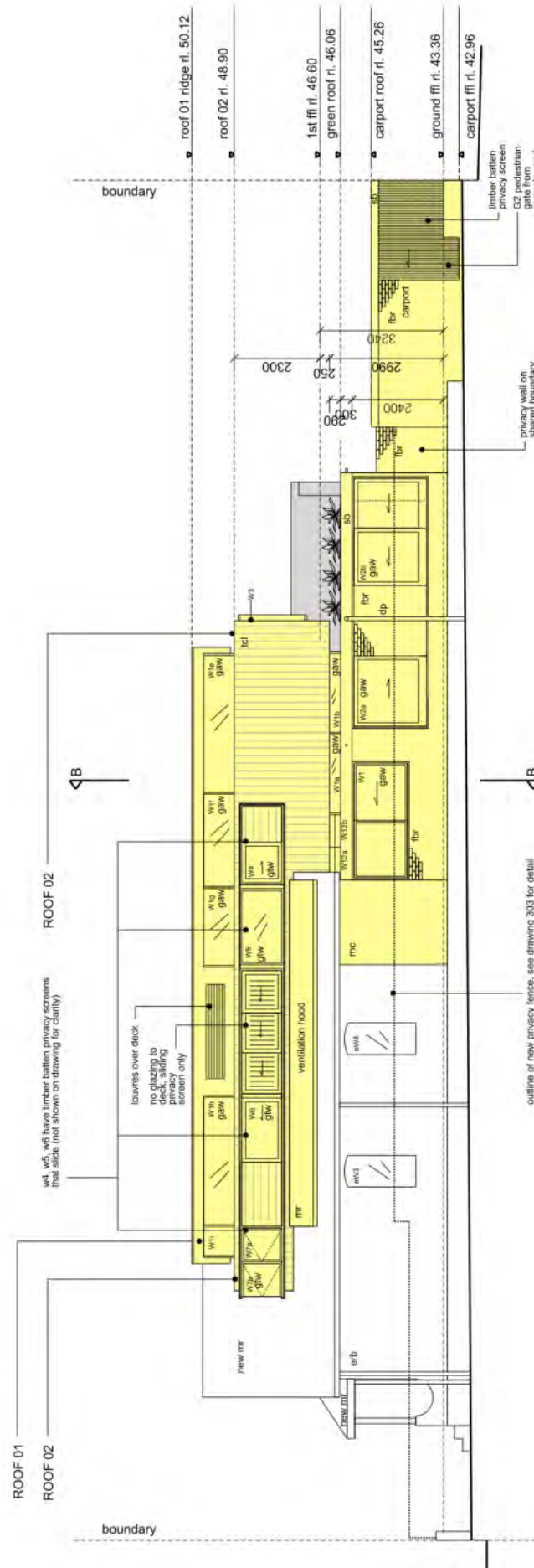
**DEVELOPMENT STATISTICS**

	existing building	proposed development	LEP/DCP/SEPP
site area	214 sq m	214 sq m	
gross floor area	132.4 sq m	166 sq m	< 150 sq m
floor space ratio	0.61:1	0.77:1** (0.66:1* after DCP exemption)	< 0.6:1*
open space	48%, 98 sq m	47%, 101 sq m**	> 55% site area
private open space	49 sq m	40 sq m	> 16 sq m
perVIOUS open space	55% 54 sq m	81% 75 sq m	> 35% open space
carparking	0 spaces	1 space	

\*based on 250sqm site as per DCP relating to undersized lot

\*\*from compliance

	New Work		Existing		Neighbour		Line of existing
	Concrete (new work)						
	Lightweight Wall (new work)						
	Brick face finish						
	Smoke Detector						
emr	existing metal roof	fm	finished floor level	w1	window	emr	existing metal roof
sd	steel beam	ed1	existing door	cpd	cupboard / robe	sd	steel beam
ov	oven	d1	new door	ldy	laundry	ov	oven
ck	cooktop	ew1	existing window	td	timber cladding	ck	cooktop
sk	skylight	mr	metal roof	atr	existing tiled roof	sk	skylight
pa	pantry	mem	membrane roof	fr / fz	fridge / freezer	pa	pantry
pbr	painted brickwork	gaw	glazed al. framed window	sl	sink	pbr	painted brickwork
erb	existing rendered brickwork	gad	glazed al. framed door	tr	terracotta tiles	erb	existing rendered brickwork
pp	power pole	gtd	glazed timber framed door	fbr	face brickwork	pp	power pole
tc	fire cement cladding, painted	glw	glazed timber framed window	mc	metal cladding	tc	fire cement cladding, painted



<b>DAY BURN ARCHITECTS</b> Brent & Rachel Burns (Lic 210) email: info@dayburnarchitects.com.au ph: 03 9497 2937, mob: 0400 801 686 registered architects (arch reg no. 7740)	The proposed building works must comply with all relevant Australian Standards and the Building Code of Australia. Do not scale drawings. Use figured dimensions only. Check and verify levels and drawings or the fabrication of components. Do not alter, reproduce or transmit in any form, or by any means without the express permission of Day Burn Architects	Project: 35 Ocean Road, Manly NSW 2095 Client: Fowler Tredinnick Job no.: 1806	drawing: <b>Proposed North Elevation</b> drawn by: lw checked by: md	DA <b>300.03</b> scale: 1:100 @ A3 ISSUE 03: 23.05.2019
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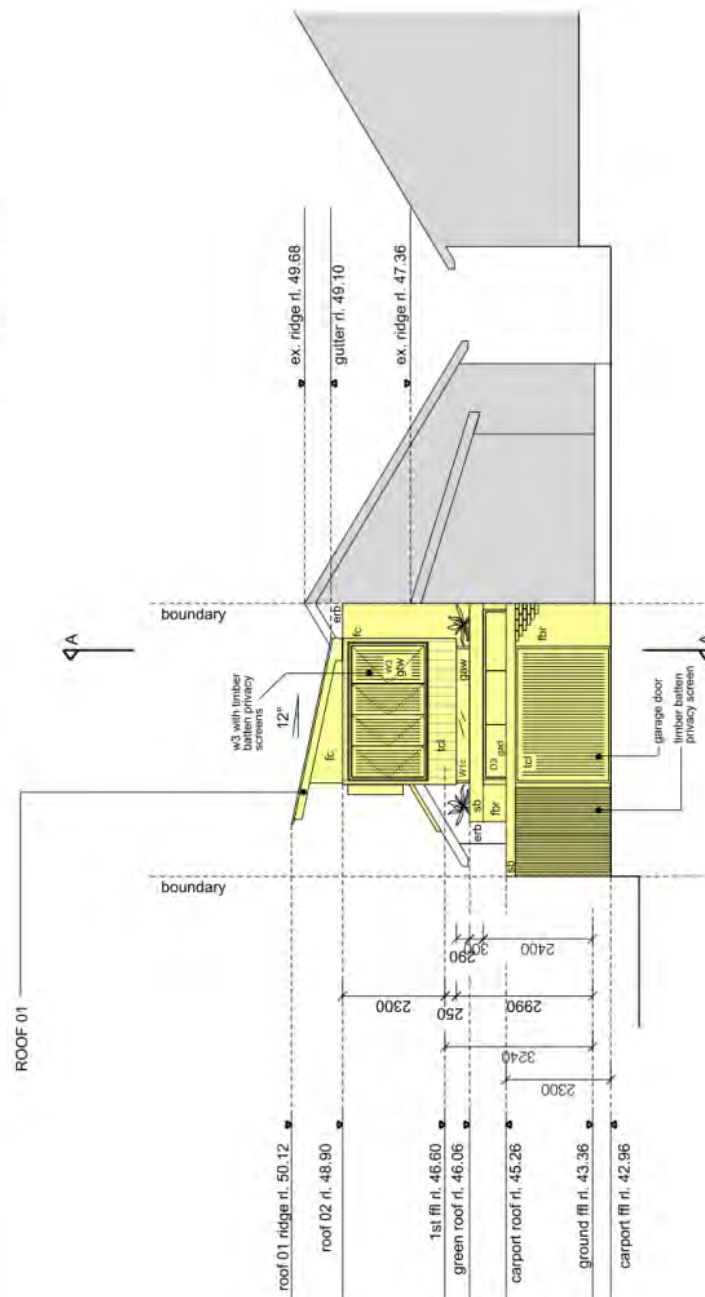
**DEVELOPMENT STATISTICS**

	existing building	proposed development	LEP/DCP/SEPP
site area	214 sq m	214 sq m	< 150 sq m
gross floor area	132.4 sq m	166 sq m	< 0.6 : 1*
floor space ratio	0.61 : 1	0.77 : 1** (0.66 : 1* after DCP exemption)	> 55% site area
open space	46% 98 sq m	47% 101 sq m**	> 16 sq m
private open space	49 sq m	40 sq m	> 35% open space
permissible open space	55% 54 sq m	81% 75 sq m	
carparking	0 spaces	1 space	

\*based on 250sqm site as per DCP relating to undersized lot

\*\*non compliance

	New Work		Existing		w1 window		ertr existing metal roof
	Carport (new work)		Neighbour		ed1 existing door		sb steel beam
	Lightweight Wall / Framing (new work)		Line of existing		td timber cladding		ov oven
	Brick face finish (new work)				ew1 existing window		ck cooktop
	Smoke Detector				mr metal roof		sk skylight
					mem membrane roof		pa pantry
					gaw glazed aluminium framed window		fr / fz fridge / freezer
					gad glazed aluminium framed door		si sink
					gld glazed timber framed door		tr terracotta tiles
					glw glazed timber framed window		fbr face brickwork
							mc metal cladding



	<b>Project:</b> 35 Ocean Road, Manly NSW 2095	<b>drawing:</b> Proposed West Elevation	<b>DA</b>	<b>301.03</b>
<b>Client:</b> Fowler Tredinnick				
<b>Job no.:</b> 1806		<b>drawn by:</b> iw	<b>checked by:</b> md	<b>scale:</b> 1 : 100 @ A3
				<b>ISSUE 03:</b> 23.05.2019

The proposed building works must comply with all relevant Australian Standards and the Building Code of Australia. Do not scale drawings. Use figure dimensions only. Check and verify levels and dimensions. Do not alter, reproduce or transmit in any form, or by any means without the express permission of Day Built Architects.

**Day Built Architects**  
Suite 1 & 2  
11 Wilson Drive, Manly NSW 2095  
www.daybuiltarchitects.com.au  
ph: 02 9497 1851, mob: 0420 861 746  
registered architect - unit 1/1/18

## \*non compliance

ROOF 01

<p>The proposed building works must comply with all relevant Australian Standards and the Building Code of Australia.</p> <p>Do not alter, reproduce or transmit in any form, or by any means without the express permission of Day Buin Architects</p>	<p>Project:</p> <p>Client:</p> <p>Job no.:</p>	<p>35 Ocean Road, Manly NSW 2065</p> <p>Fowler Tredinnick</p> <p>1806</p>	<p>drawing:</p> <p><b>Proposed East Elevation</b></p> <p>drawn by: <b>iw</b> checked by: <b>md</b></p>	<p><b>DA</b></p> <p>scale: 1 : 100 @ A3</p>	<p><b>302.03</b></p> <p>ISSUE 03: 23.05.2019</p>
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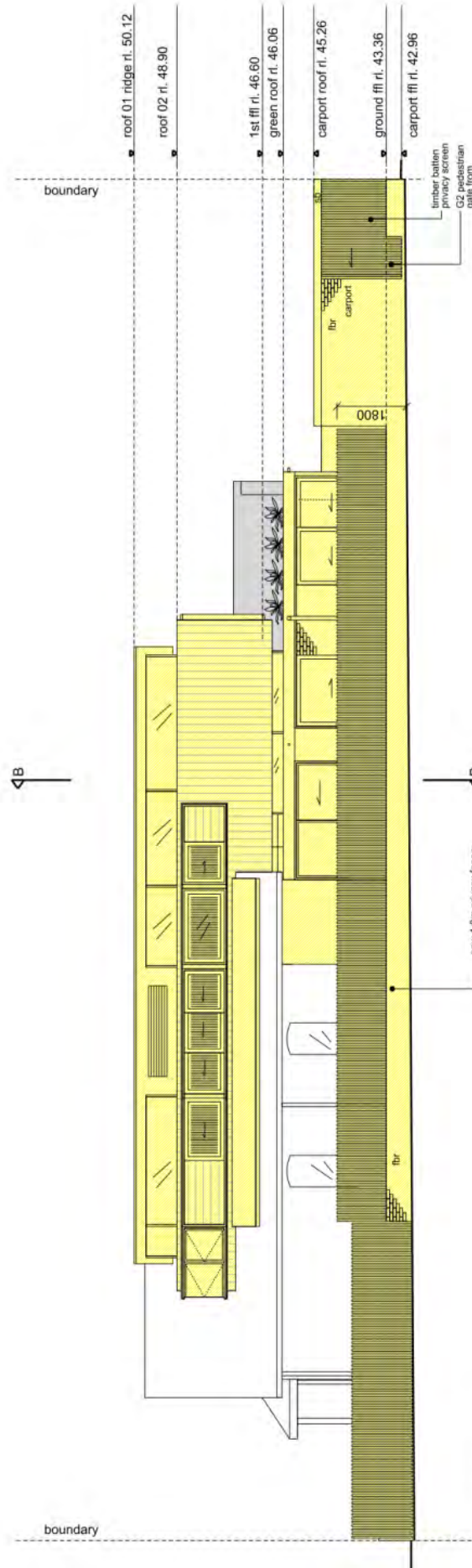
**DEVELOPMENT STATISTICS**

	existing building	proposed development	LEPIDCP/SEPP
site area	214 sq m	214 sq m	< 150 sq m
gross floor area	132.4 sq m	166 sq m	< 0.6 : 1*
floor space ratio	0.61 : 1	0.77 : 1** (0.66 : 1* after DCP exemption)	> 55% site area
open space	48%, 99 sq m	47%, 101 sq m**	> 16 sq m
private open space	49 sq m	81%, 75 sq m	> 35% open space
previous open space	55% 54 sq m		
carparking	0 spaces	1 space	

\*based on 250sqm site as per DCP relating to undersized lot

\*\*non compliance

	New Work		Existing		Neighbour		Line of existing
	Concrete (new work)		Lightweight Wall / Framing (new work)		Brick, face finish (new work)		Smoke Detector
enr	existing metal roof	w1	window	gaw	glazed al. framed window	g1w	glazed timber framed window
sb	steel beam	ed1	existing door	gad	glazed al. framed door	g1d	glazed timber framed door
ov	oven	d1	new door	g1d	glazed timber framed door	mc	metal cladding
ck	cooktop	ew1	existing window	tr	terracotta tiles		
sk	skylight	mr	metal roof	fbr	face brickwork		
pa	pantry	mem	membrane roof	fr / fz	fridge / freezer		
pbr	painted brickwork	sl	slab				
erb	existing rendered brickwork						
pp	power pole						
fc	fibre cement cladding, painted						



NOTE: This drawing is to show boundary line only. See drawing 300 for detailed north elevation of building

0 1 2 4 6 8

**DAY BUILT ARCHITECTS**

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ph: 02 9997 4397, mob: 0450 951 781  
registered architect - matt day no. 7346

The proposed building works must comply with all relevant Australian Standards and the Building Code of Australia. Do not scale drawings. Use figures and dimensions only. Check and verify levels and dimensions on site. If any part of the drawing is to be reproduced or used in any form, the reproduction of drawings or the fabrication of components. Do not alter, reproduce or transmit in any form, or by any means without the express permission of Day Built Architects

Project: 35 Ocean Road, Manly NSW 2095  
Client: Fowler Tredinnick  
Job no.: 1806

drawing: Proposed Augusta Road  
Elevation  
drawn by: lw checked by: md

DA 303.03  
scale: 1 : 100 @ A3  
ISSUE 03: 23.05.2019

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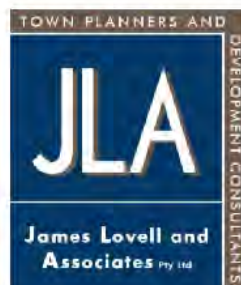
**Alterations and Additions to an Existing Semi-Detached Dwelling**

**35 Ocean Road, Manly**

**Clause 4.6 "Written Request" to Vary the  
Floor Space Ratio Control**

30 May 2019

Ref: 19119



Suite 2, Level 1, 20 Young Street, Neutral Bay NSW 2089 • PO Box 1835, Neutral Bay NSW 2089  
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## INTRODUCTION

The subject site is identified as No. 35 Ocean Road, Manly. The site is located on the western side of Ocean Road, at the junction with Augusta Road. The site also has a frontage to Ocean Lane to the rear.

The site encompasses a total area of approximately 214m<sup>2</sup>, and is rectangular in shape with a frontages of 6.045 metres to Ocean Road, 35.66 metres to Augusta Road, and 6.045 metres to Ocean Lane.

The topography of the site is relatively level, and the existing vegetation is limited to a scattering of trees, shrubs and groundcovers.

The site is occupied by a single storey semi-detached dwelling, with a partial attic level generally contained within the existing roof volume. The ground floor level accommodates two (2) bedrooms and associated living rooms, kitchen, laundry and amenities. The partial attic level accommodates a third bedroom and study.

The existing dwelling is characterised by a relatively poor relationship between indoor and outdoor spaces. Further, the existing dwelling is not serviced by any off-street car parking facilities.

The proposed development comprises alterations and additions to the existing dwelling, including internal reconfiguration and expansion of the ground floor level, and expansion of the existing attic level.

The proposed dwelling maintains three (3) bedrooms, with an improved internal layout intended to provide a better relationship between indoor and outdoor spaces.

Further, the proposed development includes providing an off-street car parking space within a carport structure to the rear of the dwelling, accessed via a new driveway crossing along the Ocean Lane frontage of the site.

On 28 February 2019, a Complying Development Certificate (CDC 2019/0119) was issued by *Chris Dan Certification*. The approved works include internal reconfiguration and expansion of the ground floor level, and expansion of the attic level.

The CDC authorises all of the works now the subject of the DA, with the exceptions being a 1.07 metre expansion of the living/dining area to the north, a 900mm expansion of Bedroom 3 at the first floor level to the south, and the off-street car parking space to the rear of the dwelling.

The approved works provide a total gross floor area of 158m<sup>2</sup>, representing an FSR of 0.74:1.

The DA was originally lodged to cover only those additional works not covered in the CDC. Irrespective, Council has subsequently advised the Applicant that the DA should cover all of the proposed works (ie. including those works already the subject of the CDC).

On that basis, the proposed development provides a total gross floor area of 166m<sup>2</sup>, representing an FSR of 0.78:1.

In the circumstances, the proposed development provides an additional 8m<sup>2</sup> (166m<sup>2</sup> – 158m<sup>2</sup>) of gross floor area when compared with the alterations and additions the subject of the recently approved CDC.

Clause 4.4 of the Manly Local Environmental Plan (LEP) 2013 specifies a maximum floor space ratio (FSR) of 0.6:1.

Accordingly, this “*written request*” has been prepared to vary the FSR control pursuant to Clause 4.6 of the LEP. In that regard, the FSR control is a development standard and is not excluded from the operation of Clause 4.6 of the LEP.

#### **CLAUSE 4.6 OF THE MANLY LEP 2013**

Clause 4.6(2) of the LEP specifies that “*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*”.

Clause 4.6(3) specifies that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

Clause 4.6(4) specifies that development consent must not be granted for development that contravenes a development standard unless:

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

Clause 4.6(5) specifies that in deciding whether to grant concurrence, the Secretary must consider:

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

## CONTEXT AND FORMAT

This “written request” has been prepared having regard to “Varying development standards: A Guide” (August 2011), issued by the former Department of Planning, and relevant principles identified in the following judgements:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827;*

- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248;*
- *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7;*
- *Moskovich v Waverley Council [2016] NSWLEC 1015; and*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.*

"Varying development standards: A Guide" (August 2011) outlines the matters that need to be considered in DA's involving a variation to a development standard. The Guide essentially adopts the views expressed by Preston CJ, in *Wehbe v Pittwater Council [2007] NSWLEC 827* to the extent that there are effectively five (5) different ways in which compliance with a development standard can be considered unreasonable or unnecessary as follows:

1. The objectives and purposes of the standard are achieved notwithstanding non-compliance with the development standard.
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
3. The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
4. The development standard has been 'virtually abandoned or destroyed' by the Councils own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
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.

As Preston CJ, stated in *Wehbe*, the starting point with a SEPP No. 1 objection (now a Clause 4.6 variation) is to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances. The most commonly invoked 'way' to do this is to show

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

In that regard, Preston CJ, in *Wehbe* states that "... development standards are not ends in themselves but means of achieving ends". Preston CJ, goes on to say that as the objectives of a development standard are likely to have no numerical or qualitative indicia, it logically follows that the test is a qualitative one, rather than a quantitative one. As such, there is no numerical limit which a variation may seek to achieve.

The above notion relating to 'numerical limits' is also reflected in Paragraph 3 of Circular B1 from the former Department of Planning which states that:

*As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be numerically small in others it may be numerically large, but nevertheless be consistent with the purpose of the standard.*

It is important to emphasise that in properly reading *Wehbe*, an objection submitted does not necessarily need to satisfy all of the tests numbered 1 to 5, and referred to above. This is a common misconception. If the objection satisfies one of the tests, then it may be upheld by a Council, or the Court standing in its shoes. Irrespective, an objection can also satisfy a number of the referable tests.

In *Wehbe*, Preston CJ, states that there are three (3) matters that must be addressed before a consent authority (Council or the Court) can uphold an objection to a development standard as follows:

1. The consent authority needs to be satisfied the objection is well founded;
2. The consent authority needs to be satisfied that granting consent to the DA is consistent with the aims of the Policy; and
3. The consent authority needs to be satisfied as to further matters, including non-compliance in respect of significance for State and regional planning and the public benefit of

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maintaining the planning controls adopted by the environmental planning instrument.

Further, it is noted that the consent authority has the power to grant consent to a variation to a development standard, irrespective of the numerical extent of variation (subject to some limitations not relevant to the present matter).

The relatively recent decision of Paine J, in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 suggests that demonstrating that a development satisfies the objectives of the development standard is not necessarily sufficient, of itself, to justify a variation, and that it may be necessary to identify reasons particular to the circumstances of the proposed development on the subject site.

Irrespective, a more recent decision of Preston CJ, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 involved relatively substantial variations to the applicable building height (55%) and floor space ratio (20%) controls.

Preston CJ, found that *"the Commissioner did not need to be directly satisfied that compliance with each development standard is unreasonable or unnecessary in the particular 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"*.

Further, Commissioner Tuor, in *Moskovich v Waverley Council* [2016] NSWLEC 1015, considered a DA which involved a relatively substantial variation to the FSR (65%) control. Some of the factors which convinced the Commissioner to uphold the Clause 4.6 variation request were the lack of environmental impact of the proposal, the characteristics of the site such as its steeply sloping topography and size, and its context which included existing adjacent buildings of greater height and bulk than the proposal.

The decision suggests that the requirement that the consent authority be satisfied the proposed development will be in the public interest because it is *"consistent with"* the objectives of the development standard and the zone, is not a requirement to *"achieve"* those objectives. It is a requirement that the development be 'compatible' with them or 'capable

of existing together in harmony'. It means "something less onerous than 'achievement'".

Further, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ found that it is not necessary to demonstrate that the proposed development will achieve a "better environmental planning outcome for the site" relative to a development that complies with the development standard.

Finally, Clause 4.1.3 of the Manly Development Control Plan (DCP) 2013 provides objectives and controls relating to the FSR control. The DCP includes the following note in relation to the application of the FSR control on smaller sites:

*On existing sites in Residential LEP Zones (including E3 & E4) with a site area less than the minimum lot size required on the LEP Lot Size (LSZ) Map, Council may consider exceptions to the maximum FSR under LEP clause 4.6 when both the relevant LEP objectives and the provisions of this DCP are satisfied. See LEP clause 4.6(4)(a).*

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

The subject site encompasses an area of 214m<sup>2</sup>, which is less than the minimum lot size required in Area C on the Lot Size Map. Accordingly, the "undersized nature of the lot" is a relevant matter for Council to consider in relation to the written request to vary the FSR control.

Further, Figure 30 of the DCP provides additional flexibility in the application of the FSR control on "undersized lots", and specifies that the FSR control on those lots will be based on a site area of 250m<sup>2</sup>. On that basis, the proposed development has an FSR of 0.66:1 (ie. 166m<sup>2</sup> of gross floor area based on a site area of 250m<sup>2</sup>).

## ASSESSMENT

Is the requirement a development standard?

The FSR control is a development standard and is not excluded from the operation of Clause 4.6 of the LEP.

What is the underlying object or purpose of the standard?

The relevant objectives of the FSR control are expressed as follows:

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) *to control building bulk and density 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.*

In relation to objective (a), the site is located within an established residential neighbourhood characterised by a predominance of detached and semi-detached dwellings, with a scattering of townhouses and residential flat buildings.

The existing buildings extend across multiple development eras, contributing to a diversity of building forms, architectural styles and landscaped treatments. Further, many of the older buildings in the locality have been expanded or replaced with larger buildings, generally with a more contemporary appearance.

The proposed development has been carefully designed to maintain the visual integrity of the front portion of the dwelling when viewed from Ocean Street, with the first floor level addition setback behind the front façade.

There are a significant number of 2-storey buildings in the surrounding locality, circumstances in which the proposed development will not be perceived as offensive, visually jarring, or unsympathetic to the existing pattern of development in the locality.

Further, a substantial number of the properties with rear lane access to Ocean Lane in the vicinity of the site include car parking structures adjacent to the rear laneway.

Finally, Clause 4.3 of the LEP specifies a maximum building height of 8.5 metres, and the proposed development extends to a maximum height of approximately 7 metres.

In the circumstances, the proposed variation to the FSR control is not accompanied by, or related to, a variation to the building height control, and in fact, the proposed works remain comfortably below the maximum building height control.

In relation to objective (b), the proposed development will not obscure any important landscape or townscape features in the locality.

Again, the existing buildings in the locality extend across multiple development eras, contributing to a diversity of building forms, architectural styles and landscaped treatments.

The proposed development has been carefully designed to maintain the visual integrity of the front portion of the dwelling when viewed from Ocean Street, with the first floor level addition setback behind the front façade.

Further, the existing vegetation within the setback to Ocean Road is being retained, all of the surrounding street trees are being retained, and the tree occupying the north-western corner of the site being removed is an introduced species that is not an important landscape feature of the locality.

In relation objective (c), the proposed development has been designed to match the rear building alignment of the adjoining semi-detached dwelling (No. 33 Ocean Road).

Further, the extension to the rear of the existing dwelling provides a larger setback to Augusta Road than the portion of the dwelling being retained. The first floor level addition is recessed behind the alignment of the levels below.

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In the circumstances, the proposed development provides an appropriate visual relationship with the existing character and landscape of the area.

In relation to objective (d), the proposed development will have no impacts on any existing public or private views. Further, the visual and acoustic privacy of the surrounding properties will be substantially retained.

The additional overshadowing caused by the proposed development is extremely minor, and will have no material impact on the amenity of the adjoining property to the south.

Finally, the proposed development will not be perceived as offensive, visually jarring, or unsympathetic to the existing pattern of development in the locality.

In the circumstances, the proposed development is generally consistent with, or not antipathetic to, the relevant objectives of the FSR control, notwithstanding the numerical variation.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The Department of Planning published “*Varying development standards: A Guide*” (August 2011), to outline the matters that need to be considered in Development Applications involving a variation to a development standard. The Guide essentially adopts the views expressed by Preston CJ in *Wehbe v Pittwater Council [2007] NSWLEC 827* to the extent that there are five (5) different ways in which compliance with a development standard can be considered unreasonable or unnecessary.

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

The proposed development is generally consistent with, or not antipathetic to, the relevant objectives of the FSR control, notwithstanding the numerical variation.

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

The proposed development is generally consistent with, or not antipathetic to, the relevant objectives of the FSR control, notwithstanding the numerical variation.

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

The proposed development is generally consistent with, or not antipathetic to, the relevant objectives of the FSR control, notwithstanding the numerical variation.

Further, strict compliance with the FSR control would effectively prevent the proposed development from proceeding, in circumstances where the works will materially improve the amenity of the existing dwelling, without imposing any significant or unreasonable impacts on either the public domain, or the amenity of any surrounding properties.

4. *The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

The FSR control has not specifically been abandoned or destroyed by the Council's actions. Irrespective, the Council has consistently adopted a very flexible approach to the implementation of development standards (including the FSR control) in circumstances where the objectives of the control are achieved, notwithstanding numerical variations.

In that regard, the Council's *Clause 4.6 Planning Register* identifies 130 Development Consents granted by Council between 13 May 2016 and 31 December 2018 (ie. the period during which a combined register has been maintained for the Northern Beaches Council) that involved variations to the FSR control contained in Clause 4.4 of the Manly LEP 2013.

Further, 129 (99.2%) of those Consents related to residential development, and 109 (83.8%) related to alterations and additions to residential dwellings, including semi-detached dwellings.

Finally, the objectives of Clause 4.6 of the LEP includes to provide *"an appropriate degree of flexibility in applying certain development standards to particular development"*.

5. *Compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

The zoning of the land remains relevant and appropriate. Irrespective, strict compliance with the FSR control would effectively prevent the proposed development from proceeding, in circumstances where the works will materially improve the amenity of the existing dwelling, without imposing any significant or unreasonable impacts on either the public domain, or the amenity of any surrounding properties.

Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposed variation to the FSR control is reasonable and appropriate in the particular circumstances on the basis that:

- the additional floor space of 8m<sup>2</sup> is extremely minor when compared with the alterations and additions the subject of the recently approved CDC;
- the Manly DCP 2013 provides alternate FSR controls for *"undersized lots"* in recognition of the inherent difficulty in achieving strict compliance with the FSR control on smaller sites;
- the site is subject to an 8.5 metre building height control, and the proposed works do to extend above a maximum building height of approximately 7 metres;
- the proposed variation to the FSR control is not accompanied by, or related to, a variation to the building height control, and in fact, the proposed works remain comfortably below the maximum building height control;
- the proposed development will not impose any significant or unreasonable impacts on the amenity of surrounding land in terms of the key considerations of visual bulk, overshadowing, loss of privacy or loss of views;
- the Council has consistently adopted a very flexible approach to the implementation of development standards (including the FSR

- control) in circumstances where the relevant objectives of the control are achieved, notwithstanding numerical variations;
- the Council's *Clause 4.6 Planning Register* identifies 130 Development Consents granted by Council between 13 May 2016 and 31 December 2018 (ie. the period during which a combined register has been maintained for the Northern Beaches Council) that involved variations to the FSR control contained in Clause 4.4 of the Manly LEP 2013;
  - 129 (99.2%) of those Consents related to residential development, and 109 (83.8%) related to alterations and additions to residential dwellings, including semi-detached dwellings;
  - the existing buildings in the locality extend across multiple development eras, contributing to a diversity of building forms, architectural styles and landscaped treatments;
  - the proposed development will not be perceived as offensive, visually jarring, or unsympathetic to the existing pattern of development in the locality;
  - strict compliance with the FSR control would effectively prevent the proposed development from proceeding, in circumstances where the works will materially improve the amenity of the existing dwelling, without imposing any significant or unreasonable impacts on either the public domain, or the amenity of any surrounding properties;
  - the proposed development is consistent with, or not antipathetic to, the relevant objectives of the R1 – General Residential zone; and
  - the proposed development is generally consistent with, or not antipathetic to, the relevant objectives of the FSR control, notwithstanding the numerical variation.

Are there any matters of State or regional significance?

The proposed variation to the FSR control does not raise any matters of State or regional significance.

What is the public benefit of maintaining the standard?

The proposed development is generally consistent with, or not antipathetic to, the relevant objectives of the FSR control, notwithstanding the numerical variation.

In the circumstances, the proposed development does not affect the public benefit of maintaining compliance with the FSR control in other instances.

Any other matters?

There are no further matters of relevance to the proposed variation to the FSR control.

Zone Objectives and Public Interest

The site is zoned R1 – General Residential and the relevant objectives of the zone are expressed follows:

- *To provide for the housing needs of the community.*
- *To provide a variety of housing types and densities.*

The proposed development is consistent with, or not antipathetic to, the objectives of the zone on the basis that the housing needs of the community will be met with improved residential amenity, and the proposed development will contribute to the variety of housing types and densities in the locality.

Further, the proposed development serves the public interest by materially improving the amenity of the existing dwelling, without imposing any significant or unreasonable impacts on the amenity of any surrounding properties.

**CONCLUSION**

The purpose of this submission is to formally request a variation to the FSR control in Clause 4.4 of the Manly LEP 2013.

In general terms, strict compliance with the FSR control is unreasonable and unnecessary in the particular circumstances, and there are sufficient environmental planning grounds to justify the proposed variation.



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**ITEM 3.2**

**DA2019/0378 - 50 GRANDVIEW GROVE, SEAFORTH -  
SUBDIVISION OF 1 LOT INTO 2 AND THE CONSTRUCTION OF  
A NEW DWELLING ON PROPOSED LOT 235A (SOUTHERN  
LOT)**

**REPORTING MANAGER**      **Matthew Edmonds**

**TRIM FILE REF**              **2019/392730**

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

**PURPOSE**

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

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**RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **approve** Development Consent to DA2019/0378 for subdivision of 1 lot into 2 and the construction of a new dwelling on proposed Lot 235A (southern lot) on land at Lot 235 DP 4889, 50 Grandview Grove, Seaforth subject to the conditions outlined in the Assessment Report.

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## DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0378
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 235 DP 4889, 50 Grandview Grove SEAFORTH NSW 2092
Proposed Development:	Subdivision of 1 lot into 2 and the construction of a new dwelling on proposed Lot 235A (southern lot)
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	PDC Holdings Pty Limited
Applicant:	Orion Consulting
Application lodged:	15/04/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Other
Notified:	30/04/2019 to 14/05/2019
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 15.29%
Recommendation:	Approval
Estimated Cost of Works:	\$ 706,422.46

Northern Beaches Council is in receipt of Development Application DA2019/0378 for subdivision of 1 lot into 2 and the construction of a new dwelling on proposed Lot 235A (southern lot) at 50 Grandview Grove, Seaforth. The proposed development includes a 15.29% variation to the 8.5m height of building development standard of the *Manly Local Environmental Plan 2013* (MLEP 2013), requiring referral to the Development Determination Panel for determination. This non-compliance is supported on merit.

The proposed development is also not compliant with Clause 4.1.2.3 Roof Height of the *Manly Development Control Plan 2013* (MDCP 2013). This non-compliance is also supported on merit. The proposed development is otherwise compliant with applicable planning controls. The proposed development received one submission relating to noise and dust during construction, and encroachment onto neighbouring property.

The application has been assessed against the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979), *Environmental Planning and Assessment Regulations 2000* (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs) and Council policies. Based on a detailed assessment of the proposal against the applicable planning controls, the proposal is suitable and is an appropriate development for the subject site. Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be **approved**.

## ASSESSMENT INTRODUCTION

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

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

## SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 235 DP 4889 , 50 Grandview Grove SEAFORTH NSW 2092
<b>Detailed Site Description:</b>	<p>The Assessing Officer conducted a site visit on 9 July 2019.</p> <p>The subject site consists of one (1) allotment located on the northern side of Grandview Grove.</p> <p>The site is irregular in shape with frontages of 22m along Grandview Grove and 50.96m along Munoorra Street, and a depth of 22.8m. The site has a surveyed area of 1,364m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and is clear of structures.</p> <p>The site slopes approximately 5m from north to south and</p>

	contains some significant vegetation to the north on the site.
	<b>Detailed Description of Adjoining/Surrounding Development</b>
	Adjoining and surrounding development is characterised by low density detached dwellings, and various subdivided properties with similar allotment sizes.

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:

- Complying Development Certificate No. CDC2018/1717 for demolition of existing dwelling, in-ground pool and all ancillary developments on site was approved on 5 November 2018 by DM Certifiers
- Pre-lodgement Meeting PLM2018/0307 for subdivision of land was held on 10 January 2019.

## PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for:

- Subdivision of the lot into two lots (Lot 235A to the south and Lot 235B to the north);
- Construction of retaining walls on both lots;
- Construction of a dwelling house on Lot 235A; and
- Tree removal on Lot 235B.

On 27 and 28 June 2019, the Applicant provided amended plans deleting the retaining walls on Lot

235B, in order to retain three of the five trees proposed for removal. The amended plans were not publicly notified, as they are substantially the same as the original submitted plans, and are of lesser environmental impact, in accordance with Clause 2.6 Notification of Amended Development Applications of the MDCP 2013.

#### ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan 2013 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&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow for additional information to be requested. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the</p>

Section 4.15 Matters for Consideration'	Comments
	<p>consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Mr Wuyin Liu	48 Grandview Grove SEAFORTH NSW 2092

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

- Noise and dust concerns during construction - construction should be limited to 9am to 5pm.
- No encroachment on to neighbouring property and its airspace during construction and ongoing use of the site.

