

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 14 AUGUST 2019



Ashleigh Sherry
Manager Business Systems and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 14 August 2019
in the Walamai Room, Civic Centre, Dee Why**

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 24 JULY 2019

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 24 July 2019 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2019/0206 - 9 MONASH CRESCENT, CLONTARF - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE
REPORTING MANAGER	Anna Williams
TRIM FILE REF	2019/431627
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.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/0206 for demolition works and construction of a dwelling house on land at Lot 13 DP 9517, 9 Monash Crescent, Clontarf, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0206
Responsible Officer:	Renee Ezzy
Land to be developed (Address):	Lot 13 DP 9517, 9 Monash Crescent CLONTARF NSW 2093
Proposed Development:	Demolition works and construction of a dwelling house
Zoning:	Manly LEP2013 - Land zoned E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Juliana Li-Nga Huang Lincoln Luen-Keung Huang
Applicant:	Gremmo Homes Pty Ltd
Application lodged:	01/03/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	05/03/2019 to 21/03/2019
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.4 Floor space ratio: 16.4%
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,687,000.00

Executive Summary

This application seeks consent for the demolition of the existing one and two storey dwelling and construction of a new two storey dwelling on the site.

The development is defined as a residential dwelling house and is permissible within the E3 Environmental Management zone under the provisions of Manly Local Environmental Plan 2014 (MLEP 2014).

Notification of the application resulted in two (2) submissions raising objection to the proposed development. The issues raised in the submissions relate to the non-compliance with the Floor Space

Ratio (FSR) requirement and overshadowing.

The application has been referred to the Development Determination Panel (DDP) as the development has a non-compliance with the FSR in excess of 10% for a class 1 building. It is recommended that the Panel approve the application.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
 Manly Local Environmental Plan 2013 - 6.8 Landslide risk
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 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 - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 13 DP 9517 , 9 Monash Crescent CLONTARF NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Monash Crescent, Seaforth.</p> <p>The site is regular in shape with a frontage of 15.24m along Monash Crescent and a depth of approximately 39.2m. The site has a surveyed area of 597.1m². the rear, southern boundary adjoins Clontarf Beach Reserve.</p> <p>The site is located within the E3 Environmental</p>

	<p>Management zone and accommodates a one and two storey brick dwelling.</p> <p>The site is mostly flat containing a fall of less than 200mm from the rear toward the street.</p> <p>The site contains minimal vegetation consisting of predominantly exotic species.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by a range of one and two storey dwelling houses exhibiting varied architectural styles.</p>
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Map:



SITE HISTORY

Development Application DA69/2014

DA69/2014 for alterations and additions including a first floor addition was lodged with Council on 16 May 2014. The application was approved on 21 August 2014.

Modification Application DA69/2014-S96-Part2

Modification of the development consent for DA69/2014 for changes to the windows and extension of the first floor level was approved by Manly Council on 8 April 2015.

Development Application DA2019/0206

Development Application No. DA2019/0206 for demolition of the existing dwelling and construction of a new two storey dwelling was lodged with Council on 4 March 2019. This application is the subject of this assessment.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks consent for the demolition of the existing dwelling and construction of a new two storey dwelling. Specifically, the new dwelling contains the following:

Ground Floor (RL3.200)

- Double garage with storage (RL3.028)
- Front fence - 1.0m high with horizontal hardwood timber slat construction
- Entry
- Study
- Powder Room
- Laundry
- Kitchen with walk-in-pantry
- Living and Dining
- Media
- Covered Alfresco

First Floor (RL6.220)

- Master suite with ensuite and Walk-in-robe
- Bed 2, 3 and 4 with walk-in-robe
- Bathroom
- Walk-in-linen
- Retreat
- South-west facing balcony off Retreat and Master suite.



Photograph 1 - Street view (source: Urban Harmony (Designer))



Photograph 2 - Rear Elevation (source: Urban Harmony (Designer))

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Mrs Helen Dorothy Hayes	11 Monash Crescent CLONTARF NSW 2093
John Clapin	

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

- **Bulk**
Comment:
The design of this development includes balanced articulation on all elevations and complementary material selection which ensures the built form mass sits comfortably within this streetscape. The proposed development complies with the maximum height and has been assessed on its merit as acceptable in terms of setbacks and landscaped open space. This issue does not hold determining weight.
- **FSR**
The total site area of 597.1 m² and current built form could not be construed as an undersize dwelling and should be considered on these merits. We also note that the total proposed floor area is 336.44 m² and that represents an INCREASE of 104.52% of the allowable FSR site footprint. We do not believe this to be reasonable and the desire for a larger house is not sufficient grounds to justify contravening the development standards, as any alterations should fall within the guidelines of Clause 4.1.3.1 of Manly DCP 2013.
Comment:
The proposed variation to the FSR for the development has been discussed in detail within Clause 4.6 of this assessment. The subject site is currently 153m² smaller than the 750m² minimum lot size for this locale and provides a building form commensurate to the lot size and adjoining development. The application on merit is considered acceptable.
- **Location closer to the beach. Currently level with adjoining.**
Comment:
The subject site has a rear building setback of 8m and is subject to the Foreshore Building Line (FBL). The proposed building provides a setback to the rear boundary of between 8.7m and 11m and is behind the FBL. The location of the dwelling is considered acceptable. This issue does not hold determining weight.
- **Overshadowing**
Increase in overshadowing to courtyard, living and dining room and more than one third of

existing sunlight to private spaces.

Comment:

The proposed footprint of the dwelling is actually smaller than the existing dwelling. The site is oriented in a north-east orientation with the rear of the site providing a south-west orientation to Middle Harbour. Overshadowing from the proposed development falls predominantly across the subject site in the morning till midday. At midday, there is some overshadowing of the side setback of the dwelling to the east which extends to the base of the dwelling walls. In the afternoon, this adjoining property at No. 7 Monash will be overshadowed by the proposed development. The extent of overshadowing is consistent with the requirements of Clause 3.4.1 of Manly DCP and is considered acceptable.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Supported</p> <p>The landscape component of the proposal is acceptable subject to the protection of existing trees and vegetation, and 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, and specifically: 3.3.1 Landscaping Design; 3.3.2 Preservation of Trees or Bushland Vegetation; 4.1 Residential Development Controls, 4.1.5 Open Space and Landscaping, and 4.1.10 Fencing.</p>
NECC (Bushland and Biodiversity)	<p>Supported</p> <p>The application has been assessed against Coastal Management SEPP, Manly LEP 6.5. The site is not on the wetlands or littoral rainforest map of the SEPP. A Landscape Plan is provided that shows native species planting. Biodiversity supports the proposal subject to erosion and sediment controls in place.</p>
NECC (Coast and Catchments)	<p>Supported</p> <p>The subject land has been assessed under the Sydney Harbour Regional Environment Plan (2005) and Sydney Harbour Foreshores DCP (2005) and the Manly LEP and DCP for impacts to and from the coastal environment.</p> <p>The proposed development is unlikely to cause coastal impacts or increased risk of coastal hazards on the subject land or other land.</p>
NECC (Development Engineering)	<p>Supported</p> <p>Development Engineering has no objection to the application subject to the following condition of consent.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>Supported</p> <p>The proposed DA involves a new two storey residence with a minimum habitable floor level of RL 3.2m AHD. The proposed garage is set at 3.028m AHD which is above the 1% AEP event of 2.9 mAHD. The proposed DA generally complies with the flood controls of the</p>

Internal Referral Body	Comments
	LEP and DCP.

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. 942044S_03).

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

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	50	50

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

SEPP (Coastal Management) 2018

The site is affected by the requirements of *State Environmental Planning Policy (Coastal Management) 2018* and is located within the Coastal environment area and the coastal use area. This memo seeks to provide an assessment of the proposal in relation to the requirements of the SEPP.

State Environmental Planning Policy (Coastal Management) 2018

Part 2, Division 5, Clause 15 of the SEPP states the following:

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

The proposed development for demolition and construction of a new dwelling house has been considered by Council's Natural Environment Coastal and Catchments (NECC) section. The proposed construction methods are considered suitable by NECC and the development is not considered likely to result in any increased coastal hazard risk or any adverse impact on the coastal environment area or coastal use area. The development is considered to adequately satisfy the requirements of the SEPP.

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	7.7m	N/A	Yes
Floor Space Ratio	FSR: 0.4:1	FSR: 0.56:1	16.4%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	No
4.6 Exceptions to development standards	No
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes

Clause	Compliance with Requirements
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 (238.8m ²)
Proposed:	0.56:1 (336.44m ²)
Percentage variation to requirement:	16.4%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

standard.

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

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

The applicants written request argues, in part:

"The relevant floor space ratio for this locality is 0.4:1. Due to lot size being inconsistent with the intention of the control, the proposed development will provide a gross floor area of 336.44m² or 0.448:1 when calculated against the minimum lot size in this locality of 750m². The development is justified in this instance for the following reasons:

- *The proposal provides for a new two storey dwelling to replace an existing one and two storey dwelling, which does not result in a significant bulk when viewed from either the street or the neighbouring properties.*
- *The development will maintain a compatible scale relationship with the newer existing residential development in the area. Development in the vicinity has a wide range of architectural styles and the given the variety in the scale of development, this proposal will reflect a positive contribution to its streetscape.*
- *The extent of the proposed new works do not present any significant impacts in terms of view loss for neighbours, loss of solar access or unreasonable bulk and scale."*

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 4.4(1).

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 E3 Environmental Management zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The non-compliance with the floor space ratio requirement is predominantly due to the fact that the lot provides an existing lot size which is approximately 153m² smaller than the minimum lot size of 750m². The design of the property provides adequate articulation and separation from the adjoining properties resulting in a bulk and scale which is considered consistent with the existing streetscape character in the immediate vicinity of the site which is predominantly two (2) storey, modern style architecture.

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:

There are no important landscape features currently visible across the site.

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

Comment:

The design of the new development integrates the dwelling with the adjoining foreshore connecting the dwelling visually with the area. The site provides a compliant landscaped provision and maintains a landscaped setback to the existing concrete retaining wall.

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

Comment:

The proposed works are fully contained within the boundaries of the site and will not impact on the enjoyment of the adjoining foreshore area.

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

Comment:

The site is not located within a business zone or local centre.

Zone objectives

The underlying objectives of the E3 Environmental Management zone are:

The underlying objectives of the E3 Environmental Management zone

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

Comment:

The proposed works are within the boundaries of the site and will not impact on the adjoining foreshore area.

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

Comment:

The works consist of the demolition of the existing dwelling and construction of a new dwelling house on the site. The proposed dwelling is not considered likely to result in any adverse impact on the values of the adjoining natural areas.

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

Comment:

The materials proposed for this project incorporate timber cladding and doors, stone feature wall, floor to ceiling glass walls that create a floating effect for the dwelling and a natural colour palette for the remaining surfaces. The finishes chosen will complement the natural setting and create a minimal environmental impact.

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

Comment:

There is no remnant vegetation or rock outcrops on the site which requires protection.

- *To protect and enhance visual quality by promoting dense bushland buffers adjacent to major traffic thoroughfares.*

Comment:

The site is not located on a major traffic thoroughfare.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E3 Environmental Management zone.

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

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

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

6.1 Acid sulfate soils

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

The site is located in an area identified as Acid Sulfate Soil Class 3 and 5, as indicated on Council's Acid Sulfate Soils Planning Map.

Class 3

Works at depths beyond 1.0m below the natural ground surface and/or works by which the watertable is likely to be lowered more than 1.0 metre below the natural ground surface within a Class 3 acid sulfate soil area are required to be assessed to determine if any impact will occur.

Class 5

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

The site currently has a finished ground level at RL2.6 and RL2.8. The Applicant has provided a Preliminary Acid Sulfate Assessment prepared by White Geotechnical Group dated 22 February 2019 which indicates that sample ground testing undertaken down to a depth of 1.6m below the surface detected no presence of acid sulfate soils.

The development proposes a finished ground floor level of RL3.2 with minor excavation for the slab and

footings. The excavations are unlikely to extend as far as the test holes.

In this regard, White Geotechnical advise that an Acid Sulfate Soil Management Plan (ASSMP) is not considered to be necessary for the development of the site. A condition of consent which requires the applicant to notify the principle certifying authority of any new evidence of the presence of acid sulfate soils has been imposed.

This condition, together with recommendations made in the Preliminary Acid Sulfate Soil Assessment prepared by White Geotechnical and dated 22 February 2019, have been included in the recommendation of this report.

6.8 Landslide risk

The site is identified within Geotechnical Area G3. The applicant has provided a Preliminary Geotechnical Assessment for the site which does not recommend any further Geotech assessment.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 597m ²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings/750m ²	1 dwelling/ 597m ² (existing)	N/A	Yes, existing
	Dwelling Size: Minimum 90m ² +17m ² = 87m ²	336.44sqm	N/A	Yes
4.1.2.1 Wall Height	North-west: 6.5m	Ground floor 2.7m Total height 5.8m	N/A	Yes
	South-east: 6.5m	Ground floor 2.7m Total height 5.8m	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	Consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	Ground Floor - 0.9m (1/3x2.7m) First Floor - 1.9m (1/3x5.8m)	Ground Floor East - 1.08m Ground Floor West - 1.08m First Floor East - 1.68m - 2.28m First Floor West - 1.8m - 4.47m	N/A N/A 11.6% 5.3%	Yes Yes No No
	Windows: 3m	1.68m - 2.28m (W13, W14 and W16 - south-east)	44%	No
4.1.4.4 Rear Setbacks	8m	8.8m - 11m	N/A	Yes
4.1.4.5 Foreshore Building Lines and Foreshore Area	6m (based on wall height)	6m	N/A	Yes
4.1.5.2 Open Space and Landscaping	Total Open Space (Area OS4) 60% of site area	54.7% (326.34m ²)	8.9%	No

	(358.2m ²)			
	Landscaped Area 40% of open space (130.54m ²)	63.12% (206m ²)	N/A	Yes
	Above Ground 25% of Total Open Space (81.59m ²)	4.1% First Floor Balcony 13.26m ²	N/A	Yes
	3 native trees	3 trees	N/A	Yes
4.1.5.3 Private Open Space	18sqm	>18sqm	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	5.1m	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 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
3.4.4 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
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.10 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

3.4.1 Sunlight Access and Overshadowing

Merit consideration:

As the proposed development results in overshadowing of the adjoining eastern property in the afternoon, the development is considered against the underlying Objectives of the Control as follows:

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

Comment:

The proposed development will create overshadowing along the western side of No. 7 Monash Crescent from 12 midday to 3pm. The property retains adequate sunlight access to the rear section of the dwelling and rear yard during the morning. The eastern side of the adjoining property is not impacted by any overshadowing until after midday.

Objective 2) To allow adequate sunlight to penetrate:

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

Comment:

The proposed development will receive direct sunlight access into the rear living and kitchen areas from midday during mid-winter and within the front setback of the site during the middle of the day.

The overshadowing of the adjoining property to the east does not affect the windows in that development until after midday during mid winter.

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

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

Due to the orientation of the site to the south-west, the increased setback from Monash Crescent works to benefit the shadow impact from the development. The building form includes a flat roof line and recessed first floor level to reduce the length of the shadows. As a result, there is minimal additional overshadowing of adjoining properties until after midday.

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

4.1.3 Floor Space Ratio (FSR)

The subject site has a total area measuring 597m² which is less than the minimum lot size of 750m². When assessed under Clause 4.4 Floor Space Ratio of Manly LEP 2014, the proposed development results in an FSR of 0.56:1 which is 16.4% greater than the required 0.4:1. The applicant has requested that a variation to the FSR calculation be considered using the exception contained within clause 4.1.3.1 Exceptions to FSR for Undersized Lots.

The proposed development is considered consistent with the following objectives of this clause:

Objective 1. To ensure the scale of development does not obscure important landscape features.

Comment:

The proposed two storey dwelling is considered to provide an acceptable scale of development which is commensurate with the surrounding development. The site does not contain any important landscape features which will be impacted by the proposed building forms and is considered to provide an appropriate development with the adjoining water interface.

Objective 2. To minimise disruption to views to adjacent and nearby development.

Comment:

There are no views which have been identified which are likely to be adversely impacted from the proposed development. The overall size of the development is below the maximum building height permissible on this site and is contained in the centre of the site maintaining separation along both sides of the building.

Objective 3. To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.

Comment:

The shadows identified from the proposed development have been assessed within the submissions section and under Part 3.4.1 of Manly DCP within this report. While overshadowing was raised as a concern by one of the adjoining neighbours, it is considered that the development satisfies the control and does not result in an unacceptable impact on sunlight access within the site or on adjacent properties.

On balance, the development is considered an appropriate form for the site and location. In this instance, a variation to the FSR for undersized allotments is considered acceptable and supported.

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

Description of non-compliance

The proposed development provides compliant side setbacks at ground floor level being 1.08m with a requirement of 0.9m. At first floor level, the setback is required to be 1.9m. The wall plane steps on both elevations. On the north-eastern elevation there is a 20.08m wall section which is 0.22m within the setback established by the wall height which equates to a 11.6% variation. On the south-western elevation there is a smaller wall section measuring 10.65m in length which is 0.1m inside the required setback. This equates to a 5.3% variation for this wall section.

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 existing streetscape includes numerous dwellings which consistently provide minimal side setbacks. The character of development within this street is transitioning to contemporary style of architecture complimentary to the proposed dwelling.

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 setbacks maintain a consistent pattern of buildings in this location. Further, the design has incorporated minimal active windows on the side elevations to ensure that privacy is maintained to and from the development.

There are no views that have been identified as impacted by the proposed development. The new building has a maximum height of RL9.82 being 7.7m and below the maximum building height.

On balance, the local amenity is considered improved with the new works.

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

Comment:

Given the sensitive location of this site adjoining Middle Harbour foreshore, the proposed footprint and siting is considered a more efficient and non-offensive response to these constraints resulting in minimal impact on surrounding development.

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 application includes a detailed landscape design which has been assessed by Council's Landscape Officer and subject to conditions to supplement the detail is considered to provide adequate landscape plantings.

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

Comment:

The site is not identified as bushfire prone.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. The extent of non-compliance in this instance is considered minor and is not considered to result in any adverse impacts on adjoining properties. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

Description of non-compliance

Proposed

Total Open Space - 265m² (44%)

Landscaped area - 77.4% of open space as proposed

Requirement

Total Open Space - 358m² (60%)

Landscaped area - 40% of open space

Merit consideration:

There is a shortfall in Total Open Space of 93.2m². Council may consider these variations where it can be demonstrated that the objectives of the Clause can be achieved. The objectives are achieved in the following ways:

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

Comment:

The site does not currently contain any important landscape features or remnant populations of native flora and fauna. The proposed landscape plan prepared by Grant Clement Landscape Architecture has been assessed by Council's Landscape Officer as acceptable.