The matters raised within the submissions are addressed as follows:

- Noise and Dust During Construction  
Comment:  
Excavation works will be limited to 8am-5pm Monday to Friday. Construction works will be limited to 7am-5pm Monday to Friday and 8am-1pm Saturdays (no work on Sundays). This is consistent with standard construction hours across the local government area, and considered adequate in restricting noise impacts on adjacent properties. Additionally, construction must comply with all relevant Australian Standards, including those in relation to noise and dust.
- Encroachment on Adjacent Site  
Comment:  
Works are limited to the subject site only and do not encroach on the neighbouring property.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>This DA seeks development consent for Torrens Title subdivision to create 2 Lots (Lot 235A and 235B) and a residential dwelling on Lot 235A.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types, including 4.1.1.2 Residential Land Subdivision, and 4.4.8 Subdivision.</p> <p><u>Subdivision</u> The proposed subdivision plan is acceptable subject to the retention of existing trees assessed with a high significant rating in the Arboricultural Impact Statement prepared by Naturally Trees, identified as T1 - Magnolia grandifolia, T2 - Magnolia grandiflora, and T3 - Glochidion ferdinandi (Cheese Tree) that are located within the proposed Lot 235B.</p> <p>Any future residential dwelling on Lot 235B shall be sited and designed to accommodate setbacks from T1, T2, and T3 as prescribed in Australian Standard AS4970-2009 Protection of Trees on Development Sites. Generally, the existing ground levels within the tree protection zone shall be retained, with any need for retaining and</p>

Internal Referral Body	Comments
	<p>altering ground levels to be established beyond the tree protection zone.</p> <p>The recommendation for removal of existing trees T4 and T5, as assessed in the Arboricultural Impact Statement, is accepted. Additionally, street tree planting to satisfy 3.3.3 Footpath Tree Planting shall be provided. In accordance with the Manly Council Street Tree Masterplan 2015, 1 x Eucalyptus haemastoma shall be planted within the road verge of Grandview Grove, and 1 x Eucalyptus botryoides shall be planted within the road verge of Munoorra Street.</p> <p><u>Residential Dwelling on Lot 235A</u></p> <p>The landscape component of the residential dwelling proposal on Lot 235A, based on the amended Landscape Plans prepared by Riverview Landscape designs, issue D, dated 27.06.2019, is acceptable subject to the completion of landscaping and any conditions of consent.</p>
NECC (Development Engineering)	<p><u>Original Development Engineering Referral Comments:</u></p> <p>The maximum allowable total impervious percentage shall be 35% plus 50 square meters up to 250 square meters will be permitted without On site Stormwater Detention system (OSD) in accordance with Council's Manly Specification for on-site stormwater management 2003.</p> <p>The proposed development in propose Lot 235A is over the the maximum allowable area.</p> <p>As such, an OSD system is required in the proposed Lot 235A. In this regard, Development Engineering cannot support the application.</p> <p>P.S: No significant issue to the subdivision aspect.</p> <p><u>Assessing Officer's Comments:</u></p> <p>In response to the above, on 18 June 2019, the Applicant provided amended stormwater plans detailing onsite stormwater detention measures. The plans were referred to the Development Engineer for review and further comment.</p> <p><u>Final Development Engineering Referral Comments:</u></p> <p>Development Engineering has no objection to the application subject to the following conditions of consent.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</p>

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

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and

LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

#### **SEPP 55 - Remediation of Land**

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

#### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. 1003345S\_02 dated 21 March 2019). 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
Minimum subdivision lot size:	600sqm	Lot 235A: 753.97sqm	N/A	Yes
		Lot 235B: 610.03sqm	N/A	Yes
Height of Buildings:	8.5m	9.8m	15.29%	No
Floor Space Ratio	0.45:1 (339.28sqm)	0.423:1 (318.9sqm)	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes
4.1 Minimum subdivision lot size	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

#### Detailed Assessment

##### 4.6 Exceptions to development standards

###### Description of non-compliance:

The proposed development breaches the maximum height of buildings development standard due to the roof pitch, as demonstrated below in red:



Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	9.8m
Percentage variation to requirement:	15.29%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

standard.

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

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

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

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

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

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

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard. In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by Clause 4.6(3)(a).

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

Comment:

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

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

Section 1.3 of the EPA Act reads as follows:

**1.3 Objects of Act(cf previous s 5)**

*The objects of this Act are as follows:*

*(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*

*(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*

*(c) to promote the orderly and economic use and development of land,*

*(d) to promote the delivery and maintenance of affordable housing,*

*(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*

- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The Applicant's written request argues, in part:

- *The proposed development is consistent with the underlying objectives or purposes of the standards as demonstrated in Section 4.1;*
- *The proposed development is consistent with the underlying objective or purpose of the R2 Low Density Residential Zone as demonstrated in Section 4.2;*
- *The proposed development would lead to a preferred development for the adjoining proposed lot forming part of the subdivision;*
- *The development will maintained neighbouring amenity as well as the amenity of the public domain;*
- *The proposed development is consistent with the desired character of the Site and surrounding Seaforth area;*
- *The proposed development would not result in significant environmental or amenity impacts.*

The arguments raised by the Applicant are agreed with by the Assessing Officer. The elements that breach the height of buildings development standard are of minimal consequence and impact, and result in a preferred design outcome. To reduce the roof form in order to provide compliance would achieve a lesser design quality for the resultant dwelling house, thus (in conjunction with the assessment of the proposal against the development standard and zone objectives below) demonstrating that the non-compliance with the height of building development standard results in a better outcome.

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

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

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

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

Comment:

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

### Objectives of Development Standard

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

(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 development provides a detached dwelling house with a pitched roof form. This pitched roof form is the only breaching element of the proposed development. Many of the properties along the northern side of Grandview Grove and within the immediate vicinity include similarly pitched roof forms and building heights, including the adjacent property at No 48 Grandview Grove, which reaches a higher reduced level. As such, despite the non-compliance with the height of building development standard, the proposed development is consistent with, and complementary to, existing development in the locality, particularly in relation to height, roof form and character.

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

Comment:

The proposed development breaches the maximum roof height control with the MDCP 2013, but is otherwise wholly compliant with the applicable built form controls. The proposed roof height is consistent with existing development in the streetscape, as demonstrated above. Additionally, the proposed development is compliant with the floor space ratio set by the MLEP 2013, which controls bulk and scale. As such, the proposed development is demonstrated to be of suitable, and controlled, bulk and scale, despite the non-compliance with the height of building development standard.

*c) to minimise disruption to the following:*

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

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

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

Comment:

The proposed development is adequately designed and sited so as not to disrupt significant views to, from, or between public or private spaces.

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

Comment:

The proposed development is adequately designed and sited so as not to result in unreasonable overshadowing to adjacent properties or the subject site.

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

Comment:

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

### Zone Objectives

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

- To provide for the housing needs of the community within a low density residential environment.*  
Comment:  
 The proposed development retains the residential use of the land, and provides additional housing for the community in a low density environment by producing an additional residential lot.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*  
Comment:  
 Not applicable. The proposed development retains the residential use of the land.

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

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

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

**Mainly Development Control Plan**

Built Form Controls

Built Form Controls - Site Area: 753.97sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: Max. 1 dwelling per 600sqm	1 dwelling on 753.9sqm lot	N/A	Yes
	Dwelling Size: Min. 90sqm	318.9sqm	N/A	Yes
4.1.2.1 Wall Height	North: Max. 7m (based on gradient 1:12)	5.7m	N/A	Yes
	East: Max. 7m (based on gradient 1:12)	6.5m	N/A	Yes
4.1.2.2 Number of Storeys	Max. 2	2	N/A	Yes
4.1.2.3 Roof Height	Height: Max. 2.5m	3m	20%	No
	Pitch: Max.35 degrees	25 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / Min. 6m	6.2m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	Secondary Street Frontage: Prevailing building line	4.4m, consistent with prevailing building line	N/A	Yes
	North: 1.9m (based on wall height)	4.4m	N/A	Yes
	East: 2.16m (based on wall height)	Min. 4m	N/A	Yes

	Windows: 3m	4.4m (North)	N/A	Yes
		Min. 4m (East)	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space: Min. 55% of site area (414.68sqm)	59.32% (447.3sqm)	N/A	Yes
	Open space above ground: Max. 25% of total open space (111.83sqm)	No calculable open space above ground	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area: Min. 35% of open space (156.55sqm)	90% (402.6sqm)	N/A	Yes
	Min. 3 native trees	3 trees	N/A	Yes
4.1.5.3 Private Open Space	Min. 18sqm	183sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.8m (<50% frontage)	N/A	Yes
4.1.10 Fencing	1m, or up to 1.5m including transparency (front)	1.5m including transparency (front)	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

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

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.1.2 Residential Land Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.10 Fencing	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.8 Subdivision	Yes	Yes

#### Detailed Assessment

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

Clause 4.1.2.3 Roof Height of the MDCP 2013 provides that pitched roof structures must be no higher than 2.5m above the actual wall height. The proposed development includes a pitched roof to a height of up to 3m above the maximum wall height. Clause 4.1.2.3 relies on the objectives of Clause 4.3 Height of Buildings of the MLEP 2013 for a merit assessment. The proposed development is acceptable in relation to these objectives, as detailed in the section of this report relating to Clause 4.6 Exceptions to Development Standards of the MLEP 2013.

#### **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 \$7,064 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$706,422.

## CONCLUSION

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

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

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

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

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

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- Manly Local Environment Plan 2013;
- Manly Development Control Plan 2013; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions. The proposed is supported by an acceptable request to vary the development standard set by Clause 4.3 Height of Buildings of the Manly LEP 2013. The provided written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary, and adequately demonstrates sufficient environmental planning grounds for the noncompliance. In this regard the application is considered to be acceptable and is recommended for approval.

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

## RECOMMENDATION

Accordingly Council as the consent authority grant Development Consent to DA2019/0378 for Subdivision of 1 lot into 2 and the construction of a new dwelling on proposed Lot 235A (southern lot) on land at Lot 235 DP 4889, 50 Grandview Grove, SEAFORTH, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

**1. Approved Plans and Supporting Documentation**

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

**a) Approved Plans**

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Site Plan (Sheet 2)	4 February 2019	Clarendon Homes
Ground Floor Plan (Sheet 3)	12 March 2019	Clarendon Homes
First Floor Plan (Sheet 4)	12 March 2019	Clarendon Homes
South Elevation - 1, East Elevation - 2 (Sheet 5)	12 March 2019	Clarendon Homes
North Elevation - 3, West Elevation - 4 (Sheet 6)	12 March 2019	Clarendon Homes
Section A-A, Home Theatre Detail (Sheet 7)	12 March 2019	Clarendon Homes
External Colour Selections	2 April 2019	Clarendon Homes
Plan of Subdivision	25 March 2019	Orion Consulting

<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Construction Management Plan, Erosion and Sediment Control Plan (Sheet 2.2)	12 March 2019	Clarendon Homes
General Layout Plan, Noted & Legend	25 March 2019	Orion Consulting
Sediment & Erosion Control Concept Plan	25 March 2019	Orion Consulting
Sediment & Erosion Control Notes & Details	25 March 2019	Orion Consulting
Engineering Plan	25 March 2019	Orion Consulting
Proposed Dwelling Plan	25 March 2019	Orion Consulting
Stormwater Layout SH-1 Sheet 1 of 2	14 June 2019	Ibrahim Stormwater Consultants
Stormwater Layout SH-1 Sheet 1 of 2	14 June 2019	Ibrahim Stormwater Consultants

**Reports / Documentation – All recommendations and requirements contained within:**

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Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate 1003345S_02	21 March 2019	Clarendon Homes
Arboricultural Impact Appraisal	1 April 2019	Naturally Trees
Preliminary Geotechnical Assessment	28 March 2019	White Geotechnical Group

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
DA - Landscape Plan	25 March 2019	Riverview Landscape Designs
Schedule & Notes	25 March 2019	Riverview Landscape Designs

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	19 March 2019	Applicant

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

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

## 2. Prescribed Conditions

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

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

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

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

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

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

Reason: Legislative requirement.

### 3. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
 

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

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

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

## FEES / CHARGES / CONTRIBUTIONS

### 4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$7,064.22 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 \$706,422.46.

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](http://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.

5. **Security Bond**

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

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

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

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

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

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

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

Certification of Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003 and the concept drawing by Ibrahim Stormwater Consultants, job number C9004-13445 and dated 14/6/2019. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

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

7. **Structural Adequacy and Excavation Work**

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

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

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

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

Reason: To provide public and private safety.

8. **Vehicle Crossings Application**

A Driveway Levels and Formwork Inspections Application shall be made with Council subject to the payment of the fee in accordance with Council's Fees and Charges. The fee includes all Council inspections relating to the driveway construction and must be paid. Approval of the application by Council is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

9. **Compliance with Standards**

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

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

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

10. **Indicative Building Footprint Lot 235B**

Consent is not granted for the indicative building footprint on proposed Lot 235B. The indicative building footprint on Lot 235B is to be deleted from plans. Development on proposed lot 235B is subject to a separate future application. Details demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure retention of Tree 1 Magnolia grandifolia, Tree 2 Magnolia grandiflora, and Tree 3 Glochidion ferdinandi (Cheese Tree).

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

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

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

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

12. **Tree Protection Measures**

Tree protection fencing shall be installed around the existing trees to be retained on site, identified as T1 - Magnolia grandiflora, T2 - Magnolia grandiflora, and T3 - Glochidion ferdinandi, within the Arboricultural Impact Assessment prepared by Naturally Trees, located along the northern boundary to No. 6 Munoorra Street.

Fencing shall consist of minimum 1.8m high x 2.4m length standard wire mesh construction fencing in accordance with Australian Standard AS 4687-2007 - Temporary Fencing & Hoardings, with fencing to be set at least 3 metres from the existing tree trunks to protect the tree protection zone.

Additionally, the Certifying Authority or a Project Arborist AQZ Level 5 must ensure that:  
i) the activities listed in section 4.2 of AS4970- 2009 Protection of Trees on Development Sites,

do not occur within the tree protection zone of any tree, and  
ii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

The tree protection measures and fencing specified in this clause must:

- i) be in place before work commences on the site, and
- ii) be maintained in good condition during the construction period, and
- iii) remain in place for the duration of the construction works.

Note. A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.

Reason: To ensure tree protection is provided and maintained.

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

13. **Road Reserve**

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

Reason: Public safety.

14. **Property Boundary Levels**

The property boundary levels shall match the existing levels except where modified for the vehicular crossing. The applicant shall design and construct having regard for the existing levels. No approval is granted for any change to existing property alignment levels to accommodate the development. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To maintain the existing profile of the nature strip/road reserve

15. **Vehicle Crossings**

The provision of vehicle crossing 3 metres wide at Grandview Grove 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.

16. **Tree and Vegetation Protection**

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

- i) all trees and vegetation within the site as shown on the Survey Plan and Site Plans, excluding exempt vegetation under the relevant planning instruments of 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,

- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
- iii) existing ground levels shall remain under the tree protection zone of trees to be retained, unless authorised by AQF Level 5 Arborist,
- iv) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an AQF Level 5 Arborist. Details including photographic evidence of works undertaken shall be submitted to the Certifying Authority,
- v) 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,
- vi) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a AQF Level 5 Project Arborist on site,
- vii) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
- viii) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist, including advice on root protection measures,
- ix) should either or all of vi), vii) and viii) 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,
- x) 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,
- xi) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

c) All protected trees are to be retained for the life of the development, or for their safe natural life. Trees that die or are approved for removal must be replaced with a locally native canopy tree.

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

##### 17. Landscape Works

Landscaping shall be implemented in accordance with the landscape plans numbered 1 of 2 and 2 of 2, prepared by Riverview Landscape Designs, issue D, dated 27.06.2019, and inclusive of the following requirements:

- i) the documented street tree planting to Munoorra Street (*Eucalyptus haemastoma*), shall be changed to *Eucalyptus botryoides*,
- ii) the documented street tree planting to Grandview Grove (*Eucalyptus botryoides*), shall be changed to *Eucalyptus haemastoma*,
- iii) street tree planting shall be completed in accordance with the typical tree planting detail, and set a minimum of 2 metres from the kerb.

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

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

**18. Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an AQF Level 5 Arborist with qualifications in arboriculture/horticulture, shall be submitted to the Certifying Authority, assessing the health and impact on existing trees required to be retained (T1, T2, and T3) as a result of the proposed development, including the following information:

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

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

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

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

Reason: To create encumbrances on the land.

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

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

Reason: To identify encumbrances on land.

**21. Reinstatement of Kerb**

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

Reason: To facilitate the preservation of on street parking spaces.

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

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure stormwater disposal is constructed to Council's satisfaction.

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

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's

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

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

### CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE

26. **Provision of Services for Subdivision**

The applicant is to ensure all services including, water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure that utility services have been provided to the newly created lots

27. **Services**

All utilities/services and street lighting is to be installed by the applicant/developer. Certification is to be provided to Council stating the above requirement has been complied with. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: Public safety and to ensure services have been provided for the newly created lots.

28. **Survey Plan - Construction Identification**

A declaration by a registered surveyor shall be provided to Council as evidence that all construction has been effected within the appropriate property, easement boundaries and rights of carriageway. This shall be in the form of a copy of the final subdivision or easement plan, with the distances from the boundaries to the edges of these structures endorsed in red thereon and signed by the surveyor. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure accurate location of buildings, access and services.

29. **Sydney Water Compliance Certification**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

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

30. **Easement for Services**

An easement for services (under the provisions of Section 88B of the Conveyancing Act) is to

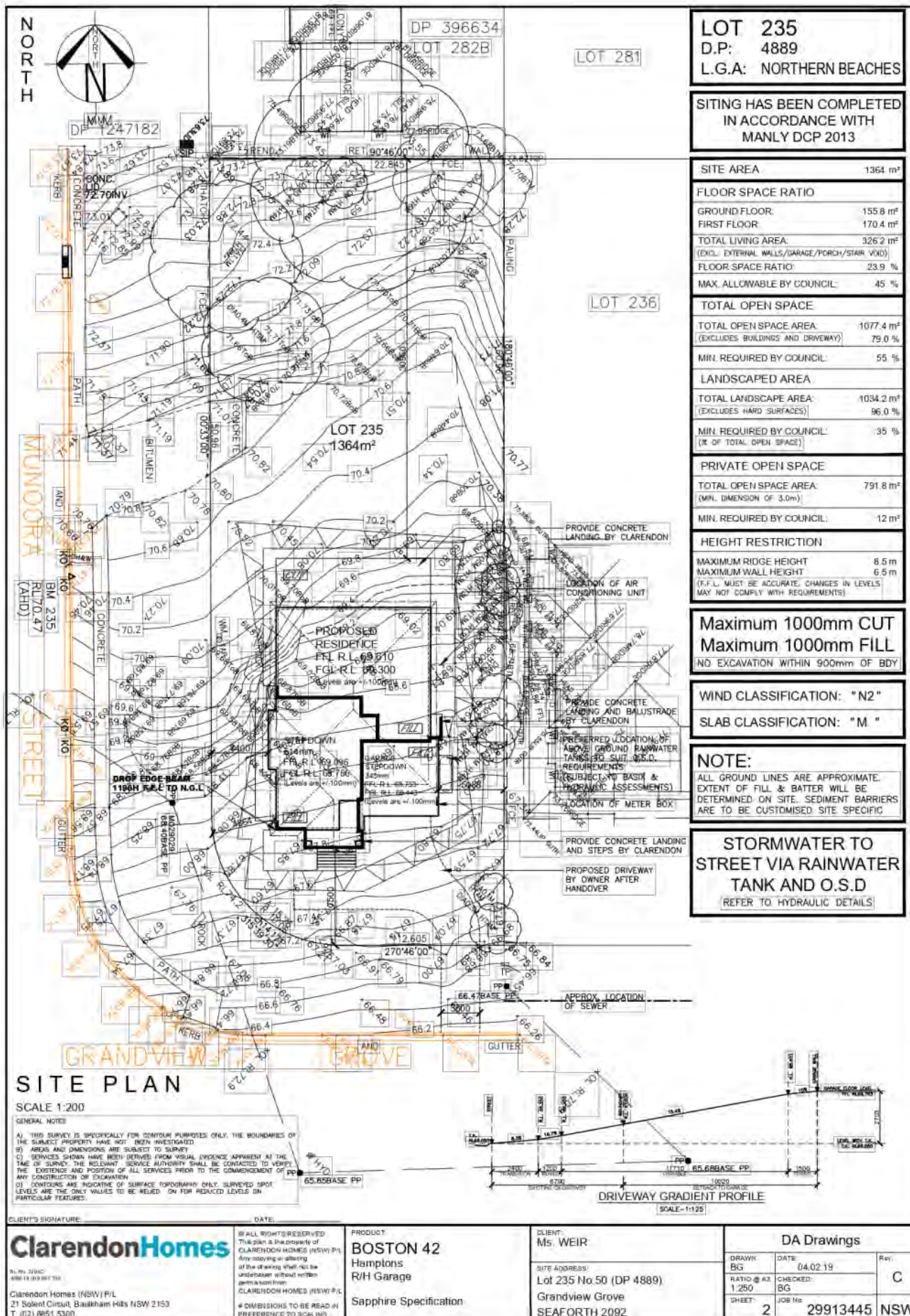
be created on the final plan of subdivision and the accompanying 88B instrument to ensure all utility services are located within the appropriate easement(s). Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

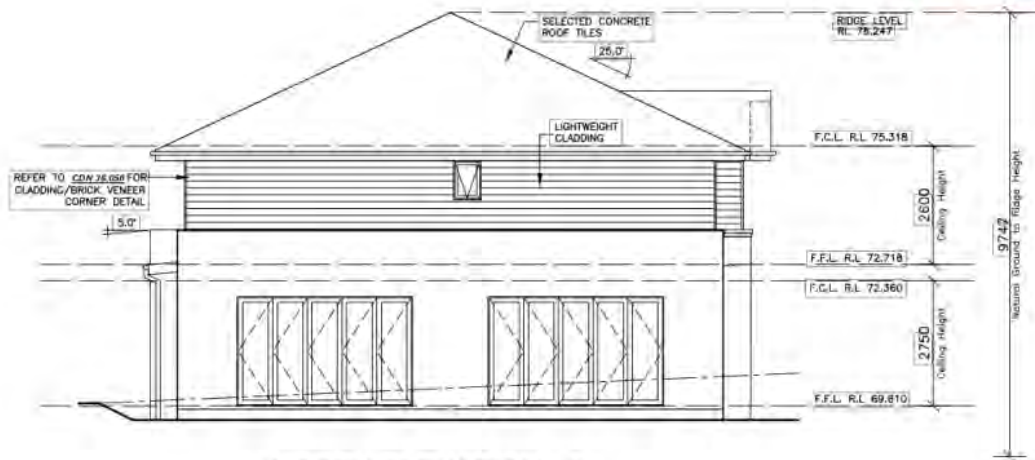
31. **Subdivision Certificate Application**

Prior to the issue of the Subdivision Certificate, a completed Subdivision Certificate form, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919 are to be submitted to Council. Nine copies of the final plan of subdivision are to be submitted. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.







NORTH ELEVATION - 3



WEST ELEVATION - 4

CLIENT'S SIGNATURE:

DATE:

**ClarendonHomes**

RL No. 2584C  
6/06/19 09:03:59 758

Clarendon Homes (NSW) P/L  
21 Solent Circuit, Baulkham Hills NSW 2153  
T: (02) 8651 5300

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# DIMENSIONS TO BE READ AT  
PREFERENCE TO SCALING

PRODUCT  
**BOSTON 42**  
Hamptons  
R/H Garage  
Sapphire Specification

CLIENT:  
Ms. WEIR

SITE ADDRESS:  
Lot 235 No.50 (DP 4889)  
Grandview Grove  
SEAFORTH 2092

DA Drawings

DRAWN:	DATE:	Rev:
SMC	12.03.19	C
RATIO @ A3	CHECKED:	
1:100	Checked By	
SHEET	JOB NO:	
6	29913445	NSW

29 March 2019

WTJ18-330\_Clause 4.6 Variation



## **Clause 4.6 Variation – Height of Buildings (Clause 4.3)**

### **Proposed Two-lot Torrens Title Subdivision and Residential Dwelling**

**50 Grandview Grove, Seaforth NSW 2092**

**Lot 235 DP 4889**

**Prepared by Willowtree Planning on behalf of  
PDC Holdings Pty Ltd**

**March 2019**

**Clause 4.6 Variation – Height of Buildings (Clause 4.3)**

Proposed Two-lot Torrens Title Subdivision and Residential Dwelling  
50 Grandview Grove, Seaforth (Lot 235 DP 4889)

**PART A PRELIMINARY**

**1.1 INTRODUCTION**

This Clause 4.6 Variation has been prepared in support of the Development Application (DA) for the proposed Two-lot Torrens Title subdivision and proposed residential dwelling at 50 Grandview Grove, Seaforth (Lot 235 DP 4889),

The Clause 4.6 Variation has been submitted to assess the non-compliance of the development with *Clause 4.3 Height of Buildings* of *Manly Local Environmental Plan 2013* (MLEP2013) which has the following aims and objectives:

- 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.*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The proposed variation related to *Clause 4.3 Height of Buildings* of MLEP2013.

In summary, the following variation is proposed:

Table 1: Variation Summary			
MLEP2013 Clause	MLEP2013 Development Standard	Proposed Development Non Compliance	Percentage of Variation
Clause 4.3 Height of Buildings	Maximum 8.5m building height	The proposal seeks development consent for a 9.747m maximum building height.	14.6%

In accordance with Clause 4.6 of the MLEP2013 Council is required to consider the following:

*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:*

**Clause 4.6 Variation – Height of Buildings (Clause 4.3)**

Proposed Two-lot Torrens Title Subdivision and Residential Dwelling  
50 Grandview Grove, Seaforth (Lot 235 DP 4889)

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- 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 request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standard.

**Clause 4.6 Variation – Height of Buildings (Clause 4.3)**  
Proposed Two-lot Torrens Title Subdivision and Residential Dwelling  
50 Grandview Grove, Seaforth (Lot 235 DP 4889)

**PART B THRESHOLDS THAT MUST BE MET**

**2.1 CLAUSE 4.6 OF THE MLEP2013**

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

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
  - a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - b) *the concurrence of the Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
  - a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - b) *the public benefit of maintaining the development standard, and*
  - c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

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

**2.2 CASE LAW**

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

- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, which emphasised that the proponent must address the following:
  - Compliance with the development standard is unreasonable and unnecessary in the circumstances;
  - There are sufficient environmental planning grounds to justify contravening the development standard;
  - The development is in the public interest;
  - The development is consistent with the objectives of the particular standard; and
  - The development is consistent with the objectives for development within the zone;
- *Randwick City Council v Mical Holdings Pty Ltd* [2016] NSWLEC 7, which held the degree of satisfaction required under Subclause 4.6(4) is a matter of discretion for the consent authority;

**Clause 4.6 Variation – Height of Buildings (Clause 4.3)**

Proposed Two-lot Torrens Title Subdivision and Residential Dwelling  
50 Grandview Grove, Seaforth (Lot 235 DP 4889)

- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, which held the degree of Clause 4.6 does not require a better planning outcome as a result from the non-compliance;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827, which emphasised the need to demonstrate the objectives of the relevant development standard are nevertheless achieved, despite the numerical standard being exceeded. Justification is then to be provided on environmental planning grounds that sets out five ways in which numerical compliance with a development standard might be considered unreasonable or unnecessary as follows:
  - The objectives of the standard are achieved notwithstanding the non-compliance with the standard;
  - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
  - The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
  - The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; or
  - The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

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

**2.3 THE OBJECTIVES/UNDERLYING PURPOSE OF THE CLAUSE**

A key determination of the appropriateness of a variation to a development standard is the proposal's compliance with the underlying objectives and purpose of the development standard. Therefore, while there is a specified numerical control for maximum building height, the objectives and underlying purpose behind the development standard are basic issues for consideration in the development assessment process.

**Part C** of this Clause 4.6 Variation addresses the proposed variation to the Clause 4.3 development standard.

**Clause 4.6 Variation – Height of Buildings (Clause 4.3)**  
Proposed Two-lot Torrens Title Subdivision and Residential Dwelling  
50 Grandview Grove, Seaforth (Lot 235 DP 4889)

## **PART C THE STANDARDS BEING OBJECTED TO**

### **3.1 CLAUSE 4.3 HEIGHT OF BUILDINGS MLEP 2013**

The development standard being requested to be varied is Clause 4.3 Height of Building of MLEP 2013, which provides the following:

#### *4.3 Height of Buildings*

*(1) The objectives of this Clause are as follows:*

- a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality, to control the bulk and scale of buildings,*
- b) 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), views between public spaces (including the harbour and foreshores).*
- c) 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,*
- d) 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.*

*The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The MLEP 2013 map referred to in Clause 4.3 identifies the Site as being subject to a maximum built height of 8.5m. Pursuant to Clause 4.6 the proposed development seeks exception to the 8.5m building height standard prescribed by Clause 4.3. It is noted the variation is only sought on proposed Lot 235A.

### **3.2 THE OBJECTIVES/UNDERLYING PURPOSE OF THE CLAUSE**

A key determination of the appropriateness of a variation to a development standard is the proposal's compliance with the underlying objectives and purpose of the development standard. Therefore, while there is a specified numerical control for maximum building height, the objectives and underlying purpose behind the development standard are basic issues for consideration in the development assessment process.

**Part C** of this Clause 4.6 Variation addresses the proposed variation to the Clause 4.3 development standard.

**Clause 4.6 Variation – Height of Buildings (Clause 4.3)**

Proposed Two-lot Torrens Title Subdivision and Residential Dwelling  
50 Grandview Grove, Seaforth (Lot 235 DP 4889)

**3.3 PROPOSED VARIATION TO STANDARDS**

The proposed development will result in a building exhibiting a maximum height of 9.747m. The proposed 9.747m building height represents a breach of 1.247m under Clause 4.3 of MLEP2013.

**Table 2** provides a summary the proposed Clause 4.6 Variation to MLEP 2013 **Clause 4.3**.

Table 2: Variation Summary			
MLEP2013 Clause	MLEP2013 Development Standard	Proposed Development Non Compliance	Percentage of Variation
Clause 4.3 Height of Buildings	Maximum 8.5m building height	The proposal seeks development consent for a 9.747m maximum building height.	14.6%

The Site is zoned R2 Low Density Residential under the provisions of the MLEP2013, whereby residential dwellings are permissible. This DA therefore relies upon what is reasonably concluded to be the underlaying objectives of the standard and the R2 zone.

**Clause 4.6 Variation – Height of Buildings (Clause 4.3)**

Proposed Two-lot Torrens Title Subdivision and Residential Dwelling  
50 Grandview Grove, Seaforth (Lot 235 DP 4889)

**PART D PROPOSED VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS**

Pursuant to Clause 4.6 of the MLEP2013, exception is sought from the 8.5m height of buildings standard applicable to the Site pursuant to Clause 4.3 of the MLEP2013. Clause 4.6(4)(a)(ii) requires that such a request must establish that the proposed contravention is consistent with the objectives of the standard and zone.

**4.1 OBJECTIVES OF THE STANDARD**

The objectives of the standard as stated in the MLEP2013 are:

- a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality, to control the bulk and scale of buildings,*

The proposal is considered to be consistent with the existing context of the immediate locality. The proposed pitched roof design is prevalent throughout adjoining properties of Grandview Grove. Similarly, the adjoining property at 48 Grandview Grove has a ridge height of ADH78.74 whilst the proposed ridge height at 50 Grandview Grove is ADH78.24. Given that adjoining property has a similar height to that proposed at 50 Grandview Grove, the proposal is considered consistent with the existing a streetscape character and adjoining built form scale.

Through maintaining the prevailing building height, the relationship of the Site with adjoining built form, the streetscape and the surrounding area, would remain consistent with the existing situation.

Accordingly, the building height and roof form of the development is highly appropriate for the Site and its context.

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

Although the proposed building height is greater than the allowable height pursuant to the MLEP2013, the architectural design of the building is considered sympathetic to the immediate locality and have a negligible visual impact on adjoining properties. Additionally, the proposed development, and resulting bulk and scale have been designed to address the site opportunities and constraints and will not result in an over development of Lot 235A, nor will it preclude the future development of Lot 235B for the purpose of residential development.

- 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),*

The Site is not located in foreshore or harbour areas. However, future development on Site considers the nearby public spaces and ensures that they will not impede on views that may be directed towards those areas.

- 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,*

The proposed development and orientation has been configured to ensure an appropriate level of privacy is achieved both with the Site and to neighbouring properties.

**Clause 4.6 Variation – Height of Buildings (Clause 4.3)**

Proposed Two-lot Torrens Title Subdivision and Residential Dwelling  
50 Grandview Grove, Seaforth (Lot 235 DP 4889)

The proposed development is located on a corner lot therefore only adjoins one dwelling that won't be impacted in regards to solar access. The proposed development has been adequately designed to ensure the adjoining property at 48 Grandview Grove, Seaforth will receive a minimum of 2hrs of sunlight per day to habitable rooms between the hours of 9am and 3pm. Similarly, the private open space to the rear of the proposed development and adjoining property will not be impacted in terms of solar access as the proposed residential dwelling has been designed to provide optimal solar access for this area.

- 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.*

The proposed development is located in a R2 Low Density Residential Zone and is not adjoining a recreation or environmental protection zone.

**4.2 OBJECTIVES OF THE ZONE**

The Site is zoned R2 Low Density Residential under the MLEP2013, and the proposal for proposed two-lot Torrens Title subdivision and residential dwelling is permissible with development consent. The proposal, in particular the future residential dwelling, is consistent with the R2 zone objectives as follows:

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

The proposal achieves a high level of amenity and housing choice resulting in a density appropriate to the Site and regional context.

The height and proportion of the building is commensurate of the desired and existing character of the immediate locality.

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

This objective is not affected by the variation sought.

The proposed development is located within an established residential area and has been developed to compliment surrounding land uses within the Seaforth area.

**4.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR NECESSARY**

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

As provided in **Section 4.1**, the proposed development is considered to be consistent with the objectives of **Clause 4.3**.

Compliance with Clause 4.3 Height of Building requirement is considered unnecessary given that the objectives of the Site are achieved notwithstanding the non-compliance, and the underlying objective of the development standard would be defeated in the event a compliant scheme was proposed.

**4.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD**

#### **Clause 4.6 Variation – Height of Buildings (Clause 4.3)**

Proposed Two-lot Torrens Title Subdivision and Residential Dwelling  
50 Grandview Grove, Seaforth (Lot 235 DP 4889)

As demonstrated in **Section 4.1** and **4.2**, the proposed development would result in a built form outcome which meets the future desired character of the Site as part of the Seaforth area. The proposed development is permissible at the Site and is considered a suitable use of the Site for residential purposes remaining consistent with the objectives of the R2 zone.

The Clause 4.6 Variation to the development standard for height of buildings, is considered well founded on planning grounds as, notwithstanding the proposed non-compliance:

- The proposed development is consistent with the underlying objectives or purposes of the standards as demonstrated in Section 4.1;
- The proposed development is consistent with the underlying objective or purpose of the R2 Low Density Residential Zone as demonstrated in Section 4.2;
- The proposed development would lead to a preferred development for the adjoining proposed lot forming part of the subdivision;
- The development will maintained neighbouring amenity as well as the amenity of the public domain;
- The proposed development is consistent with the desired character of the Site and surrounding Seaforth area;
- The proposed development would not result in significant environmental or amenity impacts.

#### **4.5 PUBLIC INTEREST**

As outlined in **Section 2.2**, *Four2Five Pty Ltd v Ashfield Council* emphasised it is for the proponent to demonstrate the proposed non-compliance with the development standard is in the public interest. Subclause 4.6(4)(a)(ii) requires the proposed development be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

**Sections 4.1** and **4.2** have already demonstrated how the proposed development is consistent with the objectives of Clause 4.3, as well as the R2 Low Density Residential Zone under the MELP2013.

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

The public advantages of the proposed development are as follows:

- Providing additional housing for the greater local of the Manly region;
- Providing employment-generating opportunities during construction stages;
- Provide a development outcome that is compatible with the existing and emerging residential area that is a permissible land use and consistent with the land use zone objectives.

There are no significant public disadvantages which would result from the proposed development.

The proposed development is therefore considered to be justified on public interest grounds.

**Clause 4.6 Variation – Height of Buildings (Clause 4.3)**

Proposed Two-lot Torrens Title Subdivision and Residential Dwelling  
50 Grandview Grove, Seaforth (Lot 235 DP 4889)

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**4.6 MATTERS OF STATE OR REGIONAL SIGNIFICANCE**

The proposed non-compliances with Clause 4.3 would not raise any matters of significance for State or regional environmental planning. It would also not conflict with any State Environmental Planning Policies or Ministerial Directives under Section 117 of the *Environmental Planning and Assessment Act* (EP&A Act).

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

- Height of Building Control by 14.6%, at a maximum.

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

Furthermore, by including these non-compliances with Clause 4.3, the proposed development would be better able to meet the objectives of the Greater Sydney Region Plan and North District Plan as per the following:

- Contributes to providing a variety of housing typologies;
- The proposed development will provide a built form consistent with the general provisions of the Local Environmental Plan; and
- The proposal is appropriate for the Site and context and achieves a high level of amenity for residents.

**4.7 PUBLIC BENEFIT IN MAINTAINING THE STANDARD**

Given the strict compliance with Clause 4.3 would result in:

- Minimising opportunities to respond to the housing need of the Seaforth area;
- Minimising opportunities to develop the Site for public benefit;

As such, there is no genuine public benefit in maintaining this strict height of building control for the Site.

**Clause 4.6 Variation – Height of Buildings (Clause 4.3)**

Proposed Two-lot Torrens Title Subdivision and Residential Dwelling  
50 Grandview Grove, Seaforth (Lot 235 DP 4889)

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**PART E CONCLUSION**

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

Given the justification provided throughout this Clause 4.6 variation the development should be considered favorable by Council. As each of the relevant considerations are satisfied for the reasons outlined elsewhere in this report, concurrence can be assumed under Clause 4.6(5).

<b>ITEM 3.3</b>	<b>DA2019/0055 - 9 MINKARA ROAD, BAYVIEW - CONSTRUCTION OF A DWELLING HOUSE</b>
<b>REPORTING MANAGER</b>	<b>Renee Ezzy</b>
<b>TRIM FILE REF</b>	<b>2019/392742</b>
<b>ATTACHMENTS</b>	<b>1 Assessment Report</b> <b>2 Site Plan &amp; Elevations</b> <b>3 Clause 4.6</b>

### **PURPOSE**

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

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### **RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **refuse** Development Consent to DA2019/0055 for construction of a dwelling house on land at Lot 40 DP 28908, 9 Minkara Road, Bayview, subject to the conditions outlined in the Assessment Report.

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## DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0055
Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot 40 DP 28908, 9 Minkara Road BAYVIEW NSW 2104
Proposed Development:	Construction of a dwelling house
Zoning:	RU2 Rural Landscape
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Joshua Caine Dick
Applicant:	Joshua Caine Dick
Application lodged:	24/01/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	13/02/2019 to 01/03/2019
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 16.47%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 987,845.00

### Executive Summary

This application seeks consent for the construction of a new dwelling with swimming pool, carport and an on-site wastewater management system. The works are described as a 'dwelling house' and are permissible with consent.

The proposal has a variation of 16.47% to the Height of Building Development Standard. As the variation is greater than 10%, the application is referred to the Development Determination Panel.

The proposed development is non compliant with the requirements of Clause 7.6 Biodiversity Protection of the Pittwater Local Environment Plan 2014 (PLEP) and Clauses A4.6 Ingleside Locality and B4.18 Heathland/Woodland Vegetation of the Pittwater 21 Development Control Plan (PDCP). These non-compliance are unacceptable and the proposal does not meet the outcomes of the control.

Public exhibition of the proposal resulted in two (2) submissions relating to compliance with the conditions of consent and protection of the existing bush land on the site and is currently the subject of compliance action in relation to the illegal clearing of protected bushland and unauthorised storage of shipping containers on the site.

Councils NECC (Bushland and Biodiversity) do not support the proposal as it is inconsistent with the objectives of PLEP Clause 7.6 Biodiversity, Pittwater 21 DCP Clause B4.18 Heathland/Woodland Vegetation, and the NSW Biodiversity Conservation Act 2016. The proposal also does not provide adequate supporting information required by the controls and consideration for supporting biodiversity information to accompany a new proposal.

The subject site is located within bushfire prone land and the Bushfire Threat Assessment was referred to the NSW RFS for comment. The NSW RFS raised several concerns with the bush fire consultants assessment of the bushfire risk and were not satisfied that the proposed development would be sited outside of a radiant heat exposure of 29kW/m<sup>2</sup> as is required.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is not suitable or appropriate development for the subject site.

The application has been assessed against the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs) and Council policies. The outcome of this assessment is detailed within this report.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be refused.

## ASSESSMENT INTRODUCTION

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

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

## SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards  
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection

Pittwater 21 Development Control Plan - A4.6 Ingleside Locality  
Pittwater 21 Development Control Plan - B4.18 Heathland/Woodland Vegetation

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 40 DP 28908 , 9 Minkara Road BAYVIEW NSW 2104
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the western side of Minkara Road, Bayview.</p> <p>The site is irregular in shape with a frontage of 324.787m along Minkara and a depth of 102.475m. The site has a surveyed area of 2.163ha.</p> <p>The site is located within the RU2 Rural Landscape zone. The site is currently vacant except for three shipping containers.</p> <p>The site slopes from the rear western boundary down to the eastern front boundary with a slope of approximately 32%.</p> <p>The whole site was densely vegetated, however, since approximately the end of 2016, areas of the site (in the location of the proposed dwelling) has been cleared and earthworks undertaken without Council approval. There is evidence that there are native and threatened species present on the site. More details are provided under site history and NECC (Bushland and Biodiversity) referral comments.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by residential development. To the north, south and west of the site are single residential dwellings on large lots. To the east of the site is Aveo Retirement Village and Minkara Aged Care Facility. Along the western rear boundary of the site is an unformed road.</p>

Map:



## SITE HISTORY

### DA2018/0787

Construction of a new dwelling house and swimming pool  
Withdrawn - 13/08/2018

The application was requested to be withdrawn as the proposal could not be supported as a result of impacts on the natural environment and non-compliance with Clause 7.6 (Biodiversity) of PLEP 2014, B1.4 (Aboriginal Heritage) of P21 DCP and B4.18 (Heathland/Woodland Vegetation) of P21 DCP. The proposal also did not comply with requirements of the *NSW Biodiversity Conservation Act 2016*. Furthermore, there were concerns with the building height and insufficient information regarding access to the site and a landscape plan was not submitted.

A meeting was held with Applicant, Architect and Council Staff on 19 September 2019 to discuss the withdrawal of the application and what would be required for the re-lodgement of the proposal. Discussions included the existing unauthorised clearing of the site and the requirement for a Biodiversity Development Assessment Report (BDAR).

### Subject Development Application

A withdrawal letter was sent 28 May 2019. The withdrawal letter outlined issues with the current application including non-compliance with the PLEP and PDCP and insufficient and missing information. The insufficient information included a BDAR, Biodiversity Management Plan, Arborist Report, and Bushfire Assessment Report. The proposal was also missing a Landscape Plan and the swimming pool was not included in the Wastewater Management Plan or SEE.

A subsequent email was sent 12 June 2019 to the applicant with the NSW RFS referral comments in which the NSW RFS raise concerns with the information in the submitted Bushfire Risk Assessment Report. The issues raised in the referral comments are detailed elsewhere in the report.

The applicants Bushfire Consultant provided a response to the NSW RFS, which was forwarded to NSW RFS for review and further comment. At the time of writing, no response had been received from the NSW RFS.

The site is currently the subject of several Building Compliance investigations which are detailed below:

**EPA2018/0302** - Investigation Illegal Land Use - Shipping containers on site with no consent  
Order issued - 20/11/2018

Council received a complaint alleging that unauthorised building use have been undertaken at the site. An inspection undertaken by Council Officer on 23 October 2018 revealed the following observations:

- That an additional shipping container had been placed on the site and the property is being used to facilitate the storage of earth moving machinery and equipment.

The owner provided representation that two of the shipping containers would be removed and one would be used for the storage of horticultural tools and equipment. The use of one shipping container was considered fair and reasonable by Council.

A site inspection undertaken on 20 June 2019 revealed that the site was still being used to store earth moving machinery and that the two shipping containers had not been removed.

The matter is still under investigation.

**EPA2018/0288** - Investigation Illegal Land Use - Land clearing  
NOI Issued - 20/11/2018

Council received a complaint alleging that unauthorised earthworks have been undertaken at the site. An inspection undertaken by Council Officer on 23 October 2018 and 29 October 2018 revealed the following observations:

- Further earthworks had been undertaken on the property that is not considered exempt development and as a result has breached the Stop Works Order (EPA2018/0069) issued on 6 April 2018.
- The property is being used to temporary store earthmoving machinery.
- Inadequate siltation and erosion control where loose spoil/fill has been placed.

The matter is still under investigation pending the out come of the current Development Application.

**EPA2018/0278** - Investigation Illegal Land Use - Land clearing  
Order Issued - 20/11/2018

A development control order was served on 6 April 2018 advising the owner of the site to stop carrying out all further earthworks and vegetation removal from the allotment that does not meet the development control set out within the State Environmental Planning Policy- (Exempt and Complying) - 2008 .

Council received a complaint alleging that further unauthorised earthworks and land clearing had been undertaken since the issuing of a stop works Order by Council on 6 April 2018.

A site inspection undertaken 23 October 2018, revealed that further earthworks had been carried out and Council is of the opinion that the stop works order has been breached. An inspection undertaken by Council Officer on 23 October 2018 revealed the following observations:

- That further earthworks and land clearing had been undertaken since the last inspection that

was undertaken on 5 April 2018.

- Ariel mapping of the area revealed that earthworks and vegetation removal has occurred since the period between 13 June 2018 to 14 September 2018.

As a result of the above, Council reissued the stop works Order as dated above on this Development Control Order.

The matter is still under investigation, pending outcome of the current Development Application.

### **PROPOSED DEVELOPMENT IN DETAIL**

The proposal is seeking approval for the construction of a new dwelling with swimming pool and spa located in the middle of the site, an on-site wastewater treatment system, carport and driveway from Minkara Road. The proposal includes the following:

#### Basement

- Foyer and stairs,
- Home Cinema,
- Garden tool store,
- Pool equipment,
- Gym,
- Dark room,
- Games room,
- Retreat.

#### Level 1

- Entrance, foyer, stairs and lift,
- Lounge and bar,
- Billiards room,
- Kitchen, dining, pantry and cellar,
- Laundry and storage,
- Family room,
- Access to outdoor terrace and swimming pool.

#### Level 2

- Office, stairs and hall,
- Guest Bedroom, dressing room and bathroom,
- Terrace,
- Four bedrooms, Bedroom 1 with dressing room and ensuite.

#### Outside

- Driveway,
- Carport and turning area,
- Swimming pool and spa,
- Outdoor terrace,

- Landscaping

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters may be addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter may be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter may be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter may be 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) <b>Environmental Impact</b></p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. In summary, the impact on the habitat for the local populations of the Red-crowned Toadlet, Glossy Black Cockatoo, Eastern Pygmy Possum and numerous other threatened species which have been identified on the site or nearby have been inadequately documented.</p>

Section 4.15 Matters for Consideration'	Comments
	<p>Council's biodiversity assessment, indicates that significant impact will occur and a comprehensive Biodiversity Development Assessment Report (BDAR), A Biodiversity Management Plan and Level 5 Arborist Report is required to address this issue. In the absence of these documents, the environmental impacts are not considered to have been fully addressed.</p> <p>The impacts on the site's biodiversity values as a result of the removal of at least 0.528ha of native bushland is considered inconsistent and unacceptable.</p> <p><b>(ii) Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p><b>(iii) Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	<p>The suitability of the site in terms of likely impacts on the environment and amenity has been discussed in detail in the various section of this report. In summary, the suitability of the site for the development as proposed in its current form remains uncertain, due to fact that the proposal has not comprehensively addressed the environmental impacts on Threatened Species on the site. Therefore, a determination that the site is suitable cannot be supported.</p>
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	<p>See discussion on "Notification &amp; Submissions Received" in this report.</p>
Section 4.15 (1) (e) – the public interest	<p>The public interest has been considered as part of the application process. In this instance, the public interest is best served by the consistent application of the requirements of the relevant planning controls, and by Council ensuring that any adverse effects on the surrounding area and the environment are minimised and/or managed.</p> <p>The proposal has been assessed against the provisions of the relevant planning controls and is deemed to be unacceptable in terms of its impact on the natural environment (specifically the threatened species). and the developments inconsistency with the requirement(s) of clause 7.6 Biodiversity protection of the PLEP2014 and parts A4.6 Ingheside Locality, B3.2 Bushfire Hazard, B4.18 Heathland/Woodland Vegetation pf PDCP 21 and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.</p>

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application (prepared by Bushfire Protection Consultants, dated 19 December 2018). The report stated that the bushfire attack level of the site is Bal 29. The report recommended an alternative solution to comply with Planning for Bush Fire Protection.

The application was referred to the NSW Rural Fire Service for further assessment. The NSW Rural Fire Service has raised a number of issues with the Bushfire Threat Assessment Report and were not satisfied that the proposed development was sited outside of a radiant heat exposure of 29kW/m<sup>2</sup>, as proposed by the bush fire consultant.

## NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Julie Emerson	12 Minkara Road BAYVIEW NSW 2104
Ms Rosalind Dawn Williams	23 Jendi Avenue BAYVIEW NSW 2104

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

- Strict compliance with the approval
- Protection of the environment

The matters raised within the submissions are addressed as follows:

- **Strict compliance with the approval**  
The submission raised the following concerns *'applicant has previously done significant works to the property illegally, both in nature and in time, we request that very strict compliance processes be undertaken and monitored to ensure the development is carried out as per the approval.*  
*We do not wish to put up with building works outside of approved times, especially prior to 7am or on sundays as happened previously!!'*

Comment:

All approved development is subject to conditions regarding hours of work. The standard condition that would apply to this proposal would require building construction and delivery of material restricted to 7.00am to 5.00pm Monday to Friday, 8.00am to 1.00pm on Saturdays and no works on Sundays or public holidays. Demolition and excavation works are restricted to 8.00 to 5.00pm Monday to Friday only. Any works outside of these hours would need to be reported to the Certifying Authority and Councils Building Compliance team to investigate.

• **Protection of environmental**

The submission raised the following comment 'We also wish that regular monitoring be carried out to ensure the vegetation on the escarpment facing Minkara Road be maintained in its natural state and not degraded in any way'. A submission was also received with the following comment 'Will there ever be a time when Northern Beaches Council put the environment of this beautiful area before the profits of developers'.

Comment:

No works or landscaping are proposed along the escarpment facing Minkara Road. Council is not in a position to carry out monitoring of sites to make sure that they are not damaged, that is at the discretion of the owner, those contracted to do the works and the certifying authority. If damage does occur as a result of works on the site then this can be reported to the Certifying Authority and Council to investigate.

Council does not support the proposed and existing clearing and works on the site, as stated in the NECC (Bushland and Biodiversity) referral comments. Councils Building and Compliance team are currently investigating the illegal works on the site.

## REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	<p><b>Supported subject to conditions</b></p> <p>The site is located in an Acid Sulfate Soil Class 5 area. No comment has been made in any of the reports submitted with this DA by the applicant especially the SEE which should specifically address this issue. It is noted that "Excavation is to 3.5m". The site appears sloping and basically self-draining and it is not expected that "ground water will be impacted by lowering the water table" the main thrust of the classification. However, the risk is considered negligible in regard to Acid Sulfate Soil. A condition will be added.</p> <p><b>Recommendation</b> Approval</p>
Environmental Health (Solid Fuel/Oil Heater)	<p><b>Supported subject to conditions</b></p> <p>Wood fire heater/fire places appear to be proposed as 2 chimneys and 2 fire places are shown on plans. No comment has been made in any of the reports submitted with this DA by the applicant especially the SEE which should specifically address this issue. Wood fire heaters have the potential to create an environmental smoke and odour nuisance. If the fire places are gas fires and the chimneys decorative only this needs to be stated in the SEE.</p>

Internal Referral Body	Comments
	<p>No details indicating compliance with specific wood fire design standards have been submitted.</p> <p>Note: The applicant does have the option of a separate Mod or providing details for this DA or removing these fire places from plan , and applying at a later time for a section 96 application.</p> <p><b>Recommendation</b> REFUSAL</p> <p><b>Additional Referral comments - 27/05/2019</b> The applicant has advised Councils Planner that the Chimneys are decorative and the heaters gas. A condition has be included to reflect this.</p> <p><b>Recommendation</b> APPROVAL</p>
Environmental Health (unsewered lands)	<p><b>Supported subject to conditions</b> This new DA mirrors previous DA2018/0787 where Environmental Health made positive comments following additional information after our initial refusal comments.</p> <p>The site is unsewered and an updated waste water report by Blue Mountains Geological and Environmental Services dated 29 August 2018 (previous reports 6 July 2018 and April 2017) has been submitted. An updated WW report by Grant Austin dated 29 August 2018 confirms his findings from the previous report 6 July 2018 including subsurface disposal area of 858m2.</p> <p>The current proposal related to effectively 6 bedrooms' potential occupation.</p> <p>It is noted that comments about the actual low intended occupancy by the owner are not relevant and misleading in respect the future and ongoing use of the property unless a legal covenant is the registered on the property restricting occupancy.</p> <p>Additionally, the issue of the waste water backwash from the swimming pool and spa which may contain chemical residue detrimental to a land application area has not been addressed in either the Waste Water Report or the SEE, as it has a potential environmental impact. The applicant may wish to propose a cartridge filter system to eliminate backwash to deal with this issue, otherwise the disposal of this waste water needs a management report.</p> <p>Therefore Environmental Health has no option but to recommend refusal at this time.</p> <p><b>Recommendation</b> REFUSAL</p>

Internal Referral Body	Comments
	<p><b>Planners Note:</b> The applicant has provided details to Council that a cartridge filter system will be installed in the swimming pool and spa. A condition has been included in the report.</p>
Landscape Officer	<p><b>Supported subject to conditions</b></p> <p>The proposal, in terms of landscape outcome, is acceptable subject to the protection of existing trees and vegetation, and the completion of landscaping to areas cleared for development works.</p> <p>Council's Landscape section has assessed the proposal against the following Pittwater 21 DCP 2014 Controls:</p> <ul style="list-style-type: none"> <li>• B4.22 Preservation of Trees and Bushland Vegetation</li> <li>• C1.1 Landscaping</li> </ul> <p>No Landscape Plan nor Arboricultural Impact Assessment is provided with the application, and conditions of consent shall be required to be met. There are no existing trees within 5m of the proposed dwelling or carport works.</p> <p>The site contains predominately native Eucalypt and Angophora forest with native understory shrubs and minimal ground cover plants. Existing rock outcrops and ledges shall also be protected.</p> <p>There is some minor weed invasion to be targeted as part of the development. Removal of all weeds and regeneration with native vegetation is required.</p> <p><b>Recommendation</b> APPROVAL</p> <p><b>Planners Note:</b> These comments reflect the current state of the site not how the site was prior to being cleared. Matter relating to the clearing of the site are being addressed by Building Compliance.</p>
NECC (Bushland and Biodiversity)	<p><b>Not supported</b></p> <p>Council's Natural Environment - Biodiversity Section cannot support the application due to non-compliance with the Pittwater LEP and DCP controls.</p> <p>This application was assessed against the objectives of Pittwater LEP Clause 7.6 Biodiversity, Pittwater 21 DCP Clause B4.18 Heathland/Woodland Vegetation, and the NSW <i>Biodiversity Conservation Act 2016</i>. The property is also mapped as bushfire prone land and "Major Habitat" within Pittwater's wildlife corridor mapping. Any development application must consider proposal options which are compliant with applicable Pittwater LEP and DCP controls, specifically:</p> <ul style="list-style-type: none"> <li>• <i>The development is designed, sited and will be managed to avoid any significant adverse environmental impact.</i></li> </ul>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• <i>Development shall retain and enhance habitat and wildlife corridors for threatened species, endangered populations, endangered ecological communities and other locally native species.</i></li> <li>• <i>Development shall not reduce or degrade habitat for locally native species, threatened species, endangered populations or endangered ecological communities.</i></li> </ul> <p>A substantial portion of the native intact bushland on the site was cleared prior to lodgement of this DA. The cleared area is located largely within the footprint of the proposed development. As such, there can be little consideration for ways to avoid and minimise impacts as per the application of mitigation hierarchy.</p> <p>The proposed development will result in a substantial loss of native vegetation (including canopy trees) and wildlife habitat on the site. The proposal as submitted does not demonstrate that the objectives of relevant Natural Environment controls have been taken into account in designing and siting the development, nor is it evident that the proponent has made an effort to avoid direct or indirect impacts to the site's biodiversity values.</p> <p>Given that the existing submission does not achieve compliance with LEP and DCP controls, the applicant is encouraged to consider a redesign of the proposal. It is noted that this DA includes additional impacts compared to the previous application. Any new proposal should incorporate a substantially reduced footprint (with reconsideration of the need for non-ancillary elements) and demonstrate feasible measures to avoid impacts to the site's biodiversity values.</p> <p><b>Detailed comments</b>  <i>Non-compliance with biodiversity controls and legislation</i>  The property is 2.18 ha and currently contains remnant native bushland (PCT 1783 and PCT 1250), including wildlife habitat large native trees with hollows and sandstone escarpments, and also provides corridor values. The proposal is for a new dwelling with 5 bedrooms, home office, billard room, lounge room, family room, gym, home cinema, retreat, games room, an associated swimming pool and spa, new concrete driveway, unspecified areas of landscaping, an on-site sewerage treatment system and treated water dispersal area, rough boulder wall and Asset Protection Zone (APZ) establishment.</p> <p>At least 0.528 ha of native bushland, including native trees with hollows, will be removed as a result of the proposal (Skelton 2018). There are inconsistencies within the supporting information which suggests this area is likely to be larger. The proposal will result in a substantial loss of native vegetation inconsistent with the controls. The property and area to be impacted provides habitat for threatened species, which have been identified onsite and records nearby, including, but not limited to:</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• <i>Pseudophryne australis</i> Red-crowned Toadlet (heard calling within the property during the ecological survey by Nick Skelton)</li> <li>• <i>Haliaeetus leucogaster</i> White-bellied Sea-eagle</li> <li>• <i>Lophoictinia isura</i> Square-tailed Kite</li> <li>• <i>Calyptorhynchus lathami</i> Glossy Black-Cockatoo</li> <li>• <i>Ninox connivens</i> Barking Owl, (owl pellet found onsite during site-inspection for this referral, possibly Barking Owl or Powerful Owl)</li> <li>• <i>Ninox strenua</i> Powerful Owl (as above)</li> <li>• <i>Rhodamnia rubescens</i> Scrub Turpentine</li> <li>• <i>Cercartetus nanus</i> Eastern Pygmy-possum</li> <li>• <i>Chalinolobus dwyeri</i> Large-eared Pied Bat</li> <li>• <i>Miniopterus australis</i> Little Bent-wing Bat</li> <li>• <i>Miniopterus schreibersii oceanensis</i> Eastern Bent-wing Bat</li> <li>• <i>Myotis macropus</i> Southern Myotis</li> </ul> <p><i>Inadequate supporting information required by controls and considerations for supporting biodiversity information to accompany any new proposals</i></p> <p>There is inadequate supporting documentation regarding impacts to biodiversity values on the site. Any new proposals should be accompanied with the following reports, in accordance with Council controls and guidelines as well as assessment against the NSW <i>Biodiversity Conservation Act 2016</i>. All reports are to be clear and consistent in terms of total scale of biodiversity impacts (trees and native vegetation).</p> <p>The submitted <b>Biodiversity Development Assessment Report</b> (BDAR, Skelton 2018) must assess all biodiversity impacts including site storage/containers, landscaping, construction, access, stockpiling and APZ impacts, and any likely indirect impacts such as installation of services and stormwater infrastructure, OSD tanks, changes in hydrology, soil disturbance, runoff, waste water disposal, artificial lighting etc. All areas of residual biodiversity impacts must be included in the offset calculation (including the driveway). Skelton states, "<i>The site contains a high density and variety of hollows including large tree hollows that are suitable for Cockatoos (such as Sulphur Crested Cockatoos and Glossy Black Cockatoos) and small hollows suitable for gliders and Eastern Pygmy Possums.</i>". These hollows must be described and provided on a map. No nocturnal survey was completed as per industry standard. The report did not follow survey guidelines for Species Credit microbat species, Large-eared Pied bat requires additional survey as per these guidelines (OEH 2018) and during identified survey season (Nov - Jan).</p> <p>A <b>Biodiversity Management Plan</b> must be provided with the application. A Biodiversity Management Plan is required to be submitted as per Clause B4.18 of the Pittwater 21 DCP in accordance with Council's guidelines. This plan must include tasks to be completed prior to and during construction, as well as ongoing long-</p>

Internal Referral Body	Comments
	<p>term management, to minimise impacts to biodiversity values.</p> <p>The submitted <b>Bushfire Assessment Report</b> must be consistent throughout in terms of APZ requirements, i.e. whether the APZ is as per calculated distances on Page 12 OR is the whole of the property to be managed as an IPA.</p> <p>An <b>Arborist Report</b> must be provided with the application. Council notes that there are trees within 5m of the works. The report must identify the location, species, health and size of all trees within 5m of the proposed development and meet the following requirements:</p> <ul style="list-style-type: none"> <li>• Prepared by a suitably qualified arborist with minimum AQF Level 5;</li> <li>▪ Prepared based on the actual plans and documentation submitted in support of the DA;</li> <li>▪ Take into account all above- and below-ground works and structures that are ancillary to the development, including the APZ;</li> <li>▪ A tree protection and management plan with specific tree protection measures to enable safe retention of all trees proposed for retention, including mapping Tree Protection Zones, Structural Root Zones and any encroachments.</li> </ul> <p>A <b>Landscape Plan</b>, which is consistent with the plans/reports above, which incorporates a minimum of 80% native plantings consistent with Plant Community Types (PCT) found onsite.</p> <p><b>Recommendation</b> REFUSAL</p>
NECC (Development Engineering)	<p><b>Supported subject to conditions</b></p> <p>The site is located within Geotechnical Hazard H1 Area, an "Acceptable Risk Management" Level can be achieved in accordance with the geotechnical report provided by White Geotechnical Group.</p> <p>The Access has been approved by council under the Section 139 of the Road Act 1993.</p> <p>No Development Engineering objection subject to conditions.</p> <p><b>Recommendation</b> APPROVAL</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
NSW Rural Fire Service –	The proposal was referred to the NSW Rural Fire Service. The NSW

External Referral Body	Comments
local branch (s79BA EPAA)	<p>Rural Fire Service has raised a number of issues with the Bushfire Threat Assessment Report prepared by Jon Delany dated 19 December 2018. The following issues were raised:</p> <p>The inappropriate use of Short Fire Run (SFR) Methodology:</p> <ul style="list-style-type: none"> <li>The consultant has incorporated the SFR methodology to several aspects of the proposed development on the subject site. As stated in the NSW RFS methodology guide for SFR (dated May 2019) , <i>"The proposal will need to be supported by a Bush Fire Design Brief (BFDB) which includes the site particulars together with the methodology proposed, and the inputs and outputs from calculations to support the proposal."</i> A BFDB was not submitted for the use of the SFR for this application prior to lodgement to Council, or prior to when referred to the NSW RFS for comment.</li> <li>Notwithstanding, the SFR is not considered appropriate for the use in this setting due to the connectivity of the vegetation around the site. As also stated within the NSW RFS methodology for SFR <i>"A proposed SFR must not have connectivity with any other parcels of land containing vegetation capable of supporting a fully developed fire that would directly impact the assets."</i> The bush fire consultant has addressed in their report that a fully developed fire is possible to the northern aspect of the site.</li> </ul> <p>The performance based modelling provided by the consultant was unable to be replicated by the NSW RFS.</p> <ul style="list-style-type: none"> <li>The modelling provided by the consultant for the fully developed fire to the northern aspect was not able to be replicated by the NSW RFS. A head width greater than 48 metres (as nominated by the consultant) is not supported, with the proposed radiant heat modeled from this aspect exceeding 29kW/m<sup>2</sup> based on the 44 metres setback vegetation.</li> </ul> <p>On the basis of this information provided, the NSW RFS is not satisfied that the proposed development is sited outside of a radiant heat exposure of 29kW/m<sup>2</sup>, as proposed by the bush fire consultant.</p>

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

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

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

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

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

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

#### **SEPP 55 - Remediation of Land**

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been vacant 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. 918894S\_02 dated Friday, 14 September 2018). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0002651370-01 dated 14 Sep 2018).

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

<b>Commitment</b>	<b>Required Target</b>	<b>Proposed</b>
<b>Water</b>	40	40
<b>Thermal Comfort</b>	Pass	Pass
<b>Energy</b>	50	50

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

#### **SEPP (Infrastructure) 2007**

##### Ausgrid

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

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

Comment:

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

**Pittwater Local Environmental Plan 2014**

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	Chimney - 9.9m Roof - 9.8m Wall - 9.1m	16.47% 15.29% 7.05%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.9 Preservation of trees or vegetation	Yes
5.9AA Trees or vegetation not prescribed by development control plan	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.6 Biodiversity protection	No
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

**4.6 Exceptions to development standards**

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	Chimney - 9.9m Roof - 9.8m Wall - 9.1m

Percentage variation to requirement:	Chimney - 16.47% Roof - 15.29% Wall - 7.05%
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Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

*(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

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

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

Comment:

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

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

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

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

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

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

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

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

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

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

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

*(a) that compliance with the development standard is unreasonable or unnecessary in the*

*circumstances of the case, and*

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

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

The applicants written request argues, in part:

- 'The proposed development has a roof ridge at 147.35m AHD along its southern wing, 7.1m above natural ground level at the western end up to 9.25m at its stepped down eastern end. This ridge point is 50m from the neighbouring property boundary to the south and 54m from the

street alignment'

- 'The building height limit for this site is 8.5m above natural ground level on the Height of Building Map. This means the roof structure exceeds the height limit by up to 0.75m at its eastern end. The highest wall height above natural ground level is 9.1m in the same location, exceeding the height limit by 0.6m',
- 'Due to the large distances between the building and neighbouring properties, and Minkara Road, the additional height shall cause no overshadowing problems or loss of view issues',
- 'A large portion of the site shall be left in its natural woodland state where canopy trees exceeding the height of the building will ensure the dwelling doesn't dominate the landscape'.

The proposal does not comply with the maximum building height development standard. An assessment of the plans provided shows that the chimney on the South Elevation has a maximum height of 9.9m above natural ground level, which is highest point of the building. The location of non-compliance with the height is where the land begins to naturally slopes away. The southern elevation chimney will be constructed of natural sandstone and the building will be colours and materials that will blend in with the natural environment of the site.

It is agreed that due to the proximity of the proposal to the street and adjoining properties as well as the landscaping to be retained on the site, that this non-compliance will not create an unreasonable impact with regards to view loss, overshadowing and bulk and scale. Overall, it is considered that demanding full compliance with Council's maximum height standard is unnecessary for this proposal.

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 RU2 Rural Landscape zone. An assessment against these objectives is provided below.

## Objectives of development standard

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

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

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

Comment:

The proposal will be below the height of the existing tree canopy on the site and uses building colours and materials that will harmonise with the natural environment. On sites that have little opportunity for trees or are visually dominated single storey buildings are preferred, however, this site is surrounded by dense bushland and trees and will be screened from the street and surrounding properties. In regards to the height of the dwelling, the proposal is consistent with the relevant criteria of desired character of the locality.

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

Comment:

Immediately to the west of the site are large single storey dwellings on cleared lots. To the north and south are one to two storey residential dwellings on more steeply sloping and vegetated lots, which are similar to the subject site. To the east of the site is Aveo Minkara Residential Aged Care Facility. Aveo Minkara Residential Aged Care Facility has buildings of varying heights from one to three stories with varying building bulk and scale. Aveo Minkara Residential Aged Care Facility is also surrounded by dense bushland which is similar to the subject site. The height and scale of the proposal is compatible with the sites and scale of development to the north, south and west which have similar site conditions to the subject site.

*c) to minimise any overshadowing of neighbouring properties,*

Comment:

Due to the proposed location of the dwelling, the proposal will not result in overshadow of the adjoining neighbouring properties.

*d) to allow for the reasonable sharing of views,*

Comment:

The proposed location of the dwelling and its distance to the adjoining sites will maintain a reasonable sharing of views.

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

Comment:

The site has a moderate slope from the rear western boundary to the front eastern boundary. From the rear and sides of the dwelling the proposal will present as a two stories, and three stories from the front. Excavation will be required to construct the basement level. A more sympathetic design could have been utilised to limit the amount of excavation on the site, however, this would have resulted in a larger building footprint. It is considered that the design of the proposal responds sufficiently to the natural topography of the site.

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

Comment:

The proposed building form provides a bulk, scale and design that will sit below the bushland and canopy trees that are to be retained on the site. The proposal will also use colours and materials that blend into the natural environment. The design will ensure that the proposal will not present an unreasonable visual impact on the natural environment, heritage conservation areas and heritage items.

However, it is considered that a reduced version of the proposed dwelling sited more appropriately to minimise unnecessary additional clearing for the APZ would be more suitable response to the site constraints. The size and location of the proposal is not supported due to impact on remaining native bushland, threatened species and their habitat from further clearing to satisfy bushfire APZ.

### Zone objectives

The underlying objectives of the RU2 Rural Landscape zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*

Comment:

The proposal is for a new residential dwelling which is permitted in the zone.

- *To maintain the rural landscape character of the land.*

Comment:

The proposal is for a residential dwelling. The majority of the site will remain undeveloped which is consistent with the surrounding sites and will maintain the rural landscape character of the land.

- *To provide for a range of compatible land uses, including extensive agriculture.*

Comment:

The proposal is permitted in the zone and compatible on the site.

- *To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*

Comment:

The proposed single residential dwelling will not unreasonably increase the demand for public services or public facilities.

- *To minimise conflict between land uses within this zone and land uses within adjoining zones*

Comment:

Surrounding development consists of residential dwellings and an aged care facility. The proposal is consistent with the existing land uses and is likely to cause conflict between land uses within this zone and land uses within adjoining zones.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the RU2 Rural Landscape 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 Development Determination Panel, for which Council has an exemption for dwelling houses that can be determined by the Development Determination Panel.

**7.6 Biodiversity protection**

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.6 Biodiversity protection of the Pittwater Local Environmental Plan 2014.

**Pittwater 21 Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Proposed	Complies
Front building line	30m	44.2m	Yes
Rear building line	7.5m	Carport - 8.3m	Yes
Side building line	South - 7.5m	48.2m	Yes
Building envelope	South - 3.5m	Within envelope	Yes
	West - 3.5m	Within envelope	Yes
Landscaped area	94.15% or 20364.8m <sup>2</sup>	94.34% (20,407 m <sup>2</sup> )	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	No	No
A4.6 Ingleside Locality	No	No
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	No	No
B3.11 Flood Prone Land	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B4.18 Heathland/Woodland Vegetation	No	No
B5.1 Water Management Plan	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D6.1 Character as viewed from a public place	Yes	Yes
D6.3 Building colours and materials	Yes	Yes
D6.5 Front building line	Yes	Yes
D6.6 Side and rear building line	Yes	Yes
D6.7 Building envelope	Yes	Yes
D6.8 Landscaped Area - Non Urban General	Yes	Yes
D6.12 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

#### Detailed Assessment

#### **A4.6 Ingleside Locality**

The proposed development and existing clearing/works on the site do not meet the desired character of the Ingleside Locality.

The locality aims to provide low impact residential development that is integrated with the landform and landscape. The existing and required clearing and excavation along with the minimal landscaping and large dwelling is not consistent with the desired future character of the locality.

The location of the proposal and the required APZ means that landscaping on the site such as canopy trees and native vegetation cannot be integrated into the design of the dwelling as per the desired character of the locality. Additionally, no landscape plan was provided with the application to show what landscaping will take place on the site and what trees and bushland is to be retained.

Furthermore, the development is to be designed to be safe from hazards. The application was referred to the NSW RFS, who raised several concerns with the Bushfire Assessment submitted.

The location, design and condition of the existing site are not consistent with Ingleside desired future character and an alternate design and location could provide a better outcome for the natural environment and provide a development that is consistent with the desired future character of the locality.

#### **B4.18 Heathland/Woodland Vegetation**

As detailed in the NECC (Bushland and Biodiversity) comments earlier in this report the proposal does not meet the requirements of the control.

This application was assessed against the objectives of PLEP Clause 7.6 Biodiversity, PDCP Clause B4.18 Heathland/Woodland Vegetation, and the NSW Biodiversity Conservation Act 2016. The property is also mapped as bushfire prone land and "Major Habitat" within Pittwater's wildlife corridor mapping. Any development application must consider proposal options which are compliant with applicable PLEP and PDCP controls, specifically:

- *Development shall retain and enhance habitat and wildlife corridors for threatened species, endangered populations, endangered ecological communities and other locally native species.*
- *Development shall not reduce or degrade habitat for locally native species, threatened species, endangered populations or endangered ecological communities.*

A substantial portion of the native intact bushland on the site was cleared prior to lodgement of this DA. The cleared area is located largely within the footprint of the proposed development. As such, there can be little consideration for ways to avoid and minimise impacts as per the application of mitigation hierarchy.

The proposed development will result in a substantial loss of native vegetation (including canopy trees) and wildlife habitat on the site. The proposal as submitted does not demonstrate that the objectives of relevant Natural Environment controls have been taken into account in designing and siting the development, nor is it evident that the proponent has made an effort to avoid direct or indirect impacts to the site's biodiversity values.