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

Comment:

The siting of the dwelling provides a commensurate proportion of landscaped and open space areas at ground level within the front and rear setbacks of the property. Council's Landscape Officer has not raised any objections to the proposed landscaping planting.

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 is not considered to result in any additional adverse impacts in terms of sunlight, privacy or views and will provide an improved built form within the existing streetscape.

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

Comment:

The proposed landscaping includes predominantly porous landscape which is considered to minimise stormwater runoff on the site.

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

Comment:

Conditions of consent have been recommended for imposition to ensure adequate weed control is provided on the site. Private and public space will not be impacted by the proposal.

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

Comment:

The proposal will not impact on existing significant trees maximising the opportunities for wildlife

habitat. With consideration of the above the the variation to the open space and landscaping requirement is considered reasonable and satisfactorily address this control.

4.1.10 Fencing

The proposed development includes a new front fence. The fence consists of sandstone clad masonry pillars and base with open style timber slat inserts. The fence includes a double automatic gate constructed in matching timber slats and has a maximum height above the existing ground level measuring 1.5m. The proposed fence is considered consistent with the requirements of Part 4.1.10.

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 \$16,870 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,687,000.

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:

- MLEP2013 - Clause 4.4 Floor Space Ratio (undersized site)
- 3.3.1 - Landscaping Design
- 3.4.1 - Sunlight Access and Overshadowing
- 4.1.4 - Setbacks (front, side and rear) and Building Separation

The non-compliances identified are not considered to result in any additional adverse impact on the adjoining or surrounding properties and are considered on merit as acceptable in the circumstances.

The proposal includes a non-compliance with the Floor Space Ratio (FSR) development standard of 16.4%. The non-compliance has been considered in the context of the site and the surrounding properties and in consideration of the development proposed for this site. On balance, the proposed non-compliance with the FSR has been assessed as reasonable given the undersized size of the allotment and the overall compliance of the dwelling.

The proposed development is therefore considered acceptable having regard to the relevant Manly LEP 2013 and Manly DCP controls and is recommended for approval subject to conditions.

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

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

RECOMMENDATION

Council is satisfied that:

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

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

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

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

Accordingly Council as the consent authority grant Development Consent to DA2019/0206 for Demolition works and construction of a dwelling house on land at Lot 13 DP 9517, 9 Monash Crescent, CLONTARF, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
542.101 - Site Plan & Elevations - DA.1	7/02/2019	Urban Harmony
542.102 - Floor Plans - DA.1	7/02/2019	Urban Harmony
542.103 - Sections - DA.1	7/02/2019	Urban Harmony
L-100 - Rev E - Landscape Master Plan	31/01/2019	Grant Clement Landscape Architecture
L-101 - Rev E - Planting Plan	31/01/2019	Grant Clement Landscape Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
18448-003-1 - Flood Management Report	6 August 2018	Engineering Studio Civil & Structural
J0852C - Preliminary Assessment - Acid Sulfate	22 February 2109	White Geotechnical Group
J1852B - Preliminary Geotechnical Assessment	22 February 2019	White Geotechnical Group
BASIX - Certificate No. 942044S_03	18 February 2019	B.L Roles & Associates

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

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

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

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

2. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work,

subdivision work or demolition work is being carried out:

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

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

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

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

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

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

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

Reason: Legislative Requirement

3. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

- v) For any work/s that is to be demolished

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

4. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$16,870.00 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 \$1,687,000.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount

unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

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

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

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

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

5. **Security Bond**

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

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

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

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

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

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

6. **Stormwater Disposal**

Plans indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments, shall be submitted prior to the issue of the Construction Certificate. The plans must indicate the provision of a rainwater tank in accordance with the BASIX certificate. Stormwater shall be conveyed from the site to a scour and erosion control device in accordance with 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.

7. **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.

8. **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.

9. **Preparation of Erosion and Sedimentation Control**

An Erosion and Sediment Control Plan is to be prepared in accordance with Landcom's Managing Urban Stormwater: Soil and Construction Manual (2004) by a suitably qualified engineer and submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To protect natural features and habitats in accordance with relevant Natural Environment LEP/DCP controls (DACNECPCC2)

10. **Compliance with Standards**

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

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

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

11. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the

development. (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 for:

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

13. **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.

14. **Implementation of Erosion and Sediment Control Plan**

The Erosion and Sediment Control Plan is to be fully implemented and measures are to remain in effective operation until all development activities have been completed and the site fully stabilised. Evidence of compliance is to be certified by a suitably qualified engineer and submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To protect natural features and habitats in accordance with relevant Natural Environment LEP/DCP controls (DACNEDPC1)

15. **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

16. **Road Reserve**

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

all times during the course of the work.

Reason: Public Safety.

17. Vehicle Crossings

The provision of one vehicle crossing 4 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

18. 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.

19. 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 identified for retention on the drawings, including the Landscape Plan L-100E, excluding exempt trees under the relevant planning instruments or legislation,

ii) all trees and vegetation located on adjoining properties,

iii) all road reserve trees and vegetation,

B) Tree protection shall be generally undertaken as follows:

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

ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,

iii) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an Arborist. Details including photographic evidence of works undertaken shall be submitted by an AQF Level 5 Arborist to the Certifying Authority,

iv) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,

v) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a Project Arborist on site,

vi) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,

vii) excavation for stormwater lines is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist, to provide for root protection measures,

viii) should either or all of v), vi) and vii) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,

ix) any temporary access to, or location of scaffolding within the tree protection zone of a

protected tree or any other tree to be retained during the construction works, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009,
x) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

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

20. Pollution Control

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

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

21. Pollution Control

Any excess materials such as cleaning paintbrushes, lacquers, and any water from cleaning tools must not enter the stormwater network and/or receiving waterways.

Reason: To ensure that building associated chemicals and pollutants don't enter the surrounding environment.

22. Survey Certificate

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

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

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

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

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

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

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

23. Landscape works

Landscaping is to be implemented in accordance with the Landscape Plans L-100 E and L-101 E, as prepared by Grant Clement Landscape Architect, including the following requirements:
i) existing ground levels around existing trees are to be retained unless authorised and certified by the Project Arborist,
ii) existing planting not impacted by the works shall be retained,
iii) all tree planting (1 x Banksia integrifolia and 2 x Tristaniopsis) shall be at 75 litre container sizes,
iv) the proposed fencing to the frontage proposed at 1.5m high must be at least 30 percent 'open/transparent' in accordance with control 4.1.10.

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 plans and the conditions of consent.

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

24. Stormwater Disposal

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

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

25. Implementation of Erosion and Sediment Control Plan

The Erosion and Sediment Control Plan is to be fully implemented and measures are to remain in effective operation until all development activities have been completed and the site fully stabilised. Evidence of compliance is to be certified by a suitably qualified engineer and submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To protect natural features and habitats in accordance with relevant Natural Environment LEP/DCP controls (DACNEFPOC1)

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

26. Landscape maintenance

All landscape components are to be maintained for the life of the development. A maintenance program is to be established. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components and species to maintain the landscape theme of the site.

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

27. Environmental and priority weed control

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

Reason: preservation of environmental amenity.

28. 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.

29. Works to cease if item found

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

Reason: To protect Aboriginal Heritage.

30. **Dead or Injured Wildlife – Manly LEP Clause 6.5**

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife in accordance with Section 2.1 of the NSW Biodiversity Conservation Act 2016.



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OBJECTION PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

9 MONASH CRESCENT, CLONTARF

**FOR THE PROPOSED DEMOLITION OF AN EXISTING DWELLING AND
CONSTRUCTION OF A NEW DWELLING HOUSE**

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

For: Proposed demolition of existing dwelling and construction of a new dwelling
At: 9 Monash Crescent, Clontarf
Owner: Huang family
Applicant: Huang family
C/- Vaughan Milligan Development Consulting Pty Ltd

1.0 Introduction

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

2.0 Background

Clause 4.4 restricts the height of a building within this area of the Clontarf locality and refers to the maximum height noted within the "Floor Space Ratio Map."

The relevant floor space ratio for this locality is 0.4:1 and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

It is noted that the Council's Manly Development Control Plan 2013 Amendment 11 and in particular Clause 4.1.3.1 provides exceptions to the FSR control where the lot is less than minimum required lot size under Council's LEP Lot Size Map and the development satisfied the LEP Objectives and the DCP provisions.

The proposed development will provide a gross floor area of 336.44m² or 0.56:1.

Whilst the proposed floor space ratio does not comply, compliance with this control is constrained by the small lot size of 597m², which in the subject locality is subject to a minimum lot size of 750m².

In this instance, when calculated against this required lot size, the development prescribes a FSR of 0.448:1 which presents a minor non-compliance with the control.

9 Monash Crescent, Clontarf

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

3.0 Purpose of Clause 4.6

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

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

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

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for a new dwelling to replace the existing dwelling which is consistent with the stated Objectives of the E3 Environmental Management Zone, which are noted as:

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

As sought by the zone objectives, the proposal will provide for the demolition of existing structures and construction of a new dwelling which is sensitive to the location and the topography of the locality.

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

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

5.0 Onus on Applicant

Clause 4.6(3) provides that:

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

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

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

6.0 Justification of Proposed Variation

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 11* & *Samadi v Council of the City of Sydney [2011] NSWLEC 1199*.

Paragraph 27 of the Samadi judgement states:

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

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Precondition 1 - Consistency with zone objectives

The site is located in the E3 Environmental Management Zone. The objectives of the R1 zone are noted as:

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

Comments

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

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

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

Precondition 2 - Consistency with the objectives of the standard

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

- (1) *The objectives of this clause are as follows:*
- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
 - (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
 - (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
 - (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

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

Comments

Whilst the proposal will present a variation to the floor space ratio control as a result of the lot size relative to the control, the proposal is considered to be in keeping with the objectives of Clause 4.4.

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

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

As discussed, it is noted that the Council's Manly Development Control Plan 2013 Amendment 11 and in particular Clause 4.1.3.1 provides exceptions to the FSR control where the lot is undersized and is less than minimum required lot size under Council's LEP Lot Size Map and the development satisfied the LEP Objectives and the DCP provisions.

In this instance the required minimum lot size in the locality is 250m² and when calculated against this required lot size, the development prescribes a FSR of 0.618, which presents a minor non-compliance with the control of 4.5m².

The relevant floor space ratio for this locality is 0.4:1. Due to lot size being inconsistent with the intention of the control, the proposed development will provide a gross floor area of 336.44m² or 0.448:1 when calculated against the minimum lot size in this locality of 750m².

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

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

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

Council's controls in Clause 4.4 provide a maximum floor space ratio of 0.4:1.

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

- The proposed works will maintain consistency with the general height and scale of residential development in the area and the character of the locality.

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- The proposed height and the overall scale of the new works will maintain amenity and appropriate solar access for the subject site and neighbouring properties.

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

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

Council's controls in Clause 4.4 provide a maximum floor space ratio of 0.4:1 for the subject development.

The relevant floor space ratio for this locality is 0.4:1. Due to lot size being inconsistent with the intention of the control, the proposed development will provide a gross floor area of 336.44m² or 0.448:1 when calculated against the minimum lot size in this locality of 750m².

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

- The proposal provides for a new two storey dwelling to replace an existing one and two storey dwelling, which does not result in a significant bulk when viewed from either the street or the neighbouring properties.
- The development will maintain a compatible scale relationship with the newer existing residential development in the area. Development in the vicinity has a wide range of architectural styles and the given the variety in the scale of development, this proposal will reflect a positive contribution to its streetscape.
- The extent of the proposed new works do not present any significant impacts in terms of view loss for neighbours, loss of solar access or unreasonable bulk and scale.

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

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

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

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

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

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

Accordingly, in regard to the proposed development at 9 Monash Crescent, Clontarf, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The development is constrained by the control relative to the lot size.
- The variation to the floor space ratio control is inconsequential as it will not result in any unreasonable impact to the streetscape and the amenity of neighbouring properties.

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

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

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

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

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

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

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

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

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

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

Comment: Not applicable.

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

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

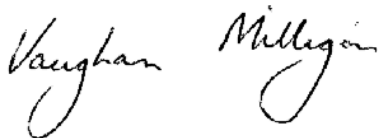
7.0 Conclusion

This development proposed a departure from the maximum floor space ratio development standard of 0.4:1, with the proposed new dwelling to provide a floor space ratio of 0.56:1, or when assessed against the minimum lot size in the area of 750m², the proposed FSR is 0.448:1.

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

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

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



VAUGHAN MILLIGAN
Town Planner

ITEM 3.2

**MOD2019/0106 - 19 TUTUS STREET, BALGOWLAH HEIGHTS -
MODIFICATION OF DEVELOPMENT CONSENT DA2018/1312
GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION
OF A NEW DWELLING HOUSE**

REPORTING MANAGER

Matthew Edmonds

TRIM FILE REF

2019/431862

ATTACHMENTS

1 Assessment Report
2 Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Mod2019/0106 for modification of Development Consent DA2018/1312 granted for demolition works and construction of a new dwelling house on land at Lot 14 DP 9561, 19 Tutus Street, Balgowlah Heights, subject to the conditions outlined in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0106
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 14 DP 9561, 19 Tutus Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Modification of Development Consent DA2018/1312 granted for 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:	Danling Zhuang
Applicant:	Bechara Chan & Associates
Application lodged:	14/03/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	04/07/2019 to 18/07/2019
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

The application seeks consent for modifications to the dwelling house approved by the Development Determination Panel on 30 January 2019.

The application seeks to delete the condition imposed by the panel in relation to wall height. As such, the application is referred back the Development Determination Panel for determination.

Council received two (2) submissions from neighbouring properties.

The proposed removal of the two conditions is supported.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot 14 DP 9561 , 19 Tutus Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Tutus Street.</p> <p>The site is regular in shape with a frontage of 15.24m along Tutus Street and a depth of 67m. The site has a surveyed area of 1021.9m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house.</p> <p>The site includes a crossfall of approximately 5m from the high point in the rear curtilage to the street front.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential development typically single and two storey dwelling houses.</p>

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

DA2018/1312- Demolition works and construction of a new dwelling house (Approved 30 January 2019).

PROPOSED DEVELOPMENT IN DETAIL

This modification application lodged pursuant to Section 4.55 (2) of the Environmental Planning and Assessment Act 1979 seeks to modify the built form approved under Development Consent No. 2018/1312.

The changes sought include change of roof to flat roof and reduction of northern and southern wall heights.

The modification works proposed will require the deletion of the following Conditions of Consent;

- **10. 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.

- **15. Building Height**

The building height shall be reduced by a minimum 600mm (maximum roof RL at highest point

being RL 55.063), resulting in a minimum 600mm reduction of the external wall's Relative Levels (RLs) on either side.

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

Reason: To achieve a more appropriate design in relation to the spatial proportions of the street.

Second Notification

The application was re-notified to neighbouring properties due to an error in the previous notification. Council wrongly notified the application with regard to the original proposal (DA2018/1312- Demolition works and construction of a new dwelling house) and not as modification application to the original consent. The second notification period finished on the 7 May 2019.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2018/1312, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2018/1312.
(c) it has notified the application in accordance	The application has been publicly exhibited in

Section 4.55(1A) - Other Modifications	Comments
with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan 2013 and Manly Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and

Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Matthew Willis, dated 17 April 2018) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report were included as part of the original conditions of consent, the works remain substantially the same.

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:
Michael Crebar	1/55a Wycombe Road NEUTRAL BAY NSW 2089
Mrs Diane Falabella	17 Tutus Street BALGOWLAH HEIGHTS NSW 2093

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

- **Solar Access**
- **Privacy**
- **Streetscape**
- **Excavation**
- **Boundary wall finishes/Retaining wall**
- **Height of Buildings**

The matters raised within the submissions are addressed as follows:

- **Solar Access**
Comment:
Concern is raised in regards loss of solar access from the proposed modification. An assessment of the application against *Clause 3.4.1- Sunlight Access and Overshadowing* of the Manly DCP was undertaken as part of the original Development Application. The application revealed the proposal was consistent with the clause. This proposal reduces the overall height of the dwelling house and as such there is no significant additional shadowing.

Accordingly, this matter does not warrant the refusal of the application.

- **Privacy**
Comment:
Concern is raised from two neighbouring properties in regards to the visual and acoustic privacy impacts of the development. The proposal does not propose any substantial change to privacy. The reduction in floor to ceiling heights at lower ground and ground floor level will have a negligible impact upon privacy.

Accordingly, this matter does not warrant the refusal of the application.

- **Excavation**

Comment:

Concern is raised in regards to the impact of the proposed excavation upon neighbouring properties.

No excavation is proposed under this application. As such, no assessment can be undertaken.

Accordingly, this matter does not warrant the refusal of the application.

- **Boundary wall finishes/Retaining wall**

Comment:

Concern is raised in regards to the proposed finishes for the boundary wall. It is noted that the existing approval, does not provide consent for any boundary fencing as owners consent from adjoining property owners was not provided.

Accordingly, this matter does not warrant the refusal of the application.

- **Height of Building**

Comment:

Concern is raised in regards to the level of fill across the site. There are no further earthworks proposed as part of this application.

Accordingly, this matter does not warrant the refusal of the application.

- **Solar Access**

Comment:

Concern is raised in regards loss of solar access from the proposed modification. An assessment of the application against Clause 3.4.1- Sunlight Access and Overshadowing was undertaken as part of the original Development Application. The application revealed the proposal was consistent with the clause. This proposal reduces overall height of the dwelling house and as such there will be no further additional impact.

Accordingly, this matter does not warrant the refusal of the application.

REFERRALS

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (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.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
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Height of Buildings:	8.5m	9.34m (conditioned to be reduced as part of consent)	8.5m	N/A	Yes
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Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.8 Conversion of fire alarms	Yes
6.9 Foreshore scenic protection area	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1021.9m ²	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	South: 8m (based on gradient 1:4)	8.3m	8m	Yes
	North: 8m (based on gradient 1:4)	8.5m	8m	Yes
4.1.2.3 Roof Height	Parapet Height: 0.6m	N/A	0.4m	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.66m (based on proposed modification southern wall height)	1.5m- 3m	1.5m- 3m	No
	2.66m (based on proposed modification northern wall height)	1.5m- 6.7m	1.5m- 6.7m	No
	Windows 3m	1.5m	1.5m	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

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

The original development application (DA2018/1312) was approved by DDP on 30 January 2019. Imposed as part of this consent was the following condition:

Building Height

The building height shall be reduced by a minimum 600mm (maximum roof RL at highest point being RL 55.063), resulting in a minimum 600mm reduction of the external wall's Relative Levels (RLs) on either side.

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

Reason: To achieve a more appropriate design in relation to the spatial proportions of the street.