Given that the existing submission does not achieve compliance with PLEP and PDCP controls, the applicant is encouraged to consider a redesign of the proposal. It is noted that this DA includes additional impacts compared to the previous application. Any new proposal should incorporate a substantially reduced footprint (with reconsideration of the need for non-ancillary elements) and demonstrate feasible measures to avoid impacts to the site's biodiversity values.

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 B4.18 Heathland/Woodland Vegetation of the PDCP.

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

### **CONCLUSION**

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

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

- Bushfire Prone Land, the application was referred to the NSW RFS who raised concerns with the Bush Fire Assessment Report provided.
- Non-compliance with the biodiversity controls and legislation, Council's Natural Environment - Biodiversity Section cannot support the application due to non-compliances with the Clause 7.6 Biodiversity of the Pittwater LEP 2014, Clause B4.18 Heathland/Woodland Vegetation of the Pittwater DCP and the NSW Biodiversity Conservation Act 2016.
- Inadequate supporting information required by the controls and consideration for supporting biodiversity information, the insufficient and missing information includes the BDAR, Biodiversity Management Plan, Arborist Report, Bushfire Assessment Report and Landscape Plan.
- Building Height, the proposal breaches the control with a height of 9.9m.
- Ingheside Locality, the proposal does meet the Desired Future Character of the locality.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is not suitable or appropriate development for the subject site. It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2019/0055 for the Construction of a dwelling house on land at Lot 40 DP 28908,9 Minkara Road, BAYVIEW, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) and Section 4.15(1)(b)(i) Environmental Impacts of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Environmental Planning and Assessment Act 1979
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.6 Biodiversity protection of the Pittwater Local Environmental Plan 2014.
3. 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 A4.6 Ingleside Locality of the Pittwater 21 Development Control Plan.
4. 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 B4.18 Heathland/Woodland Vegetation of the Pittwater 21 Development Control Plan.
5. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.



NOTE: ALL WORKS SHALL COMPLY WITH BAL 29 OF AN/959,2009 Construction of Buildings in Bushfire Prone Areas and Section A3.7 of the NSW Rural Fire Service Addendum to Appendix 3 of Planning for Bushfire protection 2006.

NOTE: ASSET PROTECTION ZONE

[illegible]

NOTE: ALL WORKS SHALL COMPLY WITH THE BUILDING CODE OF AUSTRALIA

**A. POOL & COMPANY**  
 (1990)

**Stephen Crosby & Assoc.**

**SCOTLAND ISLAND**  
PO Box 204 Church Pt. NSW 2105  
E-mail: [scotland@scotland.net](mailto:scotland@scotland.net)

## DWELLING

9 MINKARA ROAD  
BAYVIEW, NSW  
Lot 40 DP 28908

---

for J. DICK

# **SITE PLAN** **STORMWATER**

Scale	1-200 A.P.A.
	Percentage

Date	DESCRIPTION	2018
Drawn	B.C.	

Water Constraints	
<b>Landscape</b>	The applicant must plant indigenous to low water species of vegetation throughout 200 square meters of the site.
<b>Pavement</b>	The applicant must install permeable sidewalks with a minimum rating of 4 star (> 4.5 IRI and < 1.0 psi) in all zones in the development. The applicant must install a biodegradable system with a minimum rating of 4 star in each bed in the development. The applicant must install pipes with a minimum rating of 5 star in the kitchen in the development. The applicant must install pipes with a minimum rating of 6 star in each bathroom in the development.
<b>Alternative water</b>	
<b>Recreation tank</b>	The applicant must install a recreation tank of at least 40000 thus on the site. This recreation tank must meet, and be installed in accordance with, the requirements of all applicable regulatory authorities.
<b>Swimming pool</b>	The swimming pool must not have a volume greater than 9.5 kilolitres. The swimming pool must have a pool cover. The swimming pool must be outdoor.
<b>Outdoor Spa</b>	The spa must not have a volume greater than 27.7 megalitres.
<b>Hot water</b>	The applicant must install two flow-sensing hot water systems in the development, or a system with a higher energy rating, electric heat pump with a performance of 20 to 25 (EER) or better.
<b>Natural lighting</b>	The applicant must install a window and/or skylight in the kitchen of the dwelling for natural lighting. The applicant must install a window and/or skylight in a bathroom(s) in the development for natural lighting.
<b>Alternative energy</b>	The applicant must install a photovoltaic system with the capacity to generate at least 12 peak kilowatts or directly on site of the development.

Stephen Crosby & Assoc.  
Pty. Ltd.

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## DWELLING

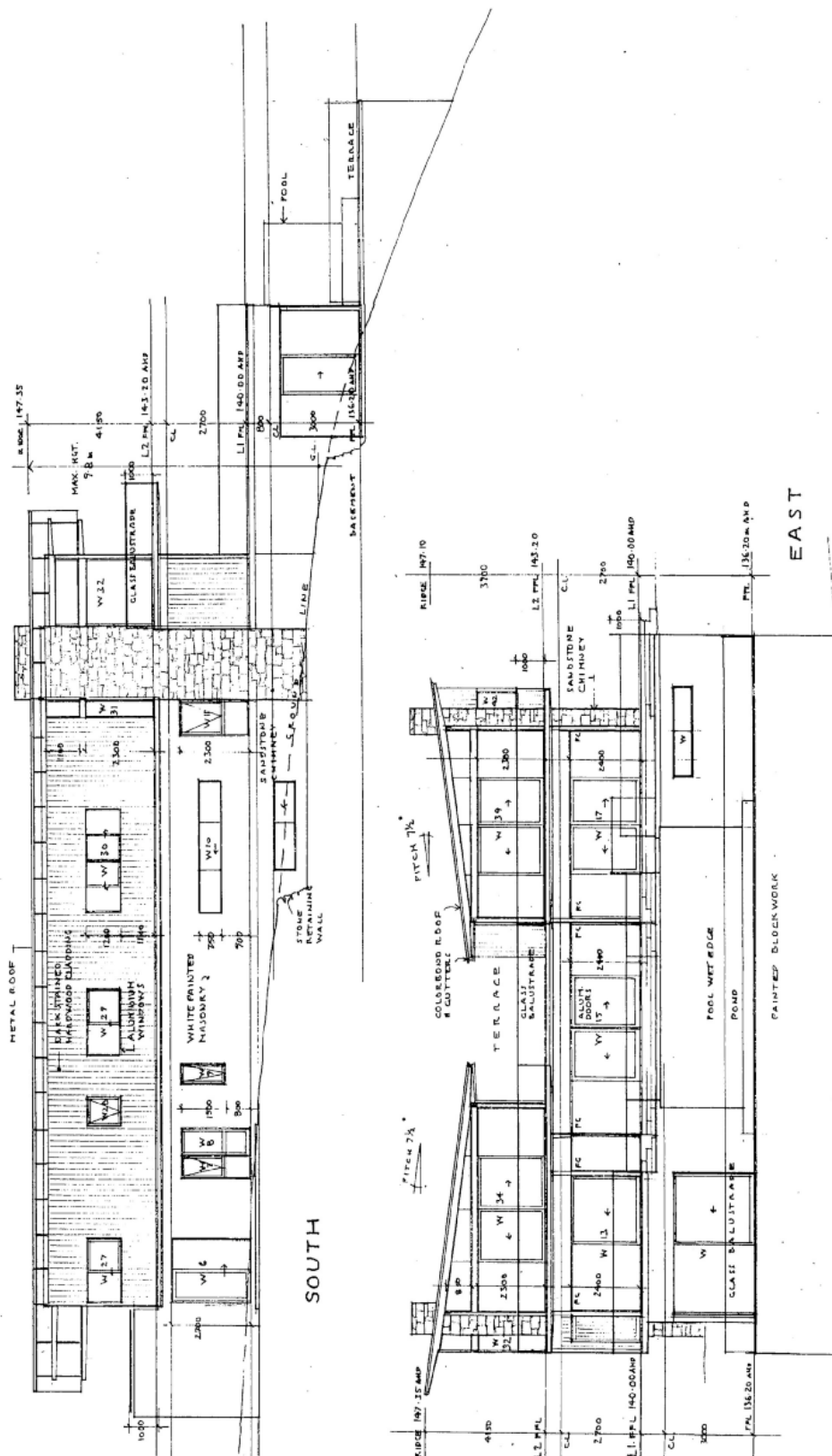
9 MINKARA ROAD  
BAYVIEW, NSW  
Lot 40 DP 28908

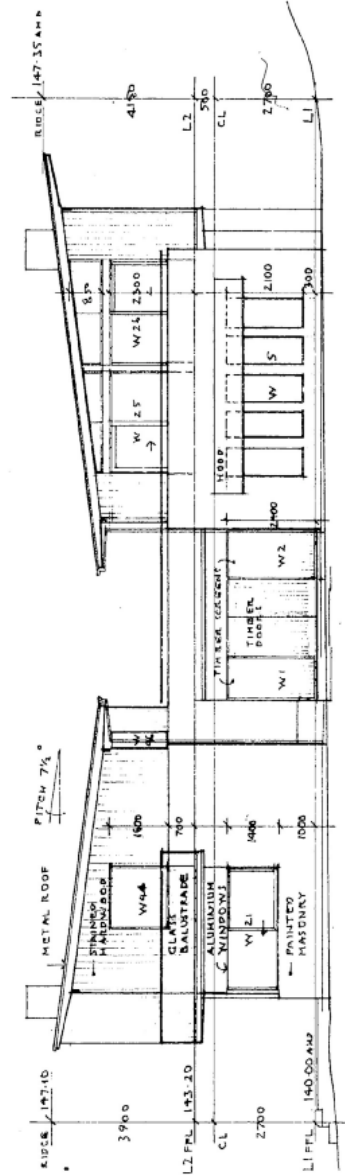
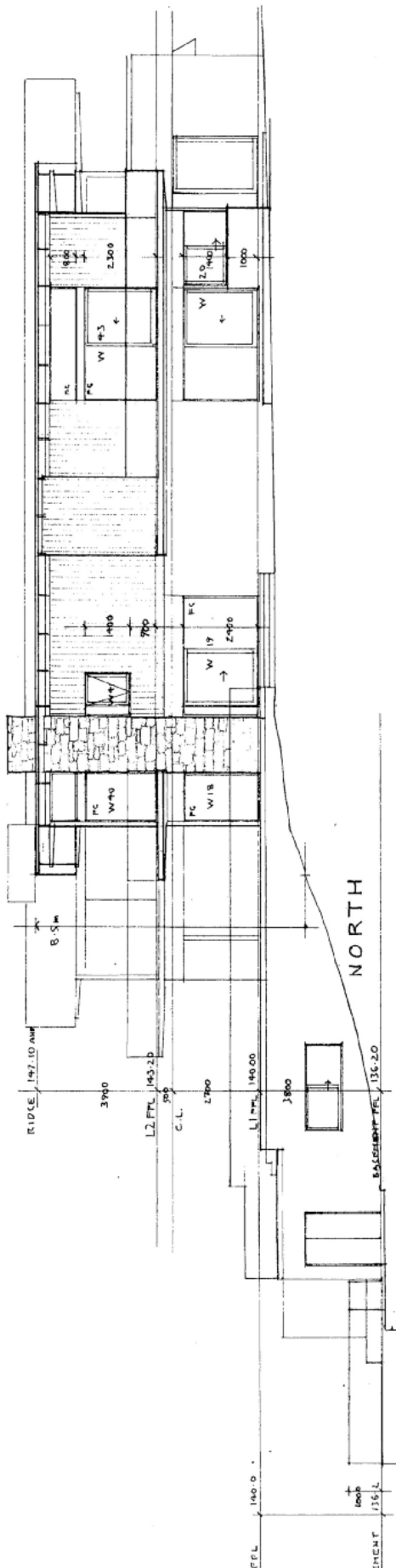
For J. DICK

## ELEVATIONS SOUTH & EAST

Scan	1:00 A7 A2
Date	AUGUST 2018
Owner	B.C.
Library Number	

2416 - DA 06A





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9 MINKARA ROAD  
BAYVIEW, NSW  
Lot 40 DP 28508

Dr J. DICK

**DWELLING**

**ELEVATIONS**  
**NORTH & WEST**

Scale: 1:100 AT A2  
Date: AUGUST 2018  
Drawing No: SC  
Drawing Title: 2416 - DA 07A

**Stephen Crosby  
& Assoc. Pty Ltd**

12th December 2018

The General Manager  
Northern Beaches Council  
1 Park St.  
MONA VALE NSW 2103

Dear Sir/Madam,

**RE: DA for No.9 MINKARA ROAD,  
BAYVIEW Lot 40 DP 28908  
For J. Dick****Exceptions to development standard LEP 2014 Clause 4.6**

Concurrent with the above Development Application we submit this letter addressing the provisions of Pittwater Council **LEP 2014**, specifically **cl. 4.3– Height of buildings** regarding development that exceeds the maximum height on Council's Heights of Buildings Map under the provisions of **LEP 2014 cl.4.6 Exceptions to development standards**.

This document shall demonstrate compliance with the outcomes of **LEP control 4.3 Height of buildings** with regard to the proposed family dwelling.

The proposed development has a roof ridge at 147.35m AHD along its southern wing, 7.1m above natural ground at the western end up to 9.25m at its stepped down eastern end. This ridge point is 50m from the neighbouring property boundary to the south and 54m from the street alignment.

The building height limit for this site is 8.5m above natural ground level on the Height of Buildings Map. This means the roof structure exceeds the height limit by up to 0.75m at its eastern end. The highest wall height above natural ground is 9.1m in the same location, exceeding the height limit by 0.6m.

Due to the large distances between the building and neighbouring properties, and Minkara Road, the additional height shall cause no overshadowing problems or loss of view issues.

A large portion of the site shall be left in its natural woodland state where canopy trees exceeding the height of the building will ensure the dwelling doesn't dominate the landscape.

**LEP 2014 Section 4.3 Height of buildings – assessment:****(1) Objectives:**

(a) The proposed dwelling is entirely consistent in form and height with similar dwellings on large sloping sites in the Pittwater area.

(b) Due to the size of this, and neighbouring properties, buildings are seen as isolated entities, when visible at all.

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(c) Due to the large boundary setbacks for the dwelling there are no overshadowing issues affecting neighbouring properties as a result of the proposal.

(d) No residences overlook this site and views from neighbouring properties are unaffected as a result of the proposal.

(e) The building sits comfortably on the existing terrain, stepping down the hillside.

(f) There are no heritage items affected by the proposal.

(2D) (a) That portion of the south facade above the 8.5m height limit is 3m<sup>2</sup> (75% eaves), being 1.2% of the total 248m<sup>2</sup> south elevation.

(b) The objectives of the clause are met as outlined above.

**Pittwater LEP 2014 cl. 4.6 Exceptions to development standards** sets out the parameters for varying a development standard such as cl. 4.3 Height of buildings described above. Compliance with the relevant provisions of cl 4.6 is achieved as follows:

- (1) (a) It is appropriate to allow the small increase in wall height in this instance.  
(b) Consistency in building form as a whole is better achieved by allowing this small height increase.
- (2) Development consent may be granted for this development.
- (3) (a) As demonstrated above compliance with the development standard cl.4.3 is unreasonable and unnecessary in this case, and,  
(b) there are sufficient environmental planning grounds to justify contravening the development standard in this instance.
- (4) (a) (i) the proposed non-compliance with the development standard is modest in scale and typical of current roof forms.  
(ii) the architectural merit of the proposed development will be in the public interest.
- (5) The minor contravention in the height control is not of State significance.
- (6) The development doesn't involve sub-division.
- (8) A BASIX Certificate shall be lodged the Development Application

This development application demonstrates compliance with the outcomes of LEP control **4.3 Height of buildings** with regard to the proposed dwelling.

The applicant looks forward to Council's concurrence with the merits of the arguments put forward here, and using its discretion under LEP 2014 cl. 4.6 Exceptions to development standards sets aside the requirements under cl. 4.3 Height of buildings where they might impact the proposal.

Yours sincerely,



**STEPHEN CROSBY** for the applicant

<b>ITEM 3.4</b>	<b>DA2019/0060 - 8A TUTUS STREET, BALGOWLAH HEIGHTS - DEMOLITION WORKS AND CONSTRUCTION OF A NEW DWELLING HOUSE</b>
<b>REPORTING MANAGER</b>	<b>Matthew Edmonds</b>
<b>TRIM FILE REF</b>	<b>2019/392821</b>
<b>ATTACHMENTS</b>	<b>1 Assessment Report 2 Site Plan &amp; Elevations 3 Clause 4.6</b>

### **PURPOSE**

To refer the attached application for determination as required under adopted delegations of the Charter.

---

### **RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **approve** Development Consent to DA2019/0060 for demolition works and construction of a new dwelling house on land at Lot 11 DP 863364, 8A Tutus Street, Balgowlah Heights, subject to the conditions outlined in the Assessment Report.

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## DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0060
Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 11 DP 863364, 8 A Tutus Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Demolition works and construction of a new dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Noel Ivor Roberts Colleen Mary Roberts
Applicant:	Walter Barda Design Pty Ltd
Application lodged:	25/01/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	05/06/2019 to 19/06/2019
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	4.4 Floor space ratio: 23.9%
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,960,200.00

### EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of development application DA2019/0060 from Walter Barda Design for the demolition of the existing dwelling and the construction of a new dwelling at 8A Tutus Street, Balgowlah Heights.

The subject site is zoned R2 Low Density Residential under the provisions of Manly Local Environmental Plan 2013 ('**MLEP 2013**') and the proposed new dwelling is permissible with consent.

The notification of the application resulted in four submissions in objection to the development from and on behalf of adjoining property owners. These submissions have been considered in the assessment report, with specific conditions of consent recommended to address unresolved concerns.

Subject to conditions of consent, the proposed development is considered to be consistent with the outcomes and objectives of the relevant legislation, plans and policies, and is recommended for approval.

As the cost of works of the development exceeds \$1 million, and as more than 3 submissions were received, the application is referred to the the Development Determination Panel for determination. The matter is also required to be determined by the Development Determination Panel as the proposal involves a variation to a development standard of more than 10%.

## **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 - Zone R2 Low Density Residential  
 Manly Local Environmental Plan 2013 - 4.4 Floor space ratio  
 Manly Development Control Plan - 3.4.3 Maintenance of Views  
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation  
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping  
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 11 DP 863364 , 8 A Tutus Street BALGOWLAH HEIGHTS NSW 2093
<b>Detailed Site Description:</b>	The site is irregular in shape, with a maximum depth of 24.45m, a maximum width of 30.48m and a total area of 604.9m <sup>2</sup> . The site is essentially landlocked, with no frontage to Tutus Street. However, vehicular and pedestrian access is gained from Tutus Street via rights of carriageway burdening both 6 and 8 Tutus Street. The site also benefits from easements for drainage services across a down slope

to the east at 37 Beatty Street.

The site currently contains an existing dwelling house and detached garage, and is surrounded by dwelling houses of varying age and character. The site contains one existing significant canopy tree, an *Angophora costata*, that is identified as being in poor health. Significant harbour views are available from the subject site and adjoining properties, and the site is located within the Foreshore Scenic Protection Area.

Map:



## SITE HISTORY

On 25 January 2019, the subject application was lodged with Council. The application was subsequently notified to adjoining property owners and referred to relevant referral bodies for comments and/or recommendations.

On 4 April 2019, the assessing officer undertook an inspection of the site, and adjoining properties at 4, 6, 8 and 10 Tutus Street.

On 5 April 2019, correspondence was sent to the applicant to identify concerns with regard to:

- Building height non-compliance,
- FSR non-compliance,
- Impacts upon views, and
- Overshadowing.

On 11 April 2019, the assessing officer met with the applicant to discuss the issues raised.

On 30 April 2019, amended plans were presented to Council, inclusive of the following amendments:

- 150mm-400mm reduction to floor levels,
- 500mm reduction to levels of upper roof form to ensure compliance with the 8.5m height limit,
- Reduction to height of chimney,
- 400mm reduction to parapet of garage,
- 1650mm reduction to height of wall adjacent to pool,
- Clarification of FSR calculation.

The amended plans were also accompanied by an amended SOEE, clause 4.6 submission and height pole certification.

On 12 June 2019, the assessing undertook an inspection of the site, and adjoining properties at 6 and 8 Tutus Street.

On 9 July 2019, the application was amended to remove a lower ground storage area, which had incorrectly been excluded from FSR calculations.

#### **PROPOSED DEVELOPMENT IN DETAIL**

The application seeks consent for the demolition of the existing dwelling and the construction of a new dwelling at the subject site. Specifically, the application proposes:

- demolition of all existing site improvements, including the existing dwelling and detached garage,
- construction of a new dwelling, detached double garage and swimming pool,
- installation of a vehicular turntable,
- tree removal, and
- landscaping.

#### **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

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

<b>Section 4.15 Matters for Consideration'</b>	<b>Comments</b>
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan ("MDCP 2013") 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&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the</p>

Section 4.15 Matters for Consideration	Comments
	<p>consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be 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) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the MDCP 2013 section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the EP&A Act requires Council to be satisfied that the development conforms to the specifications and requirements of *Planning for Bush Fire Protection 2006*.

A Bush Fire Report was submitted with the application that included certification stating that the development conforms to the relevant specifications and requirements within *Planning for Bush Fire*

*Protection 2006.* Conditions of consent are recommended to require consistency with the recommendations of this report.

## NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Maggie Ma	10 Tutus Street BALGOWLAH HEIGHTS NSW 2093
Christopher Brown	8 Tutus Street BALGOWLAH HEIGHTS NSW 2093
Andrew Vaughan	4 Tutus Street BALGOWLAH HEIGHTS NSW 2093
Marcus Chang	6 Tutus Street BALGOWLAH HEIGHTS NSW 2093

Note: In accordance with Council's Exhibition, Advertisement and Notification Policy adopted by MDCP 2013, all submissions received from or on behalf of one property have been counted as one submission.

The issues raised in the submissions received are considered as follows:

- **View loss**

Comment: Submissions have been received from and on behalf of the owners of 6, 8 and 10 Tutus Street, raising concerns regarding the impact to views. Whilst it is acknowledged that the proposed development will impact upon views currently enjoyed by surrounding properties, the impact is not unreasonable in the circumstances of the proposal. See further discussion with regard to clause 3.4.3 of MDCP 2013.

- **Bulk and Scale**

Comment: Submissions have been received which raise concern regarding the bulk and scale of the proposed development, stating that the extent of built form non-compliance attributes to an unacceptable built form. Whilst each of the specific areas of non-compliance raised are addressed in detail below, the proposed development is considered to be an appropriate design solution in response to the constrained nature of the site. The bulk and scale of the one and two storey dwelling proposed is not considered to present as overly bulky or out of scale with surrounding properties.

- **FSR non-compliance**

Comment: Concern has been raised in submissions received regarding the impacts associated with the proposed FSR non-compliance. However, as discussed in further detail with regard to clause 4.4 of MLEP 2013, the proposed FSR calculation is consistent with a variation anticipated by MDCP 2013 and does not attribute to inconsistency with objectives of the FSR development standard.

- **Setback non-compliance**

Comment: Submissions have been received on behalf of the property owners of 8 Tutus Street in objection to the setbacks of the proposal, and in particular, non-compliance with the 6m front setback, 8m rear setback and southern side setback prescribed by clause 4.1.4 of MDCP 2013. As discussed with respect to this development control, the site does not have a frontage to the street and is irregular in shape, such that the standard front, rear and two side approach cannot be applied. Noting the limited depth of the site, particularly the southern portion, the imposition of the 6m front setback and 8m rear setback control would sterilise the site, to a point where a dwelling could not be accommodated on the land.

With this in mind, the side setback control was considered to be most reasonably applied in relation to the setbacks to all boundaries. Whilst the proposed development is marginally non-compliant in relation to the western boundary that adjoins 8 Tutus Street, the proximity of the dwelling does not create any adverse impacts upon the amenity of the adjoining dwelling, particularly as the development is maintained well below the maximum building height in this location. It is noted that the proposed western setback is comparably increased compared to the existing nil setback to that boundary, and the visual impact of the development will be screened by existing and proposed landscaping along both sides of the common boundary.

The submissions make reference to a proposed 556mm setback to the southern boundary when a 851mm setback is required. However, it is not known as to how either of these figures were derived. As discussed with regard to clause 4.1.4 of MDCP 2013, there is a minor (600mm) non-compliance between the lounge room and the southern boundary. However, this non-compliance is limited to Level 1 and does not attribute to any unreasonable impacts upon adjoining properties.

- **Height non-compliance**

Comment: Submissions have been received in objection to the proposed height non-compliance. At the time of lodgement, the proposed dwelling marginally exceeded the 8.5m height limit along the eastern facade. However, this non-compliance has been resolved and the entire dwelling is maintained below the 8.5m height limit.

- **Total Open Space non-compliance**

Comment: A submission has been received which objects to the shortfall of Total Open Space proposed, attributing this non-compliance to excessive FSR. However, the Total Open Space calculation is not the inverse of the FSR calculation, and can include above ground terraces and balconies, which have been limited in the proposed development. As discussed with regard to clause 4.1.5 of MDCP 2013, the proposed dwelling could readily achieve compliance with the minimum Total Open Space requirement by converting the proposed roof gardens and flat roofed areas into balconies/terraces. However, the proposed roof gardens and flat roofs are considered to provide greater amenity for adjoining properties and a greater level of consistency with the objectives of the development control, which place greater emphasis on landscaping, as opposed to hard surface recreation areas.

- **Replacement planting**

Comment: A submission has been received in objection to the lack of replacement plantings proposed to compensate for the loss of Tree 1, with other submissions received raising concern with regard to the amount of canopy trees proposed and the associated impacts upon views. The application proposes three x *Tristaniopsis Laurina*, however the landscape plan has not

been supported by Council's Landscape Officer, as two trees are said to be sited in locations that will compromise their future growth. In consideration of the size of the site and noting the views available from up slope properties, two locally native canopy trees are considered to be achieve an appropriate balance for the development of the site. See further discussion with regards to clause 4.1.5 of MDCP 2013.

- **Lack of consideration of slope**

Comment: A submission has been received which raises concerns regarding the lack of stepping incorporated within the proposed dwelling, siting a 6.5m fall across the depth of the site. The proposed development has been partially excavated into the western side of the site, in order to maintain a consistent ground plane on the living level. The upper floor has then been set back from the eastern edge of the level below, responsive to the natural fall of the land, creating a step at the upper floor.

- **Privacy**

Comment: Submissions have been received from and on behalf of the property owners of 4 Tutus Street, raising concerns with regard to visual privacy. Upon further discussion, it became apparent that the concerns relate to overlooking from the Laundry and Bedroom 2 windows on the upper level of the proposed dwelling. The windows in question are located at a minimum distance of 13-16.4m from the common southern side boundary, with adequate spatial separation provided between dwellings. It is also noted that the windows associated with the laundry have a minimum sill height of 1.5m. The proposed development is consistent with the provisions of 3.4.2 of MDCP 2013 in this respect.

- **Acoustics**

Comment: Concerns have been raised from the property owners of 4 and 6 Tutus Street in relation to acoustic impacts associated with the proposed swimming pool and vehicle turntable. Noise levels associated with the use of a swimming pool are not considered to be unreasonable in a residential context, particularly noting that the proposed pool is separated from the relevant properties by a solid wall. The proposed pool is also located away from bedrooms of the relevant properties, and is located adjacent to an existing swimming pool at 4 Tutus Street. The noise levels associated with the proposed turntable can be addressed with a condition of consent, limiting plant noise in accordance with the relevant noise criteria.

- **Solar access**

Comment: Submissions have been received from and on behalf of the property owners of 4 Tutus Street, raising concerns with regard to solar access. The proposed development has been amended in this regard, and will not result in any unreasonable overshadowing impacts upon the adjoining property to the south.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	The proposal, in terms of landscape outcome as illustrated on the landscape plan, is not acceptable and fails to satisfy the landscape controls of the Manly DCP.

Internal Referral Body	Comments
	<p>The landscape plan fails to provide the required tree planting in deep soil that is able to establish a tree canopy to satisfy 4.1.5.2 c) Minimum Tree Plantings. The suggested tree planting on the landscape plan is located within ground with limited soil area availability to support tree growth in the long term. Tree planting at the eastern entrance is located in a garden strip of 1.2m in width, and the second tree planting proposal is located in a garden strip of 1.8m width along the northern boundary. Under 4.1.5.2, three (3) trees are required to be planted on site, and located within open space with a horizontal dimension of at least 3m in any direction under 4.1.5.1.</p> <p>The proposed landscape fails to minimise the bulk and scale of the development, with proposed landscaping of trees and shrubs confined to boundaries where garden widths are limited.</p> <p>Under 3.3.1 (b) - i) Landscaped areas must be capable of supporting new native tree species that are typically expected to reach a mature height of 10m; ii) including the use of locally occurring native plant species; and iii) trees should be positioned in locations that minimise significant impacts on neighbours in terms of: blocking winter sunlight to either living rooms, private open space or solar collectors; or where the proposed location the tree may be otherwise positioned to minimise any significant loss of views.</p> <p>A arboricultural Impact Assessment, prepared by All Arbor Solutions is provided and the recommendations for removal of the existing tree (identified as Tree 1 - Smooth Barked Apple) on site is accepted, based on the site investigations and this tree cannot be retained under the current design and should be considered for removal, irrespective of development, due to its current health and condition. This tree is assessed as in poor condition and in an advanced state of decline.</p> <p>All trees and vegetation on adjoining properties must be protected from any damage and health impacts. Building design inclusive of scaffolding works are to be designed to accommodate no impact to existing trees and vegetation on adjoining property.</p>
NECC (Coast and Catchments)	<p>The application has been assessed in accordance with the State Environment Planning Policy (Coastal) 2018, the Sydney Harbour Catchment Regional Environment Plan (SREP 2005) and Sydney Harbour Foreshores Development Control Plan (2005) for impacts to the Harbour and Coastal Environment.</p> <p>The development occurs within Coastal Use and Coastal Environment area of the Coastal SEPP. According to the SEPP, these Clauses (13 and 14) do not apply and the SREP planning controls take priority. In addition, Clause 15 does not apply as there are no coastal hazards affecting this property.</p> <p>In applying the SREP and DCP, it has been found no significant</p>

Internal Referral Body	Comments
	impacts are likely to be caused by the development.
NECC (Development Engineering)	Development Engineering has no objection to the application subject to conditions of consent.

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

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

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

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

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

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

##### **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 proposed.

##### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. 982758S dated 12 December 2018 ).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	81

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

### **SEPP (Infrastructure) 2007**

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

### **Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

The subject property is located within the Foreshores and Waterways Area, as shown on the Foreshore and Waterways Area Map, and is therefore subject to the provisions of this plan.

An assessment of the proposal against the relevant provisions of this plan has been undertaken, and the proposal is considered to be consistent with the SREP in this regard. Given the scale of the proposed works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

### **SEPP (Coastal Management) 2018**

The site is mapped as being located within the Coastal Environment Area and Coastal Use Area under the provisions of *State Environmental Planning Policy (Coastal Management) 2018* ("CM SEPP"). However, as the site is also located within the Foreshores and Waterways Area within the meaning of *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*, the provisions of clauses 13 and 14 of the CM SEPP do not apply.

Nonetheless, Council can be satisfied that the proposal is consistent with clause 15 of the CM SEPP, as the proposed development is not likely to cause increased risk of coastal hazards on the site or adjoining land.

### **Manly Local Environmental Plan 2013**

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

### **Principal Development Standards**

<b>Standard</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation</b>	<b>Complies</b>
Height of Buildings:	8.5m	8.5m	-	Yes
Floor Space Ratio	0.4:1	0.5:1	23.9%	No

### **Compliance Assessment**

<b>Clause</b>	<b>Compliance with Requirements</b>
2.7 Demolition requires development consent	Yes

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

#### Detailed Assessment

#### **Zone R2 Low Density Residential**

The proposed development is consistent with the objectives of the R2 Low Density Residential Zone, as follows:

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

Comment: The proposed new dwelling provides for the housing needs of the property owners, and has been designed to appropriately respond to the context of the site. The proposed three bedroom dwelling house is a low density development, consistent with the character of the surrounding locality.

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

Comment: Not applicable - the proposal provides for the housing needs of the community.

#### **4.4 Floor space ratio**

#### **and 4.6 Exceptions to development standards**

With a proposed FSR of 0.49:1 the proposed development is non-compliant with the 0.4:1 FSR calculation prescribed by clause 4.4 of MLEP 2013. The FSR calculation is a development standard, as defined by the EP&A Act, and as such, the provisions of clause 4.6 of MLEP 2013 can be applied.

Pursuant to clause 4.6(2) of MLEP 2013, consent may be granted for development even though the proposal contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause does not apply to those standards expressly excluded from this clause, the FSR calculation is not expressly excluded and thus, the clause can be applied in this instance.

#### What is the extent of the breach?

The proposed development has a gross floor area calculation of 299m<sup>2</sup>, with a FSR calculation of 0.49:1. The extent of non-compliance with the FSR development standard is 57m<sup>2</sup> or 23.6%.

Has the applicant's submission addressed the relevant criteria?

Pursuant to clause 4.6(4) of MLEP 2013, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the criteria of clause 4.6(3) of MLEP 2013. The application was supported by a detailed submission (**attached**) addressing the provisions of clause 4.6 of MLEP 2013. The submission has been considered with regard to the criteria of clause 4.6(3) of MLEP 2013, as follows:

- a. *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,*

Comment: In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council [2007] NSWLEC 827*, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard. The applicant's submission has satisfactorily demonstrated that the proposed development standard will achieve consistency with the objectives of the FSR development standard, and as such, strict compliance with the 0.4:1 FSR calculation is considered to be unreasonable and unnecessary in the circumstances of this application.

- 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*, "environmental planning grounds" were found to be grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects prescribed by clause 1.3 of that Act.

The applicant's submission highlights the following reasons/grounds for the proposed departure from the FSR development standard:

- The site is irregular and constrained,
- The proposal is more responsive to current controls than that which exists on the site,
- The proposal provides for a greater level of amenity for occupants of the proposal and adjoining properties,
- The proposal is a skilful design with high architectural merit,
- The proposal is consistent with a permitted variation in clause 4.1.3.1 of MDCP 2013, which provides that the FSR should be calculated based on the prescribed minimum lot size (750m<sup>2</sup>) rather than the undersized lot size (604.9m<sup>2</sup>). The proposal complies with the variable FSR calculation prescribed by MDCP 2013, the application of which promotes orderly development.

The applicants submission is considered to establish sufficient environmental planning grounds, consistent with objects 1.3(c) and (g) of the EP&A Act.

Therefore, the consent authority can be satisfied that the applicant's request has satisfactorily addressed the matters required by clause 4.6(3) of MLEP 2013.

Is the proposal in the public interest?

Under the provisions of clause 4.6(4)(a) of MLEP 2013, consent must not be granted to a proposal that contravenes a development standard unless the proposed development (as a whole) 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 to be carried out.

The proposal is considered to be consistent with the objectives of the FSR development standard, as follows:

- *To ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

Comment: The proposed development is generally hidden from view as seen from Tutus Street. The development will appear as a one and two storey dwelling as seen from Beatty Street, of a character and scale that is consistent with the existing and desired streetscape. The proposed development is well articulated, with a reduced upper floor, to ensure that the bulk and scale of the proposal is appropriately minimised.

- *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: Whilst the proposed development will result in minor impacts to views currently enjoyed from adjoining properties, the level of impact is not unreasonable in the context of the site. Furthermore, the development will not unreasonably obscure important landscape and townscape features, noting that each property will retain significant whole views. The density and bulk of the proposed development is considered to be an appropriate solution to the constrained and undersized allotment.

- *To maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

Comment: The proposed development will enhance views available to occupants of the subject site, without unreasonably impacting upon views currently enjoyed from adjoining dwellings. The proposed development will sit appropriately within the context, in a manner that is consistent with the character and landscape of the area.

- *To minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

Comment: As discussed in response to the submissions received and with regard to specific controls, the proposed development will not adversely impact upon the enjoyment of use of adjoining properties.

- *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.

Furthermore, as discussed in further detail separately above, the proposal is considered to be consistent with the relevant objectives of the R2 Low Density Residential Zone.

Therefore, the consent authority can be satisfied that the proposal is in the public's interest.

Has concurrence been obtained?

Pursuant to clause 4.6(4) of MLEP 2013, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with correspondence from the Deputy Secretary dated 24 May 2019, the Development Determination Panel may assume the Secretary's concurrence in relation to the proposed development.

#### Conclusion

Overall, the consent authority can be satisfied of the matter prescribed by clause 4.6 of MLEP 2013, and the proposal can be supported, despite contravention of the FSR development standard.

### Manly Development Control Plan

#### Built Form Controls

Built Form Controls - Site Area: XXXX	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	1 dwellings	1	-	Yes
4.1.3.1 FSR for undersized lots	0.4:1 based on 750m <sup>2</sup> lot size	0.4:1	-	Yes
4.1.2.1 Wall Height	7.3m	7.1m (max.)	-	Yes
4.1.2.2 Number of Storeys	2	2	-	Yes
4.1.2.3 Roof Height	Parapet: 0.6m	0.55m	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	West: 1.6m	1.2m	25%	No
	East: 1.8m	2.35m	-	Yes
	North: 1m	1.8m	-	Yes
	South: 1.8m (lounge) 1.1m (garage/pool)	1.2m 1.2m	33% -	No
	Windows: 3m	>3m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	46%	24%	No
	Open space above ground 25% of total open space	3%	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	46%	-	Yes
	3 native trees	3 trees	-	Yes
4.1.5.3 Private Open Space	18m <sup>2</sup> per dwelling	>18m <sup>2</sup>	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	1.5m	50%	No
	1m curtilage	1-1.5m	-	Yes
Schedule 3 Parking and Access	2 spaces	2 spaces	-	Yes

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

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	No	No
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.1.10 Fencing	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

#### Detailed Assessment

### 3.4.3 Maintenance of Views

The proposed development will impact upon views currently enjoyed by adjoining properties and submissions in objection to the development have been received in this regard from and on behalf of the owners of 6, 8 and 10 Tutus Street. The impact upon views from each of these properties is considered individually, with respect to this development control and the Views Planning Principle developed by the NSW LEC in the matter of *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*.

#### 6 Tutus Street

Partially obscured views of Manly Harbour, across to North Head, are available from the ground floor rear living room and adjacent terrace of 6 Tutus Street. From the Master Bedroom on the first floor of the dwelling at 6 Tutus Street, this view is expanded to include Manly Wharf and distant ocean views beyond. All views available to the dwelling at 6 Tutus Street are obtained across the rear boundary (across the subject site) and across the common side boundary of 4 Tutus Street.

As demonstrated by **Figure 1**, the proposed development will impact upon a portion of the partially obscured/filtered distant views currently enjoyed from the ground floor of 6 Tutus Street. It is noted that the photos were taken during winter, when the deciduous trees were generally free of any foliage. The extent of obstruction associated with vegetation is likely to be greater during the remainder of the year. The impact upon the views currently enjoyed from the lower level of 6 Tutus Street is considered to be minor.

The adjoining property owner has also raised concern with regard to the impact of vegetation on the top of the garage roof. The proposed plantings atop of the garage have the potential to become a dense hedge, with a maximum height of 1.5m, which will result in additional loss of water and foreshore views. As such, a condition of consent is recommended to require the garage roof top planter to comprise ground covers with a maximum height of 500mm.



Figure 1 - View from ground floor living room at 6 Tutus Street with impact highlighte

As demonstrated by **Figure 2**, the proposed development will impact upon a minor portion of water views as seen from the Master Bedroom on the upper floor. However, the land/water interface will be marginally extended across the roof of the existing dwelling, and the whole view will be improved as a consequence of the removal of the central tree (Tree 1). The impact upon views currently enjoyed from the upper level of 6 Tutus Street is considered to be negligible, and if anything, the view is likely to be enhanced.



Figure 2 - View from upper floor bedroom at 6 Tutus Street with impact highlighted b

The overall impact upon the views currently enjoyed by occupants of 6 Tutus Street is considered to be minor at worst, and cannot be directly associated with any particular area of built form non-compliance. The proposed development is considered to be a skilful design in consideration of the context of the site, and the impact upon views currently enjoyed from 6 Tutus Street is considered to be reasonable.

#### 8 Tutus Street

Views of Manly Harbour, North Head, Manly Wharf and the ocean are available from the upper floor rear deck and living rooms of the dwelling at 8 Tutus Street. The views are obtained across the rear boundary (across the subject site) and across the common side boundary of 10 Tutus Street.

As demonstrated by **Figure 3**, the proposed development will impact upon a portion of the water views currently obtained in a standing position at the rear of the upper level. The whole of the land/water interface will remain unobstructed, with the removal of the existing ridge line, which slightly interrupts the coastline at present. Views of North Head will be slightly improved as a consequence of the removal of Tree 1. The impact upon views from a standing position at the rear of 8 Tutus Street is considered to be minor.



Figure 3 - Standing view from rear of upper floor at 8 Tutus Street with impact highlighted

As demonstrated by **Figure 4**, the proposed development will have a slightly greater impact upon views currently enjoyed from a seated position at the rear of the upper level, removing a slightly greater proportion of water, and a greater portion of the distant land/water interface. However, noting that the majority of the view will remain unobstructed and that seated views are expressed as being more vulnerable/harder to retain, the impact upon views from a seated position at the rear of 8 Tutus Street is also considered to be minor.



Figure 4 - Seated view from rear of upper floor at 8 Tutus Street with impact highlight

The impact upon the views currently enjoyed by the occupants of 8 Tutus Street is considered to be minor. The dwelling is considered to be skilfully designed to minimise the width of the upper floor as seen from 8 Tutus Street, in order to maximise views for the adjoining property. The impact upon views currently enjoyed from 8 Tutus Street is considered to be reasonable.

#### 10 Tutus Street

From the ground level of the dwelling at 10 Tutus Street, views of Manly Harbour and North Head are available from the primary living area and adjacent terrace. The views are obtained across the rear boundary (across 39 Beatty Street), with no views available across the subject site. From upper floor rear bedrooms, expansive views are available of Manly Harbour, North Head, Manly Wharf and the ocean beyond. These views are available across the northern side boundary, across the rear boundary and across the southern side boundary (across the subject site).

Unfortunately, access to 10 Tutus Street was not available following the amendments (lowering) to the height poles, and as such, the impact associated with the proposed development shown in **Figure 5** is worse than that anticipated (500mm higher than that now proposed). Nonetheless, the impact is considered to be negligible and reasonable, noting the retention of primary views to the north-east, as shown in **Figure 6**.



Figure 5 - View from rear of upper floor at 10 Tutus Street with impact highlighted by



Figure 6 - View from rear of upper floor at 10 Tutus Street to be retained.

#### Summary

Overall, the impact upon views is considered to be minor at worst, and is reasonable in the context of the application. View sharing between properties is considered to be achieved.

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

With an irregular shape and no street frontage, the subject site does not conform to the standard front, rear and two side approach generally anticipated by this development control. In consideration of the irregular subdivision pattern, and the siting of the existing dwelling and that of surrounding dwellings, the prescribed side setback is considered to be reasonably applied in relation to each of the boundaries.

Whilst the majority of the proposal far exceeds these minimum requirements, the proposed dwelling is marginally inconsistent with the side setback requirements in two separate locations, as follows:

- The southern elevation of the Level 1 lounge room, with a 1.8m setback required and only a 1.2m setback proposed (600mm non-compliance for a length of 6.8m), and
- The western elevation of the Level 2 Laundry and guest suite, with a 1.6m setback required and only a 1.2m setback proposed (400mm non-compliance for a length of 5.7m).

The two minor areas of non-compliance do not attribute to any unreasonable impacts upon adjoining properties, or inconsistency with the objectives of the setback controls, as follows:

- *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 is generally screened from view, and the areas of non-compliance will not be perceived from the public domain.

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

Comment: The setbacks of the proposed dwelling in relation to the common boundaries do not attribute to any unreasonable impacts with respect to solar access, view sharing or visual privacy. The western facade of the upper floor is limited in width, with two minor windows within recesses in the facade, and is maintained well below the maximum permitted building height and wall height. The southern facade of the lounge room room is sited in the same approximate location as that of the existing dwelling, with adequate spatial separation and landscaping to the dwelling to the south-east. As expressed above, the subject site is a bit of an anomaly in the subdivision pattern of the area, and as such, irrespective of the setbacks proposed, the proposed dwelling will never be able to contribute to the rhythm or pattern of surrounding dwellings. However, the proposal is not inconsistent with the siting of the dwelling on the neighbouring battle-axe subdivision, which features limited or nil setbacks to the majority of the common boundaries.

- *To promote flexibility in the siting of buildings.*

Comment: The siting and scale of the proposed development is considered to be an appropriate design solution for the somewhat irregular and constrained site. Whilst the majority of the proposal is setback consistent with the minimum setback prescribed, two minor areas of the dwelling extend within the minimum setbacks. However, these setbacks are considered to be acceptable on merit, consistent with the objective to promote flexibility in the siting of buildings.

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

Comment: The siting of the proposed development provides adequate deep soil zones and landscaping across the site, despite non-compliance with the minimum setback requirements.

- *To assist in appropriate bush fire asset protection zones.*

Comment: The setbacks proposed facilitate access around the property, and the design of the development is consistent with the provisions of *Planning for Bushfire Protection 2006*.

Overall, the siting of the proposed development is consistent with the objectives of the setback control and the proposal is considered to be acceptable on merit.

#### 4.1.5 Open Space and Landscaping

Minimum Total Open Space required: 363m<sup>2</sup> or 60% of the site area  
Total Open Space proposed: 277m<sup>2</sup> or 46% of the site area

Minimum Landscaped Area required: 145.2m<sup>2</sup> or 40% of the required area of Total Open Space  
Landscaped Area proposed: 165.6m<sup>2</sup> or 46% of the required area of Total Open Space

The proposed development falls short with respect to the requirement for 60% of the site to be Total Open Space.

However, the Total Open Space calculation is not considered to accurately represent the proposed landscaped treatment of the site, as roof top gardens and areas less than 3m in width are required to be excluded from this calculation. If these areas were able to be included within the Total Open Space calculation, the calculation would be considerably increased to 412.6m<sup>2</sup> or 68% of the site area. The scale of the proposed dwelling is compatible with that of surrounding dwellings, and has a lesser footprint than that which currently exists on the site. Furthermore, the proposed development provides a landscaped area calculation in excess of the minimum prescribed, to ensure consistency with the objectives of the control, as follows:

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

Comment: The proposed development will result in an enhancement of vegetation on the subject site. Whilst Tree 1, a mature *Angophora costata*, is proposed for removal, the tree is in a state of decline and is recommended for removal irrespective of the works proposed.

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

Comment: The proposed development will maximise soft surface area, with landscaped areas in excess of the minimum requirements prescribed by this control. The application was supported by a detailed landscape plan which demonstrates appropriate tree planting and the enhancement of vegetation on the site. The extent of open space at ground level is considered to be appropriate with respect to the context of the site, with additional elevated areas proposed in response to the slope of the land.

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

Comment: The non-compliant Total Open Space calculation does not attribute to any unreasonable impacts upon the amenity of neighbouring properties. If anything, the shortfall increases the amenity of adjoining properties by avoiding excessive elevated balconies that could be included just to achieve technical compliance with this control.

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

Comment: The short fall of Total Open Space does not attribute to inconsistency with this objective, with deep soil landscaping provided in excess of the minimum areas required. As such, water infiltration is considered to be maximised.

- *To minimise the spread of weeds and the degradation of private and public open space.*

Comment: A condition of consent can be imposed to ensure that the site is eradicated of any weeds, and that the proposed landscaped treatment is maintained appropriately for the life of the development.

- *To maximise wildlife habitat and the potential for wildlife corridors.*

Comment: The site is not located within a wildlife corridor. However, the proposal will result in an enhancement of landscaping on site, to maximise the potential for wildlife habitat.

Clause 4.1.5 of MDCP 2013 also requires a minimum of three locally native trees to be planted at the subject site. The application is technically consistent with this requirement, with three x *Tristaniopsis Laurina* proposed, in addition to a number of exotic trees and shrubs. However, Council's Landscape Architect does not support the proposed landscape plan, as the two of the *Tristaniopsis Laurina* proposed are sited in a manner that will restrict the future growth of the tree in the long term.

It is agreed that the proposed placement of a canopy tree immediately adjacent to the proposed driveway is not appropriate, and in this regard, the landscape plan should be amended to delete this proposed tree. However, there is no constraint upon the tree proposed in the north-west corner of the site, and the tree proposed adjacent to the north-eastern terrace has adequate unencumbered space to the north to compensate for the proximity of the proposed retaining wall in the medium term. The placement of these two trees along the northern boundary is also responsive to views, in so far as they will align with existing vegetation to minimise further impacts upon existing view corridors.

If deemed necessary, an additional canopy tree could be incorporated within one of the lawn areas (either to the north of the living room, or to the north of the swimming pool) as adequate space and soil levels are provided. However, noting the general enhancement of vegetation across the site, the proposed development is considered to provide an appropriate landscape solution for the site, despite a resultant shortfall of one locally native canopy tree.

#### **4.1.9 Swimming Pools, Spas and Water Features**

The eastern edge of the proposed swimming pool extends approximately 1.5m above existing ground level, resulting in inconsistency with the provisions of this clause which prescribe that swimming pools should not be elevated more than 1m above natural ground level. However, an exception may be considered if the setback to the boundary is equal to or greater than the above ground height of the pool, and if the siting and design of the swimming pool does not detract from the amenity or character of the locality. The eastern edge of the swimming pool is setback 1.6m from the eastern boundary, 100mm greater than the maximum above ground height proposed. Furthermore, the siting and design of the proposed swimming pool will not impact upon the amenity or character of the neighbourhood. As such, the above ground height of the proposed pool is considered to be acceptable, in accordance with the expressed variation.

#### **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 \$19,602 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,960,200.

## CONCLUSION

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

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

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

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

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

The proposed development is a contextually appropriate and sensitive design solution for the constrained site. The proposed new dwelling is compatible with the scale and character of surrounding dwellings and has been designed to minimise impacts upon nearby properties, specifically with regard to visual privacy and view sharing.

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

## RECOMMENDATION

Accordingly Council as the consent authority grant Development Consent to DA2019/0060 for Demolition works and construction of a new dwelling house on land at Lot 11 DP 863364, 8 A Tutus Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

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

#### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Plan A111, issue C	9 July 2019	Walter Barda Design
Floor Plans A201, issue C	9 July 2019	Walter Barda Design
Elevations A301, issue D	9 July 2019	Walter Barda Design
Sections A311, issue C	9 July 2019	Walter Barda Design
Landscape Plan A250, issue B	17 April 2019	Walter Barda Design

Engineering Plans		
Drawing No.	Dated	Prepared By
Drawing Schedule & Legend H000, issue A	19 December 2018	Glenn Haig & Partners Hydraulic and Fire Consultants
Roof & Floor Plans H101, issue A	19 December 2018	Glenn Haig & Partners Hydraulic and Fire Consultants
Site Soil & Water Management Plan, issue A	19 December 2018	Glenn Haig & Partners Hydraulic and Fire Consultants

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Risk Management Report, reference 1303	4 December 2018	Planning for Bushfire Protection
Arboricultural Impact Assessment Report	18 December 2018	All Arbor Solutions
Geotechnical Risk Management Report, reference AG 18167	12 December 2018	Ascent Geotechnical Consulting
BASIX Certificate 982758S	12 December 2018	Taylor Smith Consulting

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

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

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

## 2. Prescribed Conditions

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost

of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative Requirement

### 3. General Requirements

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths,

roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

- (j) Prior to the commencement of any development onsite for:
- i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished
- The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
 

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

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

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

## FEES / CHARGES / CONTRIBUTIONS

### 4. Policy Controls

#### Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$19,602.00 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 \$1,960,200.00.

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](http://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.

#### 5. Security Bond

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

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

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

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

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

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

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

Certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's *Manly Specification for On-Site Stormwater Management 2003* and the concept plans referenced in Condition 1 of this consent. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the construction certificate

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

7. **Structural Adequacy and Excavation Work**

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

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
  - (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.
- Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

8. **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.

9. **Compliance with Recommendations of Approved Reports**

Written certification from a suitably qualified person(s) shall be submitted to the Principal Certifying Authority, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the reports referenced in Condition 1 of this consent have been incorporated into the construction certificate detail.

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

Reason: To ensure compliance with all endorsed recommendations.

10. **Amendments to Landscape Plan**

The approved Landscape Plan referenced in Condition 1 of this consent is to be amended, as follows:

- o The *Tristaniopsis laurina* proposed immediately adjacent to the driveway/turntable is to be removed, and
- o The *Correa alba* proposed in the roof garden atop of the garage is to be replaced with a draping locally native grass/ground cover, with a maturity height of no more than 500mm.

The amended landscape plan is to be submitted to the certifying authority prior to the issuance of the construction certificate.

Reason: To ensure the landscape treatment of the site is appropriate and manageable.

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

11. **Tree Protection Measures**

Tree protection measures shall be undertaken as recommended in the Arboricultural Impact Assessment referenced in Condition 1 of this consent.

A) The Principal Certifying Authority or Project Arborist must ensure that:

i) the activities listed in section 4.2 of AS4970- 2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site, and

ii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree

or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

B) The tree protection measures specified in this clause must:

i) be in place before work commences on the site, and

ii) be maintained in good condition during the construction period, and

iii) remain in place for the duration of the construction works.

Note. A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.

Reason: To ensure tree protection is provided and maintained.

12. **Installation and Maintenance of Sediment and Erosion Control**

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

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

13. **Demolition Works - Asbestos**

Should asbestos be present in the existing dwelling to be demolished, demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

14. **Civil Works Supervision**

All civil works approved in the Construction Certificate are to be supervised by an appropriately qualified and practising Civil Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority

Reason: To ensure compliance of civil works with Council's specification for engineering works.

15. **Traffic Control During Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety

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

16. **Landscape Certification**

A qualified Landscape Consultant is to submit a Certificate of Practical Completion to the Principal Certifying Authority prior to the issue of the occupation certificate, stating the work has been carried out in accordance with the approved Landscape Plan referenced in Condition 1 of this consent, and as amended by any conditions of this consent.

Reason: This is to ensure the landscaping is planted in accordance with the approved plans.

17. **Condition of retained vegetation**

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

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

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

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

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

Reason: To create encumbrances on the land.

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

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

Reason: To identify encumbrances on land.

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

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

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

Reason: To ensure stormwater disposal is constructed to Council's satisfaction.

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

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

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

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

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

**22. Compliance with Recommendations of Approved Reports**

Written certification from a suitably qualified person(s) shall be submitted to the Principal Certifying Authority and Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the reports referenced in Condition 1 of this consent have been completed.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issuance of the occupation certificate.

Reason: To ensure compliance with recommendations endorsed by Council

23. **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 the occupation certificate.

Reason: To protect human life.

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

24. **Landscape Maintenance**

Any existing landscaping required to be retained together with any additional landscaping required by this Consent is to be maintained for the life of the development.

Landscape works shall be maintained for a minimum period of 12 months following practical completion. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan referenced in Condition 1 of this consent, as amended by any condition of this consent.

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

25. **Environmental and priority weed control**

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

Reason: Preservation of environmental amenity.

26. **Maintenance of Vehicular Turntable**

The vehicular turntable is to be maintained to ensure the noise associated with its ongoing use does not result in any unreasonable noise impacts to adjoining properties, in accordance with the provisions of the *Noise Policy for Industry (2017)*.

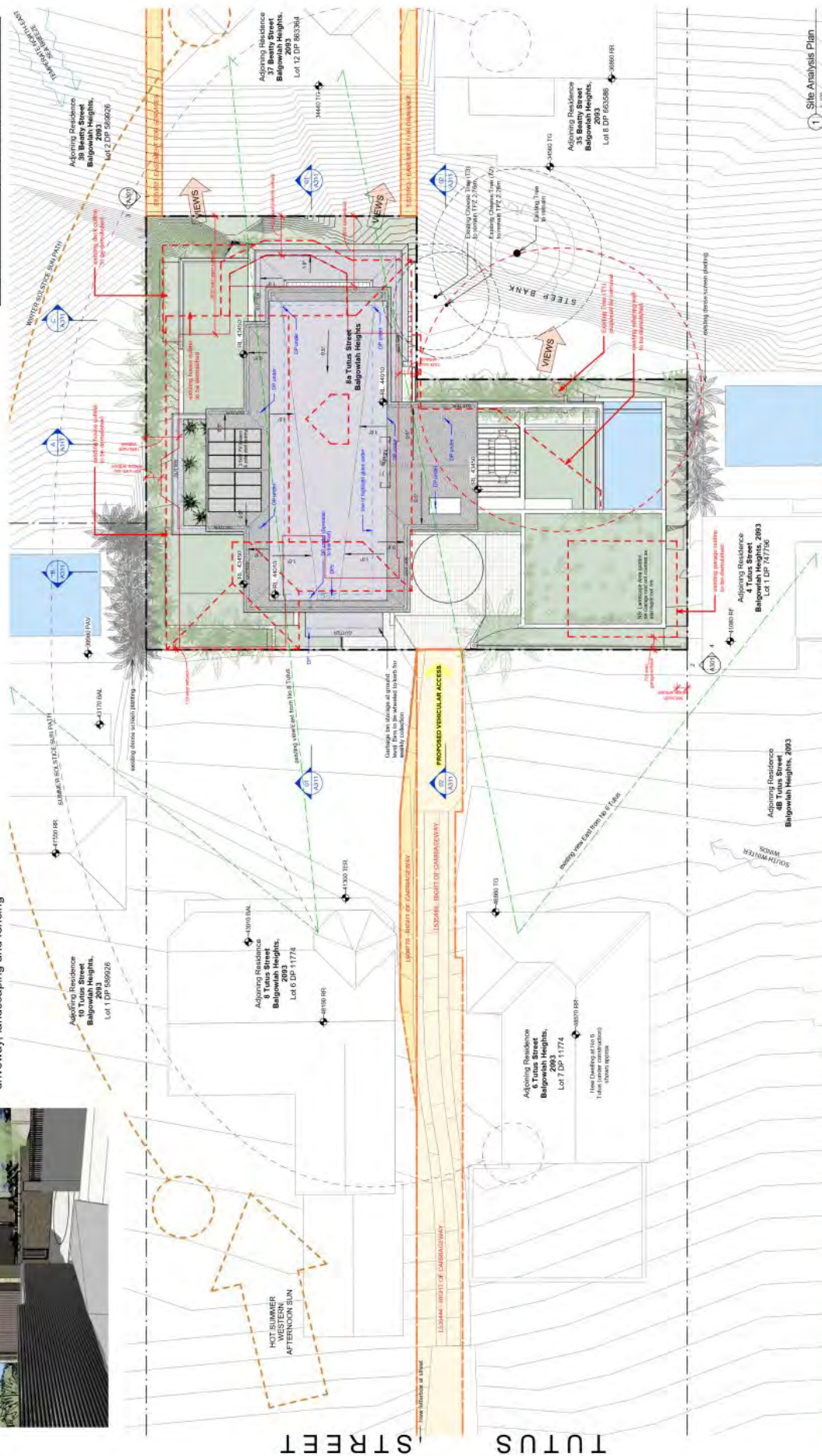
Reason: To ensure that noise levels are appropriately minimised for the life of the development.

**DEVELOPMENT APPLICATION**  
**88A TUTUS ST, BALGOWLAH HEIGHTS NSW 2093**

Proposed Demolition of Existing Dwelling and Construction of new multi-level dwelling with double garage, swimming pool, terraces, driveway, landscaping and fencing



Daftar List			
Slip	Waktu	Tempat	Detail
001	01/01/2019	01/01/2019	01/01/2019
002	02/01/2019	02/01/2019	02/01/2019
003	03/01/2019	03/01/2019	03/01/2019
004	04/01/2019	04/01/2019	04/01/2019
005	05/01/2019	05/01/2019	05/01/2019
006	06/01/2019	06/01/2019	06/01/2019
007	07/01/2019	07/01/2019	07/01/2019
008	08/01/2019	08/01/2019	08/01/2019
009	09/01/2019	09/01/2019	09/01/2019
010	10/01/2019	10/01/2019	10/01/2019
011	11/01/2019	11/01/2019	11/01/2019
012	12/01/2019	12/01/2019	12/01/2019
013	13/01/2019	13/01/2019	13/01/2019
014	14/01/2019	14/01/2019	14/01/2019
015	15/01/2019	15/01/2019	15/01/2019
016	16/01/2019	16/01/2019	16/01/2019
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027	27/01/2019	27/01/2019	27/01/2019
028	28/01/2019	28/01/2019	28/01/2019
029	29/01/2019	29/01/2019	29/01/2019
030	30/01/2019	30/01/2019	30/01/2019
031	31/01/2019	31/01/2019	31/01/2019
032	01/02/2019	01/02/2019	01/02/2019
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037	06/02/2019	06/02/2019	06/02/2019
038	07/02/2019	07/02/2019	07/02/2019
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046	15/02/2019	15/02/2019	15/02/2019
047	16/02/2019	16/02/2019	16/02/2019
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056	25/02/2019	25/02/2019	25/02/2019
057	26/02/2019	26/02/2019	26/02/2019
058	27/02/2019	27/02/2019	27/02/2019
059	28/02/2019	28/02/2019	28/02/2019
060	29/02/2019	29/02/2019	29/02/2019
061	01/03/2019	01/03/2019	01/03/2019
062	02/03/2019	02/03/2019	02/03/2019
063	03/03/2019	03/03/2019	03/03/201

[illegible]

**Roberts Residence**  
**Roberts**

Id	Description	Date
1	Secretary for Candidates	26/11/2018
2	Secretary for Candidates	05/12/2018
3	Secretary for Candidates	30/12/2018
4	CAI Clinic	18/01/2019
A	CAI Appointment	17/04/2019
B	Secretary Share Issued to Open Unshared	09/07/2019
C		

[illegible]





## Colco Consulting Pty Ltd

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17 June 2019

To Northern Beaches Council  
Council Offices  
Pittwater Road  
DEE WHY NSW 2099

### MANLY LEP 2013 CLAUSE 4.6 APPLICATION

**Development Application No. DA2019/0060 - Clause 4.6 Application to Vary Development Standard - Manly Local Environmental Plan 2013 Clause 4.4 Floor Space Ratio (FSR) Variation; and Proposed Application of Clause 4.1.3.1 of the Manly Development Control Plan for Increased FSR to apply to Undersized Lots in a Locality - Modified Drawings. Property 8A Tutus Street Balgowlah Heights.**

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##### 1.0. Introduction, Purpose and Summary

- Assessment of modified drawings
- 1.2 and 1.3 Manly LEP FSR control, provision in clause 4.6 to vary the standard; and the application of Manly DCP clause 4.1.3.1 whereby increased floor area may be allowed for undersized lots.

##### 2.0. Authority to contravene a development standard

##### 3.0. Assessment and Justification for Increased FSR and for Application of MDCP Clause 4.1.3.1 for Undersized Lots:

- 3.1 Relevant Land and Environment Court Judgements
- 3.2 Floor Space ratio (FSR) Clause 4.6 Exceptions to development standard – MLEP Clause 4.6 and MDCP 4.1.3.1
- 3.2.1 Exceptions Assessment - Table
- 3.2.2 Clause 4.6 (4)(a)(i) Justification Assessment Table
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## Colco Consulting Pty Ltd

Planning and Development Consultants  
17 June 2019

### CLAUSE 4.6 APPLICATION

**Development Application No. DA2019/0060 - Clause 4.6 Application to Vary Development Standard - Manly Local Environmental Plan 2013 Clause 4.4 Floor Space Ratio (FSR) Variation; and Proposed Application of Clause 4.1.3.1 of the Manly Development Control Plan for Increased FSR to apply to Undersized Lots in a Locality - Modified Drawings. Property 8A Tutus Street Balgowlah Heights.**

#### 1.0. Introduction, Purpose and Summary

1.1. We have assessed the modified drawings dated 17 April 2019 submitted to council; and we have reviewed the submissions received by council. We consider the modifications address the primary issues raised by objectors notwithstanding that there remain non-compliant setbacks the proposed floor space ratio (FSR) exceeds the MLEP primary numerical control of 0.4:1 and exceeds this control by 57m<sup>2</sup>. We also note that the proposed FSR is within the FSR permitted when calculated under the provisions of the Manly Development Control Plan clause 4.1.3.1 for undersized lots within a locality.

We note this property comes within the Manly Development Control Plan 2013 (MDCP) definition of an undersized allotment for the locality; and that under the provisions of the Manly DCP clause 4.1.3.1 the consent authority may authorise an increased FSR to undersized lots. This property is an undersized lot and the proposed FSR is within the allowable FSR for undersized allotments that the consent authority may authorise. Such concession is now sought.

**1.2. This Clause 4.6 Application is to vary the MLEP basic development standard for the maximum Floor Space Ratio of 0.4:1 and allow the proposed FSR that may be allowed for undersized lots in the locality of 0.4:1 calculated on a minimum allotment area of 750m<sup>2</sup>. Refer to table on page 2.**

#### 1.3. Clause 4.4 Floor Space Ratio and MDCP Clause 4.1.3.1 FSR for Undersized Lots

1.3.1. The MLEP floor space ratio for this property is not to exceed the maximum floor space ratio shown for the land on the Floor Space ratio map which is 0.40:1 (40%). However, the LEP and the Manly DCP provide for increased floor area and FSR that may be granted for undersized lots in the locality.

Objectives summary include:

- Bulk and scale of development is consistent with existing and desired streetscape character.
- Control building density and bulk in relation to site area to ensure development does not obscure important landscape and township features.
- Maintain an appropriate visual relationship between new development and the existing character and landscape of the area.
- Minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain.

#### 1.3.2. Exceptions to FSR for Undersized Lots – MLEP and MDCP

1. On existing sites in Residential LEP Zones with a site area less than the minimum lot size required on the LEP Lot Size (LSZ) Map, Council may consider exceptions to the maximum FSR under LEP clause 4.6 when both the relevant LEP objectives and the provisions of this DCP are satisfied. See LEP clause 4.6(4)(a).

The undersized nature of a lot is a matter that Council may consider in determining whether 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' and 'there is sufficient environment planning grounds to justify contravening the development standard' under LEP clause 4.6(3). The extent of any exception to the LEP FSR development standard pursuant to LEP clause 4.6 in this plan is to be no greater than the achievable FSR for the lot size indicated in Figure 30 - Extent of FSR Variation for Undersized Lots.

**1.3.3. The proposed FSR exceeds the basic MLEP FSR maximum; however, it is within the provisions of clause 4.6(4)(a) and MDCP clause 4.1.3.1 Exceptions to FSR for Undersized Lots which, if applied, allows increased FSR for such lots in this locality of 40% of 750m<sup>2</sup> = 300m<sup>2</sup>; and when applied to the subject application the FSR of 0.39.86:1 complies with the control.**

The MDCP clause 4.1.3 states (Our Italics):

*"4.1.3.1 Exceptions to FSR for Undersized Lots"*

*"Note: On existing sites in Residential LEP Zones (including E3 & E4) with a site area less than the minimum lot size required on the LEP Lot Size (LSZ) Map, Council may consider exceptions to the maximum FSR under LEP clause 4.6 when both the relevant LEP objectives and the provisions of this DCP are satisfied. See LEP clause 4.6(4)(a).*

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

1.3.3. The FSR Calculations based on the modified proposal (Drawing No. A201B) are as follows:

Site Area = 604.9m <sup>2</sup>	604.9m <sup>2</sup>
Base maximum FSR = 0.4:1 (40%) =	242m <sup>2</sup>
Proposed Gross Floor Area (GFA) = 299m <sup>2</sup> (0.39:86:1 on a lot area of 750m <sup>2</sup> )	299m <sup>2</sup>
<b>Proposed Gross Floor Area (GFA) excess to the basic MLEP numerical FSR control = 299 minus 242</b>	<b>57m<sup>2</sup></b>
Clause 4.6(4)(a) Provision for increased FSR which may be allowed for undersized allotments in accordance with MDCP 4.1.3.1 planning figure 30 based on 750m = 750 x 40% = 300m <sup>2</sup>	300m <sup>2</sup>
<p><u>Summary:</u></p> <ol style="list-style-type: none"> <li>1. The proposed FSR based on the actual lot area of 604.9m<sup>2</sup> = 0.47:1</li> <li>2. The proposed FSR based on clause 4.6(4)(a) and MDCP clause 4.1.3.1 for a 750m<sup>2</sup> lot = 0.39.86:1.</li> <li>3. The proposed FSR complies with clause 4.6(4)(a) and MDCP clause 4.1.3.1 Exceptions to FSR for Undersized Lots which may be accepted by the consent authority.</li> <li>4. In our opinion, for the reasons stated in this application: <ul style="list-style-type: none"> <li>• The increased floor area is justified on planning grounds under the MLEP provisions and the MDCP clause 4.1.3.1 that may be applied to undersized lots.</li> <li>• Compliance with the MLEP basic numerical control is considered unreasonable and unnecessary and would not result in any environmental benefits (refer to reasons in clause 3.2.5 Q5), and</li> <li>• There are sufficient environmental planning grounds to justify contravening the MLEP development standard and to allow the increased FSR permissible under the Manly Development Control Plan – in which situation, the proposal complies with a FSR of 0.39.86:1.</li> </ul> </li> </ol>	

## 2.0. Authority to contravene a development standard

2.1. The authority to contravene a development standard is contained in clause 4.6 of the Manly Local Environmental Plan (MLEP). This application is submitted to support the development application to Vary Development Standards under the provisions of the MLEP Clause 4.6 – Exceptions to Development Standards; and to apply the MDCP clause 4.1.3.1 for increase in floor area that may be allowed for undersized lots in a locality.

2.2. Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment. It's assumed that the Northern Beaches Council/consent authority holds the delegated authority of the Secretary, Department of Planning to approve variations to numerical standards.

## 3.0. Assessment and Justification for Increased FSR and for Application of MDCP Clause 4.1.3.1 for Undersized Lots

### 3.1. Relevant Land and Environment Court Judgements.

In assessing the proposal and preparing this clause 4.6 application we have had regard to relevant L&E Court judgements as we understand them including *Winton Property Group Limited v North Sydney Council [2001]*


*NSW LEC46; Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 and a later judgement Randwick City Council v Micaul Holdings Pty Ltd [2016] and Initial Action Pty Ltd v Woollahra Council [2018] NSW LEC118.* Our understanding of these judgments is briefly as follows:

- The judgement – Four2Five Pty Ltd – in essence that Clause 4.6 applications need to be more detailed than the former SEPP 1 Applications and need to address the environmental grounds particular to the circumstances, the proposed development and the site specific, as opposed to grounds that could apply to any similar development on the site or in the vicinity.
- The later judgement – Randwick City v Micaul Holdings – suggests that the approach is less restrictive than that adopted in the Four2Five judgement in that a clause 4.6 application would be acceptable if it can substantiate that the variation sought did not cause environmental harm.
- The judgement – Initial Action v Woollahra Municipal Council – the consent authority to be satisfied that the applicant's written request demonstrates that compliance with the development standard is unreasonable or unnecessary, there are sufficient environmental planning grounds to justify contravening the development standard and the development is in the public interest.