The condition was imposed to reduce the overall bulk and scale of the dwelling house, through reducing the external wall height on both the northern and southern side of the dwelling house. The reduction of the wall height also reduces the numerical side setback non-compliance on the northern and southern side of the development.

This modification application proposes an alternate design to reduce the bulk and scale of the dwelling house. The proposal changes include:

- Amending the approved roof form, from a skillion metal roof to a flat roof; and
- Reducing the floor to ceiling height at lower ground floor and ground floor level from 3m to 2.9m at each level.

The proposed changes result in a maximum building height of 8.5m (RL 55.063), compliant with the 8.5m Height of Buildings development standard.

The proposed amendments result in a total wall height reduction of 0.3m on the southern side and 0.5m on the northern side of the dwelling house. The amended design reduces the apparent bulk and scale of the development as viewed from the street and neighbouring properties. It is noted that the change of roof and reduction of wall height will ensure the maximum height of the dwelling house is lower than that of the neighbouring property to the south (RL 55.300). The proposed changes are in keeping with the spatial proportions of neighbouring dwelling houses along the western side of Tutus Street and does not present as out of character or bulky in the streetscape. The proposed amended design is supported in this circumstance.

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

Description of non-compliance

Clause 4.1.4.2 requires development be setback at least one third of the adjoining wall height equal to 2.66m for the northern and southern side.

Clause 4.1.4.2 of the Manly requires windows be setback at least 3m from side boundaries.

The development proposes the following:

Side setback (southern)- 1.5m- 3m (dwelling house), 0- 43% variation to the numeric control.

Side setback (northern)- 1.5m-6.7m , 0- 43% variation to the numeric control.

Windows- 1.5m, 50% variation to the numeric control

Merit consideration:

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

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

Comment:

The proposed side setback non-compliance will not result in any unreasonable visual impact. A greater setback at first floor level would not enhance the character of Tutus 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 proposal upholds the amenity of Tutus Street and the Sydney Foreshore area of which the subject site is located within. The proposed dwelling is consistent with the building height development standard and is appropriately articulated and setback so as to maintain reasonable levels of privacy and overshadowing to adjoining properties to the north and south. The proposed side setbacks maintains adequate space between building to a facilitate view sharing to Middle Harbour, form both private and public spaces.

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

Comment:

The siting of the dwelling house is deemed reasonable given there are no unreasonable impacts upon amenity to adjoining properties.

Objective 4) To enhance and maintain natural features by:

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

Comment:

No works are proposed that will impact upon the approved landscaped open space and planting on site.

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

Comment:

Subject to the conditions of consent included as part of the original consent, the proposal satisfies this objective.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2019/0106 for Modification of Development Consent DA2018/1312 granted for demolition works and construction of a new dwelling house on land at Lot 14 DP 9561, 19 Tutus Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA.03/ Ground Floor Plan, level 1 floor plan.	15 March 2019	Bechara Chan and Associates.
DA.04/ Roof and Site Plan	15 March 2019	Bechara Chan and Associates.
DA.05/ Elevations	15 March 2019	Bechara Chan and Associates.
DA.06/ Section A-A, B-B	15 March 2019	Bechara Chan and Associates.

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

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

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

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

B. Delete Condition - 10. External Finishes to Roof - to read as follows:

10. External Finishes to Roof
DELETE

C. Delete Condition - 15. Building Height - to read as follows:

15. Building Height
DELETE





ITEM 3.3

**MOD2018/0696 - 15 PERONNE AVENUE, CLONTARF -
MODIFICATION OF DEVELOPMENT CONSENT DA665/2001
GRANTED FOR NEW BUILDING DWELLING**

REPORTING MANAGER **Matthew Edmonds**

TRIM FILE REF **2019/431878**

ATTACHMENTS **1 Assessment Report**
 2 Site Plan & Elevations

PURPOSE

To refer the attached application for determination as required under adopted delegations of the Charter.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Mod2018/0696 for modification of Development Consent DA665/2001 granted for new building dwelling on land at Lot 180 DP 9999, 15 Peronne Avenue, Clontarf, subject to the conditions outlined in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0696
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 180 DP 9999, 15 Peronne Avenue CLONTARF NSW 2093
Proposed Development:	Modification of Development Consent DA665/2001 granted for new building dwelling
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:	Aram Sandalciyan Janelle Margaret Sandalciyan
Applicant:	Aram Sandalciyan
Application lodged:	19/12/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	01/07/2019 to 15/07/2019
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 17.5% 4.4 Floor space ratio: 19%
Recommendation:	Approval

EXECUTIVE SUMMARY

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable and appropriate development for the subject site.

The application is lodged pursuant to Section 4.55 (2) of the Environmental Planning and Assessment Act 1979 seeking modification of DA665/2001.

Substantial works proposed under this application have been undertaken and as such, the applicant is seeking retrospective consent for the works having regard to *Windy Dropdown Pty Ltd v Warringah Council* (2000) 111 LGERA 299.

Following notification of the application Council received two (2) submissions from neighbouring properties raising concern with the application. Concerns raised included privacy, overdevelopment, the use, cost of works and the modification application not being '*substantially the same*' development. Each of these concern have been addressed in detail within this report.

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 approved subject to conditions attached to this report.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot 180 DP 9999 , 15 Peronne Avenue CLONTARF NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Peronne Avenue, Clontarf.</p> <p>The site is irregular in shape with a frontage of 16.1m along</p>

Peronne Avenue and a depth of 50m. The site has a surveyed area of 774m².

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

The site and general area slopes steeply to the rear of the property towards Clontarf Beach Reserve.

The site includes dense vegetation to the rear of the property.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by multi storey residential development.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

DA665/2001- New building dwelling (Approved by DAU 24 July 2002).

PROPOSED DEVELOPMENT IN DETAIL

This modification application lodged pursuant to Section 4.55 (2) of the Environmental Planning and Assessment Act 1979 seeks to modify the built form approved under Development Consent No. 665/01.

The changes sought include:

- The conversion of the existing outdoor living to gross floor area at lower floor level.
- Garden level addition to provide for games and gym area.
- Internal and external alterations including new windows.
- Screening along the northern wall.
- Rear yard external access.
- Landscaping.

The above modifications have been constructed and the Applicant is seeking retrospective approval for these works through this modification application, in accordance with *Windy Dropdown Pty Ltd v Warringah Council (2000) 111 LGERA 299*. According to this case law, Talbot J held that Section 4.55 (formerly Section 96) of the Environmental Planning and Assessment Act 1979 could be used to modify a development consent where the works subject of that application had already been carried out.

Second Notification

Council re-notified this application from 01 July 2019 to 15 July 2019, due to insufficient information being provided on Council's DA tracker during the time of the first notification period (3 January 2019-29 January 2019). The second notification ensures that the proposed elevations and site plan are included on Council's website for public viewing in accordance with the Manly DCP.

Consideration of Section 4.55 Application

The relevant considerations under section 4.55(2) of the *Environmental Planning and Assessment Act*, 1979, are as follows:

"Prior to granting consent to a modification under Section 4.55(2) of the Act, the consent authority needs to be satisfied that:

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and"

The consent as modified is substantially the same development as that for which the consent was originally granted. The proposed development retains a single residential use, and does not alter the intent of the lot to be developed. The development is materially and essentially the same as originally approved, incorporating modifications as discussed below.

The proposal increases the size and scale of the approved outdoor living areas and provides an additional lower level to the dwelling house. However, it is noted that the proposal does not propose a new use, and is considered to remain the same development with substantial alterations leading to a larger development. Outdoor living areas have been a key element in the original consent and subsequent modification applications.

The proposed new works are mostly within the existing footprint of the approved dwelling house and will not change the visual appearance of the dwelling from the street, nor does it increase approved maximum height of the dwelling house. The changes sought will only alter the rear (west) portion of the dwelling house. In regards to environmental impact, there are no unreasonable privacy, shadowing or view impacts that result from the proposal. The development retains a bulk and scale consistent with that of neighbouring properties, with no considerable additional impact upon the adjoining RE1 Zone to the rear or Foreshore Scenic Protection area.

Based on this, the modified application is "substantially the same development" as the originally approved development and hence, may be considered under Clause 4.55(2).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA665/2001, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA665/2001. Further discussion is undertaken within the report under proposed development in detail.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA665/2001 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environmental Plan

Section 4.55 (2) - Other Modifications	Comments
(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	2013 and Manly Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

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

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Withheld	CLONTARF NSW 2093
Mr Cesar Henry Fernandez-Cornejo Wendy Fernandez-Cornejo	17 Peronne Avenue CLONTARF NSW 2093

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

- **Visual Privacy**
- **Bulk and Scale**
- **Modification application is not 'substantially the same' development.**
- **Use or premises**
- **Cost of works**

The matters raised within the submissions are addressed as follows:

- **Visual Privacy**

Comment:

Concern is raised from the adjoining northern property (No. 17 Peronne Avenue) in regards to the potential loss of privacy that would result from the proposed lower ground floor outdoor living area. Particular concern was the overlooking to both the swimming pool and master bedroom of No. 17 Peronne Avenue. The proposal has been assessed against clause 3.4.2 of the Manly DCP in this report.

In summary, the proposal complies with the relevant provision and underlying objectives of this clause.

This does not warrant the refusal of the application.

- **Bulk and Scale**

Comment:

Concern was raised that the proposed works would be an over development of the subject site.

While the proposal is inconsistent with the numerical requirement for the Floor Space Ratio development standard, it is considered that the proposed development is consistent with the level of development of existing dwelling houses along the western side of Peronne Avenue. Despite the increase in gross floor area and overall increased built form across the site, the bulk and scale of the building is not unreasonable.

This matter does not warrant refusal of the application.

- **Modification application is not 'substantially the same' development**

Comment:

Objectors to the proposal have questioned the validity of the proposal being lodged and assessed under Clause 4.55 (formerly Section 96) as the works proposed are not considered to be '*substantially the same*' development as originally approved, of particular concern is that of the proposed addition.

Council has considered the application against *Vacik Pty Ltd v Penrith City Council* [1992] NSWLEC 8, the threshold test of determining as to whether a proposed development is "substantially the same development". Having consideration of the original consent (DA665/201), the scope of works proposed, visual bulk and the resulting minor impacts upon amenity, the application is considered to be substantially the same.

This matter does not warrant refusal of the application.

- **Use of Premises**

Comment:

Concern is raised in regards to the potential use of the garden level addition as a separate occupancy/dwelling. The addition as proposed on the plans does not contain kitchen facilities or fittings that would allow for the addition to be capable of being used as a separate occupancy. Existing condition of consent No. 28 is to be amended to ensure the garden level addition is not to be utilised as a separate occupancy if the application is approved.

This matter does not warrant refusal of the application.

- **Cost of Works**

Comment:

Concern is raised over the proposed cost of works of the proposed new development. It is noted that Council fee's and charges are based on the original cost of the works of the development. The cost of works quoted within the applicant's statement of environmental effects does change or lead to any changes in charges at cost to the applicant.

This matter does not warrant refusal of the application.

REFERRALS

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A352094).

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.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	N/A	10m (measured to top of privacy screen)	17.6%	No
Floor Space Ratio	FSR: 0.4:1 309.67m ²	FSR: 0.39:1 309.6m ² (calculation based on original report)	FSR: 0.476:1 368.9 ²	19%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

In accordance with the Land and Environment Court caselaw of *North Sydney Council v Michael Standley & Associates Pty Ltd* [1009] NSW 163 (Michael Standley & Associates) the Court determined that Section 96 (now Section 4.55) is a "free-standing provision" meaning that "a modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application". This means that Clause 4.6 of the MLEP 2013 does not strictly apply to the assessment of a modification application.

Notwithstanding the findings in Michael Standley & Associates, the Court later detailed in *Gann v Sutherland Shire Council* (2008) that consideration should still be given to the relevant standard objectives:

"This does not mean that development standards count for nothing. Section 96(3) still requires the consent authority to take into consideration the matters referred to in s 79C, which in turn include the provision of any environmental planning instrument. That is, any development standard in an environmental planning instrument must be taken into consideration by the consent authority, but the absolute prohibition against the carrying out of development otherwise than in accordance with the instrument in s 76A(1) does not apply."

Accordingly, with consideration to the above caselaw, a merit assessment of the variation sought against the approved development is undertaken below to identify the developments consistency with the zone objectives and prevailing development standard objectives.

Description of non-compliance:

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	10m
Percentage variation to requirement:	17.6%

The proposal must satisfy the objectives of Clause 4.3 Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

Objectives of development standard

(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 height of building non-compliance under this application is in reference to the proposed privacy screens proposed along the existing northern and southern elevation windows. The approved height of the existing dwelling house is not altered.

The proposed development is located on a site that slopes steeply from the front of the property to the rear. The proposed privacy screens and undercroft area not be visible from the street, nor will it be readily visible from adjoining properties. The maximum building

height of the original proposal will not be altered.

The development satisfies this objective.

b) to control the bulk and scale of buildings,

Comment:

The proposed bulk and scale of the building relates favourably to the sloping topography across the site. The works will allow for an appropriate relationship and spatial separation with surrounding development. The visual bulk of the dwelling house as viewed from public open space (Middle Harbour) is not adverse nor unreasonable.

The development satisfies this objective.

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 will not result in unreasonable view loss to and from private and public open spaces.

The development satisfies this objective.

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

Comment:

The solar impacts of this aspect of the development are minor and acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces.

The development satisfies this objective.

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

Comment:

The proposed additional storey is located within the existing building footprint. The proposed development is unlikely to have any unreasonable impact upon existing vegetation or topography that will conflict with public recreation area to the rear of the subject site.

The development satisfies this objective.

Conclusion:

The proposed development satisfies the underlying objectives of the Height of Buildings development standard.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone:

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

Comment:

The proposed development seeks to alter the existing dwelling house and is considered to comply with the above objective. The house remains for residential use.

It is considered that the development satisfies this objective.

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

Comment:

The proposal is for residential use

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development.

Comment:

The subject modification application does not rely upon the flexibility that may be granted by Clause 4.6 for the reasons outlined in the first paragraph of this assessment.

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

Comment:

The proposed height of building non-compliance will allow for greater privacy between neighbouring properties.

Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	FSR: 0.4:1 309.67m ²
Proposed:	FSR: 0.476:1 368.9m ²
Percentage variation to requirement:	19%

The proposal must satisfy the objectives of Clause 4.4 – Floor Space Ratio, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

Objectives of development standard

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

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

Comment:

The proposal will not significantly alter the existing bulk and scale of the development, with the increase in gross floor area contained mostly within the approved footprint of the building and to the rear section of the existing dwelling. The increased bulk will not impact upon the appearance of the existing dwelling as viewed from the street. The dwelling house remains consistent with the desired character of the streetscape.

The development satisfies this objective.

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

Comment:

The proposed works will not obscure important landscape and townscape features. Important existing landscape features both to the front and rear of the site will be retained. No other important landscape features are proposed for removal as part of these works.

The development satisfies this objective.

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

Comment:

The proposed new works maintain a built form consistent with the identified streetscape. The increase to floor space does not unreasonably impact on the visual relationship between new development and the existing character and landscape of the area. The proposed works are contained mostly within the approved footprint of the dwelling house and therefore will maintain the visual relationship between the new development and the existing character and landscape of the area.

The development satisfies this objective.

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

Comment:

The increase in gross floor area will not significantly increase visual and aural impacts on adjoining development, nor will it lead to unreasonable levels of overshadowing to adjoining properties. No significant views to or from the harbour or foreshores and neighbouring properties will be unreasonably impacted by the proposed development.

The development satisfies this objective.

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:

The proposed development satisfies the underlying objectives of the Floor Space Ratio development standard.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone:

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

Comment:

The proposed development seeks to alter the existing dwelling house and is considered to comply with the above objective. The house remains for residential use.

It is considered that the development satisfies this objective.

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

Comment:

The proposal is for residential use

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development.

Comment:

The subject modification application does not rely upon the flexibility that may be granted by Clause 4.6 for the reasons outlined in the first paragraph of this assessment.

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

Comment:

The proposed increase in gross floor area is minor (60.3m²) increase in gross floor area will not have a substantial impact on adjoining properties in terms of amenity. The proposal will provide greater internal amenity than the existing approved development without unduly compromising the amenity of adjoining properties.

Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 774.19m ²	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	North: 8m (based on gradient 1:4)	4.5-9.0m (based on previous original assessment report)	10m	Yes
	South: 8m (based on gradient 1:4)	5-2- 9.1m (based on previous original assessment report)	10m	Yes
4.1.2.2 Number of Storeys	2	3	4	No
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	6.0-7.56m, consistent with prevailing setback	9m	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.16m (based on northern wall height)	1.5m and 4.07m	1.5m	No
	2.16m (based on southern wall height)	1.35, 1.82 and 3.06m	1.5m	No
	Windows: 3m	Not addressed previously	1.5m	No
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	8m (rear boundary)	25.5m- 30.9m	18m	Yes
4.1.5.1 Minimum Residential Total Open Space	Open space 60% (464m ²) of site area	73% (568.5m ²)	62.1% 481m ²	Yes

Requirements Residential Open Space Area: OS1/2/3/4	Open space above ground 25% (142m ²) of total open space	(120.25m ²)	19.1% (92m ²)	
4.1.5.2 Landscaped Area	Landscaped area 40% (192m ²) of open space	(361.76m ²)	70% 341m ²	Yes
	3 native trees	4 trees	4 trees	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Merit consideration:

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

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

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

Comment:

The modification application seeks approval for the partial enclosure of the lower ground and extension

of the lower ground floor balcony. A 1.8m privacy screen is proposed along the northern side of the outdoor living area. It is noted that a small portion (0.5m) of the proposed garden bed is not screened along the northern elevation (See Photo 1)

From a view of what is visible from the lower ground floor balcony it is evident there are sight lines to the bedroom window and rear yard of the adjoining northern property. However, the sight lines are not the dominant views from this balcony (which is directly to the rear to the subject site to Middle Harbour (west)). Any direct view to the north of the balcony is sufficiently mitigated by the proposed screen along the northern side of the balcony. Any additional sight lines to both the northern and southern property from this balcony is inevitable given the sloping topography and residential use of the area. The expectation of complete privacy is not reasonable in this circumstance. Further, a balustrade is proposed between the balcony and roof garden to ensure the area is non-trafficable. Reasonable visual and acoustic privacy is maintained between the subject site and neighbouring properties.