### 3.2. Floor Space Ratio (FSR) Clause 4.6 - Exceptions to development standard – MLEP and MDCP 4.1.3.1.

#### 3.2.1. Table – Exceptions and Response

Clause 4.6 Exceptions to development standards	Response
<p><i>(1) The objectives of this clause are as follows:</i></p> <p><i>(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,</i></p> <p><i>(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</i></p>	<p>1. This is an unusual landlocked site situated behind and adjoining substantial dwellings fronting Tutus Street with the subject property being accessed by way of registered easements/ROWs over two adjoining properties.</p> <p>2. The existing dwelling does not comply with current planning numerical controls and it's likely that any proposed alterations and additions to that dwelling would be less compliant with potential for significant amenity issues. The proposed new development is significantly more desirable.</p> <p>3. In our opinion, the site requires flexibility in the application of numerical planning controls in order to provide a dwelling and facilities suitable for a modern family and which also respects the amenity of neighbours and facilitates excellence in architecture.</p> <p>4. We note the proposed new dwelling is non-compliant in some numerical setback areas on the ground floor; however, the proposed development:</p> <ul style="list-style-type: none"> <li>• Provides substantially increased setbacks from the current dwelling on the ground floor where complete compliance is difficult on this unusually shaped landlocked site; however, in our opinion the proposed building location is preferable to a two storey building with a mass spread across the site with resultant view impacts.</li> <li>• Complies with the setbacks for the top level (L2).</li> <li>• Is contained within the 8.5m height control and is significantly below that height control for most of the proposed dwelling as clearly demonstrated in the drawings below and drawings in the Clause 4.6 (4)(a)(i) Table assessment response.</li> <li>• Provides for view sharing from neighbouring properties; and complies with the view sharing principles established by the NSW Land and Environment Court.</li> <li>• To achieve ground level setback compliance on the northern elevation would unduly compromise the liveability of the dwelling and result in no environmental impact improvements.</li> <li>• <i>Overall the proposal when planning controls and objectives are assessed against the nature of this landlocked site and adjoining properties – the combined affect of the proposed height, setbacks and landscaping achieves a sensible and appropriate planning and architectural outcome.</i></li> </ul>

	<p>Figure 1 below – Yellow arrow indicates the permissible 8.5m height control and the proposed development relative thereto.</p>  <p>5. The proposed FSR exceeds the MLEP 0.4:1 control; <b>however</b>, when the Manly DCP clause 4.1.3.1 provisions for undersized allotments within a locality (the minimum lot area for this locality is 750m<sup>2</sup>) is applied, <u>the proposed FSR is 0.39.86 (299m<sup>2</sup>) and FSR is compliant.</u></p> <p>6. <u>The flexible application permitted under clause 4.6 of the MLEP and under clause 4.1.3.1 of the MDCP is warranted and should be applied without hesitation.</u></p> <p>7. <b>We have formed the considered opinion that sufficient environmental planning grounds exist as documented in this application to justify the variation; noting that if the provisions of MDCP clause 4.1.3.1 are applied there is no breach of the FSR numerical control.</b></p>
<p>(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.</p>	<p>Clause 4.4 Floor space ratio development standard is not expressly excluded from the operation of this clause.</p>
<p>(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:</p> <p>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</p> <p>(b) that there are sufficient environmental planning grounds to justify contravening the development standard</p>	<p>This application constitutes the written request to vary the control; and/or apply the Manly DCP provisions allowing increased FSR for undersized lots.</p>

<p>(4) Development consent must not be granted for development that contravenes a development standard unless:</p> <p>(a) the consent authority is satisfied that:</p> <p>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</p> <p>(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</p> <p>(b) the concurrence of the Secretary has been obtained.</p>	<p>1. The proposal contravenes the basic FSR control under the MLEP 2013 of 0.4:1 by an area of 57m<sup>2</sup>; <u>but does not contravene the numerical control if the consent authority allows the provisions to be applied for increased FSR for undersized lots in the locality.</u></p> <p><u>2. The subject property is an undersized lot in the locality; and if the provisions are applied then the proposed FSR is 0.39.86 (299m<sup>2</sup>) and the proposed FSR is compliant.</u></p> <p>3. Should the additional floor area not be allowed and the FSR be deemed non-compliant then we submit for the reasons stated in this application that:</p> <ol style="list-style-type: none"> <li>1. The proposed development is in the public interest because it is consistent with the objectives of the FSR standard; and the objectives for development within the land zone (R2 Low Density Residential); and that,</li> <li>2. Strict compliance with the basic MLEP Floor Space ratio (FSR) would require a redesign of portions of the building <b>with a reduction of 57m<sup>2</sup> of floor area</b> – with the resultant implications being: <ul style="list-style-type: none"> <li>• Most probably would require a significant redesign of the ground floor level along the northern side which would significantly impact on the liveability of some rooms, and</li> <li>• Most probably eliminate part of the lower level (L0) resulting in a reduction in excavation and leaving the lower level part basement area or undercroft area.</li> <li>• Would unlikely require any alteration to the upper floor design which complies with height and setbacks.</li> <li>• These would be matters for the client and architect, however, in our opinion, such reductions in floor area would not be in the best interest of the architectural design, overall integrity of the building, would compromise the liveability of the home - <b>and would NOT result in any community or neighbour benefit. (Refer to clause 3.2.5 Q5).</b></li> </ul> </li> </ol> <p><b>4. In Summary:</b></p> <p>1. A reduction in floor area of 57m<sup>2</sup> to comply with the basic MLEP FSR control would have no impact on height or the upper level design and would not result in any change to view sharing, which we assess as complying. <u>We again note that if the provisions of MDCP clause 4.1.3.1 are applied, which we consider warranted, there is no breach of the FSR numerical control.</u></p> <p>2. In our opinion, compliance with the basic MLEP FSR numerical control is unreasonable and unnecessary in the circumstances of the case, for the reasons outlined in this application; and noting that if the MDCP clause 4.1.3.1 are applied, <u>which we consider warranted, there is no breach of the FSR numerical control.</u></p> <p>3. Overall the proposal when applicable planning controls and objectives are assessed against the nature of this landlocked site and adjoining properties – the combined effect of the architectural design, proposed height, setbacks and landscaping achieves a sensible and appropriate planning and quality architectural outcome.</p>
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### 3.2.2. Clause 4.6 (4)(a)(i) Justification Assessment

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

There are two separate matters for consideration contained within Clause 4.6 (3) and addressed as follows:

Clause 4.6 (4)(a)(i)	Response
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,	<p>1. In our opinion, this application demonstrates throughout including this response below that:</p> <ul style="list-style-type: none"> <li>• The objectives of the development standard are achieved through good design – orientation, setbacks of the upper level (L2), articulation of elevations, height, interesting roof design and landscaping.</li> </ul>

- Overall the proposal when assessed against the planning controls and objectives and the nature of this landlocked site and adjoining properties – the combined effect of the architectural design, proposed height, setbacks and landscaping achieves a sensible and appropriate planning and architectural outcome.
- The bulk and scale of the proposal is consistent with the existing and desired streetscape and adjoining development and within the locality with the proposal not exceeding the MLEP height control - with the majority of the development is significantly below the applicable 8.5m height control and the theoretical building envelope.
- The proposal is considerate of views of neighbours and the proposal complies with the Land and Environment Court view sharing principles providing compliant sharing of views.
- **In our opinion, compliance with the basic MLEP FSR numerical control is unreasonable and unnecessary in the circumstances of the case, for the reasons outlined in this application (refer to clause 3.2.5 Q5); and noting that if the provisions of clause 4.1.3.1 are applied to the lot (and which we consider are justified and appropriate), then there is no FSR breach.**

2. Should the consent authority consider the provisions for increased FSR for this undersized lot is not to be applied, then we contend that the proposal complies with the critical planning controls and objectives which should allow the additional floor area for the reasons outlined in this application including that strict compliance is unreasonable and unnecessary – refer to clause 3.2.5 Q5 .

3 The objectives of the Floor Space Ratio development standard are achieved – the standards being:

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character, **(YES)**
- (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, **(YES)**
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area, **(YES)**
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain, **(YES)**
- (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. **(N/A)**

4. The proposals consistency with the objectives of the Floor Space Ratio development standard are demonstrated in the architect's drawings below (which also show in red dotted lines the existing dwelling) and in particular:

Figure 1 below – Yellow arrow indicates the permissible 8.5m height control and the proposed development relative thereto.



Figure 2 below – Red arrow indicates the permissible 8.5m building height envelop and the proposed development relative thereto.



Figure 3 below – Blue arrow indicates the 8.5m building height control and the proposed development relative thereto. Existing building shown in red dotted outline.



5. The proposal has been designed to minimise the bulk and scale of the development within reasonable and acceptable limits by:

- Stepping the upper level in from the side elevations in an articulated form providing architectural interest and maintaining view sharing corridors.
- Ensuring the height is slightly below the existing height; and significantly below the 8.5m numerical height control for the site. (Refer to drawings above).
- Ensuring that view sharing is achieved within the parameters established by the NSW Land and Environment Court.

6. The proposal in summary:

- Is oriented to minimise view impacts.
- Bulk, height and scale of the proposed development is acceptable and are NOT excessive when assessed against planning principles and objectives and against neighbouring dwellings and those in the locality.
- Is height compliant and significantly below the permissible height.
- Achieves view sharing for neighbours. With the top floor (L2) set back from the side boundaries in an articulated manner enables significant views to be shared and achieved within the principles established by the NSW Land and Environment Court.

7. The location is characterised by large residential dwellings. The proposal will sit comfortably within the locality; will be difficult to view from Tutus Street and partly visible from the street below (Beatty Street) in a similar manner to existing dwellings on the high side of Beatty Street. The proposal is not out of character.

8. In our opinion

- The proposal represents a considered design approach to this site and its surroundings and is preferable to a potential to undertake additions to the existing dwelling, which by virtue of the existing building design and footprint, would result in negative impacts on neighbours.

	<ul style="list-style-type: none"> <li>Any proposed new dwelling on this landlocked site will result in some degree of negative impact and the proposal represents a quality, well considered and architecturally significant dwelling that respects the constrained site, neighbours and the locality.</li> <li>The proposal, in our opinion, is an excellent design solution for this difficult landlocked site and will result in minimal and acceptable impacts on adjoining properties which are not greater than may reasonably be expected on this site in this locality.</li> </ul> <p>9. Critical planning objectives for amenity – including privacy and view sharing, are in our opinion, well addressed in this proposal. There is some impact on existing views across the subject land; however, the Land and Environment Court principles of view sharing are achieved.</p> <p><u>10. Strict compliance with the basic Floor Space ratio (FSR)</u> would require a redesign of portions of the building to achieve a reduction of 57m<sup>2</sup> of floor area (Refer to clause 3.2.5 Q5) - and:</p> <ul style="list-style-type: none"> <li>Would unlikely require alteration to the upper floor design. It is fully compliant.</li> <li>Most probably would require a redesign of the ground floor level along the northern side which would significantly impact on the liveability of some rooms, and</li> <li>Most probably eliminate part of the lower level (L0) resulting in a reduction in excavation and leaving the lower level part basement area or undercroft area.</li> <li>This would be matters for the client and architect. <u>However, in our opinion, such reductions in floor area would not be in the best interest of the architectural design, overall integrity of the building, would comprise the occupants liveability of their home - and would NOT result in any community or neighbour benefit.</u></li> <li>A reduction if floor area to comply with the basic FSR control would have no impact on height or the upper level design and would not result in any change to view sharing (which complies with the L&amp;E Court view sharing principles).</li> </ul> <p><b>11. In our opinion, compliance with the basic MLEP FSR numerical control is unreasonable and unnecessary in the circumstances of the case, for the reasons outlined in this application (refer to clause 3.2.5 Q5); and noting that if the provisions of clause 4.1.3.1 are applied to the lot (and which we consider are justified and appropriate), then there is no FSR breach.</b></p>
<p><i>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</i></p>	<p>1. 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 an applicant's written request has adequately demonstrated that that there are sufficient environmental planning grounds to justify contravening the development standard:</p> <p><i>'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.'</i></p> <p>2. Section 1.3 of the EPA Act reads as follows:  1.3 Objects of Act (cf previous s 5)  The objects of this Act are as follows:  (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,  (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,  (c) to promote the orderly and economic use and development of land,</p>

	<p>(d) to promote the delivery and maintenance of affordable housing,</p> <p>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</p> <p>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</p> <p>(g) to promote good design and amenity of the built environment,</p> <p>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</p> <p>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</p> <p>(j) to provide increased opportunity for community participation in environmental planning and assessment.</p> <p>3. In our opinion, this application demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard. These include the following:</p> <ul style="list-style-type: none"> <li>• The view of the proposed dwelling from Tutus Street is limited to the upper levels and is not dissimilar to the height and built bulk of other dwellings in the locality and is considered appropriate and in character with the area.</li> <li>• The proposal will result in a quality streetscape outcome in the manner the building is located, articulated, height and interesting roof design.</li> <li>• Similarly, the outlook from neighbouring properties is of a quality architecturally significant dwelling in which the building is significantly below the height control for the land and the visual bulk located away from dwelling fronting Tutus Street and adjoining.</li> <li>• Specific non-compliance with the FSR standard is not considered to result in any adverse or unreasonable impacts towards surrounding sites in terms of amenity; <u>and further noting that if Council accepts the additional floor area permitted for undersized lots, which we consider warranted, then the proposed FSR of 0.39.86:1 is within the floor area which may be allowed under the provisions of clause 4.1.3.1 of the Manly DCP and therefore the proposal complies with the applicable FSR control.</u></li> <li>• Strict compliance would limit the development potential of the site and require deleting 57m<sup>2</sup> of floor area which would compromise the design and limit the lifestyle of the occupants of the dwelling. And would be unreasonable and unnecessary (Refer to clause 3.2.5 Q5).</li> <li>• To enforce strict compliance with the MLEP basic FSR control of 0.4:1 would be restrictive on the development with no benefits achieved other than strict numerical compliance. <u>Further, we consider on planning grounds that the provisions of the Manly DCP Clause 4.1.3.1 allowing for increased FSR on undersized lots should be applied without hesitation, and on that basis, the proposal complies with the permitted floor area and FSR at 0.39.86:1.</u></li> <li>• The proposed development is an orderly and economic use and development of the land; the proposal is of a good design and will protect the amenity of the surrounding built environment therefore satisfying cl 1.3(c) and (g) of the EPA Act – orderly and economic use of land; and promote good design and amenity of the built environment.</li> <li>• As identified in this application, the development achieves the outcomes of the development standard and is considered to be in the public interest.</li> <li>• <u>The proposed floor area and FSR does not in itself result in any loss of views or negative environmental impacts as it is located on the ground floor level. The current proposal achieves all reasonable requirements for “view sharing”; and again, noting that if the provisions of the MDCP are applied for undersized lots, then the proposal complies with the FSR numerical control.</u></li> <li>• We consider Council should be satisfied that this application has adequately addressed the matters required to be demonstrated by cl 4.6 and <u>the consent authority should have no hesitation in applying the provisions for increased FSR for this undersized lot as permitted under the provisions of the MDCP clause 4.1.3.1 . We consider the clause 4.6 variation should be accepted without hesitation.</u></li> </ul>
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### 3.2.3. Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

Clause 4.6 (4)(a)(ii) requires the consent authority to be satisfied that the proposal is in the public interest – Table below.

Clause 4.6 (4)(a)(ii) (Public Interest)	Response
<i>(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,</i>	<p>1. In considering whether or not the proposed development will be in the public interest consideration must be given to the underlying objectives of the Floor space ratio development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.</p> <p><b>2. Objectives of development standard</b> The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor Space Ratio' of the MLEP 2013 are:</p> <p><i>(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,</i>  <u>Comment:</u> The siting of the proposed dwelling, the stepped and articulated design of the upper level, the compliance with the height control in which it is noted is significantly below the maximum height permissible for the majority of the structure and careful placement of built bulk and landscaping results in a building of architectural significance which achieves view sharing principles, visual streetscape and desired character of the locality. The development satisfies this objective.  .....</p> <p><i>(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,</i>  <u>Comment:</u> No important landscape or townscape features will be unreasonably impacted by the proposed works. The development satisfies this objective.  .....</p> <p><i>(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,</i>  <u>Comment:</u> The development will enhance the visual continuity of the existing character of the area and improve the aesthetics of the development on site. The development satisfies this objective.  .....</p> <p><i>(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,</i>  <u>Comment:</u> The proposal will not lead to unreasonable impacts on amenity including privacy, sunlight access and views. The development satisfies this objective.  .....</p> <p><i>(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,</i>  <u>Comment:</u> The subject site is not located in a business zone. The development satisfies this objective.  .....</p> <p><b>3. R2 Low Density Residential zone underlying objectives are:</b></p> <ul style="list-style-type: none"> <li><i>To provide for the housing needs of the community within a low density residential environment.</i>  <u>Comment:</u> The proposal retains the existing residential use of the site. It is considered the development satisfies this objective.</li> <li><i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>  <u>Comment:</u> The proposal retains the existing housing type and density. It is considered the development satisfies this objective.</li> </ul>

	<p>For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone; and,</p> <ol style="list-style-type: none"> <li>1. There are sufficient environmental planning grounds to justify contravening the MLEP FSR standard; and</li> <li>2. There are sufficient environmental planning grounds to justify the application of related Manly Development Control Plan 4.1.3.1 to allow the FSR to be calculated for an undersized lot within the locality – and in which case, the proposed FSR of 0.39.86:1 complies with that numerical standard.</li> </ol> <p><b><u>4. Conclusion:</u></b></p> <p><i>1. The proposed development satisfies the underlying objectives of the Floor space ratio development standard for both the MLEP 0.4:1 numerical standard and the variation that may be permitted under the Manly Development Control Plan for undersized allotments in a locality; and satisfies the Zone objectives. The proposed FSR complies with the provision for increased FSR for undersized lots in the locality and does not erode the public interest.</i></p> <p><i>2. For the reasons stated above and, in this application, the proposal is in the public interest.</i></p>
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#### 3.2.4. Floor Space Ratio (FSR) and Undersized Lots – MLEP and MDCP clause 4.1.3.1.

Floor Space Ratio (FSR) is a development standard contained in the Manly LEP at clause 4.4. Provision is contained in the MLEP and MDCP planning controls for increased FSR for undersized lots in a locality which includes clause 4.1.3.1 of the Manly DCP. Both the MLEP and MDCP documents provide for flexibility in the FSR control. In our opinion, the flexibility sought is reasonable and necessary for this undersized and landlocked site.

The Manly DCP 2013 - Figure 30 – States the Extent of FSR Variation for Undersized Lots. The subject site is identified as Subzone “R” and comes within the parameters of FSR calculation based on 750m<sup>2</sup> for an undersized lot. The proposed Floor Space Ratio (FSR) exceeds the base FSR in the Manly LEP of 0.4:1. The subject allotment area of 604.9m<sup>2</sup> is undersized for the locality minimum of 750m<sup>2</sup>. The application therefore potentially invokes MDCP clause 4.1.3.1 “Exceptions to FSR for Undersized Lots” which allows the consent authority to increase FSR up to the amount stated in the Manly DCP table figure 30 “Extent of FSR Variation for Undersized lots”.

The subject site is within the provisions of clause 4.6(4)(a) and MDCP clause 4.1.3.1 Exceptions to FSR for Undersized Lots which the consent authority may allow increased FSR for such lots in this locality of 40% of a lot area of 750m<sup>2</sup> = 300m<sup>2</sup>.

We contend on planning grounds related to the FSR provisions and objectives in the Manly LEP 2013 and the Manly DCP 2013 that strict compliance with the basic MLEP Floor Space ratio (FSR) would require a redesign of portions of the building **with a reduction of 57m<sup>2</sup> of floor area** – and this would be unnecessary and unreasonable/ **Refer to the supporting reasons stated in clause 3.2.5 Q5.**

#### 3.2.5. Relevant Questions and Response

##### Q1. Is the planning control in question a development standard?

##### **Response:**

Yes - the prescribed FSR limitation pursuant to Clause 4.4 of the MLEP 2013 is a development standard; as also is the provision contained in MDCP 2013 for undersized lots – both working together.

**Q2. What are the underlying objectives of the development standard?**

**Response:**

The underlying objectives of the standard – 'Floor Space Ratio' of the MLEP 2013 clause 4.4 and response is contained in the following table:

Objectives of Clause 4.4 (FSR)	Response
<p>(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,</p> <p>(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,</p> <p>(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,</p> <p>(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,</p> <p>(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.</p>	<p>1. The proposed height, bulk and scale is sensitively designed for this landlocked site with regard to neighbours, streetscape and the locality; and does not cause adverse environmental impacts – notwithstanding that there are Manly DCP non-compliant setbacks on the ground floor.</p> <p>2. The height of the proposal fully complies with the 8.5m height control with the majority of the development significantly below the permissible height control and lower than adjoining dwellings in Tutus Street.</p> <p>3. The proposed development will result in minor loss of existing views; however, extensive harbour views, ocean views landscape views and townscape features are retained. The proposal achieves and complies with the L&amp;E Court objectives for view sharing.</p> <p>4. The proposed development maintains good visual relationship between it and the existing character and landscape of the area; and does not impact on the reasonable enjoyment of adjoining land or the public domain.</p> <p>5. The floor area is considered appropriate for a modern family requirement in this locality and is not excessive in this regard; however, the FSR exceeds the MLEP basic control but is within the additional floor area that may be allowed for undersized lots.. Strict compliance is addressed elsewhere in this application and it is considered that strict compliance with the FSR control is unreasonable and unnecessary (refer to clause 3.2.5 Q5).</p> <p>6. The MLEP and MDCP controls recognise a need for FSR flexibility with regard to existing lots that are undersized for the locality and the consent authority may allow increased FSR in accordance with MDCP control 4.1.3.1 and MLEP clause 4.6 exceptions to development standards.</p> <p>If accepted by Council, the proposed FSR is within the provisions for increased FSR for undersized lots that may be allowed under MDCP clause 4.1.3.1 and therefore compliant:</p> <ul style="list-style-type: none"> <li>Proposed Gross Floor Area (GFA) = 299m<sup>2</sup> (0.39:86 on 750m<sup>2</sup>) = FSR of 0.39.86:1.</li> <li>Clause 4.6(4)(a) and MDCP 4.1.3.1 provision for increased FSR for undersized Lots (planning figure 30) based on 750m<sup>2</sup> = 750 x 40% = 300m<sup>2</sup>.</li> </ul> <p><b>7. Conclusion:</b></p> <p>7.1. The proposal appropriately addresses the clause 4.4 FSR planning objectives, does not result in negative environmental outcomes and is considered appropriate for the undersized landlocked site and locality.</p> <p>7.2. The proposal is considered to satisfy the provision for increased FSR for undersized lots as provided in MDCP clause 4.1.3.1 and, having regard to the stated objectives, it is considered that strict compliance is both unreasonable and unnecessary for the reasons stated in clause 3.2.5 Q5 and in summary:</p> <ul style="list-style-type: none"> <li>Achieves the objectives of MLEP clause 4.4 FSR.</li> <li>Achieves the MLEP objectives for the R2 Low Density Zone.</li> <li>Consistent with the conclusions reached in the L&amp;E Court matter of <i>Project Venture Developments v Pittwater Council</i> (2005) NSW LEC 191 we have formed the opinion that most observers would not find the development by virtue of its floor space, height, bulk, scale to be offensive, jarring or unsympathetic in a streetscape context (from either Tutus Street or Beatty Street below) nor having regard to the existing built form characteristics of development within the sites visual catchment and locality.</li> </ul>

	<ul style="list-style-type: none"> <li>It can be reasonably concluded that the proposal is compatible with its surroundings when viewed from the harbour below, public domain and surrounding properties.</li> <li>This is not a case where the difference between compliance and non-compliance is the difference between good and bad design. The proposal is of high architectural quality and integrity.</li> <li>Public benefit is obtained by the demolition of the existing dwelling and replacement with a new architecturally significant dwelling.</li> </ul> <p>7.3. Overall the proposal when assessed against the applicable planning controls and objectives, the nature of this landlocked site and adjoining properties – the combined effect of the architectural design, proposed height, setbacks and landscaping achieves a sensible and appropriate planning and architectural outcome – architectural excellence.</p>
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**Q3. What are the underlying objectives of the zone?**

**Response:**

Objectives of the zone R2 Low Density Residential	Response
<ul style="list-style-type: none"> <li>To provide for the housing needs of the community within a low-density residential environment.</li> <li>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> </ul>	<p>1. Development is permissible and consistent with the aims and objectives of the MLEP and the Land Zone objectives; provides for the housing needs of the community in a low-density environment. A single dwelling use is retained.</p> <p>2. The proposal will retain a single dwelling character with building structures at a height, bulk and scale consistent with the site and locality surroundings when viewed from the harbour below, public domain and surrounding properties.</p> <p>3. The proposal is of high architectural quality and integrity and will sit comfortably in the site and locality.</p> <p>4. The proposal will sensibly meet the needs of a modern family with a development that sensibly respond to the site, neighbours and the locality</p> <p><b>5. Conclusion:</b></p> <ul style="list-style-type: none"> <li>The proposal provides for the housing needs of a modern family and the community within a low-density residential environment.</li> <li>The proposal minimises adverse effects of bulk and scale on the land, from neighbouring properties and in the locality and is considered appropriate for the site.</li> <li>The proposed FSR increase of 57m<sup>2</sup> for an undersized lot would not be apparent and most observers would not find the development by virtue of its floor space, bulk, scale to be offensive, jarring or unsympathetic in a streetscape context (from either Tutus Street or Beatty Street below) nor having regard to the existing built form characteristics of development within the sites visual catchment.</li> </ul>

**Q4. Is the variation to the development standard consistent with the objectives of Clause 4.6 of MLEP 2013?**

**Response:**

Yes - This assessment is contained in the Assessment Table in clause 3.2.1 of this application.

**Q5. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?**

**Response:**

1. To enforce strict compliance with the MLEP basic FSR control of 0.4:1 (if Council does not agree to apply the provisions of Manly DCP clause 4.1.3.1 for undersized lots) would be unduly restrictive, unreasonable and unnecessary on the development and would not lead to any environmental benefits being achieved, other than strict numerical compliance. Further, we consider on planning grounds that the provisions of the Manly DCP Clause 4.1.3.1 allowing for increased FSR on undersized lots should be applied, and on that basis, the proposal complies with the permitted floor area and FSR at 0.39.86:1.

2. However, should the consent authority not agree to apply the provisions of Manly DCP clause 4.1.3.1, then strict compliance with the basic Floor Space ratio (FSR) of 0.4:1 would require an area of 57m<sup>2</sup> to be eliminated from the proposal. This would require extensive redesign of portions of the building to achieve a reduction of 57m<sup>2</sup> of floor area and would be unduly restrictive, unreasonable and unnecessary for the following reasons.

**In eliminating 57m<sup>2</sup> of floor area from the proposal this would:**

- Reduce the ground floor level area significantly, particularly along the northern side and living rooms, significantly impacting on the amenity and liveability of occupants with no environmental benefit to adjoining neighbours in regards to view loss, privacy or general amenity being the ground level. It is therefore *deemed unnecessary and undesirable.*
- Eliminate the 14m<sup>2</sup> area of storage at rear of single storey garage resulting in no environmental benefit to adjoining neighbours whatsoever - in regards to view loss there would be no change as it is a single storey component with appropriate setbacks. It is therefore *deemed unnecessary and undesirable.*
- Be most unlikely to result in reducing the extent and size of the upper storey bedroom level area which as proposed accommodates 3 bedrooms, one being a master containing a WIR; bathrooms; a small narrow study; and laundry room. The spatial program at the upper level is appropriately sized and deleting Floor Space to achieve strict numerical compliance would be seen as *unreasonable and unnecessary and an unacceptable compromise for little or no environmental benefit.*
- Removing spatial program from the upper floor and adding it to the ground level would result in reduced open space and landscape area for the site, reducing amenity of occupants and adding planning environmental impacts. It is therefore *deemed unreasonable and unnecessary.*

3. To enforce strict compliance with the MLEP basic FSR control of 0.4:1 would be restrictive on the development with no benefits achieved other than strict numerical compliance. Further, we consider on planning grounds that the provisions of the Manly DCP Clause 4.1.3.1 allowing for increased FSR on undersized lots should be applied without hesitation, and on that basis, the proposal complies with the permitted floor area and FSR at 0.39.86:1.

**4. Conclusion.**

4.1. A requirement to strictly comply with the MLEP numerical controls is unreasonable and unnecessary and would result in negative impacts to the architectural design and liveability of the dwelling with no apparent environmental benefits achieved.

**4.2. The FSR variation sought in this application:**

- Does not result in loss of views or negative environmental impacts as the "offending" floor area is primarily located on the ground level of the dwelling and the garage/storage area which is also at ground level.
- The proposal achieves all reasonable requirements for "view sharing" of Sydney harbour, land/water, Sydney Ferries, Manly, and Ocean - and complies with the principles established by the NSW Land and Environment Court – view sharing and not preservation of existing views.
- Strict compliance with the MLEP FSR numerical control would result in design and liveability compromises which would not, or be most unlikely, result in any increase views from neighbouring properties or gain any environmental benefits for the reasons stated above.

4.3. This application satisfies the requirements for a clause 4.6 variation as addressed in the clause 4.6 Assessment Table in clause 3.2.1 of this application. The relevant MLEP and MDCP planning objectives are satisfactorily addressed – including bulk, height, scale, streetscape, landscaping and view sharing in the context of this landlocked site; and in the context of existing development adjoining and in the locality.

**4.4. The consent authority should have no hesitation in accepting this Clause 4.6 Application. Further, we consider that the consent authority should have no hesitation in applying the provisions of the Manly DCP clause 4.1.3.1 to allow increased FSR for an undersized lot in which case, the proposal results in an FSR of 0.39.86:1 and complies with the FSR control.**

**Q6. Does the non-compliance with the development standard raise any matter of significance for State or Regional Environmental Planning?**

**Response:**

The non-compliances do not raise any matter of significance.

**4.0. CONCLUSION – Clause 4.6 Application - Floor Space Ratio and Application of MDCP clause 4.1.3.1 to permit increased floor area.**

4.1. A clause by clause analysis of the Clause 4.6 provisions, all relevant planning controls and objectives is included in this application; it being noted that clause 4.6 is intended to provide an appropriate degree of flexibility in applying certain standards to a proposed development.

4.2. This Clause 4.6 Application clearly states that:

- *Manly DCP clause 4.1.3.1 - The development application should be granted the benefit of additional floor area as provided in the Manly DCP for the reasons stated throughout where we conclude the development proposal, whilst not complying with identified MDCP controls (refer to Statement of Environmental Effects), complies with the relevant planning objectives; and on this basis the application complies with the FSR control with a FSR of 0.39.86:1.*
- *However, should the benefit of Manly DCP clause 4.1.3.1 not be allowed, then the FSR objectives and clause 4.6 objectives are achieved as demonstrated in this Application, that the proposed FSR is reasonable and acceptable; and that to require strict numerical compliance would be unreasonable and unnecessary in the circumstances of the case.*

4.3. This application clearly states that the impact of the non-compliance, if the provisions of Manly DCP for additional 57m<sup>2</sup> of floor area on the undersized lot is not granted, is minimal; that on a merit-based assessment should be regarded as relatively minor, with the objectives of clause 4.6 achieved and the critical MLEP planning objectives achieved relative to this landlocked site, neighbouring dwellings, the locality and streetscape – including Height; Bulk; Overlooking; Shadows; Landscaping, View sharing and Public interest are all satisfactorily addressed within this Application.

**4.4. We have concluded that strict compliance with the development standard would be unreasonable or unnecessary in this particular case for the reasons elaborated on in clause 3.2.5 Q5 of this application. In summary strict compliance with the basic Floor Space ratio (FSR) of 0.4:1 would require an area of 57m<sup>2</sup> to be eliminated from the proposal. This would require extensive redesign of portions of the building to achieve a reduction of 57m<sup>2</sup> of floor area. In doing so this would:**

1. *Reduce the ground floor level area significantly, particularly along the northern side and living rooms, significantly impacting on the amenity and liveability of occupants with no environmental benefit to adjoining neighbours in regards to view loss, privacy or general amenity being the ground level. It is therefore deemed unnecessary and undesirable.*
2. *Eliminate the 14m<sup>2</sup> area of storage at rear of single storey garage resulting in no environmental benefit to adjoining neighbours whatsoever - in regards to view loss there would be no change as it*

is a single storey component with appropriate setbacks. It is therefore deemed unnecessary and undesirable.

3. *Be most unlikely to result in reducing the extent and size of the upper storey bedroom level area which as proposed accommodates 3 bedrooms, one being a master containing a WIR; bathrooms; a small narrow study; and laundry room. The spatial program at the upper level is appropriately sized and deleting Floor Space to achieve strict numerical compliance would be seen as unreasonable, unnecessary and an unacceptable compromise for little or no environmental benefit.*
4. *Removing spatial program from the upper floor and adding it to the ground level would result in reduced open space and landscape area for the site, reducing amenity of occupants and adding planning environmental impacts. It is therefore deemed unreasonable and unnecessary.*
5. *To enforce strict compliance with the MLEP basic FSR control of 0.4:1 would be restrictive on the development with no benefits achieved other than strict numerical compliance.*

4.5. Having regard to the MLEP 2013 clause 4.6 variation provisions and the MDCP 2013 clause 4.1.3.1 we have formed the considered opinion as outlined in this application:

1. *The proposal is of a high architectural standard appropriate to the site and locality and though good design minimises potential negative impacts on the locality and neighbours within the context of applicable planning controls and objectives.*
2. *The proposal is consistent with the MLEP Zone objectives and consistent with the objectives of the floor space ratio standard; and the potential additional FSR available under MDCP clause 4.1.3.1 for undersized lots.*
3. *There are sufficient environmental planning grounds to justify contravening the basis FSR standard and also, to accept the provisions of MDCP clause 4.1.3.1 to allow increased floor space area for this undersized lot. It's noted that if this provision is applied to the development, then the proposed FSR complies with the 0.40:1 control.*

4.5. In our opinion, the proposal is consistent with conclusions reached in various decisions of the NSW Land and Environment Court, as we understand them. We have formed the considered opinion that:

- *The proposed bulk, height and scale of the proposal is appropriate for the site and is not excessive, is in accord with the applicable planning controls and objectives and represents a form of development that might reasonably be expected under the current planning controls for new development in the locality particularly in the circumstances of this landlocked lot.*
- *Overall the proposal when assessed against the nature of this landlocked site, adjoining properties, streetscape and the locality – the combined effect of the architectural design, proposed height, setbacks and landscaping achieves a sensible and appropriate planning and architectural outcome.*
- *The proposed additional FSR under MDCP clause 4.1.3.1 that may be granted by the consent authority is site specific for the proposed development which on our assessment does not give cause to environmental concerns, to neighbouring properties or the locality or when viewed from the Sydney Harbour and, notwithstanding non-compliance with some setbacks on the ground level, achieves the R2 Zone planning objectives particularly when related to this undersized landlocked allotment and shape.*
- *Most observers would not find the proposed development by virtue of its floor space, bulk or scale offensive, jarring or unsympathetic in a streetscape or harbour context, nor when having regard to the built form characteristics of existing large homes on sloping sites adjoining or within the site's visual catchment. From an observers perspective, the reduction of 57m<sup>2</sup> at ground level would not be discernible from the streets (Tutus Street and Beatty Street) or from neighbouring properties (refer to reasons stated in clause 3..2.5 Q5 as to why strict compliance is unreasonable and unnecessary).*

**4.6. Overall, we conclude that:**

1. ***The proposal when assessed against planning controls and objectives, the nature of this landlocked site, streetscape and adjoining properties – the combined effect of the architectural design,***

*proposed height, setbacks and landscaping achieves a sensible and appropriate planning and architectural outcome. The proposed building associated facilities and landscaping represents architectural excellence.*

2. *There are no matters which should prevent the consent authority from approving the proposed Floor Space Ratio or granting development consent to this proposal.*
3. *The consent authority should have no concerns in accepting this Clause 4.6 Application as satisfying the requirements of clause 4.6 of the Manly LEP to allow either the provisions for increased FSR for undersized Lots as provided in MDCP clause 4.1.3.1 to be applied to this proposal or granting consent for the non-complying element of the FSR for the reasons and justifications stated in this application – including:*
  1. *Compliance with the standard is unreasonable or unnecessary in the circumstances of the case’ and ‘there is sufficient environment planning grounds to justify contravening the development standard’ under LEP clause 4.6(3).*
  2. *The proposal complies with the required MLEP objectives and the MDCP objectives – both being satisfied notwithstanding there are Manly DCP setback non-compliances. It being noted that with clause 4.1.3.1 applied, the proposal is FSR compliant with an FSR of 0.39.86:1.*
  3. *The proposed development is in the public interest because it is consistent with the objectives of the development standard, the R2 Low density Residential zone and for the supporting reasons stated in this application. Strict compliance with the basic Manly FSR control is unreasonable and unnecessary*
4. *If this additional floor area under the Manly DCP clause 4.1.3.1 is not granted then in our opinion, the non-compliant FSR (area of 57m2) should be accepted:*
  1. *For the reasons and justifications contained in this application – compliance with all relevant and applicable planning objectives, public interest and that strict compliance is most unlikely to produce a better environmental outcome.*
  2. *The proposed development is in the public interest because it is consistent with the objectives of the development standard and the zone and for the supporting reasons stated in this application; and*
  3. *Strict compliance with the basic Manly FSR control is unreasonable and unnecessary in the circumstances of the case’ and ‘there is sufficient environment planning grounds to justify contravening the development standard’ under LEP clause 4.6(3) for the reasons stated in clause 3.2.5 Q5 of this application.*

Wayne Collins

Director

**ITEM 3.5**                                      **DA2018/2051 - 135 RIVERVIEW ROAD, AVALON BEACH -  
DEMOLITION WORKS AND THE CONSTRUCTION OF A  
DWELLING HOUSE**

**REPORTING MANAGER**              **Matthew Edmonds**  
**TRIM FILE REF**                      **2019/392836**  
**ATTACHMENTS**                      **1 Assessment Report**  
   **2 Site Plan & Elevations**

**PURPOSE**

To refer the attached application for determination as required under adopted delegations of the Charter.

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**RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **approve** Development Consent to DA2018/2051 for demolition works and the construction of a dwelling house on land at Lot 1 DP 1135396, 135 Riverview Road, Avalon Beach, subject to the conditions outlined in the Assessment Report.

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## DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/2051
Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 1 DP 1135396, 135 Riverview Road AVALON BEACH NSW 2107
Proposed Development:	Demolition works and the construction of a dwelling house
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	David Leander Nichols Simon Keith Johnson
Applicant:	Simon Keith Johnson
Application lodged:	21/12/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	08/01/2019 to 29/01/2019
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,875,260.00

### EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of development application DA2018/2051 from Mr Simon Keith Johnson for the construction of a new dwelling at 135 Riverview Road, Avalon Beach.

The subject site is zoned E4 Environmental Living under the provisions of Pittwater Local Environmental Plan 2014 ('**PLEP 2014**') and the proposed new dwelling is permissible with consent.

The notification of the application resulted in seven submissions in objection to the development from and on behalf of adjoining property owners and nearby residents. These submissions have been considered in the assessment report, with specific conditions of consent recommended to address unresolved concerns.

The proposal is reliant upon a number of variations to prescribed controls, and is not without impact to the adjoining property. However, subject to conditions of consent, the proposed development is considered to be consistent with the outcomes and objectives of the relevant legislation, plans and policies, and is recommended for approval.