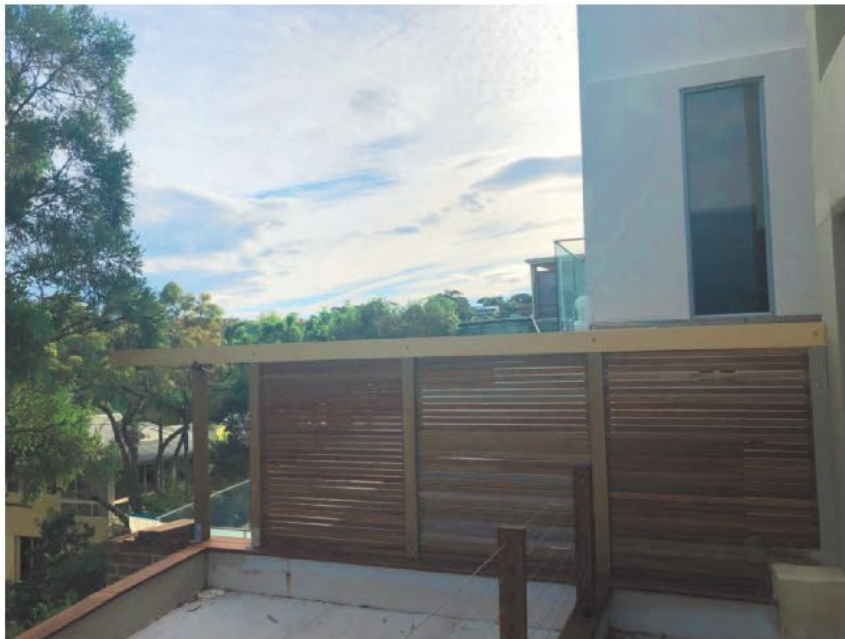


Photo 1- Lower ground floor balcony (looking north).

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

Comment:

The proposed balcony minimises openings and outlook onto side boundaries through screening along the northern side of the lower ground floor balcony, while providing a view to the rear of the property. This ensures that access to light and air can be maintained and provided to the rear of the property, whilst also ensuring privacy impacts are minimised to the nearest neighbours to the north and south.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal retains an open frontage to allow for passive surveillance.

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

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

Description of non-compliance

Clause 4.1.2.2 of the Manly DCP requires development not exceed more than two (2) storeys.

The alteration of the existing lower ground floor level combined with the proposed garden floor addition means that the proposed dwelling will be a total of four (4) storeys, non-compliant with the numeric control of two (2) storeys. This clause relies upon the objectives of Clause 4.3 under MLEP 2013. An assessment of the proposal against the objectives of Clause 4.3 has been provided below.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control 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 is located on a site that slopes steeply from the front of the property to the rear. The undercroft area will not be visible from the street, nor will it be readily visible from adjoining properties. The maximum building height of the original proposal will not be altered.

b) to control the bulk and scale of buildings,

Comment:

The proposed bulk and scale of the building relates favourably to the sloping topography across the site. The works will allow for an appropriate relationship and spatial separation with surrounding development. The visual bulk of the dwelling house as viewed from public open space (Middle Harbour) is not adverse nor unreasonable.

The development satisfies this objective.

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 will not result in unreasonable view loss to and from private and public

open spaces.

The development satisfies this objective.

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

Comment:

The solar impacts of this aspect of the development are minor and acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces.

The development satisfies this objective.

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

Comment:

The proposed additional storey is located within the existing building footprint. The proposed development is unlikely to have any unreasonable impact upon existing vegetation or topography that will conflict with public recreation area to the rear of the subject site.

The development satisfies this objective.

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

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

Description of non-compliance

Clause 4.1.4.2 of the Manly DCP requires development be setback at least 2.16m from the northern and southern side boundary. Further new windows facing side boundaries are to be setback at least 3m from the side boundary.

The development proposes the following:

North side setback- 1.5m (30.5% variation to the numeric control)

South side setback- 1.5m (30.5% variation to the numeric control)

Windows- 1.5m (50% variation to the numeric control)

Merit consideration:

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

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions

of the street, the street edge and the landscape character of the street.

Comment:

The proposed works will not be visible from 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:

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

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

Comment:

Flexibility is provided in this situation as the proposed works will not unreasonably compromise amenity (privacy, sunlight access and views) of adjoining properties.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed development will retain significant landscaped open space, consistent with the numeric control under clause 4.1.5 of the Manly DCP. SEPP 19 does not apply in this circumstance.

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

Comment:

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental

Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2018/0696 for Modification of Development Consent DA665/2001 granted for new building dwelling on land at Lot

180 DP 9999, 15 Peronne Avenue, CLONTARF, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Plan	June 2019	Aram Sandalciyan
12/A/ West and North Elevation, Lower and Garden Floor Plan	December 2018	Aram Sandalciyan
16/A/ Proposed Garden Floor Plan	June 2019	Aram Sandalciyan
Section A-A	June 2019	Aram Sandalciyan
14/A/ North Elevation	June 2019	Aram Sandalciyan
15/A/ South Elevation	June 2019	Aram Sandalciyan

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

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A352094	28 June 2019	Ari Sandalciyan

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

B. Modify Condition No. 28 - to read as follows:

This consent not being construed as permission to install at lower ground level **or garden floor level** any kitchen facilities or to carry out alterations or additions including the installation of any appliance, fixtures or fittings so as to alter the nature or concept of a single occupancy.

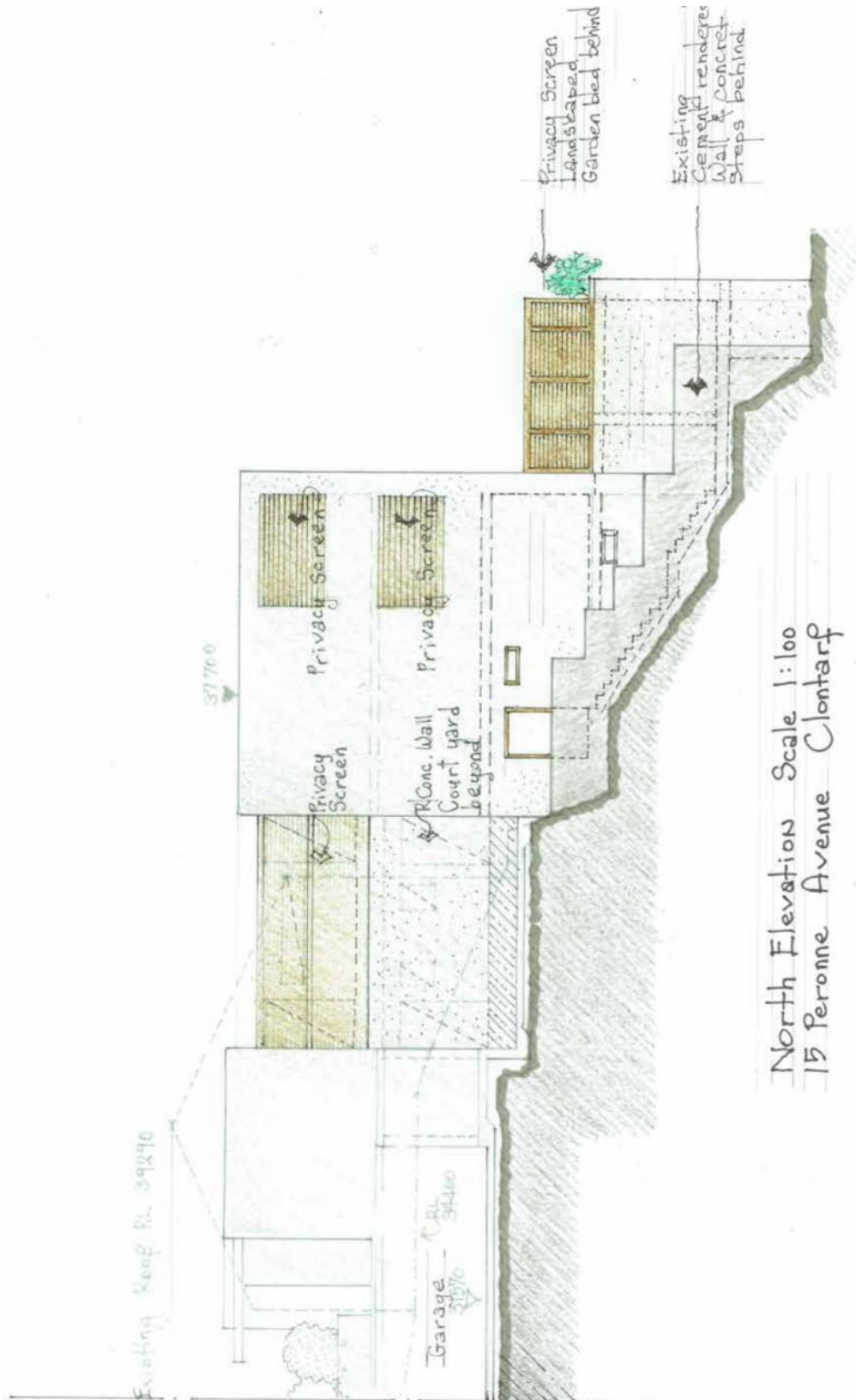
Reason: To maintain single residential use of the site.

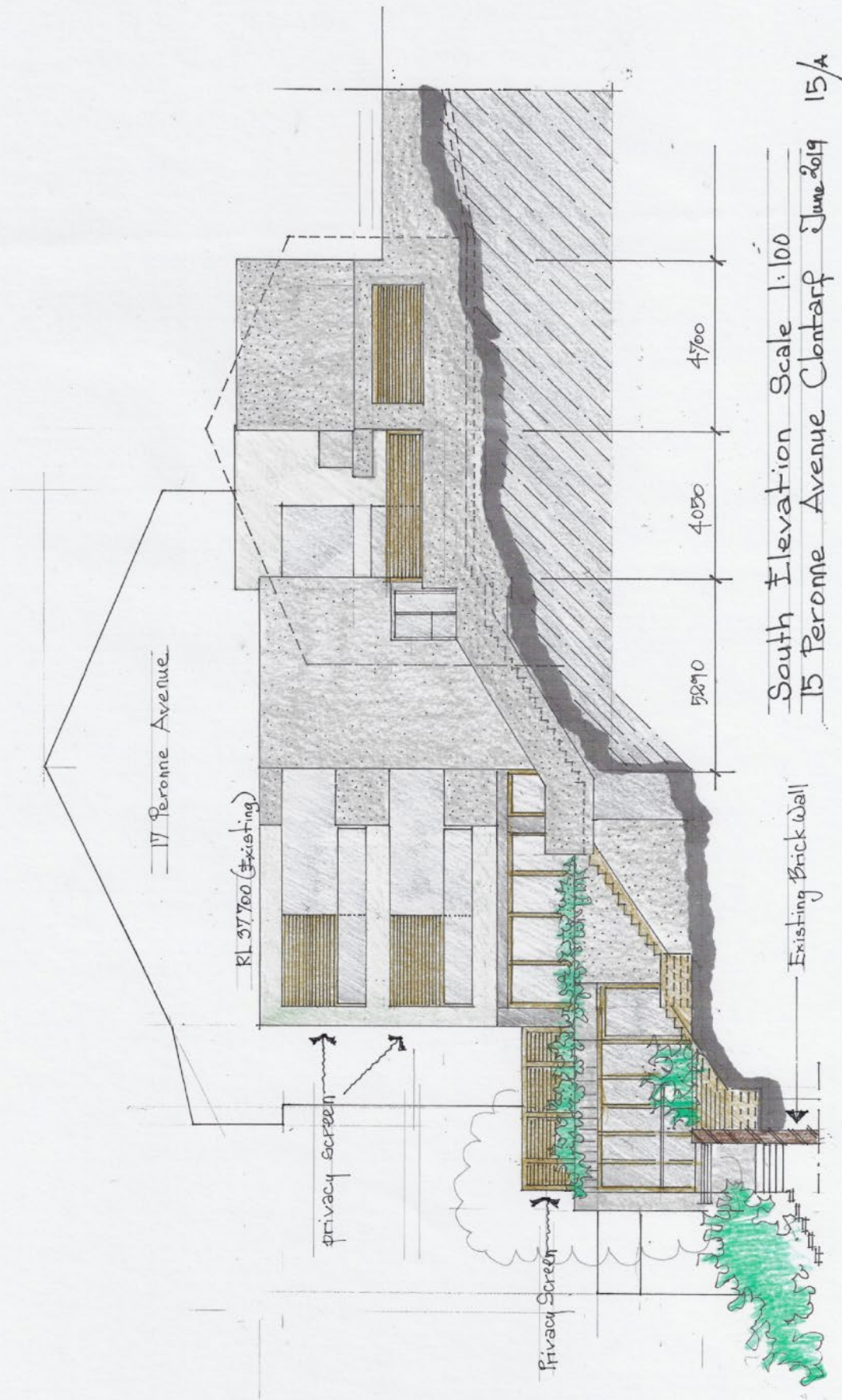
C. Add Condition No. 79 - On Slab Landscape Works - to read as follows

Details must be submitted to the Council/Accredited Certifier prior to issue of the Construction Certificate indicating the proposed method of water proofing and drainage of the concrete slabs over which landscaping is being provided.

Reason: To ensure the appropriate type of water proofing is carried out and descriptive information about drainage is provided.







ITEM 3.4

**MOD2019/0110 - 4 PANIMA PLACE, NEWPORT - MODIFICATION
OF DEVELOPMENT CONSENT N0057/16 GRANTED FOR
ALTERATIONS AND ADDITIONS TO EXISTING DWELLING AND
THE RECONSTRUCTION OF EXISTING SWIMMING POOL**

REPORTING MANAGER

Steve Findlay

TRIM FILE REF

2019/432005

ATTACHMENTS

1 Assessment Report
2 Site Plan & Elevations

PURPOSE

To refer the attached application for determination as required under adopted delegations of the Charter.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Mod2019/0110 for modification of Development Consent N0057/16 granted for alterations and additions to existing dwelling and the reconstruction of existing swimming pool on land at Lot 5 DP 243519, 4 Panima Place, Newport, subject to the conditions outlined in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0110
Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 5 DP 243519, 4 Panima Place NEWPORT NSW 2106
Proposed Development:	Modification of Development Consent N0057/16 granted for alterations and additions to existing dwelling and the reconstruction of existing swimming pool
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:	Terence Michael Watson Suzanne Margaret Watson
Applicant:	Terence Michael Watson Suzanne Margaret Watson
Application lodged:	15/03/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	20/03/2019 to 05/04/2019
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	4.3 Height of buildings: 12.9%
Recommendation:	Approval

Executive Summary

This report is submitted to the Northern Beach Development Determination Panel for the consideration of Modification Application MOD2019/0110 for the alterations and additions to an existing dwelling and the reconstruction of an existing swimming pool at 4 Panima Place, Newport.

The modification seeks to approve the change in the Reduced Levels (RL) of the finished floor for the original development, as a result of the incorrect nomination of the entry floor Reduced Level (RL) within the original application. The modification also seeks changes to the building height, the maximum roof ridge height, window changes, and the addition of a new walkway/access area and retaining wall at the rear of the site.

The site is known as 4 Panima Place, Newport. The site is a battle-axe lot with shared driveway. The site is irregular in shape with a size of 1,097m². The site experiences significant fall from the top of the site to the rear high water mark of Pittwater waterways.

The proposed modifications are to be made to a "dwelling house" as defined under the Pittwater Local Environmental Plan (PLEP) 2014 and is permissible with consent in the E4 Environmental Living Zone. The proposed development has been assessed against the applicable planning controls for the site including the relevant provisions of Pittwater LEP 2014. The modification application does not comply with the building height development standard of 8.5m. The original application lodged a request under Clause 4.6 for a variation to the development standard, which was approved. However, further assessment has been undertaken due to the additional variation of the building height control as part of this modification.

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

The proposed development was notified for a period of 14 days. During this period, seven (7) submissions were received, which has been addressed in detail in the notification section of this report.

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

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone E4 Environmental Living

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
 Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
 Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
 Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
 Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
 Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
 Pittwater 21 Development Control Plan - A1.7 Considerations before consent is granted
 Pittwater 21 Development Control Plan - A4.10 Newport Locality
 Pittwater 21 Development Control Plan - B5.10 Stormwater Discharge into Public Drainage System
 Pittwater 21 Development Control Plan - B5.11 Stormwater Discharge into Waterways and Coastal Areas
 Pittwater 21 Development Control Plan - B5.12 Stormwater Drainage Systems and Natural Watercourses
 Pittwater 21 Development Control Plan - B5.13 Development on Waterfront Land
 Pittwater 21 Development Control Plan - C1.3 View Sharing
 Pittwater 21 Development Control Plan - C1.5 Visual Privacy
 Pittwater 21 Development Control Plan - C1.6 Acoustic Privacy
 Pittwater 21 Development Control Plan - D10.1 Character as viewed from a public place
 Pittwater 21 Development Control Plan - D10.11 Building envelope (excluding Newport Commercial Centre)
 Pittwater 21 Development Control Plan - D10.16 Construction, Retaining walls, terracing and undercroft areas
 Pittwater 21 Development Control Plan - D10.18 Scenic Protection Category One Areas

SITE DESCRIPTION

Property Description:	Lot 5 DP 243519 , 4 Panima Place NEWPORT NSW 2106
Detailed Site Description:	<p>The site is known as 4 Panima Place, Newport and has a legal description of Lot 5 in Deposited Plan 243 519.</p> <p>The site is a battle-axe lot with shared driveway. The site is irregular in shape with a size of 1,097m². The site has eastern and western side boundaries of 41.975m and 48.21m respectively (by survey), and a rear boundary of 24.215m to Pittwater.</p> <p>The site falls 11.1m from the front boundary to the rear of the property. Across the proposed building footprint, the land falls 5.72m and up to 27.7%.</p> <p>Vehicular access to the site is currently provided via a common driveway from the Panima Place cul-de-sac.</p> <p>The site currently has a rear boundary adjoining the Pittwater Waterway. The dwellings along Panima Place all enjoy expansive views of the Pittwater Waterway.</p> <p>The site was occupied by a one and two-storey dwelling including attached garage, above-ground swimming pool, retaining walls, paved areas and vegetation. However, the dwelling house is currently under construction. A jetty and pontoon currently exist north from the site into Pittwater Waterway.</p>

Adjoining sites consist of large one, two and three storey dwelling houses, within landscaped settings.

Map:



SITE HISTORY

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

- Development Application N0057/16 for the alterations and additions to existing dwelling and the reconstruction of existing swimming pool was approved by Northern Beaches Council on the 18 August 2016.
- Modification Application N0057/16/S96/1 for a change in the roofline over north west facing ground-floor balcony to provide for a opening louvre roof was approved by Northern Beaches Council on the 12 December 2016.

PROPOSED DEVELOPMENT IN DETAIL

The modification seeks to modify consent number N0057/16 to address changes to the approved development.

The original approval was based on an incorrect nomination of the existing entry foyer level, from which determined the upper floor and eventual ridge level (RL).

The entry level in application N0057/16 was noted in approved architectural plans at RL 12.13m. The correct existing floor level (RL) of the existing entry floor is RL 12.33m with the proposed tiled finished RL to be RL 12.345m.

Therefore, the modification seeks to approve the change in RL levels as a result of the incorrect nomination of the entry floor Reduced Level.

A summary of the current changes are as follows:

Finished Floor Level Changes

- Change in the rumpus room finished floor level from RL7.15 to RL7.48 (increase of 0.33m)
- Change in the height of the finished floor level of the ground floor from RL11.53 to RL12.33 (increase of 0.8m)
- Change in the height of the pool deck/terrace from RL9.855 to RL10.23 (increase of 0.375m)
- Change in the height of the finish floor level of Level 1 from RL14.880 to RL15.10 (increase of 0.22m)

Roof Changes

- Change in the overall ridge height of the the dwelling house from RL17.88m to RL17.95 (overall maximum building height of 9.3m)
- Roof pitch lowered from 4.5 degrees to 2 degrees
- Addition of thirty six (36) Solar Panels on the north sloping side of the roofline

Level 1

- Reduction of the first floor east window of bedroom three (3)
- Reduction of the first floor south window of bedroom three (3)
- Reduction and relocation of the first floor western window in in walk in robe
- Increase in the size of the western window adjoining the first floor ensuite
- Minor internal configuration

Ground Floor

- Two western windows deleted adjoining the ground floor bathroom and retained western window reduced in size
- Increase in size of the ground floor western window adjoining the living room
- Deletion of the ground floor eastern elevation windows adjoining the kitchen and family room
- Addition of a new ground floor eastern elevation window adjoining the kitchen
- Minor internal configuration

Level 1 - Under Balcony

- New access door on the western elevation to replace window adjoining the storage area
- New access/walkway on the northern elevation adjoining the rumpus room
- New sliding doors on the northern elevation from the rumpus living room to access the new walkway
- Additional of steps from new access/walkway adjoining the rumpus room
- Windows on the northern elevation deleted, and windows adjoining the bathroom of Level 1 - under balcony pool deck reduced in size
- New retaining wall at the rear of the northern elevation
- Minor internal reconfiguration

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for N0057/16, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under N0057/16.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application N0057/16 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environmental Plan 2011 and Pittwater 21 Development Control Plan.

Section 4.55 (2) - Other Modifications	Comments
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (2) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 7 submission/s from:

Name:	Address:
Cadence & Co Design Pty Ltd	7/287 Mona Vale Road TERREY HILLS NSW 2084
Mr Henry Robert Hodge	2 Panima Place NEWPORT NSW 2106

Name:	Address:
Mr Toby Rowley Browne	C/- Mark Hurcum Design Practice L2 271 Alfred Street North NORTH SYDNEY NSW 2060
DFP Planning Pty Ltd	11 Dartford Road THORNLEIGH NSW 2120
Ingham Planning Pty Ltd	Suite 406 Level 4 220 George Street Sydney NSW 2000
Mrs Julie Anne Browne	140 A Crescent Road NEWPORT NSW 2106
Mrs Julie Anne Browne	C/- Mark Hurcum Design Practice L2 271 Alfred Street North NORTH SYDNEY NSW 2060

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

- Application type
- Accuracy of information
- Unauthorised works
- Side Boundary Setbacks
- Building Height
- Privacy
- View Loss
- Building envelope and solar access
- Access to the foreshore and shared pontoon
- Works in the foreshore area

The matters raised within the submissions are addressed as follows:

- ***Concern is raised that the proposed works cannot be approved under a Section 4.55 Modification.***

Comment:

An applicant can apply to Council for approval to modify an approved development consent under Section 4.55 of the Environmental Planning and Assessment Act 1979. Section 4.55 refers to the part of the Act that allows a development consent to be modified, if the development is substantially the same.

The modification is to be assessed as a 4.55 (2) application with the modified development being 'substantially the same development' as authorised by the original development consent.

It is important to note that modification applications can be granted retrospective approval under NSW case law as established in the case of Windy Dropdown Pty Ltd v Warringah Council [2000] NSWLEC 240. Commission J.Talbot. Therefore, all works (proposed and undertaken works) can be assessed and approved under this current modification.

This issue does not warrant the refusal of the application.

- ***Concern is raised in regards to the accuracy of the information provided.***

Comment:

The documentation and architectural plans submitted by JJ Drafting, dated January 2019, are sufficient for Council to undertake an accurate assessment of the modified works.

This issue does not warrant refusal of the application.

- **Concern is raised as to works not included as part of this Modification Application and unauthorised use of the site.**

Comment:

Submissions received made comment on works that have been undertaken but are not included as part of this application, and the use of the swimming pool and habitation of the Level 1 under balcony area.

If there are works that do not have building approval, or if there is further concern about the habitation of the under balcony area or use of the swimming pool, it is recommended that a report be made to Councils Customer Service staff so a complaint can be documented and sent to Councils Compliance Unit for their investigation.

This issue does not warrant the refusal of the application.

- **Concern is raised that the proposed height of the development will adversely impact upon views.**

Comment:

This issue has been addressed in detail in this report (refer to Clause 4.6 - Exceptions to Development Standards under PLEP 2014).

In summary, the non-compliance of the building height was found to be numerically minor and satisfied the various objectives of the Standard and the zone. The extent of view loss as a result of the maximum roof ridge (RL17.95) was found to be minor and did not warrant the refusal of the application.

- **Concern is raised that the proposed side boundary envelopes will adversely impact upon views (No. 2 Panima Place) and be visually dominant.**

Comment:

This issue has been addressed in detail in this report (refer to Clause D10 - Side Boundary Envelope under the Pittwater 21 DCP).

In summary, the additional non-compliance was found to satisfy the various objectives of the control and had minimal impact upon view loss such that the non-compliance did not warrant the refusal of the application.

- **Concern is raised in the submission on behalf of No. 3 Panima Place that the previously approved side setback will be should be increased for the western boundary to reduce the privacy impacts, overshadowing and impact upon views.**

Comment:

This issue has been addressed in detail in the development assessment N0057/16 under Clause D10.8 Side and Rear Building Line of the Pittwater 21 DCP.

In summary, the side setbacks were found to satisfy the various objectives of the control and had minimal impact upon the provision of deep soil landscaping, visual dominance, bulk and scale and the amenity of neighbouring property (including view sharing, privacy and overshadowing) such that the application was approved.

There is no proposed change to the approved side boundary setbacks, and consequently the western side setbacks do not form part of the assessment for the modification. Therefore, these issues did not warrant the refusal of the application.

- **Concern is raised in the submission from No. 2 Panima Place that the modified height will create unreasonably overshadowing on the west side of the property, particularly during the mid-winter months.**

Comment:

This issue has been addressed in detail in this report (refer to Clause C.14 Solar Access under the Pittwater 21 DCP).

In summary, the assessment found that the development complied with the requirements of the control and did not warrant the refusal of the application.

- **Concern is raised from No.2 Panima Place that the modified development will adversely impact upon views.**

Comment:

This issue has been addressed in detail elsewhere in this report (refer to Clause C.13 View Sharing under the Pittwater 21 DCP).

In summary, the assessment found that the extent of view loss was minor from No. 2 Panima Place with respect to the modified works at No.4 Panima Place and that the extent of further view loss was not sufficient grounds to refuse the application.

- **Concern is raised in the submissions from No. 2, 3 and 5 Panima Place, and 140A Crescent Road that the modified development will result in a significant loss of privacy to their rear private open space areas, particularly with respect to the increase height of the pool terrace area, and proposed windows on the eastern, southern and western elevations.**

Comment:

This issue has been addressed in detail elsewhere in this report (refer to Clause C1.5 Visual Privacy under the Pittwater DCP).

In summary, the assessment found that the modified development, as conditioned, does not create any additional unreasonable privacy impacts to the private open space area on neighbouring properties. Areas which have been identified as creating additional overlooking have been appropriately addressed by conditions which require the installation of opaque glazing to certain windows on both the eastern and western elevation.

This issue does not warrant the refusal of the application.

- **Concern is raised concern to the addition of the retaining wall within the foreshore area.**

Comment:

This issue has been addressed in detail in this report (refer to Clause 7.8 - Limited development on the foreshore area under PLEP 2014).

In summary, the assessment found that the walkway/access area is not located within the foreshore area, with only the retaining wall being located within the foreshore area. The assessment concluded that the retaining wall is permissible and consistent with the control.

This issue does not warrant the refusal of the application.

- **Concern is raised to the access to the shared path and pontoon.**

Comment:

Concern has been raised regarding obstruction of the shared access path and pontoon as a result of the construction of the dwelling house.

A condition is to be included to ensure the access path between sites No.3 and No.4 Panima Place is not to be obstructed at any time.

Should access be obstructed, a complaint can be made to Councils Customer Service staff so a report can be documented and sent to Councils Compliance Unit for their investigation.

This issue does not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	The proposed works include minor alterations within the existing footprint. Biodiversity raises no issues.
NECC (Riparian Lands and Creeks)	The application is supported as the proposed modifications do not impact water quality. Sediment and erosion controls were addressed in the original approval.

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. A253285_03 and 09 February 2019). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. A253285_03 and 09 February 2019).

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

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

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.3m ²	9.6m ²	12.9%	No

* Development Application N0057/16 was conditioned to maintain an overall building height of RL17.88. This modification application seeks to increase the the overall building height to RL17.95 (increase of 0.07m).

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes

Detailed Assessment

Zone E4 Environmental Living

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

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

The proposed modification is found to have a negligible impact on the previously approved landscaping and existing vegetation on the site, as detailed in the Biodiversity comments elsewhere in this report. The documentation accompanying the proposed modification contains sufficient information for Council to be satisfied that the development will continue to integrate with the landform and landscape and be consistent with surrounding developments.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m

Proposed:	9.6m
Percentage variation to requirement:	12.9%

The proposal was originally accompanied by a submission pursuant to Clause 4.6 in support of the proposed variation. However, as the modification seeks to increase the overall building height, and maximum roof ridge height, a further assessment has been undertaken below.

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 as per application N0057/16 did demonstrate 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 as per application N0057/16 did adequately demonstrate 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 as part of the application N0057/16 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 as per application N0057/16 argued, in part:

- *"the significant majority if the existing building is 8.5m high or lower,*
- *bulk and scale compatible with neighbours and its context,*
- *site slope between the garage and pool is up to 31%.*
- *the height will not obstruct views,*
- *the proposal maintains existing privacy and sufficient sun, and*
- *alternatively, a relocated first floor would increase building footprint and potential further loss of landscaped space.*

The visual bulk and scale of the proposal is acceptable and the height, form and design of the additions are appropriate for the site and locality.

The proposed works are not likely to result in any adverse impacts on the existing amenity of neighbouring properties."

The modification seeks to increased the overall building height. However, the previously submitted justifications continue to be valid for the proposed building height increase in that:

- The additional proposed height breach relates to the steep topography of the site;
- The additional proposed height breach does not result in any unreasonable overshadowing of adjoining properties;
- The additional proposed height breach does not result in any loss of privacy for neighbouring properties;
- The additional proposed height breach does not result in any adverse visual impact given the overall improved articulated nature of the dwelling; and
- The additional proposed height breach does not detract from compliance with the E4 Environmental Zone objectives.

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

It is agreed that the additional breach is largely unavoidable due to the incorrect nomination of the existing entry foyer level, slope of the land and essentially the encroachment does not result in any unreasonable impacts to any surrounding properties.

In this regard, the applicant's written request continues to demonstrated that the modified 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 continues to 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 previous written request by the applicant as part of application N0057/16 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 modified development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The modification is for the previously approved two (2) level dwelling house, with a third storey element under the pool terrace area. The proposal reflects the established built form character of the immediate Panima Place area where multi-level, variably stepped houses are prevalent, due to the steep topography of the land and difficulty with pedestrian and vehicular access.

In this modification, the existing approved three (3) levels remain but reconfigured with internal changes, new floor heights to correct the incorrectly documented existing floor levels, new access and balcony elements and a new roof form. It is changes to the floor finished heights and their relationship with the sloping topography that contributes to the non-compliance.

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

The development satisfies this objective.

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

Comment:

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

Notwithstanding, the overall height of the modified development is a very minor increase to 9.6m, with an increase in the maximum roof ridge from RL17.88 to RL17.95 (increase of 0.07m as shown in Figure 1 below).

These building height modifications are due to the change in previously approved finished floor levels. However, the modified development continues to be representative of a three (3) level development when viewed from properties to the east and west and a two (2) storey development when viewed from the upslope of Panima Place.

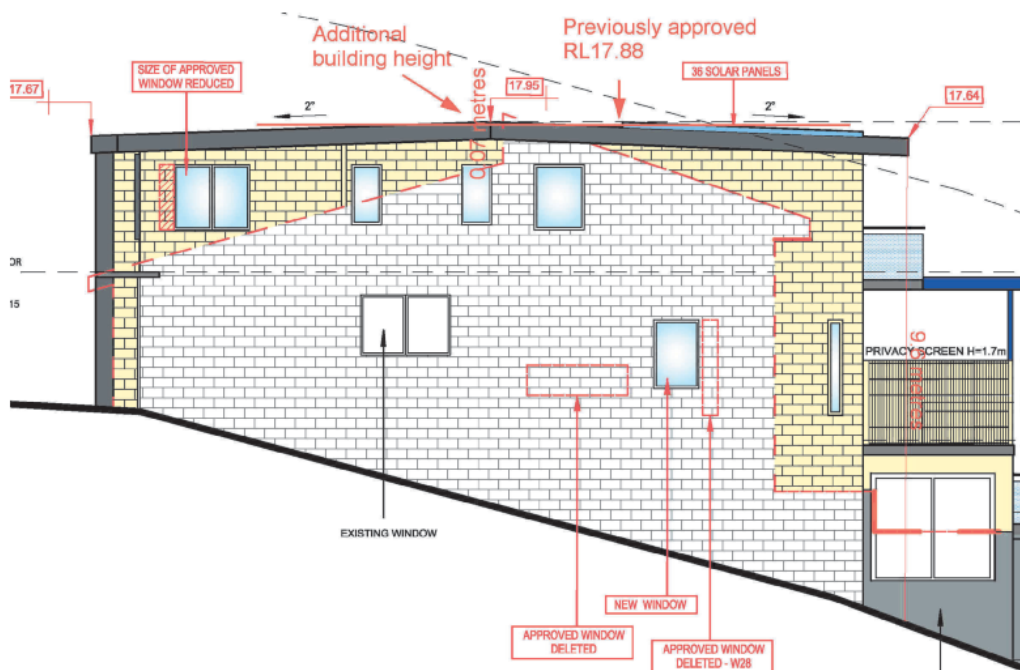


Figure 1. Additional Building Height (9.6m) and previously approved RL17.88 with modified RL17.95

The additional building height non-compliance is located at the northern edge of the roofline of the balcony of the first floor.

The overall RL level of the building has also increased by 0.07m to RL17.95, however this area complies with the building height standard.

It is noted that a reduction to the height would not achieve compliance and will not reduce the scale of the building to any significant extent such that it would appear as smaller than the previously approved.

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

The development satisfies this objective.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The development application includes shadow diagrams which are certified by JJ Drafting (see Drawing No. 10 - 12, dated January 2019). The diagrams indicate that the modified building height will cast additional shadow over the neighbouring right of carriageway and the road reserve to the south between 9.00am and 3.00pm on 21 June.

It should be noted here that overshadowing is controlled by Clause C1.4 Solar Access in the Pittwater 21 DCP which requires that at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of three hours of sunlight between 9.00am and 3.00pm on June 21. In this regard, the diagrams indicate that the modified height will not additionally shadow these areas. The modified building height therefore continues to comply with the requirements of that particular control.

Notwithstanding, it is estimated that modifying the height of the development to comply would not result in any notable improvement such that it would reduce the above degrees of overshadowing. Given the finding in this clause, the development satisfies this objective.

d) to allow for the reasonable sharing of views,

Comment:

It is acknowledged that the non-compliance along the north-western edge of the proposed roof does not impact the viewing angle from the properties to the east No.3 Panima Place or west No.5 Panima Place. The sweeping range of Pittwater water views available from the internal areas and terrace areas of both properties will continue to remain intact.

The height non-compliance does not have an unreasonable impact upon the existing views from the opposite side of Panima Place of Pittwater water views as the breach of the building height is limited to the north-western corner of the development, with the maximum roof ridge fully complying with the 8.5m height limit, being a maximum height of 7.6m above the existing ground level.

However, the increase in the maximum roof ridge from RL17.88 at RL17.95 (increase of 0.07m) will contribute to very minor additional view loss to No. 2 Panima Place. However, it is considered that the additional increase of 0.07m would have a minimal impact on the overall view loss.

The modified proposal makes no change to the complying western side setback, and modifies the roof pitch from 4 degrees to 2 degrees. Therefore, the design has attempted to minimise and reduce the impact into the viewline. Therefore, the portion of the development which breaches the maximum height shall not unreasonably interrupt neighbouring views and the modified design attempts to minimise the impact on the view lines by providing a 2 degree roof pitch and as such is supported.

The development satisfies this objective.

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

Comment:

The modified proposals design continue to respond to the topographical constraints of the site. The modified design makes no change to the previously approved open style rear balcony areas,

provides a more "stepped" look when viewed from the rear waterway and the neighbouring properties. The proposal reflects the established built form character of the immediate Panima Place area where multi-level, variably stepped houses are prevalent, due to the steep topography of the land.

The development satisfies this objective.

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

Comment:

Despite the topographical constraints of the site, the modified design continues to create articulation, and visual interest and is sufficiently setback from the boundaries such that the visual impact of the building will be appropriately managed.

There is no change to the previously approved landscaping or significant trees onsite that will assist in softening and will filter the built form. Therefore, the proposal will be sufficiently integrated into the existing landscaped setting.

The development satisfies this objective.

Zone objectives

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

The underlying objectives of the E4 Environmental Living zone

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

Comment:

The proposed modifications will be relatively low-impact and have been designed to respond to the steep topography. The dwelling house will provide the occupants an increased level of amenity without causing unreasonable impacts to adjoining neighbours (subject to conditions) or to the site itself. The modified development does not result in any adverse impact to the native natural environment.

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

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

Comment:

There is no change to the previously approved natural landscaped setting. Therefore, the modified dwelling house will continue to sit within a natural setting and below the existing tree canopy.

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

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

and leisure uses.

Comment:

This is not applicable for this application.

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

Comment:

The modified development will be of a minor scale, that will be integrated with the existing dwelling and the steep landform. The design continues to be open in style and responds to the natural vegetated context in which the site is located.

The modified development will not dominate the existing bushland environment with the bulk and scale continuing to be consistent with the surrounding area.