As the cost of works of the development exceeds \$1 million, and as more than 3 submissions were received, the application is referred to the the Development Determination Panel for determination.

## **ASSESSMENT INTRODUCTION**

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

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

## **SUMMARY OF ASSESSMENT ISSUES**

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings  
 Pittwater 21 Development Control Plan - A4.1 Avalon Beach Locality  
 Pittwater 21 Development Control Plan - C1.3 View Sharing  
 Pittwater 21 Development Control Plan - C1.4 Solar Access  
 Pittwater 21 Development Control Plan - C1.5 Visual Privacy  
 Pittwater 21 Development Control Plan - C1.23 Eaves  
 Pittwater 21 Development Control Plan - D1.1 Character as viewed from a public place  
 Pittwater 21 Development Control Plan - D1.8 Front building line  
 Pittwater 21 Development Control Plan - D1.9 Side and rear building line  
 Pittwater 21 Development Control Plan - D1.11 Building envelope  
 Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 1 DP 1135396 , 135 Riverview Road AVALON BEACH NSW 2107
<b>Detailed Site Description:</b>	The site is slightly irregular in shape, with a 13.185m wide frontage to Riverview Road, a maximum depth of 84.67m and a total area of 1072m <sup>2</sup> . The site adjoins the Pittwater

Waterway to the west, with existing waterfront facilities located partially on the subject site, and partially on an adjoining site (Lot 2 DP 1135396), which is in the same ownership. An existing dwelling is located somewhat centrally on the site, surrounded by a number of canopy trees. The site experiences a fall of 38.34m from the upper street frontage down towards the waterway, with a slope of approximately 45%.

The site is identified within a mapped area containing Pittwater Spotted Gum Forest Endangered Ecological Community, and is subject to landslip and wave and tidal action. The site is dissected by the foreshore building line, which runs approximately parallel, at a distance of 20m, from the MHW. The site is located within a low density residential environment, and is surrounded by single dwellings of varying age and character.

Map:



## SITE HISTORY

On 9 December 2013, development application N0236/13, which sought consent for a three storey structure at the front boundary of the subject site, was approved by Council.

On 8 November 2018, a construction certificate was issued in relation to N0236/13.

On 21 December 2018, the subject application was lodged with Council.

On 5 March 2019, the assessing officer undertook an inspection of the subject site.

On 3 May 2019, the assessing officer undertook an inspection of the adjoining property at 133 Riverview Road, in the presence of the relevant property owner.

On 13 May 2019, Council wrote to the applicant to request amendments or the withdrawal of the subject application, due to concerns relating to:

- Building height and building envelope non-compliance,
- Overshadowing, and
- Impacts to existing significant canopy trees, with a request for new/amended arborist and ecological reports.

On 23 May 2019, amended plans and reports were presented to Council.

On 3 June 2019, Council wrote to the applicant identifying further concerns with the finding of the arborist report.

On 11 June 2019, Council's Heritage consultant undertook an inspection of the subject site.

On 14 June 2019, amended plans and reports were presented to Council.

#### **PROPOSED DEVELOPMENT IN DETAIL**

The application seeks consent for the construction of a new dwelling at the subject site. The proposed new dwelling comprises two pavilions situated on the upper/front portion of the site, connected by an elevated walkway. The top/front pavilion is a three storey structure comprising a double garage at the upper level, with two levels of bedrooms and storage below. The main pavilion is a two and three storey structure, comprising the master bedroom and study at the upper level, an open plan kitchen, living, dining area, and balcony at the middle level, and a rumpus room, steam room, bathroom, and laundry on the lower floor. Each pavilion comprises a lift to connect the separate levels.

The application also seeks consent for the extension of an existing inclinator to connect the proposed dwelling to existing waterfront facilities to be retained. Tree removal and earthworks are proposed to accommodate the development, with compensatory landscaping also proposed.

#### **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

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

<b>Section 4.15 Matters for Consideration'</b>	<b>Comments</b>
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan ("P21 DCP") applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent.

Section 4.15 Matters for Consideration	Comments
	<p>Clause 92 of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be 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) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the P21 DCP section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED

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

relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 7 submission/s from:

Name:	Address:
David Pain & Co Solicitors SJB Planning Pty Ltd Mr John Kenneth Mettam Louisa Mettam Prue Mettam	133 Riverview Road AVALON BEACH NSW 2107
Mr Rex Francis Xavier Hoeben Mrs Julie Anne Hoeben	131 Riverview Road AVALON BEACH NSW 2107
Mr Gregory John O'Neill Mrs Bernadette Mary O'Neill	69 Clanville Road ROSEVILLE NSW 2069
Georgina Jama	31a Yeramba Street TURRAMURRA NSW 2074
Mrs Nicola Prue Boutkan	6 / 2 Robertson Street NARRABEEN NSW 2101
Wendy Cooper	30/66-72 Browns Road WAHROONGA NSW 2076
Avalon Preservation Trust	24 Catalina Crescent AVALON BEACH NSW 2107

Note: In accordance with Council's Exhibition, Advertisement and Notification Policy prescribed by clause A5.1 of P21 DCP, all submissions received from or on behalf of one property will be counted as one submission.

The concerns raised in the submissions are considered individually, as follows:

- **Building height**

Comment: At the time of lodgement, the proposed dwelling exceeded the 10m height limit prescribed by clause 4.3(2D) of PLEP 2014 in a number of locations, and a number of submissions raised concerns in this regard. One submission in particular also challenged the clause 4.6 submission provided to support the application, commenting that the proposal did not meet the objectives of the standard, and as such, the request to vary the development standard was not well-founded.

The applicant subsequently reduced the maximum height of the development by dropping the ridge line of the pitched roof, reducing the area of the void, and by lowering the level of the walkway connecting the two pavilions. In response to these amendments, a number of additional submissions were received questioning how the height was made to comply when the RL of the roof over the void marginally increased. Whilst the levels of the main pavilion remain generally the same, the area/volume of the upper floor was reduced in the north-western corner where the height breach occurred, ensuring that the development is wholly maintained below the 10m height limit. As the development now complies with the height limit, a request to vary the development standard pursuant to clause 4.6 of PLEP 2014 is not required.

- **Overshadowing**

Comment: A number of submissions have been received from and on behalf of the adjoining property owners at 133 Riverview Road, raising concerns with regard to overshadowing as a

result of the proposed built form and landscape treatment. As discussed with respect to clause C1.4 of P21 DCP, a reasonable solar access outcome is considered to be achievable, subject to conditions of consent.

- **Impacts to views**

Comment: Submissions have been received from and on behalf of the adjoining property owners at 133 Riverview Road, raising concerns regarding the loss of views from the primary living room and those available when approaching the dwelling. Further concerns were also raised about the loss of views currently enjoyed from Riverview Road. As discussed with regard to clause C1.3 of P21 DCP, view sharing is considered to be achieved, subject to conditions of consent.

- **Visual privacy**

Comment: Submissions were received raising concerns with regard to overlooking of the adjoining dwelling to the south at 133 Riverview Road. As discussed with regard to clause C1.5 of P21 DCP, an appropriate privacy outcome is considered to be achieved, subject to conditions of consent.

- **Bulk and scale and lack of landscaping**

Comment: Concern has been raised in regards to the bulk and scale of the proposal, as seen from the adjoining dwellings to the south at 133 Riverview Road and 131 Riverview Road, with a comment that the built form will not be appropriately screened by landscaping. However, at the same time, the submissions raise concern with regard to the height of the screen plantings proposed along the common boundary. The proposed development comprises a mix of materials and setbacks, such that landscaping is not considered to be necessary to screen the entire length of each side elevation as seen from adjoining properties.

- **Excessive fill in foreshore area**

Comment: Concern has been raised in regards to the extent of works to provide level areas of lawn within the rear garden. These concerns were also echoed by Council, with additional landscaping and arboricultural detail requested in this regard. The design of the landscaping within the rear yard has been altered such that it will not attribute to unreasonable impacts upon existing canopy trees and the landscaping works within the rear yard are now supported by Council's Landscape Architect.

- **Visual amenity from public places**

Comment: Submissions have been received in objection to the development, and the way in which it presents to the public domain. As discussed with regard to clause D1.1 of P21 DCP, the visual impact of the proposal as seen from the public domain is consistent with and compatible with the surrounding context and the desired future character.

- **Incorrect identification of trees & validity of reports**

Comment: Submissions were received which challenged the conclusions of the arboricultural impact report, with concerns that the species of trees were misidentified. A subsequent report was ultimately provided and further concerns were raised in regards to the accuracy of the

report, noting earlier errors. The arboricultural impact assessment has been prepared in accordance with Council's lodgement requirements and has been reviewed internally by Council's Biodiversity Officer, Landscape Architect and Arborist.

- **Drainage**

Comment: A submission has been received from the adjoining property owners to the south regarding drainage and potential impacts to their property. The application was supported by a concept stormwater design that has been reviewed and endorsed by Council's Development Engineer, who has confirmed that the proposed stormwater solution is appropriate for the site and in accordance with Council's stormwater controls.

- **Heritage**

Comment: A submission was received in objection to the proposal due to concerns regarding the heritage significance of the existing dwelling. In response to these concerns, the application was referred to Council's Heritage Officer for comment in this regard. Council's Heritage Officer confirmed that the existing dwelling is not an item of local or state heritage significance, and has requested an archival record of the dwelling, prior to the issuance of a construction certificate.

A separate submission was received requesting that Tree 12 be listed as an item of local heritage significance to ensure its ongoing protection. Tree 12 is a Pittwater Spotted Gum, within an area mapped as containing Pittwater Spotted Gum Endangered Ecological Community ('Spotted Gum EEC'). Being both a native tree, and a Spotted Gum within the Spotted Gum EEC, the tree already has a high level of protection. Furthermore, as a consequence of this application, conditions of consent are recommended to ensure the protection of this specific tree.

- **Proximity to sewer**

Comment: One of the submissions received from the adjoining property owners at 133 Riverview Road raises concerns regarding impacts to the sewer line. Upon review of Council's files, a sewer line dissects the rear boundaries of sites to the south, and terminates at the boundary of the subject site. The application does not propose any works in the vicinity of the sewer line. However, prior to the issuance of a construction certificate the applicant will be required to check the location of all underground services to ensure that works will not impact upon any existing infrastructure.

- **Request for height poles**

Comment: A submission received made a request for the erection of height poles to demonstrate the visual bulk of the proposal. The architectural plans demonstrate the height and bulk of the proposed development in comparison to adjoining properties and the existing dwelling on site, such that height poles are not considered to be required to undertake this assessment.

- **Design of privacy screen**

Comment: Specific concerns have been raised in submissions received from and on behalf of the adjoining property owner regarding the slatted nature of the proposed privacy screen and the potential to cause migraines. The design of the screen is not considered to be unreasonable, particularly noting that as a result of the proposed conditions of consent, the screen will be shortened and setback at a greater distance than that which currently exists and

will not overshadow any window or internal floor space.

- **Setback of BBQ area**

Comment: A submission was received from the property owners to the north, raising concerns regarding the proximity of the BBQ. As discussed with regard to clause D1.9 of P21 DCP, the nil setback of the BBQ area is to be increased to 1m, consistent with the minimum setback prescribed, to ensure appropriate separation from the side boundary.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><b>Approval, with conditions.</b></p> <p>The proposal, in terms of landscape outcome, is acceptable subject to the protection of the existing trees and vegetation, and the completion of landscaping. Amended plans alter the layout of the proposal to minimise the impact to the tree protection zone of existing trees considered worthy of retention: T9, T12 to T18 inclusive, and trees within adjoining property.</p> <p>Council's Landscape section has assessed the proposal against the following Pittwater21 DCP Controls: B4.22 Preservation of Trees and Bushland Vegetation C1.1 Landscaping C1.5 Visual Privacy D1 Avalon Locality D1.4 Scenic protection - General</p> <p>A Landscape Plan is provided generally satisfying DA Lodgement Requirements, subject to conditions of consent to satisfy C1.1 Landscaping.</p> <p>A Arboricultural Impact Assessment is provided with the application, satisfying DA Lodgement Requirements.</p>
NECC (Bushland and Biodiversity)	<p><b>Approval, with conditions.</b></p> <p><u>Updated comments 19/06/2019</u> The applicant has provided amended plans (Burley Katon Halliday, Issue D, 14/06/2019) and Arborist Report (Martin Peacock, Rev D, 14/06/2019).</p> <p>Council's Natural Environment – Biodiversity section supports the application, subject to conditions.</p> <p><u>Updated comments 04/06/2019</u> A site inspection was carried out with one of Council's internal Arborists, including investigation below the existing deck. Only one existing brick pier was observed within the mapped "line of piers below" close to the base of T12. Further existing brick piers were</p>

Internal Referral Body	Comments
	<p>observed set-back east, appearing to be in the same alignment as the existing house labelled "line of existing structure". There are many unknowns and assumptions, some of which can be reasonably addressed at DA stage.</p> <p><i>Clarification of impacts to T12 required from the Arborist and Architect/Engineer</i></p> <ol style="list-style-type: none"> <li>1. Re-calculate SRZ using the diameter just above the root buttress as per the Australian Standard (AS 4970-2009)</li> <li>2. Existing piers: please provide evidence of the existing piers, including location, depth, and dimensions</li> <li>3. Proposed piers: please provide information regarding the extent of proposed piers required to support the concrete cantilevered structure, including how many, location and depth. Discussion on the suitability of the existing</li> <li>4. Assessment and measures to mitigate changes in hydrology for T12</li> <li>5. The trunk of T12 has a lean to the north-west and also protrusions which may intercept with the current design. The design must demonstrate the proposed distance between the trunk and the finished structure.</li> <li>6. The Proposed South Elevation shows the finished ground level of the proposed spa/rumpus adjacent to T12 lower than the existing deck. The base of T12 is 150mm below the existing deck. The finished ground level of the spa/rumpus must be above the existing ground levels surrounding T12.</li> <li>7. Where there are un-knowns the Arborist must provide Hold Points to provide advice/direction throughout construction</li> </ol> <p>The Arborist has not assessed the impacts of the proposed stormwater pipes (and any required trenching) which runs within the TPZ and SRZ of existing trees proposed to be retained and protected.</p> <p>It should be noted that the Arborist Report uses the Diameter at Breast Height (DBH) to calculate the SRZ, rather than the diameter measured immediately above the root buttress, as per the Australian Standard (AS 4970-2009). The diameter above the root buttress has not been provided and is usually (not always) larger than the DBH. The use of the correct diameter would result in a larger calculated SRZ than presented in the report.</p> <p><u>Updated comments 29/05/2019</u></p> <p>The updated Arborist report (Martin Peacock Tree Care, Rev B, 22nd May 2019), the amended plans which now show the calculated Tree Protection Zones (TPZ), Structural Root Zones (SRZ) and encroachment percentages, and the updated Ecological Assessment (Ecological Consultants Australia Pty Ltd, May 2019).</p> <p>It should be noted that the Arborist Report uses the Diameter at Breast Height (DBH) to calculate the SRZ, rather than the diameter measured immediately above the root buttress, as per the Australian</p>

Internal Referral Body	Comments
	<p>Standard (AS 4970-2009). The diameter above the root buttress has not been provided and is usually (not always) larger than the DBH. The use of the correct diameter would result in a larger calculated SRZ than presented in the report.</p> <p>The Arborist states, "<i>eight (8) trees are proposed for retention, nine (9) trees are proposed for removal, five (5) of which are listed as exempt species and one (1) tree is to be transplanted within the site. The retained trees will be protected through a combination of tree sensitive design and construction methods and the establishment of Tree Protection Zone areas.</i>"</p> <p>The updated Ecological report provides as amended Assessment of Significance for Pittwater Spotted Gum EEC, noting the direct removal of <i>Corymbia maculata</i> Spotted Gums, a diagnostic species, which concludes a likely non-significant impact. The author also makes the following comments considering the effect of tree removal on PSG EEC at the site "<i>Tree removal adds to this [risk of the local occurrence extinction] and without replacement planting the community has a high risk of extinction.</i>". As such, tree replacement is critical to this approval.</p> <p>The Landscape Plan (Myles Baldwin Design, issue C, 22/05/2019) lists the following replacement trees: 4 <i>Corymbia maculata</i>, 8 <i>Elaeocarpus reticulatus</i> and 3 <i>Glochidion ferdinandi</i>. The majority of flora species proposed are within the Pittwater Spotted Gum EEC.</p> <p><u>Original comments 18/02/2019</u></p> <p>There is insufficient information to assess the proposal against relevant biodiversity controls. The submitted Arborist report does not provide detailed assessment of the impact of landscaping works (including wall and stair construction and modification of soil levels), and does not identify measures to enable safe retention and long-term protection of canopy trees proposed to be retained.</p> <p>Council's Natural Environment – Biodiversity section cannot complete the assessment until further information is provided.</p> <p>This application was assessed under Pittwater LEP Clause 7.6 Biodiversity, and Pittwater 21 DCP Clauses B4.4 Flora and fauna habitat enhancement category 2 and wildlife corridor, B4.7 Pittwater Spotted Gum, B4.15 Saltmarsh EEC, B4.16 Seagrass conservation, and B4.19 Estuarine habitat as well as the environmental assessment requirements under the NSW <i>Biodiversity Conservation Act 2016</i> (NSW BC Act 2016). The site is also mapped as Pittwater Spotted Gum EEC (WSF11) in the SMCMA v3 mapping (OEH 2016), and there are seagrass meadows mapped west of the boat shed.</p> <p>The Arboricultural Impact Assessment Report (Martin Peacock Tree Care 2018) assesses 25 trees, 18 are within the site (5 of these are exempt species) and 7 are on neighbouring properties but have TPZs which extend into the site. The proposal will remove 4 of the 13 native</p>

Internal Referral Body	Comments
	<p>trees on the subject property (T2, T6, T13, all <i>Corymbia maculata</i> Spotted Gum and T11 <i>Livistona australis</i> Cabbage Tree Palm). One of these is to be translocated as part of the landscape plan, T11, <i>Livistona australis</i>. All 5 exempt trees will be removed (T1, T3, T5, T7, T10). Nine (9) native trees are proposed to be retained and protected, T4, T8, T9, T12, T14, T15, T16, T17, T18.</p> <p>Council notes that the applicant has designed the proposed dwelling to avoid and minimise impacts to local native trees, particularly T12 which has been incorporated into the rear deck.</p> <p>The Arborist states that there will be major Tree Protection Zone (TPZ) encroachment to 8 of the 9 native trees proposed to be retained (T4, T9, T12, T14-T18). This is due to proposed dwelling and landscaping walls and stairs, and raising of soil levels. To ensure the safe retention of these 8 trees, further aboricultural investigation and/or landscape design amendment is required.</p>
NECC (Coast and Catchments)	<p><b>Approval, with conditions.</b></p> <p>The subject land has not been included on the Coastal Vulnerability Area Map under State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP) and in regard to CM SEPP the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>However, the subject land is within the Estuarine Hazard Affected zone, wave action - tidal inundation and an Estuarine Planning Level (EPL) of 2.70m AHD has been adopted by Council on the subject property.</p>
NECC (Development Engineering)	<p><b>Approval, with conditions.</b></p> <p>The site is located in Geotechnical Hazard H1 Area, an "Acceptable Risk Management" level is achievable in accordance with the geotechnical report provided by Jack Hodgson Consultants. Provision for OSD stormwater management for the development will not be required for this property due to its proximity to the Bay. No Development Engineering objection subject to conditions.</p>
NECC (Riparian Lands and Creeks)	<p><b>Approval, with conditions.</b></p> <p>Coarse sediments and organic matter must be removed from stormwater prior to discharge from the land.</p> <p>A sediment and erosion control plan has not been provided and must be submitted to the Certifying Authority prior to construction certificate.</p>

Internal Referral Body	Comments
	<p>Sediment and erosion controls must be installed prior to any work on site and maintained until work is complete and groundcover has been re-established.</p> <p>The applicant states that the existing discharge outlet is being used. If a new outlet is built it must comply with <i>Pittwater 21 DCP</i> B5.11 Stormwater Discharge into Waterways and Coastal Areas.</p>
Strategic and Place Planning (Heritage Officer)	<p><b>Approval, with conditions.</b></p> <p><u>Discussion of reason for referral:</u> The property is not a heritage item or within the vicinity of one. However it was referred to Heritage due to a submission raising the potential heritage value of the existing dwelling.</p> <p><u>Consideration of Application:</u> The proposal seeks consent for the construction of a new dwelling on the site with demolition of the existing dwelling. The proposal was referred to Heritage due to a submission indicating the existing dwelling could be of heritage value. The property is not listed as a heritage item in the Pittwater Local Environmental Plan 2014.</p> <p>This property was considered as part of the Pittwater Community Based Heritage Study which was completed in 2015. Investigations into the property indicate that it was designed by prominent modernist architect Arthur Baldwinson and constructed in 1949 for Richard Foot and his wife, the artist Elaine Haxton. It is one in a series of dwellings that Baldwinson designed for a number of prominent artists and photographers of the time including a house for Max Dupain in Castlecrag. Ultimately the study did not recommend the listing of the property due to changes that were undertaken to it in the early 1990s.</p> <p>Heritage undertook a site visit to assess the impact of the proposed new dwelling. The inspection revealed that there had been modifications made to the dwelling since its construction, but that the ideas and intent of Baldwinson were still clearly legible and apparent. The house is a special and innovative holiday cottage that he designed for his clients that sought him out for commission like this house, and that while it is proposed for demolition, an interested owner could develop a concept that sympathetically adds to the property without seeking the removal of the existing dwelling.</p> <p>Given the significance of Arthur Baldwinson in the development and promotion of Modernism in Australia, the development of the Sydney Regional Style of architecture, and the importance of this house, it is recommended that a full photographic archival recording of the property be undertaken for the property in accordance with the NSW Heritage Council's 'Photographic Recording of Heritage Items Using Film or Digital Capture' (2006). This would capture the dwelling as it is and provide a record for future investigations into it as well as Arthur Baldwinson.</p>

Internal Referral Body	Comments
	In summary, Heritage would prefer a design that seeks to sympathetically add to the existing dwelling rather than its demolition, but accepts that it has been modified and that an archival record is the best option to capture its significance.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<b>Approval, no conditions.</b>  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 proposed.

##### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application. A condition can be included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

##### SEPP (Coastal Management) 2018

The site is located within the Coastal Use Area and Coastal Environment Area as identified by *State Environmental Planning Policy (Coastal Management) 2018* (CM SEPP), and the provisions of this policy are applicable in relation to the proposal. Following detailed assessment of the proposed

development, the consent authority can be satisfied of the following:

- the proposal is not likely to cause an adverse impact upon the matters listed in clause 13(1) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 13(1) of the CM SEPP,
- the proposal is not likely to cause an adverse impact upon the matters listed in clause 14(1) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 14(1) of the CM SEPP,
- the proposal is not likely to cause increased risk of coastal hazards on the site or other land.

As such, the proposal is considered to be consistent with the provisions of the CM SEPP, including the matters prescribed by clauses 13, 14 and 15 of this policy.

#### Pittwater Local Environmental Plan 2014

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

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m - 10m	9.45m	-	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

#### Detailed Assessment

##### 4.3 Height of buildings

The proposed development is non-compliant with the 8.5m maximum building height prescribed by clause 4.3(2) of PLEP 2014, as follows:

Maximum height of garage pavilion = 9.08m (north-western corner of upper roof)  
Maximum height of main pavilion = 9.8m (north-western corner of roof over void), and  
9.7m (western end of ga

The applicant seeks to rely upon a variation prescribed by 4.3(2D) of PLEP 2014, which provides that the building may reach up to 10m in height, subject to consistency with certain criteria. One of the relevant criteria is to ensure that the objectives of the clause are achieved. The objectives of the height of buildings development standard are considered as follows:

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

Comment: The proposed new dwelling has been designed to step down the slope in response to the natural fall of the land. Whilst the proposal will technically exceed 2 storeys in height in any one place, the proposed built form is designed to present as a single storey structure to Riverview Road and as a two storey stepped structure, as seen from the waterway. As such, the height and scale of the proposal is considered to be reasonably consistent with the desired character of the Avalon Beach Locality.

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

Comment: The proposed three storey development is both consistent and compatible with the height and scale of other adjoining and nearby dwellings, particularly those on the low side of Riverview Road.

- *to minimise any overshadowing of neighbouring properties,*

Comment: The central pitched roof element above the master bedroom and the portions of the development along the northern elevation (where the maximum height protrusions occur) do not contribute to any unreasonable overshadowing of adjoining properties.

However, the south-western corner of the roof over the void, which reaches 9.4m above existing ground level, contributes to additional overshadowing of the adjoining dwelling. This three-storey portion of the building extends considerably beyond the prescribed building envelope, and overshadows kitchen and secondary living room windows of the adjoining dwelling for the majority of the day. The impact is associated with a double storey internal void, and more than 3 hours of direct sunlight would be retained to these windows if the proposal was compliant with the prescribed built form controls. As such, it is difficult to suggest that overshadowing has been reasonably minimised.

As discussed in further detail with regard to solar access and building envelope, it is recommended that the void be removed from the proposal, reducing the roof over the living room to that of the adjacent balcony (RL32.64). This would reduce the height of this portion of the development below the 8.5m height limit and ensure that overshadowing is reasonably minimised.

- *to allow for the reasonable sharing of views,*

Comment: The proposed height of the development does not result in any unreasonable

impacts upon views.

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

Comment: The proposal is reliant upon a considerable volume of excavation across the majority of the footprint of the dwelling. However, the visual impact of the excavation will be screened from view, and the proposal presents as a dwelling that has been sited to sympathetically follow the natural slope of the land.

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

Comment: The resultant built form will not result in any adverse visual impacts, with the enhancement of landscaping to further reduce the visual impact of the proposal.

The remainder of the criteria prescribed by clause 4.3(2D) of PLEP 2014 are considered, as follows:

- The consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor,

Comment: The portions of the development that exceed the 8.5m building height plane are limited in height and depth, receding quickly in response to the slope of the land. The protrusions are reasonably described as minor.

- The building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and

Comment: The proposed new dwelling is sited on a slope of approximately 40%.

- The buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.

Comment: The proposal is reliant upon a considerable volume of excavation. However, the extent of excavation proposed is not unreasonable in the context of the site, and does not present as excessive built form as seen from the public domain.

Subject to conditions to reduce the height of the roof over the living room (to remove the two-storey internal void), the proposed development will be consistent with the criteria of clause 4.3(2D) of PLEP 2014, and the application of the 10m variation is supported. As such, the proposed development is consistent with the maximum building height prescribed for the site.

#### Pittwater 21 Development Control Plan

##### Built Form Controls

Built Form Control	Requirement	Proposed	Variation	Complies
Front building line	6.5m	1.1m	83%	No
Rear building line	FSBL	>FSBL	-	Yes
Side building line	North - 2.5m	2.5m	-	Yes
	South - 1m	1m	-	Yes
Building envelope	North - 3.5m	Outside envelope	3.0m (max)	No

	South - 3.5m	Outside envelope	3.2m (max)	No
Landscaped area	60%	56.7% 61.3% with variations	5.5%	No

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

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	No	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.8 Stormwater Management - Water Quality - Low Density Residential	Yes	Yes
B5.11 Stormwater Discharge into Waterways and Coastal Areas	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	No	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
D1.1 Character as viewed from a public place	No	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	No	Yes
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.16 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes

#### Detailed Assessment

##### **A4.1 Avalon Beach Locality**

The proposed development is generally consistent with the desired character of the Avalon Beach locality, with the exception of the expressed desire for dwellings to be limited to two storeys in height. Whilst the entirety of the front pavilion and a considerable portion of the main pavilion is three storeys in height, the proposal has a single storey presentation to Riverview Road and a two storey presentation to the waterway, such that it can be said that the proposal will be consistent with the two storey character desired for the locality, as seen from the public domain.

Concern is raised in relation to the three storey element associated with the central void over the living room. However, due to concerns with regard to building envelope non-compliance and solar access, this element is proposed for deletion.

##### **C1.3 View Sharing**

###### View from 133 Riverview Road

Concern has been raised in submissions from and on behalf of the adjoining property to the south at 133 Riverview Road in objection to the proposed development and the associated impacts to views. The assessment of view impact is undertaken with regard to clause C1.3 of P21 DCP and the Views Planning Principle developed by the NSW LEC in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*.

Occupants of the adjoining dwelling at 133 Riverview Road currently enjoy views of the Pittwater Waterway and the Western Foreshores from the primary living room at the rear of the dwelling through windows on both the rear and side elevation. The views are obtained in a south-westerly direction across the southern side boundary and the rear of the adjoining property to the south (131 Riverview Road), in a westerly direction across the length of 133 Riverview Road, and in a north-westerly direction across the common side boundary and the rear of the subject site. The proposed development will impact upon north-westerly views currently enjoyed from windows on the side elevation, as

approximated in **Figure 1**, below.



Figure 1 - North-westerly views from Living Room

The privacy screen on the southern side elevation of the rear balcony will result in the obstruction of views across the side boundary, the outline of which is approximated by the red dashed lines in **Figure 1**, above. In an attempt to minimise view loss, the privacy screen has been designed to comprise louvres fixed at a 45 degree angle, to facilitate the retention of the north-westerly water views from the windows on the northern elevation of 133 Riverview Road, whilst restricting a direct side view into the proposed deck. As the affected views are obtained over a side boundary, and as the majority of the views will be retained, the impact of the proposal is considered to be minor.

However, it is noted that the western-most 1.5m of the proposed screen is largely redundant from a privacy perspective. The proposed screen and deck extend beyond the western alignment of the neighbouring dwelling, where there is no available sight line to screen. As such, a condition of consent is recommended to remove the western most 1.5m of the proposed privacy screen. This outcome will still ensure that the majority of the proposed balcony is screened from view, whilst maximising the angle of the view corridor available to the adjoining property.

The reasonableness of the setback/proximity of the privacy screen to the common side boundary is also questionable, particularly noting the visual impact of the structure, the associated building envelope non-compliance and the comparably irregular shape of the balcony itself. An increase to the setback of the screen would significantly improve the resultant amenity of the living room of the adjoining property, including the available view corridor, with little impact upon the usability of the proposed deck. As such, an additional condition of consent is recommended to require the relocation of the privacy screen at the southern elevation of the deck to be setback a further 1.5m (minimum) from the southern boundary.

Subject to minor amendments to the extent and position of the screen, the impact of the proposed development upon views currently enjoyed from within 133 Riverview Road is considered to be reasonable.

The submissions received from 133 Riverview Road also raise concern about the loss of water views currently obtained from the front of the property at 133 Riverview Road over the roof of the existing dwelling at the subject site. In particular, the submissions raise concern about views obtained when walking down the access stairs between the street and the dwelling. The loss of these transient views over the side boundary is not considered to be unreasonable, particularly noting that views will be retained between the two dwellings.

Concerns were also raised in regards to the impact upon views associated with landscaping proposed within the rear setback. Enhancement landscaping and the planting of canopy trees is encouraged by P21 DCP, and as prescribed by clause C1.3 of this policy, views are not to be obtained at the expense of native vegetation. However, it is appreciated that the proposed density of canopy tree planting within the rear of the subject site is comparably high. Council's Landscape Architect has recommended a series of amendments to the proposed landscape plan, including the removal of proposed canopy tree plantings within the TPZ of existing canopy trees to be retained. This will considerably reduce the extent of canopy trees within the rear of the site to a degree that is anticipated within a Spotted Gum EEC and that is not unreasonable in the context of the site.

#### View from the street

A submission was also received raising concerns regarding the loss of existing water views currently visible from the street over the subject site. The views have become more apparent as a result of vegetation clearing undertaken in conjunction with works approved pursuant to N0236/13. The design of the front pavilion has been amended to reduce the width of the structure presenting to Riverview Road, with an unenclosed covered walkway at the side allowing for the preservation of views around the proposed garage. Whilst the control encourages open structures within setback areas to maximise views through structures, the width of the garage is not excessive and the scale of the proposal as it presents to the street is not overly bulky or unreasonable in the context of Riverview Road. As such, the impact upon views from the street is not considered to warrant the refusal of the subject application.

### **C1.4 Solar Access**

#### Proposed dwelling

The development has been designed to maximise direct sunlight to living spaces and areas of private open space of the proposed dwelling.

#### Adjoining dwelling

The proposed development will result in additional overshadowing of the adjoining property to the south at 133 Riverview Road and a number of submissions have been received from and on behalf of the adjoining property owner in this regard. Upon review of the solar access diagrams provided, the application achieves consistency with the provisions of this clause which require windows to the principal living area of adjoining dwelling to receive a minimum of 3 hours of direct sunlight between 9am and 3pm in midwinter to at least 50% of the glazed area of those windows. In this respect, the principal living area (being the living room currently benefiting from the most solar access in midwinter), is the living room in the north-western corner of the dwelling at 133 Riverview Road, with two windows on the western end of the northern side elevation and two windows on the northern end of the western rear elevation.

It is noted that compliance with this bare minimum requirement will be improved as a result of conditions recommended to reduce the length and increase the setback of the privacy screen, such that it is likely that 100% of the glazing associated with the principal living room will retain direct solar

access for 3 hours in midwinter.

Additional windows associated with living rooms along this northern elevation will be overshadowed for the entirety of the day in midwinter as a result of the development. Whilst these rooms do not receive the most sun at present, the proposal will result in the reduction of direct sunlight to these spaces, the impact of which is associated with a portion of the building that protrudes well beyond the building envelope prescribed by P21 DCP. As such, whilst the proposal technically achieves compliance with the three hour requirement for solar access to glazing associated with the principal living room, it is questioned as to whether this impact is reasonable in these circumstances. See further discussion with regard to clause D1.11 of P21 DCP in this regard.

Clause C1.4 of P21 DCP also requires the maintenance of 3 hours of direct sunlight to the main private open space of the adjoining dwelling between 9am and 3pm in midwinter. Whilst the term 'main private open space' is not defined, it is ordinarily taken to be an area of private open space associated with the living room, where occupants of the dwelling would most frequently sit or entertain outside. The dwelling at 133 Riverview Road does not have a deck or terrace area associated with the living room, and in this respect, the property owners have nominated a narrow concrete pathway at the entrance to the dwelling as the main area of private open space.

Whilst overshadowed for the majority of the day in midwinter, the nominated area receives direct sunlight at and around midday, the extent of which will be reduced as a result of the proposed development. However, this impact is not considered to be unreasonable in the context of the site, noting that the narrow space at the centre of the site is highly vulnerable to overshadowing, and as much larger areas of private open space adjacent to the dwelling will retain full sunlight for large portions of the day. Nonetheless, this impact will also be reduced as a consequence of the recommended amendments to the height of the ceiling above the living room (the removal of the void), such that the same level of sunlight currently received will be retained to this area.

Further submissions were received raising concern regarding overshadowing associated with the proposed landscaping, particularly the hedge planting along the southern boundary. Council's Landscape Architect has recommended conditions of consent to require the proposed *Acmena Smithii* to be of the 'dwarf' species, to minimise overshadowing associated with landscaping.

### **C1.5 Visual Privacy**

The proposed development comprises floor-to-ceiling windows on the southern elevation of the living room, within close proximity to windows on the northern elevation of the adjoining dwelling at the same approximate level. To ensure privacy between the two properties, a condition of consent is recommended to require these windows to comprise frosted or opaque glazing.

The application proposes a new rear deck, in the same approximate footprint of the existing rear deck, albeit at a higher level. The deck comprises 1.8m high privacy screening along the southern side elevation, with no screening along the northern elevation. In the absence of a submission from the adjoining property owner to the north in this regard, and as there are no windows associated with habitable rooms adjacent to the deck, the lack of a screen along the northern side elevation is considered to be acceptable in the circumstances.

However, submissions have been received from and on behalf of the property to the south in objection to the proposed inclusion of a 1.8m high screen along the southern elevation of the rear deck, and the resultant overshadowing and the loss of water views currently obtained across this area. As discussed with respect to solar access and views, the impacts associated with the screen are not considered to be unreasonable, subject to a minor reduction to the length and an increase to the setback of the screen. The resultant screen is considered to maintain a reasonable level of privacy between the primary area

of private open space proposed and the primary living space of the adjoining property, consistent with the provisions of this control and commensurate with the amenity of adjoining waterfront dwellings, where greater preference is given to view sharing over privacy.

### C1.23 Eaves

The proposed new dwelling does not comprise 450mm eaves on all elevations. Nonetheless, the proposed development is considered to appropriately reflect to coastal heritage and character of the locality, and is designed to ensure that appropriate solar access and shading is achieved. As such, the objectives of this development control are achieved, despite the lack of 450mm wide eaves on all elevations.