Privacy, amenity and solar access are provided for within the proposed development and via imposed conditions. Therefore, the conditioned development will have a minimal impact on surrounding residences.

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

Comment:

The modified development will continue to retain the existing foreshore vegetation and continue to maintain the existing trees for the wildlife corridors.

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

Conclusion:

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

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

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

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

7.1 Acid sulfate soils

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

The proposed modification does not involve the disturbance of more than one tonne of soil, which is the trigger for an Asset Sulfate Soil Management Plan (ASSMP). Therefore, a ASSMP is not required.

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

7.2 Earthworks

A Geotechnical Addendum has been prepared by Jack Hodgson Consultants Pty Ltd, Reference No. MQ 30330N, dated 8 March, 2019. This report and its recommendations are included within the applied conditions to ensure there is no adverse impacts to the surrounding properties resulting from the modifications works.

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

7.6 Biodiversity protection

Councils Biodiversity officers have assessed the modification proposal and consider the impact of the modified works to be negligible.

An Arboricultural Impact Assessment prepared by Standfast Tree Services, dated 19 December 2018 to address the impact of the retaining wall erected below the dwelling on the Eucalyptus Punctata (Grey Gum) adjoining the northern face of the dwelling. A second wall is listed within the report, however this wall is not part of this application.

The report concludes that the impact presented by the works is acceptable. Further mitigation work involving aeration of the soil between the tree and the garden wall be implemented within the conditions of this consent.

7.7 Geotechnical hazards

A Geotechnical Addendum has been prepared by Jack Hodgson Consultants Pty Ltd, Reference No. MQ 30330N, dated 8 March, 2019. This report and its recommendations are included within the applied conditions to ensure there is no additional adverse impacts to the surrounding properties resulting from the proposal on sloping land.

7.8 Limited development on foreshore area

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

- The construction of a retaining wall (1m in height)

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

It is concluded that the 1.0m high retaining wall will be consistent with the provisions of the control. The retaining wall is supported as the minimal structure remains consistent with that currently on site or

on neighbouring sites, and will not be visually dominant. The retaining wall will be consistent with the design criteria of the control.

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	8.3m - 9.5m	No change	Yes
Foreshore Building Line	6.5m	all works behind foreshore building line	Garden retaining wall located 0.8 - 1m within the foreshore area	No
Side building line	2.5m	1.2m west	No change	Yes
	1m	0.9m east	No change	Yes
Building envelope	3.5m	Within envelope	Additional encroachment of approximately 0.1m for for a length of 15m	No
	3.5m	Outside envelope	No additional envelope encroachment	Yes
Landscaped area	50%	51.5%	No change	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B3.8 Estuarine Hazard - Medium Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.11 Stormwater Discharge into Waterways and Coastal Areas	Yes	Yes
B5.12 Stormwater Drainage Systems and Natural Watercourses	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	No	Yes
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A1.7 Considerations before consent is granted

Modification applications can be granted retrospective approval under NSW case law as established in the case of *Windy Dropdown Pty Ltd v Warringah Council* [2000] NSWLEC 240. Commission J.Talbot considered the following:

"The broad construction of s96 leads to a practical result that enables authority to deal with unexpected contingencies as they arise during the course of construction of development or even subsequently, provided of course that the development to which the consent as modified relates is substantially the same development."

Therefore, works proposed and undertaken which form the basis of this Section 4.55 application can still be granted.

A4.10 Newport Locality

The application proposes a range of minor amendments to the design of the dwelling, in addition to the minor change proposed to the foreshore area.

In this regard, the built form will continue to sit comfortably with adjoining and surrounding two, and three storey residential development. Also, consistent with adjoining development, the built form is located downslope in steep topography and therefore existing and previously approved landscaping, will assist to visually screen any additional bulk and scale of the built form and continue to integrate the built form into the landscape.

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

B5.10 Stormwater Discharge into Public Drainage System

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

B5.11 Stormwater Discharge into Waterways and Coastal Areas

Subject to compliance with previously applied conditions, the proposal is considered to meet the

requirements of this clause.

B5.12 Stormwater Drainage Systems and Natural Watercourses

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

B5.13 Development on Waterfront Land

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

C1.3 View Sharing

The subject modification seeks to alter the conditions imposed under the original development consent, with an increase in the maximum ridge line to RL17.95 from RL17.88, an increase of 0.07m, as well as increase the overall building height to 9.6m.

During the assessment of the original development application N0057/16, concern was raised by the property owners of 2 Panima Place regarding potential impacts to the views of Pittwater Waterway, Rowland Reserve and foreshore, and land/water interface across the area of the subject site.

Specifically, concerns were raised with regard to overall ridge height projecting into the view corridor with the view loss rating being severe for the dinning/lounge area, moderate for the kitchen area and minor/moderate for the study and outdoor terrace. In consideration of these concerns, conditions were imposed to ensure the maximum ridge line height was reduced to RL17.88 to enable greater retention of these identified views.

The property owners of 2 Panima Place have raised concern in regards to view loss as a result of the increase in the maximum ridge line. It is important to note that construction has since commenced on the site and the clearing of vegetation and pre-existing structures has further enhanced the view of Pittwater waterway available from 2 Panima Place across the subject site as shown in Photo 1 below.



Photo 1. Current views from dinning area of 2 Panima Place.

However, as a result of the modified changes there is additional view loss from the kitchen, dinning/living, study and terrace area. The additional view loss include very minor district tree views, and Pittwater water views.

The original view loss assessment concluded that the:

"non-compliance with the maximum height was limited to the north-eastern corner of the development where the site slopes steeply towards the rear. The portion of the development which impacts upon the views is the overall ridge height and the western portion of the development which comply with the 8.5m height limit. The portion of the development which breaches the maximum height shall not unreasonably interrupt neighbouring views and as such is supported."

This assessment of the modification reveals the same outcome of the view loss assessment, in that the maximum building height of 9.6m in the north-east corner does not impact this view corridor, it is the increase the maximum ridge height from RL17.88 to RL19.95 that contributes to the view loss. However, this area continues to comply with the 8.5m height limit.

The view loss rating from the additional ridge height of 0.07m is considered very minor additional view loss.

The revised design has attempted to minimise the overall RL height and subsequent view loss by providing minimum floor to ceiling heights in the south (front) area of the dwelling, reducing the thickness of the roof structure, and providing a two degree roof pitch. Therefore, the modified design is consistent with the design recommendations of the original application.

Concern was raised that the proposed solar panels will cause additional view loss to No. 2 Panima

Place. However, there is no additional view loss from the proposed solar panels due to their location on the northern slope of the roof, and the flat placement on the roof form.

In conclusion, the design has attempted to minimise any additional view loss impacts to 2 Panima Place through the modified design and will not result in any unreasonable impacts upon the current view sharing corridors.

C1.5 Visual Privacy

Clause C1.5 Visual Privacy requires that:

- Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.
- A sense of territory and safety is provided for residents.

The controls behind the requirement are:

- Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).
- Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.
- Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.

The original development has been generally designed to satisfactorily address overlooking by locating living room windows and terraces away from habitable room windows, balconies and private open space area on neighbouring properties by orientating these areas to the Pittwater Water views.

However, the modified plans indicate that the following elements could either result in actual overlooking, or the perception of being overlooked from neighbouring properties, and are therefore examined in detail against the above requirements and objectives:

Level 1

- Window to bedroom 3 (east) reduced
- Window to bedroom 3 (south) reduced
- Window to walk in robe (west) reduced
- Window to en-suite (western) increased

The eastern window to bedroom 3 is to be reduced in size, and will overlook the eastern neighbours roof line (5 Panima Place). The window to the south of bedroom 3 is to also be reduced, and this window is over approximately 9m from the nearest adjoining boundary (2 Panima Place), with vegetation and boundary fencing obstructing any direct view-line to any private open space area.

The window to the walk in robe and from the en-suite on the western elevation are orientated towards

the front entry area of the neighbouring property (No. 3 Panima Place).

Overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time and, because the above features are directly associated to bedrooms, it is not considered that any additional privacy treatments are required.

Ground Floor

- Windows to bathroom (west) removed, and middle window to be reduced
- Window to the lounge room (west) to be increased
- Windows to the lounge/kitchen (east) to be removed and an additional to the kitchen window proposed

The western facing windows to the bathroom are to be removed, with only one window to remain. This window will overlook the side setback area of No.5 Panima Place. In this regard, whilst it is considered that the privacy impacts from a bathroom are minimal, due to the proximity to the neighbouring dwelling it is considered that an opaque privacy treatment to this window is appropriate in this instance.

The western window to the lounge room is to be increased by approximately 0.5m in width to the south. The additional area will create additional overlooking to the western neighbouring site as the increase in window area will continue to directly face one window, and the opening to the first floor balcony and the private open space area of No.5 Panima Place as shown in photo 2 below. Therefore, it is not that additional opaque privacy treatments are required.



Photo 2. Existing overlooking from the window adjoining the lounge room.

A submission was received from No. 5 Panima Place that raised concerns regarding the overlooking from the new window adjoining the kitchen. This new window will adjoin a bedroom window of No. 5 Panima Place. Therefore, it is considered that due to the very close proximity of the adjoining bedroom window additional privacy treatments of opaque glazing are required.

A submission was received from No. 2 Panima Place which raised concerns regarding overlooking from the proposed development. The proposed development shall be located in excess of 9m to the southern neighbouring property. The southern elevation includes the reduction of one window to bedroom 3 and as stated above, the neighbouring property at 2 Panima Place has existing screen planting along the northern boundary to obscure any direct overlooking. In view of the above, the proposed development is not considered to result in any unreasonable impacts upon No.2 Panima Place with regards to visual privacy.

Rear Terrace Area

The terrace and pool area is located at the rear of the dwelling and faces north to take advantage of the Pittwater views. The existing dwelling houses along this waterfront are designed to capture the view lines to the Pittwater waterway. Therefore, there is an absence of privacy screening devices in these areas, so to maintain viewlines across the side boundaries and over the neighbouring sites. Consequently, there is existing significant overlooking into the side and rear areas of No. 3 and 5 Panima Place from the outdoor private open space areas.

The terrace area was approved within the original application and maintains the previously approved side boundary setbacks. However, the finished floor level of the terrace area has been increased from RL7.15 to RL7.48 (increase of 0.3775m). Therefore, the assessment below is for the 0.3775m height increase, not the design or setbacks.

No. 5 Panima Place

After discussion with the owners of No.5 Panima Place it was requested that no privacy screens be installed on the pool deck/terrace area in order to maintain the existing water views obtained from over the subject site from their property, see photo 3 below. This request was considered in the original assessment, and is still considered valid that imposition of a privacy screen on the finished floor level of RL10.23 would impact upon the views from 5 Panima Place and as such it is reasonable not to require a privacy screen on the pool deck.



Photo 3. Existing view lines from No. 5 Panima Place over the subject site terrace.

The design of the pool and terrace area provide reasonable privacy measures. The spatial distance between the pool and the eastern and western terrace edges are 0.81m to the east and 0.5m to the north. These areas are considered non-trafficable due to their size, and are primarily for cleaning and maintenance purposes, rather than recreational areas. Therefore, it is not anticipated that frequent unreasonable direct overlooking would occur.

No. 3 Panima Place

An assessment of photos pre-construction and a site assessment has revealed that the existing pool was able to overlook the adjoining rear private open space area to the west as there were no privacy screens, see photo 4 below. As discussed above, the installation of a privacy screen on the subject site terrace area would impact the view line from the subject site to Pittwater Waterway and from the adjoining sites to the east and west. Therefore, it is considered reasonable not to require a privacy screen on the pool deck so to maintain existing view lines.



Photo 4. Existing view lines and overlooking from No.3 Panima Place.

It is considered in the context of the site, and surrounding built form that the increase in the terrace height of 0.375m is minor in nature and continues to be consistent with the level of overlooking that currently exists.

The private open space areas of No.3 Panima Place (currently under construction) demonstrates a higher elevation above ground level, than that of the modified terrace of No. 4 Panima Place. For example, the infilled lawn area directly adjoining a lounge area has a finished level of approximately RL10.180 with the swimming pool at RL8.505. It is also noted that No.3 Panima place has a recent approval for the construction of planter boxes with associated screening planting on the eastern boundary. These planter boxes will assist in providing filtered screening and obscure the direct line of sight to the pool and lawn area of No.3 Panima Place. Therefore, the increase in the terrace floor level by 0.337m does not create any unreasonable privacy impacts.

Level 1 - Under Balcony and Pool Deck

- Window to be removed and the addition of a new access door on the western elevation
- New access/walkway on the northern elevation adjoining the rumpus room
- New steps from new access/walkway adjoining the rumpus room to the garden

Whilst the new access door is facing the western side boundary, and No.3 Panima Place, it is not considered to have any unreasonable privacy impacts. The door is considered to be a transitional area, and the current door is of opaque glazing minimising any potential direct overlooking and is not considered to result in any unreasonable impacts upon the adjoining property with regards to visual privacy.

The new access stairs, access/walkway and associated bi-fold doors, create a new and improved access area from the rumpus room. The modified design improves the access and livability of this area of the dwelling. There is no unreasonable overlooking from this area as the orientation is towards the north, and it is considered a transitional area due to the width being only 0.6m. The access stairs are orientated to the east with landscaping adjoining the area. Therefore, the access/walkway is not considered to result in any unreasonable impacts upon the adjoining property with regards to visual privacy and no privacy treatments are recommended.

A submission received from No.140A Crescent Road which raised concerns regarding overlooking from the approved window on the western elevation adjoining the rumpus room. This window is well over 30m from the subject site, with the line of sight over property No.3 Panima Place. It is considered that the minor size of the window, the distance and intervening vegetation obscured the impacts of additional and unreasonable overlooking. Therefore, it is not considered that privacy treatments to this window is required.

Subject to conditions, the modification application proposes a range of amendments to the design of the dwelling that do not alter the previously approved privacy impacts and satisfy the requirements of the C1.5 Visual Privacy control.

C1.6 Acoustic Privacy

The acoustic levels would be consistent with current residential living.

D10.1 Character as viewed from a public place

The existing dwelling house is orientated towards the Pittwater Waterway. The minor modifications continue to demonstrate proposed design is a visually modernised improvement of the existing dwelling house, with an integration with the landform and landscape and provides continued consistency with surrounding developments. Therefore, there will be an improvement in the presentation to Pittwater Waterway.

D10.11 Building envelope (excluding Newport Commercial Centre)

The modified dwelling house exhibits a very minor additional non-compliance with the side building envelope requirements.

The additional non-compliance is very minor and includes the following:

- Eastern Elevation: additional areas measuring: 0.1m in height for a length of 15m

There is no additional side boundary envelope variation to the western elevation.

The control permits a variation for the addition of a second storey where the existing dwelling is retained. The proposed modified works continue to include the retention of the existing dwelling with a first floor level, and as such the modified variation for the addition of a second storey is permitted.

The non-compliance reflects the transitions within the existing ground line combined with the additional building height as shown by Figure 2 below. The resulting built form is not considered unreasonably bulky or dominant and will be suitably in scale with the large trees that exist on the site.

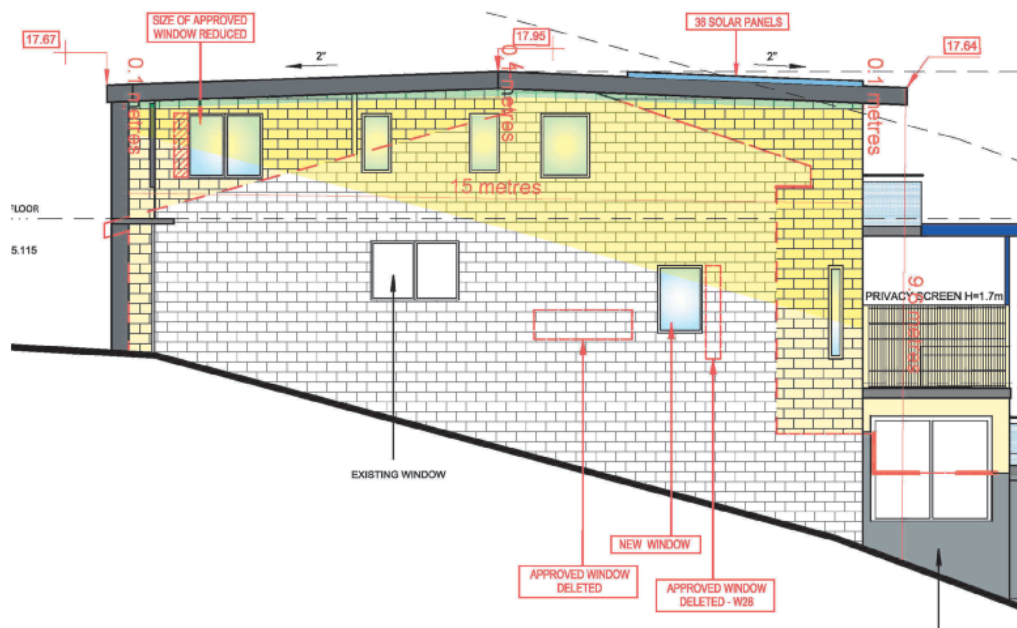


Figure 2: Additional envelope encroachment in as a result of the modification in green.

The proposed works are considered to be reasonable solution in light of the circumstances, the constraints of the site and is consistent with the outcomes of the building envelope control, as follows:

- *To achieve the desired future character of the Locality.*

Comment:

The modified development is consistent with the desired future character of the Newport locality.

- *To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*

Comment:

The modified development continues to present a more modern design, with the modified changes being consistent with surrounding built form. Furthermore, the resultant built form will be maintained below the existing tree canopy.

- *To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.*

Comment:

The modified development is considered to be a design response in consideration of the natural characteristics of the site, with the retention of existing canopy trees and the enhancement of landscaping.

- *The bulk and scale of the built form is minimised.*

Comment:

The proposed modifications create a envelope non-compliance that is relatively minor in size. The eastern elevation variation is not visually apparent from the front setback and foreshore area. The additional encroachment area directly adjoin the significant wall planes of the adjoining

dwelling houses, demonstrating consistency with adjoining development.

- *Equitable preservation of views and vistas to and/or from public/private places.*

Comment:

As discussed previously due to the downslope siting of the existing dwelling, the modified envelope encroachment will not result in any unreasonable impacts upon views.

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*

Comment:

The design of the proposed additions, combined with imposed conditions, will not result in any unreasonable impacts upon the amenity of adjoining properties.

- *Vegetation is retained and enhanced to visually reduce the built form.*

Comment:

There is no change proposed to the previously approved vegetation, and existing trees are retained within the foreshore area to reduce the visual impact of the development.

D10.16 Construction, Retaining walls, terracing and undercroft areas

As discussed above, the application proposes an additional retaining wall within the foreshore area which are considered to be consistent with the provisions of this control which prescribed that retaining walls and terracing shall be kept to a minimum.

The retaining wall adjacent to the undercroft area of the secondary dwelling access/walkway has a maximum height of 1.0m which complies with the maximum 3.0m requirement of the control.

Notwithstanding, the retaining wall is supported as being reasonable for the following reasons;

- Excavation works and site disturbance are very minor;
- The retaining wall creates an functional area to to screen and soften the undercroft area;
- The localised steepness at the rear of the site; and
- The height of the retaining wall is minor and consistent with that of adjoining and surrounding residential development, for example No. 3 Panima Place .

Therefore, the proposal will otherwise achieve consistency with the outcomes of this development control, which aim to minimise site disturbance and encourage building design to respond sensitively to the natural topography of the land.

D10.18 Scenic Protection Category One Areas

Foreshore works

The modification application proposes an additional retaining wall within the foreshore area that generally aligns with existing natural ground level, with a maximum height of 1.0m above existing and finished ground levels. The retaining wall has a height of up to 1.0m and will not dominate the foreshore area, and is consistent with the objectives of PLEP 2014 and P21 DCP which aim to minimise site disturbance and respect the natural topography of the land.

The newly introduced retaining walls and subsequent landscaping to shield the undercroft area is supported.

Other works

The modification application also proposes a range of amendments to the design of the dwelling that do not unreasonably alter the character of the development as viewed from the public domain. No concerns are raised in this regard.

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

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

This report provides a detailed assessment of the Modification Application for the alterations and

additions to an existing dwelling and the reconstruction of an existing swimming pool to 4 Panima Place, Newport.

Public Exhibition

The public exhibition of the application resulted in seven (7) response from four (4) neighbouring residents. Those objecting to the proposal raised concerns in relation to the additional view loss, and amenity and privacy impacts that would be generated by the modified development.

The issues raised in the submissions have been addressed in the "Public Exhibition & Submissions Received" section" in this report.

Conditions have been included that address the privacy impacts.

Referrals

The application was referred to two (2) internal departments and one (1) external authorities.

External: No response was received from Ausgrid within the 21 day statutory period, therefore it is assumed that no objections are raised and no conditions are recommended.

Internal: Council's Bushland and Biodiversity, Riparian, Officers who advised that the proposal is acceptable with no specific conditions.

Assessment of the Development Application

The works sought as a part of this modification include additions changes in the building height, internal alterations, window changes, finished floor level changes and the inclusion of a new access/walkway and retaining wall.

The assessment of the modification against the provisions of PLEP 2014 found that the proposal does not comply with the 'Height of Buildings' Development Standard under the PLEP 2014 which permits a maximum building height of 8.5m within the E4 Environmental Living zone.

In this case, the three levels are to remain but reconfigured with new finished floor levels. This has contributed to the additional building height non-compliance.

Whilst the building height variation was addressed in the original application (N0057/16) an further assessment of the additional building height variation has been undertaken. The overall building height has increased to 9.6m and the maximum overall ridge height has increased from RL17.88 to RL17.95 (increase of 0.07m). The maximum overall ridge height increase complies with the building height requirement of 8.5m. It is agreed that the breach is largely unavoidable due to the considerable slope of the land and the modified increase in the floor levels, and essentially the encroachment does not result in any unreasonable impacts to any adjoining and surrounding properties. Furthermore, the applicant has provided sufficient justification for the substantial departure from the development standard.

View loss was also addressed due to the increase in the maximum overall ridge height. However, the increase of 0.07m is considered minor, leading to a very minor view loss. It is important to note that this area complies with the building height standard of 8.5m and the modified design has attempted to limit the impact of this view loss through design attempts by providing a 2 degree roof pitch.

In addition, the assessment of the proposed development against the provisions Pittwater 21 DCP found that the proposal does not comply with a number of controls, i.e side boundary envelope, visual privacy. Given the constraints on the development by virtue of the escarpment location and the siting of the existing structures on the site, some flexibility in applying these controls is required.

It is considered that the scale of these non-compliances combined with imposed conditions, will not have unreasonable amenity impacts for adjoining properties and are consistent with the character of Panima Place and the Newport locality.

Recommendation - Approval

In summary, the modification should be approved as the conditioned design is reasonable for the site by virtue of the level of non-compliance that does not create unreasonable amenity impacts. The proposed modified changes will continue to integrate with the landform and landscape and be consistent with surrounding developments.

It is considered that all processes and assessments have been satisfactorily addressed and that proposed development does not constitute the proper and orderly planning for the site or the locality.

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2019/0110 for Modification of Development Consent N0057/16 granted for alterations and additions to existing dwelling and the reconstruction of existing swimming pool on land at Lot 5 DP 243519,4 Panima Place, NEWPORT, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Analysis Plan 01	January 2019	JJ Drafting
Level 1 - Under balcony and Pool Dec 02	January 2019	JJ Drafting
Level 4 Ground Floor Plan 03	January 2019	JJ Drafting
Level 6 - First Floor Plan 04	January 2019	JJ Drafting
North and South Elevations 05	January 2019	JJ Drafting
West Elevation 07	January 2019	JJ Drafting
East Elevation 08	January 2019	JJ Drafting
Section 09	January 2019	JJ Drafting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By

Addendum to Geotechnical Report	08/03/2019	Jack Hodgson Consultants Pty Ltd
Arboricultural Impact Assessment	19/12/2018	Standfast Tree Services

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

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

B. Add Condition 7A Amendments to the Approved Plans to read as follows:

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

- a) The maximum roof ridge height of the development is to be RL17.95m AHD.
- b) The new window adjoining the kitchen on the eastern elevation is to be fitted with with obscured glazing.
- c) The window adjoining the lounge room on the western elevation is to be fitted with with obscured glazing.
- d) The window adjoining the bathroom on the western elevation is to be fitted with with obscured glazing.

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

Reason: In order to maintain privacy to the adjoining / nearby property.

C. Add Condition 17A Survey Certificate to read as follows:

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

- a) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- b) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

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

D. Add Condition 17B Obstruction of Access Path to read as follows:

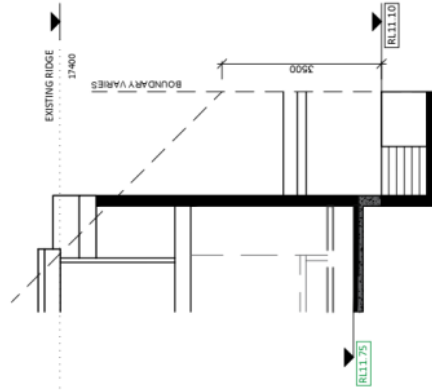
During the demolition and construction phase, no construction materials are to obstruct the access path between number 4 Panima Place and Number 3 Panima Place. Additionally, all construction fences are to be located on or within the property boundaries.

Reason: to ensure that access is not obstructed to the neighbouring sites

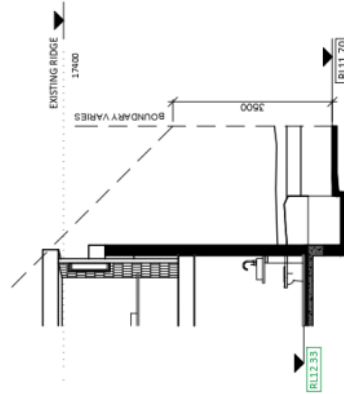


SITE PLAN

NOTE: THE SITE COVERAGE & LANDSCAPING CALCULATIONS DO NOT INCLUDE RIGHT OF WAY AND THE LAND HIGHLIGHTED IN BROWN

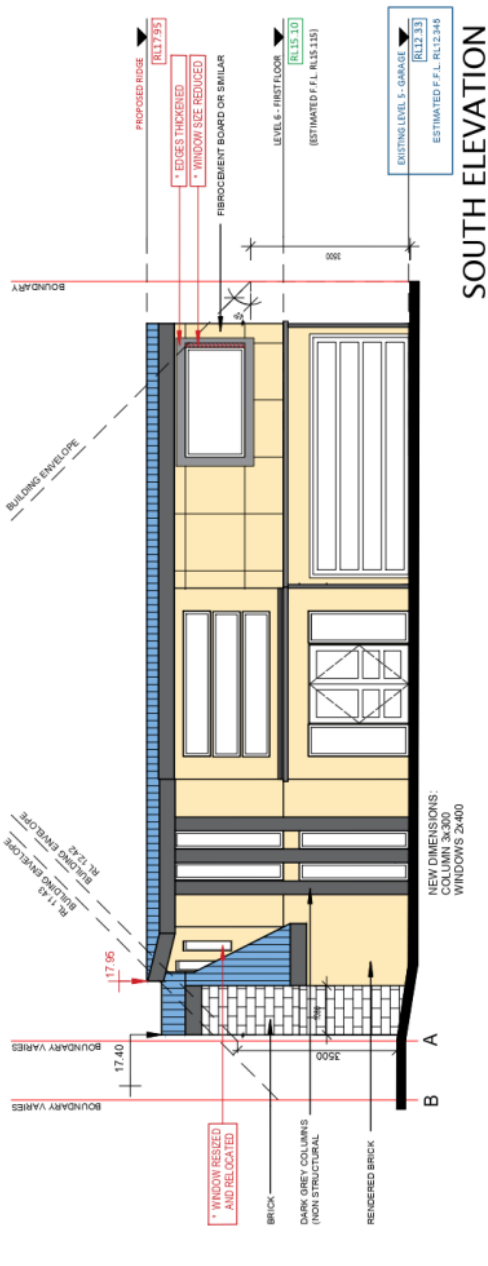


SECTION 3

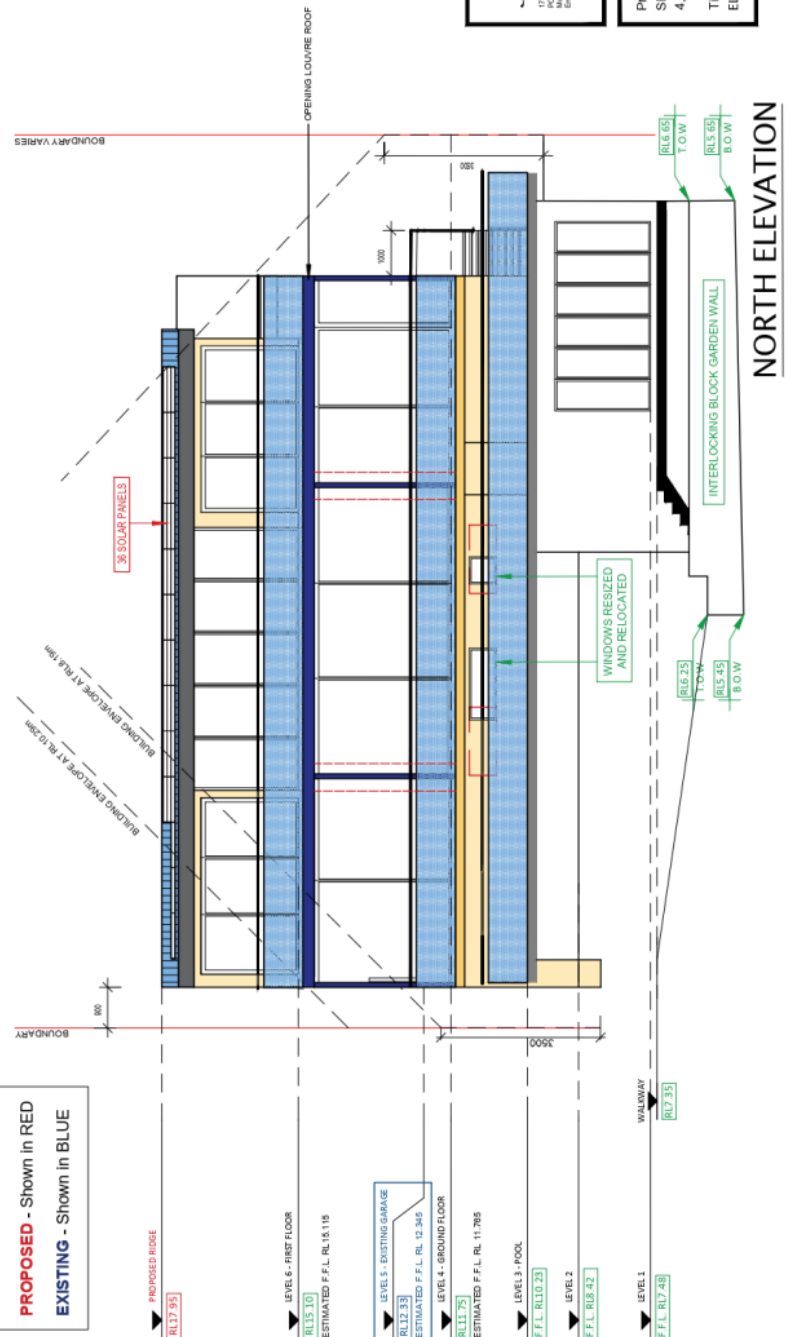


SECTION 4

<p>JJ Drafting</p> <p>171 Gordon St, North Ryde NSW 1585 PO Box 807, New Ryde NSW 1585 Email: j.j.drafting@gmail.com.au</p>	<p>NOTES:</p> <ul style="list-style-type: none"> All structures including stormwater & drainage to engineers' details On-site construction to be in accordance with the relevant SAA Code of Practice These drawings are to be read in conjunction with all other consultants' drawings and specifications Any amendments to these drawings shall be in accordance with the requirements of current editions including amendments of the relevant SAA Code of Practice, the Building Code of Australia and local council requirements Concrete footings, slab, structural beams or any other structural members are to be designed by a practicing engineer
	<p>Project: SECTION 4.55 MODIFICATIONS 4, PANIMA PLACE, NEWPORT</p> <p>Scale: 1:100 Date: JANUARY 2019</p> <p>Title: ELEVATIONS AND SECTIONS</p> <p>Job No.: 687 / 19 Dwg No.: 05</p>



SOUTH ELEVATION

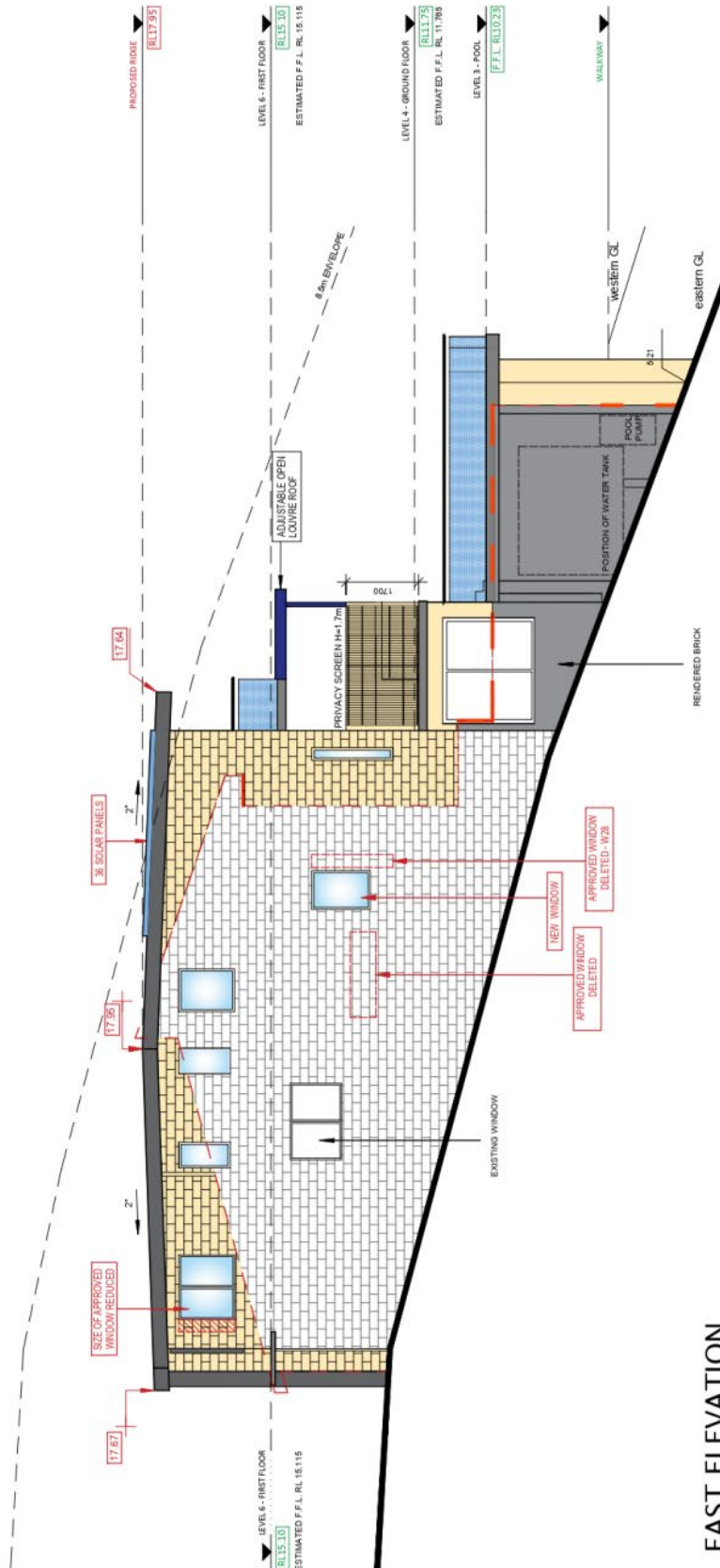


NORTH ELEVATION



WEST ELEVATION

[illegible]



EAST ELEVATION

AS BUILT - Shown in GREEN
PROPOSED - Shown in RED
EXISTING - Shown in BLUE

<p>Project: SECTION 4.55 MODIFICATIONS 4, PANINIA PLACE, NEWPORT</p>	<p>Scale: 1:100 Date: JANUARY 2019</p>	<p><i>JJ Drafting</i> 170 Gaudry St, North Sydney, NSW 1585 Tel: 02 9339 1777 Email: j.j.drafting@gmail.com</p>	<p>Job No.: 687 / 19 Dwg No.: 08</p>
<p>Notes: • All structures including stormwater & drainage to engineer's detail • All structures to be constructed in accordance with the relevant standards • These drawings are to be read in conjunction with all other consultant's drawings and specifications • All work to be carried out in accordance with the requirements of the relevant SAA Codes of Practice, the Building Code of Australia and local council requirements • Concrete footings, slab, structural beams or any other structural members are to be designed by a practicing engineer.</p>	<p>Title: EAST ELEVATION</p>		

ITEM 3.5

**MOD2019/0177 - 5/9 THE CRESCENT, MANLY - SECTION 4.55(2)
MODIFICATION OF DEVELOPMENT CONSENT 219/2015 FOR
THE REMOVAL OF REAR EXTERNAL STAIRS, INSTALLATION
OF REAR LIFT AND STAIRS AND PARTIAL ENCLOSURE OF
FRONT BALCONY - UNIT 5**

REPORTING MANAGER **Matthew Edmonds**

TRIM FILE REF **2019/440802**

ATTACHMENTS

1 Assessment Report

2 Site Plan & Elevations

PURPOSE

To refer the attached application for determination as required under adopted delegations of the Charter.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Mod2019/0177 for Section 4.55(2) Modification of Development Consent 219/2015 for the removal of rear external stairs, installation of rear lift and stairs and partial enclosure of front balcony - Unit 5 on land at Lot 5 SP 12289, 5/9 The Crescent, Manly, subject to the conditions outlined in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0177
Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 5 SP 12289, 5 / 9 The Crescent MANLY NSW 2095
Proposed Development:	Section 4.55(2) Modification of Development Consent 219/2015 for the removal of rear external stairs, installation of rear lift and stairs and partial enclosure of front balcony - Unit 5.
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:	Harold Thompson Donaldson Elizabeth Marijke Donaldson
Applicant:	Hosking Munro Pty Ltd
Application lodged:	18/04/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	20/05/2019 to 03/06/2019
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Approval

The subject application seeks to modify the design of an existing staircase and lift at the north-western extent of a residential flat building. The application is referred to the DDP as the original application 219/15 was determined by the Manly Development Assessment Unit.