### D1.1 Character as viewed from a public place

The proposed garage, with a minimum setback of 1.1m from the front property boundary, is inconsistent with the requirements of this clause, which prescribe that parking structures must not be the dominant site feature when viewed from a public place, and should be located behind the building line, preferably setback further than the primary building. However, the proposed siting of the garage structure is consistent with a permitted variation prescribed by the front building line development control, which allows parking forward of the front building line on steeply sloping sites. Furthermore, the presentation of the proposed garage is consistent with other garages along this particularly steep stretch of Riverview Road and an earlier development consent that was issued for the site. The siting of the proposed garage is supported on merit, as the proposal is compatible with the character of Riverview Road, and will not detract from consistency with the outcomes of this development control.

### D1.8 Front building line

The proposed development is inconsistent with the 6.5m minimum front building line prescribed by this development control, with the garage and the two lower levels of the front pavilion setback at a minimum distance of 1.1m from the front property boundary. As discussed with respect to clause D1.1 of P21 DCP, the siting of the proposed garage is consistent with a prescribed variation which permits parking structure forward of the building line on steeply sloping sites. However, this variation requires all other structures to be set back in accordance with the 6.5m minimum building line prescribed, and as such, the siting of the lower two levels of the front pavilion are inconsistent in this regard.

Despite non-compliance with the minimum front building line, the siting of the lower two levels of the front pavilion is considered to be an appropriate solution for the site, reducing the footprint of the building and the extent of disturbance on the environmentally sensitive site. The position of this floor space facilitates the retention of Tree 9, which would otherwise be removed if this floor space was set back behind the garage to comply with the 6.5m front building line.

The siting of the front pavilion as a whole is considered to be acceptable on merit, particularly as the proposal otherwise achieves consistency with the outcomes of the front building line development control, as follows:

- *To achieve the desired future character of the Locality.*

Comment: The siting of the front pavilion does not detract from consistency with the desired character prescribed for the Avalon Beach Locality.

- *The amenity of residential development adjoining a main road is maintained.*

Comment: Not applicable - the site is not adjoining a main road.

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

Comment: The site contains a number of existing canopy trees, some of which are proposed for removal to facilitate the development. However, a considerable portion are to be retained, including the more significant species on the site, with enhancement plantings proposed. As such, the proposed development is considered to appropriately retain and enhance vegetation on the site, to reduce the visual impact of the proposed built form as seen from the public domain.

- *Vehicle manoeuvring in a forward direction is facilitated.*

Comment: Vehicular movement in a forward direction is not facilitated by the proposal. However, as prescribed by clause B6.2 of P21 DCP, the provision for vehicles to enter and leave in a forward direction is not required for this site, irrespective of the front setback proposed.

- *To encourage attractive street frontages and improve pedestrian amenity.*

Comment: The proposed parking solution has been designed with adequate site lines, to maximise pedestrian safety. Furthermore, the structure itself is of a high quality design, finished in materials that will blend with the natural surrounds, resulting in an attractive presentation to the street.

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

Comment: The siting of the front pavilion is consistent with other structures along this stretch of Riverview Road, allowing for the length of the driveway to be limited and for a landscaped buffer to be retained between the parking area and the main pavilion. The proposed development is considered to be an appropriate response for the context of the existing urban environment of Riverview Road and the wider Avalon Beach Locality.

## D1.9 Side and rear building line

### and clause C1.7 Private Open Space

The proposed development is generally consistent with the side and rear building lines prescribed by this control, with the exception of a 9m long BBQ area proposed with a nil setback along the northern side boundary. The proposed BBQ area is enclosed in a solid balustrade, 1m above the internal FFL of the adjacent living room, with a maximum height of 3.7m above ground. In response to concerns from Council regarding the maintenance of this structure with a nil setback to the boundary, the applicant has advised that it could be setback 550mm from the boundary, which is the minimum setback to retain the space as a workable/usable BBQ area. However, the BBQ could be relocated to the opposite side of the courtyard, adjacent to the powder room to provide a 1m setback, consistent with the minimum setback prescribed by this control. This would also facilitate the incorporation of landscaping between the elevated structure and the boundary, to lessen the impact upon the adjoining property.

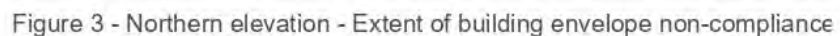
The reorientation of the BBQ area also limits the use of the elevated side courtyard and associated overlooking of the adjoining property, noting that the current design is inconsistent with the provisions of clause C1.7 of P21 DCP, which prescribe that private open space should be located at the rear of

### D1.11 Building envelope

This architectural section drawing illustrates a multi-level building complex integrated into a sloping terrain. The structure features several distinct spaces, each labeled with its function:

- Coffee Room**: Located at the top right, featuring exposed gables and stone walls.
- Storage and Fuel Storage**: A room below the coffee area, containing fuel storage tanks.
- Workshops**: Two workshops are shown, one with elevated floors and another with concrete slabs.
- Control Building**: A central structure housing control equipment.
- Living Quarters**: Multiple living areas are depicted, including a large room with a fireplace and a smaller room with a fireplace and a view of the sea.
- Kitchen**: A kitchen area is located near the living quarters.
- Bathroom**: A bathroom is situated adjacent to the living quarters.
- Garage**: A garage space is provided for vehicle storage.
- Storehouse**: A storehouse is located near the entrance.
- Entrance**: The main entrance to the building complex.
- Stairs**: External stairs lead up to the upper levels of the building.
- Roof**: The roof structure is shown, with some areas highlighted in green.
- Foundation**: The foundation of the building is indicated by a dashed line.
- Ground Level**: The ground level is shown as a hatched area at the bottom of the section.
- Sea**: The sea is visible on the right side of the drawing.
- Tree**: A large tree is shown on the left side of the drawing.
- Dimensions**: Various dimensions are noted throughout the drawing, such as "4.5 meters", "3.0 meters", "2.0 meters", "1.5 meters", "1.0 meter", "0.5 meter", "0.25 meter", "0.15 meter", "0.10 meter", "0.05 meter", "0.025 meter", "0.0125 meter", "0.00625 meter", "0.003125 meter", "0.0015625 meter", "0.00078125 meter", "0.000390625 meter", "0.0001953125 meter", "0.00009765625 meter", "0.000048828125 meter", "0.0000244140625 meter", "0.00001220703125 meter", "0.000006103515625 meter", "0.0000030517578125 meter", "0.00000152587890625 meter", "0.000000762939453125 meter", "0.0000003814697265625 meter", "0.00000019073486328125 meter", "0.000000095367431640625 meter", "0.0000000476837158203125 meter", "0.00000002384185791015625 meter", "0.000000011920928955078125 meter", "0.0000000059604644775390625 meter", "0.00000000298023223876953125 meter", "0.000000001490116119384765625 meter", "0.0000000007450580596923828125 meter", "0.00000000037252902984619140625 meter", "0.000000000186264514923095703125 meter", "0.0000000000931322574615478515625 meter", "0.00000000004656612873077392578125 meter", "0.000000000023283064365386962890625 meter", "0.0000000000116415321826934814453125 meter", "0.00000000000582076609134674072265625 meter", "0.000000000002910383045673370361328125 meter", "0.0000000000014551915228366851806640625 meter", "0.00000000000072759576141834259033203125 meter", "0.000000000000363797880709171295166015625 meter", "0.0000000000001818989403545856475830078125 meter", "0.00000000000009094947017729282379150390625 meter", "0.000000000000045474735088646411895751953125 meter", "0.0000000000000227373675443232059478759765625 meter", "0.00000000000001136868377216160297393798828125 meter", "0.000000000000005684341886080801486968994140625 meter", "0.0000000000000028421709430404007434844970703125 meter", "0.00000000000000142108547152020037174224853515625 meter", "0.000000000000000710542735760100185871124267578125 meter", "0.0000000000000003552713678800500929355621337890625 meter", "0.00000000000000017763568394002504646778106689453125 meter", "0.000000000000000088817841970012523233890533447265625 meter", "0.0000000000000000444089209850062616169452667236328125 meter", "0.00000000000000002220446049250313080847263336181640625 meter", "0.000000000000000011102230246251565404236316680908203125 meter", "0.0000000000000000055511151231257827021118083404541015625 meter", "0.00000000000000000277555756156289135105590417022705078125 meter", "0.000000000000000001387778780781445675527952085113525390625 meter", "0.0000000000000000006938893903907228377639760425567626953125 meter", "0.00000000000000000034694469519536141888198802127838134765625 meter", "0.000000000000000000173472347597680709440994010639190673828125 meter", "0.0000000000000000000867361737988403547204970053195953369140625 meter", "0.00000000000000000004336808689942017736024850265979766845703125 meter", "0.000000000000000000021684043449710088680124251329898834228515625 meter", "0.0000000000000000000108420217248550443400621256649494171142578125 meter", "0.0000000000000000000054210108624275221700310628324724555711190625 meter", "0.00000000000000000000271050543121376108501553141623622778555953125 meter", "0.000000000000000000001355252715606880542507765708118113892779765625 meter", "0.0000000000000000000006776263578034402712538828540590569463898828125 meter", "0.00000000000000000000033881317890172013562694142702952847319494140625 meter", "0.000000000000000000000169406589450860067813470713514764236597470703125 meter", "0.0000000000000000000000847032947254320033906953567537371182987353515625 meter", "0.00000000000000000000004235164736271600169534767837686855914936767578125 meter", "0.000000000000000000000021175823681358000847673839188434279574683837890625 meter", "0.0000000000000000000000105879118406790004238369195942171397873419189453125 meter", "0.00000000000000000000000529395592033950021191845979710856989367095947265625 meter", "0.000000000000000000000002646977960169750105959229898554284946835479736328125 meter", "0.0000000000000000000000013234889800848750059796149492771424723417739681640625 meter", "0.00000000000000000000000066174449004243750298980747463857123617088698408203125 meter", "0.000000000000000000000000330872245021218751494903737319285618085443492041015625 meter", "0.00000000000000000000000016543612251

Figure 2 - Southern elevation - Extent of building envelope non-compliance



- *To achieve the desired future character of the Locality.*

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

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

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will be retained.

- *The bulk and scale of the built form is minimised.*

Comment: Generally, the proposal presents as a single or two storey dwelling that has been designed to step down the slope of the site. However, there is one area (the void above the living room) where there is no articulation to break down the three storey presentation on the southern facade. It is also this location where the greatest protrusion of the building envelope occurs, to the point where the majority of the volume of the upper floor void is outside the building envelope plane. This portion of the building envelope non-compliance also coincides with a breach of the 8.5m building height plane. In light of the multiple areas of non-compliance, the lack of articulation along the three storey facade and noting that the built form non-compliance is associated with an internal void, it cannot be said that the bulk and scale of this portion of the development has been minimised.

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

Comment: A portion of the proposed privacy screen along the southern elevation of the rear balcony protrudes beyond the prescribed building envelope. However, the 300mm (max) non-compliant element will be resolved as a result of recommended conditions to both limit the length and increase the setback of the screen. Overall, the resultant building envelope non-compliance will not attribute to any unreasonable impacts upon views from private or public places.

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

Comment: The proposal is capable of providing a reasonable level of privacy to adjoining properties, unhindered by the proposed building envelope non-compliance. However, concern is raised in regards to additional overshadowing of the adjoining property to the south as a direct consequence of the proposed building envelope non-compliance. Whilst technical compliance with the 3 hour requirement of clause C1.4 of P21 DCP is achieved in relation to 50% of the glazed surface of the principal living room windows, the building envelope non-compliance associated with the central three storey element (void over the living room) attributes to additional overshadowing of windows associated with the kitchen and secondary living spaces for the entirety of the day. These windows/rooms would otherwise retain more than 3 hours of sunlight if the proposed development was maintained within the prescribed building envelope plane. As such, it is difficult to suggest that this impact is reasonable, when the impact arises as a direct consequence of a portion of the building that is non-compliant with multiple built form controls.

Aside from this central portion of the proposed building, the remaining areas of non-compliance are not considered to result in any unreasonable impacts upon the amenity of the adjoining properties.

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

Comment: The proposed development achieves an appropriate balance between the retention of existing vegetation and the development of the site, with appropriate enhancement plantings proposed to soften the resultant built form.

Overall, the building envelope breach occurring centrally on the site associated with the double storey

void over the living room is not considered to achieve consistency with the outcomes of this control. However, the remainder of the development is otherwise considered to be an appropriate response for the context of the site, and as such, it is considered that the proposal can be supported, subject to the imposition of conditions requiring the removal of the void, and in turn the lowering of the roof in this portion of the dwelling.

It is acknowledged that this may not be the applicant's preferred architectural solution for the design of the dwelling. However, the applicant was formally advised of concerns in this regard and provided the opportunity to provide their own design solution to address these concerns. The amendments that came forward were minimal, if not token at best, and the extent of resultant non-compliance remains unreasonable. The statement of environmental effects provided to support the application relies upon the variation relating to the slope of the site, stating that strict compliance with the building envelope control would be unreasonable in the circumstances of the site. Despite the proposed recommendations to lower a portion of the development, considerable non-compliance with the building envelope will remain. However, the resultant design solution is considered to represent a more reasonable, balanced response to the development of the constrained site.

#### **D1.14 Landscaped Area - Environmentally Sensitive Land**

The application proposes new works that will cover approximately 43.3% of the total site, resulting in a minor non-compliance with respect to the 60% minimum landscaped area requirement prescribed by this control. However, a considerable portion of hard surfaces proposed (49m<sup>2</sup> or 4.6%) is solely associated with stairs and walkways that provide access around the outside of the dwelling and down to the waterway. The development control provides a variation to exclude such pathways in circumstances where the outcomes of the landscaped control are achieved. The application of this variation is considered to be warranted in the circumstances of this application, as the minor area of technical non-compliance does not result in inconsistency with the relevant outcomes of the control. With this variation applied, the landscaped area calculation is increased from 608m<sup>2</sup> to 657m<sup>2</sup>, or 61.3%, consistent with the minimum requirements of this control.

Note: It is acknowledged that there are discrepancies between the landscape plans and architectural plans provided to support the application, specifically with regard to walkways and stairs along the southern side setback. The applicant has confirmed the intent to retain/provide these pathways and the above landscaped calculations have been based on this advice.

#### **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 \$18,753 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,875,260.

## CONCLUSION

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

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

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

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

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

The resultant development is representative of the maximum built form outcome anticipated on the site under the provisions of PLEP 2014 and P21 DCP. However, subject to the recommended conditions of consent, the resultant development is considered to be an appropriate outcome for the site, that achieves a balance between the development of the site and the retention of significant natural features and the maintenance of a reasonable level of amenity for adjoining properties.

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

## RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/2051 for Demolition works and the construction of a dwelling house on land at Lot 1 DP 1135396, 135 Riverview Road, AVALON BEACH, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. Approved Plans and Supporting Documentation

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

##### a) Approved Plans

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<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Proposed Roof Plan & Garage Plan A.01.01-C	22 May 2019	Burley Katon Halliday Pty Ltd
Proposed First & Second Floor Plan A.01.02-C	22 May 2019	Burley Katon Halliday Pty Ltd
Proposed Ground Floor & Lower Ground Floor Plan A.01.03-D	14 June 2019	Burley Katon Halliday Pty Ltd
Structural Root Zone & Tree Protection Zone A.01.04-A	22 May 2019	Burley Katon Halliday Pty Ltd
Proposed North Elevation A.02.01-D	14 June 2019	Burley Katon Halliday Pty Ltd
Proposed South Elevation A.02.02-D	14 June 2019	Burley Katon Halliday Pty Ltd
Proposed East & West Elevation A.02.03-D	14 June 2019	Burley Katon Halliday Pty Ltd
Section A-A Longitudinal A.03.01-D	14 June 2019	Burley Katon Halliday Pty Ltd

<b>Landscape Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Landscape Plan Cover Page 402_DA_01, issue C	22 May 2019	Myles Baldwin Design
Landscape Plan - Basement Level 402_DA_10, issue C	22 May 2019	Myles Baldwin Design
Landscape Plan - First Level 402_DA_13, issue C	22 May 2019	Myles Baldwin Design
Landscape Plan - Third Level 402_DA_14, issue C	22 May 2019	Myles Baldwin Design

<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Stormwater Concept Plans D01A, D02A, D03A and D04A	17 December 2018	NB Consulting Engineers

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
BASIX Certificate 981643S_03	23 May 2019	BASIX Certification Centre
Flora and Fauna Impact Assessment Report	May 2019	Ecological Consultants Australia
Arboricultural Impact Assessment Report, revision D	14 June 2019	Martin Peacock Tree Care
Geotechnical Risk Management Report	3 December 2018	Jack Hodgson Consultants Pty Ltd

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

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

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

## 2. Prescribed Conditions

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

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

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

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

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

Reason: Legislative Requirement

### 3. General Requirements

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolishedThe person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

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

## FEES / CHARGES / CONTRIBUTIONS

### 4. Policy Controls

#### Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$18,752.60 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 \$1,875,260.00.

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](http://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.

5. **Security Bond**

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

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

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

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

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

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

6. **Stormwater Disposal**

Stormwater shall be disposed of to an existing approved system or in accordance with the relevant B5 control of *Pittwater 21 Development Control Plan* ('P21 DCP').

A certificate is to be provided to the Principal Certifying Authority with the Construction Certificate application by a qualified experienced practicing Civil Engineer, with Corporate membership of the Institute of Engineers Australia (M.I.E.) or who is eligible to become a Corporate member and has appropriate experience and competence in the related field that the existing approved system can accommodate the additional flows or provide drainage plans demonstrating compliance with Council's requirements.

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans. Prior to issue of the construction certificate, Form 2 of the *Geotechnical Risk Management Policy for Pittwater* (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

**8. Structural Adequacy and Excavation Work**

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

- Maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

**9. Shoring of Adjoining Property**

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

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

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

**10. 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. Structural detail for the retaining wall and slab must be provided with the application for Council approval.

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.

**11. Construction Management Program**

An application for Traffic Management Plan is to be submitted to Council for approval. The Traffic Management Plan shall be prepared to RMS standard by an appropriately certified person. An approval is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate measures have been considered for site access, storage and

the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community

12. **Photographic Archival Recording**

Photographic archival recording is to be undertaken before works begin in accordance with the NSW Heritage Office's *Photographic Recording of Heritage Items Using Film or Digital Capture* (2006). These documents are to be provided to Council's historical archives.

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

Reason: To provide a historical record of heritage significant works on the site for archival purposes.

13. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:-

- Site Boundaries and contours;
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities);
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls;
- North point and scale.

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

Reason: To mitigate environmental impact resulting from site disturbance.

14. **Arborist supervision to install tree protection measures**

The Project Arborist (minimum AQF 5) is required to supervise the installation of tree protection measures for existing trees to be retained as nominated below:

- T9 - Spotted Gum
- T12 to T18 inclusive - all Spotted Gums (one Bloodwood T15)

Tree protection measures, as listed within section 9.0 of the Arboricultural Impact Assessment Report referenced in Condition 1 of this consent, are required to be installed under supervision of the Project Arborist. Additionally, stem and branch protection as detailed in Figure 4 within AS4970-2009 at a minimum is required for T9 and T12.

Written certification of compliance, including photographic evidence, is to be produced by the project arborist and provided to the Principal Certifying Authority prior to issue of the construction certificate.

Reason: To confirm compliance with tree protection/replacement measures.

15. **Water Quality**

To comply with clause B5.8 of P21 DCP, the applicant must install stormwater quality improvement measures as follows:

- Pre-screening of organic matter (eg. leaf litter) prior to the collection of rainwater in the rainwater tank, and
- Filtration of stormwater to capture organic matter and coarse sediments prior to discharge from the land.

Provision must be made for maintenance access.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval and are to be incorporated into the design of the development prior to the issue of the construction certificate.

Reason: Protection of the receiving environment.

16. **Preparation of a Tree Transplanting Methodology**

The Project Arborist (minimum AQF 5) is to prepare a tree transplanting methodology/report in relation to the relocation of T11 Cabbage Tree Palm. All recommendations within the report must be followed throughout transplanting works.

The translocation must occur outside of the Tree Protection Zones of existing trees to be retained and protected.

This strategy is to address maintenance issues such as irrigation, soil testing, weeding, plant staking, fertilising, pest and disease control, remedial pruning and the like. Further, provision is to be made for the contractor to visit the site on a 3 monthly basis from the date of the relocation. After the inspection, the contractor is to issue a report to the project manager certifying that the palm is healthy and performing to expectation.

A copy of the Tree Transplanting Methodology report is to be provided to the Principal Certifying Authority prior to issue of construction certificate.

Reason: To confirm ensure appropriate with tree protection/replacement measures to minimise impacts upon the natural environment.

17. **Trenching for utilities and stormwater infrastructure outside of SRZ**

All utilities services, including stormwater trenching, must be relocated outside of the Structural Root Zone (SRZ) of T12. The trenching must be relocated outside the SRZ of T17, along the northern boundary (i.e. north of the existing inclinators). The Stormwater Concept Plans referenced in Condition 1 of this consent will requirement amendment in this regard.

The Project Arborist must provide further recommendations on how trees T15, T16, T17 can be protected and retained during trenching works within the TPZ of these trees.

Compliance with these measures is to be certified by the Project Arborist in writing, including photographic evidence and amended plans, prior to issue of the construction certificate.

Reason: To minimise impacts upon the natural environment.

18. **Estuarine Hazard Design Requirements**

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

Reason: To minimise potential hazards associated with development in an estuarine habitat.

19. **Estuarine Planning Level Requirements**

An Estuarine Planning Level (EPL) of 2.70 m AHD has been adopted by Council for the subject site and shall be applied to all development proposed below this level as follows:

- All structural elements below 2.70m AHD shall be of flood compatible materials;
- All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 2.70m AHD or waterproofed to this level; and
- The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 2.70m AHD.
- All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.70m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.70m AHD to avoid the likelihood of contact with splashing waves and spray.

Reason: To ensure aspect of the development are built at the appropriate level

20. **Project Ecologist**

A Project Ecologist is to be employed for the duration of the approved works to ensure all bushland protection measures are carried out according to the conditions of consent.

The Project Ecologist will provide certification that conditions relating to the biodiversity mitigation measures are carried out in accordance with these consent conditions and the Flora and Fauna Impact Assessment referenced in Condition 1 of this consent.

The Project Ecologist must have one of the following memberships/accreditation

- Practising member of the NSW Ecological Consultants Association OR
- Biodiversity Assessment Method assessor accreditation under the NSW Biodiversity Conservation Act 2016

Evidence demonstrating the engagement of a Project Ecologist is to be provided to the Principal Certifying Authority prior to the issue of construction certificate.

Reason: To ensure bushland management.

21. **Engage a Project Arborist**

A Project Arborist with a minimum of AQF Level 5 is to be appointed for the duration of the works. The Project Arborist is to implement pre-construction tree protection measures and supervise all works within 5m of significant trees.

Evidence demonstrating Project Arborist engagement (i.e. cover letter from Project Arborist) is to be provided to the Principal Certifying Authority prior to the issue of Construction Certificate.

Reason: Tree protection in accordance with relevant Natural Environment LEP/DCP

controls (DACNECPCC2)

**22. Compliance with Recommendations of Approved Reports**

Written certification from a suitably qualified person(s) shall be submitted to the Principal Certifying Authority, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the reports referenced in Condition 1 of this consent have been incorporated into the construction certificate detail.

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

Reason: To ensure compliance with recommendations endorsed by Council.

**23. 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](http://www.sydneywater.com.au) for:

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

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

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

**24. Schedule of External Colours and Finishes**

A Schedule of External Colours and Finishes is to be prepared demonstrating consistency with the following:

- o The pitched roof above the Master Bedroom shall be finished in natural timber shingles,
- o All other roof forms shall be finished in a dark and non-reflective material, of a colour equivalent to or darker than Colorbond 'Woodland Grey',
- o Privacy screens are to be comprise natural timber privacy blades,
- o External walls are to be finished in off-form concrete or finished in a colour equivalent to or darker than Dulux 'Milton Moon',
- o Balustrades are to be metal, finished in a colour equivalent to or darker than Dulux 'Ferrodor',
- o Window/door frames are to be finished in a colour equivalent to or darker than Colorbond 'Wallaby', and
- o The garage door is to be finished in natural timber or a colour equivalent to or darker than Colorbond 'Woodland Grey'.

The use of red, white or light colours on any external surface is not permitted.

The Schedule of External Colours and Finishes is to be submitted to the certifying authority prior to the issuance of the construction certificate. Any plans prepared as part of the construction certificate are to demonstrate consistency with the Schedule of External Colours and Finishes prepared and submitted.

Reason: To ensure that the visual impact of the proposal is appropriately minimised.

25. **Amendments to Approved Plans**

The Approved Architectural Plans, Approved Landscape Plans and Approved Engineering Plans referenced in Condition 1 of this consent are to be amended, as follows:

- a. The Void on the first floor, adjacent to the Master Bedroom is to be deleted, and the roof over this space is to be lowered to RL 32.640. The line of glazing along the western extent of the Master Bedroom will then become the external facade.
- b. The privacy screen along the southern edge of the ground floor rear deck is to be amended, as follows:
  - the western extent of the screen is to be reduced by 1.5m and replaced with 1m high metal balustrade,
  - the setback between the screen and the southern boundary is to be increased by 1.5m, and
  - the resultant setback area is to be a non-trafficable roof
- c. All services, including stormwater trenching, are to be located outside the Structural Root Zone of Trees 12 and 17.
- d. A 1m wide pathway/stairway is permitted along the southern boundary to connect the rear access stairs to the subfloor services area. The remainder of the southern setback is to be landscaped in accordance with the Approved Landscape Plans.
- e. the incorporation of drip irrigation around T12, in accordance with Section 9.13 of the Approved Arboricultural Impact Assessment Report referenced in Condition 1 of this consent.
- f. The elevated courtyard/BBQ area along the northern side elevation is to be setback a minimum distance of 1m from the northern boundary. A 1m solid balustrade is required along the northern elevation of the length of the courtyard.
- g. Windows W.2 and W.3 on the southern elevation of the Living Room are to comprise frosted/opaque glass.

These amendments are to be incorporated into any plans submitted to the certifying authority as part of the construction certificate application.

Reason: To minimise the environmental impact of the development.

26. **Amendments to Approved Landscape Plans**

The Approved Landscape Plans referenced in Condition 1 of this consent are to be amended, as follows:

- a. All existing ground levels within the Tree Protection Zone (TPZ) of existing trees to be retained shall be maintained, unless authorised by the Project Arborist,
- b. All tree planting is to be installed at 75L pot size,
- c. One *Coymbia maculata* (Spotted Gum) shall be planted in the garden space between the garage pavilion and the main pavilion, near Tree 9. This tree may replace one of the other trees proposed within this area,
- d. All tree planting shall have a minimum individual area of 3m x 3m of soil area, and shall be located a minimum of 5m from existing and proposed built structures or 3m where pier and beam footings are used,
- e. The proposed *Acmena smithii* shall be the 'dwarf' species,
- f. All proposed trees are to be located outside of the TPZ of existing trees to be retained.

These amendments are to be incorporated into the landscape plans submitted to the certifying

authority as part of the construction certificate application.

Reason: To ensure an appropriate landscaped outcome.

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

**27. Tree protection measures**

The Project Arborist is to supervise and certify tree protection measures for the existing trees nominated for retention and protection in the Arboricultural Impact Assessment Report referenced in this consent, requiring site attendance during excavation and construction works as listed in section 9.0 Recommendations, and in particular 9.4 9.5, and 9.6, and in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4.

The Project Arborist is required to supervise any works within the tree protection zone (TPZ) of existing trees to be retained as nominated below:

T9 - Spotted Gum

T12 to T18 inclusive - all Spotted Gums

In Particular, the Project Arborist must be present on site to undertake direct supervision during proposed pier location excavation, particularly but not limited to, that to be undertaken within the TPZ of T12. all excavation within the TPZ of T12 is to be undertaken by hand.

The retention and protection of tree roots/trees identified to be retained is to override any approved works, including pier footings. Redesign of the approved works will be required where any conflicts arise, by means of a modification application under the EP& A Act.

The Project Arborist shall determine the extent of tree protection fencing, trunk and ground protection required to be undertaken to protect the existing trees during all stages of the works.

The tree protection measures specified in this clause must:

- i) be in place before work commences on the site, and
- ii) be maintained in good condition during the construction period, and
- iii) remain in place for the duration of the construction works.

The Project Arborist shall submit certification during all stages of the works (excavation and construction) and prior to occupation certificate to the Certifying Authority that all tree protection measures as listed above have been completed prior to the commencement of excavation and construction works, and have been appropriately maintained during the works.

Reason: To ensure tree protection is provided and maintained.

**28. 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.

**29. Tree retention and removal**

In consideration of the assessment of development impact, the following existing trees are approved for removal as impacted by development unless otherwise stated, based on the recommendations of the Arboricultural Impact Assessment referenced in Condition 1 of this consent:

- T1 - Coral Tree (exempt)
- T2 - Spotted Gum
- T3 - Cocus Palm (exempt)
- T4 - Spotted Gum
- T5 - Coral Tree (exempt)
- T6 - Spotted Gum
- T7 - Jacaranda (exempt)
- T8 - Spotted Gum
- T10 - Banagalow Palm (exempt)

Replacement planting in accordance with the Landscape Plan and any additional condition of consent for Spotted Gum tree replacement shall be undertaken.

Trees to be retained must be clearly marked by wrapping the trunks in high-visibility flagging tape prior to the commencement of works.

Reason: To confirm the anticipated tree removal to occur on site and to protect trees to be retained.

**30. Installation and Maintenance of Sediment and Erosion Control**

Sediment and erosion controls must be installed in accordance with the ESCP required by this consent.

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

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site.

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

**31. 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.

**32. Demolition Works - Asbestos**

If the existing dwelling is found to contain asbestos, demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and

disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

**33. Civil Works Supervision**

All civil works approved in the Construction Certificate are to be supervised by an appropriately qualified and practising Civil Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority

Reason: To ensure compliance of civil works with Council's specification for engineering works.

**34. Vehicle Crossings**

The provision of one standard vehicle crossing 5.4 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/3 and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. 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.

**35. Tree and vegetation protection**

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

- a. all trees and vegetation within the development zone identified for retention in the Arboricultural Impact Assessment Report referenced in Condition 1 of this consent, including existing trees numbered T9, and T12 to T18 inclusive, excluding exempt trees and palms under the relevant planning instruments of legislation,
- b. all other trees and vegetation located on adjoining properties,
- c. all road reserve trees and vegetation,

Tree protection shall be generally undertaken as follows:

- a. all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites,
- b. removal of existing tree roots greater than 25mm is not permitted without consultation with the Project Arborist,
- c. existing ground levels shall remain under the tree protection zone of trees to be retained, unless authorised by the Project Arborist,
- d. any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by the Project Arborist. Details including photographic evidence of works undertaken shall be submitted to the Certifying Authority,

- e. 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,
- f. no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by the Project Arborist on site,
- g. all structures are to bridge tree roots greater than 25mm diameter unless directed by the Project Arborist on site,
- h. excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with the Project Arborist, including advice on root protection measures,
- i. should either or all of vi), vii) and viii) occur during site establishment and construction works, the Project Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Project Arborist to the Certifying Authority,
- j. 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,
- k. 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.

36. **Protection of rock and sites of significance**

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: preservation of significant environmental features.

37. **No Material Storage within 5m/calculated Tree Protection Zone (TPZ)**

No storage of building materials or building waste, excavated fill or topsoil storage is to occur within 5m or the notional TPZ of trees shown on the approved landscape working drawing(s) as being retained or within protective fenced areas. Drainage is to be arranged such that fill, building materials or contaminants are not washed into protective fenced areas.

Reason: To protect and retain trees proposed for retention.

38. **Compliance with Ecologist's Recommendations – During Construction**

All biodiversity-related measures are to be implemented during construction, as specified in the approved Flora and Fauna Impact Assessment referenced in Condition 1 of this consent, and any other conditions of consent. Compliance with these measures is to be certified by the project ecologist prior to issue of the occupation certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

39. **Installation of Nest Box**

A minimum of 1 nest box, suitable for threatened microbats, is to be installed in a retained trees

at the rear of the property. This is best completed during approved tree removal works as tree-climbing Arborists will be on-site.

Habitat for native wildlife including trees with hollows or flaky bark must be inspected for native wildlife prior to removal or supervised during removal by the project ecologist. If native wildlife is found within habitat required to be removed, the project ecologist must be contacted for advice. Any incidents in which native wildlife are injured or killed as a result of works are to be recorded, in addition to details of any action taken in response. If no such incidents occur during works, a statement to that effect is to be prepared. The Project Ecologist is to prepare a record of any incidents or a statement that no such incidents occurred and provide this to the Principal Certifying Authority prior to issue of the occupation certificate.

A certificate demonstrating compliance must be prepared by the project ecologist and submitted to the Certifying Authority prior to issue of the occupation certificate.

Reason: To maintain wildlife habitat.

**40. Relocation of Logs and Coarse Woody Debris**

All logs and branches are to be salvaged from trees prior to any vegetation clearing and reused as fauna habitat within the proposed retained vegetation.

Details demonstrating compliance are to be provided by the Project Ecologist to the Principal Certifying Authority prior to issue of any occupation certificate.

Reason: To protect wildlife habitat.

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

**41. Landscape Certification**

Prior to the issue of an occupation certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the Approved Landscape Plans referenced in Condition 1 of this consent, as amended by any other condition of this consent.

Reason: To ensure that the landscape treatments are installed to provide landscape amenity and soften the built form.

**42. Certification Elevated Parking Facility Work**

An appropriately qualified and practicing Structural Engineer shall certify to the Council / Principal Certifying Authority that the elevated parking facility was constructed in accordance with this consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical controls. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of an Occupation (or Subdivision)

Reason: Compliance with this consent

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

44. **Compliance with Recommendations of Approved Reports**

Written certification from a suitably qualified person(s) shall be submitted to the Principal Certifying Authority, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the reports referenced in Condition 1 of this consent have been completed.

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

Reason: To ensure compliance with recommendations endorsed by Council.

45. **External Colours and Finishes**

The project architect is to confirm that the as-built development has been finished in a manner that is consistent with the Schedule of External Colours and Finishes required by this consent. Written certification to this effect is to be provided to the certifying authority prior to the issuance of the occupation certificate.

Reason: To ensure that the visual impact of the as-built development is appropriately minimised.

46. **Project Ecologist Certification**

Prior to the issuance of the occupation certificate, the Project Ecologist is to provide written certification to the certifying authority to confirm:

- a. A minimum of 1 nest box suitable for threatened microbats has been installed in an existing tree at the rear of the site, a minimum of 5m from the ground, in the location directed by the Project Ecologist.
- b. Logs and branches salvaged from cleared trees have been reused as fauna habitat within areas of proposed vegetation.
- c. All biodiversity related measures, as specified in the Approved Flora and Fauna Assessment Report referenced in Condition 1 of this consent and any other conditions of this consent, have been undertaken/implemented at the appropriate stage of development to the satisfaction of the Project Ecologist.
- d. Establishment/initiation of post-construction measures have been undertaken to the satisfaction of the Project Ecologist.

Reason: To confirm compliance with necessary wildlife/habitat protection measures.

47. **Project Arborist Certification**

Prior to the issuance of the occupation certificate, the Project Arborist is to provide written certification with photographic evidence to the certifying authority to confirm:

- a. All tree protection measures have been undertaken in accordance with the Approved Arboricultural Impact Assessment Report referenced in Condition 1 of this consent and any conditions of this consent.
- b. All trees nominated for safe retention have been safely retained. In this regard, a report is to be prepared by the Project Arborist and presented to the certifying authority assessing the health and impact of trees nominated for retention.
- c. Drip irrigation has been installed around T12, with an automated timer to ensure watering of the TPZ for a period of 6 hours at least once weekly when no rain is forecast.

- d. All new structures near T12 have been constructed with a minimum finished gap of 500mm, ideally larger, from the trunk stem and all existing branches.
- e. The translocation of T11, a *Livistona australis*, has been undertaken in accordance with the Tree Transplanting Methodology required by this consent.

Reason: To ensure that impacts upon the existing natural environment are appropriately minimised.

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

48. **Landscape maintenance**

All landscape components are to be maintained for the life of the development, and in accordance with the Approved Flora and Fauna Report referenced in Condition 1 of this consent. A 12 month establishment period shall apply for all new landscaping. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components and species to maintain the landscape theme of the landscape plan.

Furthermore, 3 monthly inspections are to occur during the 12 month establishment period to inspect and monitor the health of the translocated *Livistona australis*.

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

49. **Environmental and priority weed control**

All weeds are to be removed and controlled in accordance with the *NSW Biosecurity Act 2015*.

Reason: Preservation of environmental amenity.

50. **Control of Weeds**

Prior to the completion of works, all priority weeds (as listed under the *Biosecurity Act 2015*) are to be removed/controlled within the subject site using an appropriately registered control method. All environmental weeds are to be removed and controlled.

Reason: Weed management.

51. **No Planting Environmental Weeds**

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

Reason: Weed management.

52. **Works to cease if Aboriginal Heritage item found**

Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council should be contacted.

Reason: To protect Aboriginal Heritage in accordance with the NSW National Parks and Wildlife Act 1974.

53. **Dead or Injured Wildlife**

If construction activity associated with this development results in injury or death of a native

mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.