The application has received five (5) submissions raising concern about the impact of the amended design upon the car park configuration and laundry access. The assessment of the application concludes that the amended lift and staircase design will result in a better outcome and will not further impact the car park use or configuration, when compared the existing design approved under 219/15. Therefore, the application 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

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 5 SP 12289 , 5 / 9 The Crescent MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the south-eastern side of The Crescent.</p> <p>The site is regular in shape with a frontage of 9.14m along The Crescent and 15.24m along Commonwealth Parade and a depth of 44.9m. The site has a surveyed area of 503.8m².</p> <p>The site is located within the R1 General Residential zone and accommodates a residential flat building comprising of 5 units and a hardstand parking area.</p> <p>The site has a level parking area at north-western end of the site, and a moderate fall across the building footprint towards Commonwealth Parade.</p> <p>Currently, the access stairway to Unit 5 has been demolished and the lift shaft unfinished following the cease of works pending the lodgement of the Section 4.55 application. No access is currently obtainable to the Unit 5 upon the top floor.</p> <p>Detailed Description of Adjoining/Surrounding Development</p>

Adjoining and surrounding development is characterised by residential flat buildings, detached dwelling houses and North Harbour across the road to the east.

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:

- Application 219/2015 for Alterations and additions to an Existing Residential Flat Building including the removal of rear external stairs, installation of rear lift and partial enclosure of front balcony - Unit 5, was approved by Manly Council on 11 November 2015.
- A construction certificate was issued in June 2017 and works commenced on the lift and stairs, including the demolition of the existing staircase.
- In December 2017, Council received correspondence from an adjoining owner raising concern that the construction certificate issued for the lift and stairs was not in accordance with the approved DA plans.
- The owner of Unit 5 stopped works on the lift and commenced the process of preparing a Section 4.55 application for the amended design.
- The applicant was unsuccessful in obtaining owners consent from the owners corporation of Strata Plan 12289 to enable the lodgement of the Section 4.55 application to amend the design.
- A case was heard before the NSW Civil and Administrative Tribunal on 13 September 2018 in regards to the refusal of owners consent.
- On 5 March 2019 the Tribunal handed down it's decision which ordered that The Owners Corporation provide consent to the lodgement of the Section 4.55 Application.
- On 18 April 2019, the Section 4.55 application was lodged with Council.

PROPOSED DEVELOPMENT IN DETAIL

This modification application proposes an amendment to the lift and staircase design at the rear of an

existing residential flat building. The modifications specifically relate to amending the design of the external staircase and lift which was approved under DA219/2015 by Manly Council. The amendments include:

- Amended location of the staircase access point, new access adjacent to the south-east wall;
- Amendment to the lift design by increasing the width of the lift to accommodate disabled access (wheelchair); and
- Enlargement of the staircase and lift landing off the first floor to accommodate new lift design .

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA219/2015, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA219/2015. That is, consent was granted for the construction of a new staircase and lift at the rear of the building and the proposed modification is to amend the design of the stairs and lift.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general	Development Application DA219/2015 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Environmental Plan 2011 and Manly Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

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

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This Clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>

Section 4.15 'Matters for Consideration'	Comments
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 5 submission/s from:

Name:	Address:
Mr Amir Colombo	52 Robertson Road NORTH CURL CURL NSW 2099
Ms Philippa Karen Sutton	8 / 7 Commonwealth Parade MANLY NSW 2095
Angus Blair	2 / 9 The Crescent MANLY NSW 2095
Mr Jason John Waterhouse	C/- McGrath Property Management PO Box 178 EDGECLIFF NSW 2027
Mrs Bridget Jean Bolewski	17 Bilberry Avenue BILGOLA PLATEAU NSW 2107

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

- Privacy and overlooking from the lift platform towards 13 The Crescent.
- Amendment to the front balcony would impact upon views.
- Adverse impact upon off-street parking due to the increased footprint of the rear lift.
- Obstruction to the common laundry access.
- The decision of the NSW Civil and Administrative Tribunal ordering consent be provided by the owners corporation to the lodgement of the application is currently subject to an appeal and therefore Council should not be considering the application in light of the appeal.

The matters raised within the submissions are addressed as follows:

- *Concern is raised regarding an impact to privacy and overlooking into the main living area of the adjacent Number 13, the Crescent created by the west facing lift landing platform.*
Comment:

The application includes a 1.8m height balustrade on the south-western elevation of the lift landing. This will limit views to the adjoining property 13 The Crescent and is an adequate measure to ensure privacy is maintained to the adjoining property.

- *Concern raised regarding works to the front balcony (south-eastern elevation) and the enclosure of the balcony which may impact upon views to North Harbour.*

Comment:

The subject Section 4.55 modification application does not propose any amendments to the front balcony upon the south-eastern elevation. The enclosure of the front balcony was consented to under the initial application DA219/2015, however this work is yet to be carried out. Council officers have advised the submitter of this and provided a copy of the approved plans under DA219/2015 for their information.

- *Concern has been raised regarding the impact the proposed works will have upon off-street parking. In particular, the amendments propose to increased the footprint of the lift and staircase which encroach into a number of car spaces, impede other car parks and create access difficulties for the other owners.*

Comment:

The proposed amendments are viewed in the context of the plans already consented to which consists of a new lift and staircase. Council staff have reviewed the modified plans to ascertain if the new design presents an outcome that has a more detrimental impact to the off-street car parking arrangements for the unit block when compared to the design already consented to under DA219/2015. The following is noted for the purpose of considering the amended lift and staircase design:

1) The proposed design increases the setback to the staircase and lift landing from the north-eastern boundary by an additional 100mm (previously approved 4.5m and now proposed 4.6m). This results in more horizontal clearance for car spaces 4 and 5 when compared to NO219/2015 (shown in Figure 1 and 3).

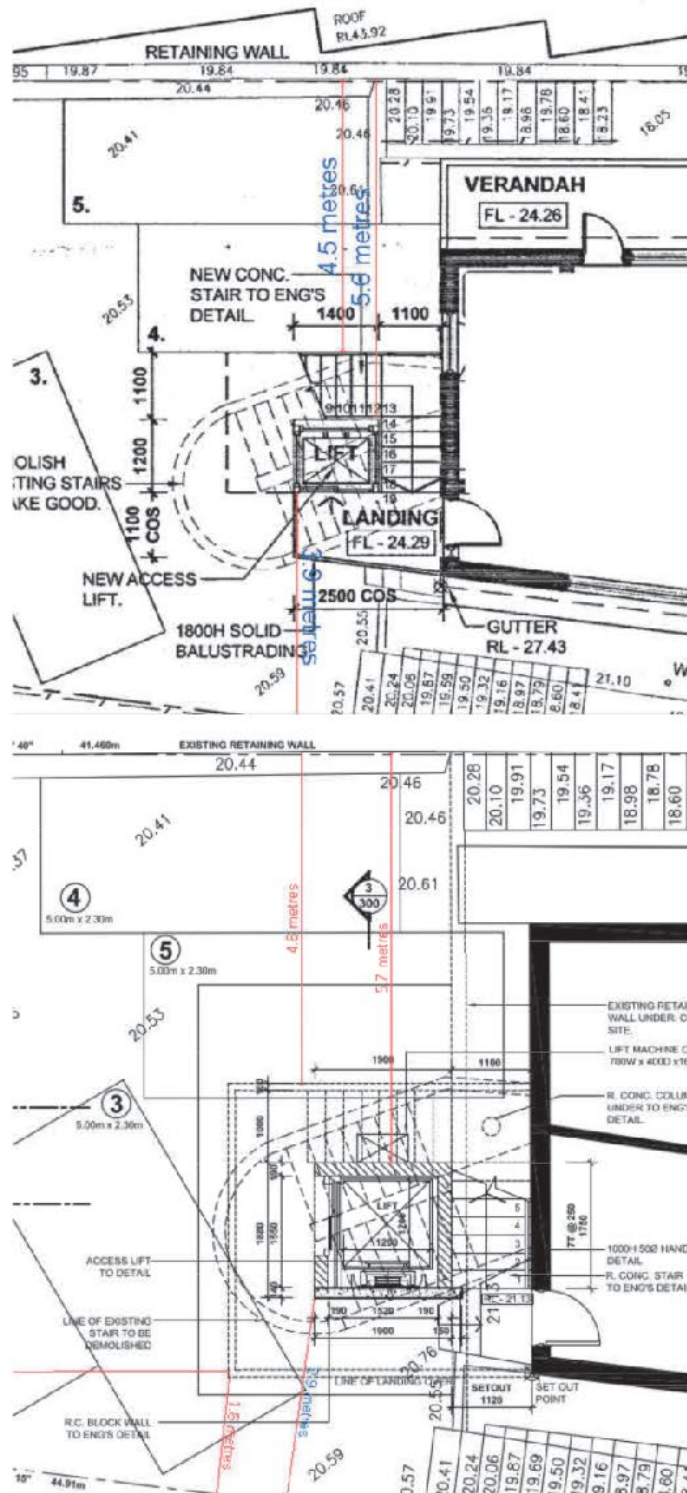


Figure 1 - Comparison of horizontal clearance from north-eastern boundary to staircase landing and lift. Approved above, proposed below.

2) The proposed design increases the vertical clearance to the north-eastern edge of the staircase and landing adjacent to cars space number 5 in comparison to DA219/2015. Under the proposed modified design, there is minimum vertical clearance of 1.6m adjacent to the north-eastern edge of the staircase/landing which will allow sufficient room for a car door to open unobstructed for car space number 5. Under DA219/2015, a minimum 1.2m vertical clearance was provided which would present more obstruction to the opening of a car door.

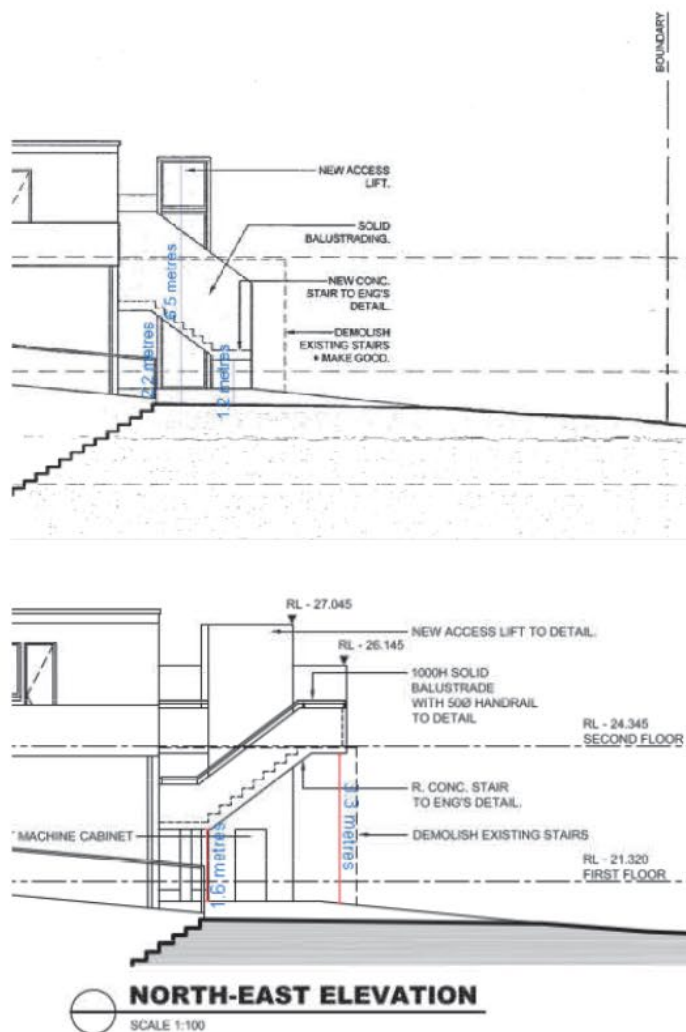


Figure 2 - Comparison of vertical clearance North-East Elevation. Approved above, proposed below.

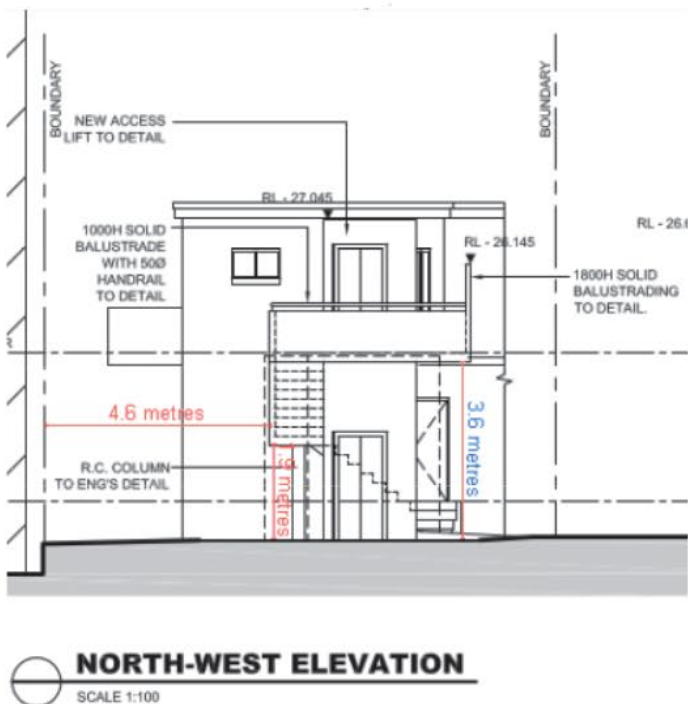
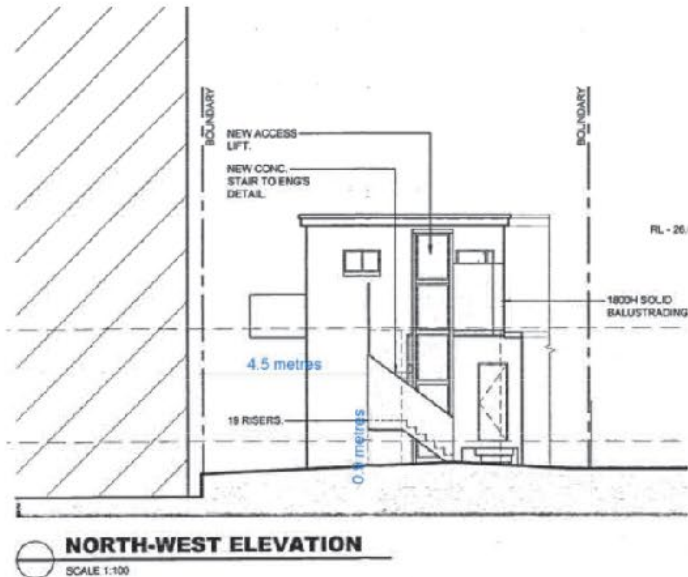


Figure 3 - Comparison of vertical clearance North-West Elevation. Approved above, proposed below.

3) The vertical clearance to the landing provided above car space number 3 is proposed at 3.6m. The proposed overhead clearance of 3.6m is sufficient clearance to allow unobstructed access to this car-space and will not impact upon the car park use. It should be noted that the prior staircase (which has since been demolished) was of similar configuration with an overhead encroachment into car space number 3 (shown in figure 1 and figure 4).

Overall, the proposed amended lift and staircase design will provide less obstruction and additional clearance when compared to the design approved under DA219/2015 for the reasons outlined above. Therefore, it is considered the amended design provides a better outcome than that approved under DA219/2015.



Figure 4 - Staircase prior to demolition.

- *Obstruction to the common laundry access.*

Comment:

The amended lift design results in a partial extension of the lift shaft towards the common laundry entrance. As seen on the below Figure 5, the laundry access was partially obstructed by the staircase entry prior to the demolition of the staircase. The new design is not considered to cause any more inconvenience than the previous situation, with the reasonable access maintained through the new design. Council does not consider the common laundry entrance to be an obstruction that will cause anything other than a minor inconvenience resulting in occupants having to take a few extra steps to access the laundry.



Figure 5 - Access arrangement to laundry prior to demolition of the existing staircase.

- *The decision of the NSW Civil and Administrative Tribunal ordering consent be provided by the owners corporation to the lodgement of the application is currently subject to an appeal and therefore Council should not be considering the application in light of the appeal.*

Comment:

The subject application has been lodged with Council following a case heard before the NSW Civil and Administrative Tribunal (NSWCAT) regarding the Owners Corporation of Strata Plan No.12289 refusing to consent to the lodgement of the Section 4.55 modification application. In accordance with the decision made on 5 March 2019, the Tribunal ordered that consent is to be provided to the lodgement of the Section 4.55 modification. Following the order made by the Tribunal, the Section 4.55 modification was lodged with Council.

In accordance with Clause 49 of the Environmental Planning and Assessment Regulation 2000, owners consent is required for the *making* of a development application only. The subject application has been made with Council upon the Order of the Tribunal that owners consent be provided. There is a consistent approach in the Land and Environment Court that land owners consent is only required at the time a development application is made and there is no opportunity for the revocation or withdrawal of the owners consent.

Therefore, the application has been appropriately made to Council and the application can be considered and determined on its merits.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development. Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.
NECC (Development Engineering)	Development Engineering has no objection to the additional lift. No additional engineering condition is required.
Strategic and Place Planning (Heritage Officer)	No objections.
Traffic Engineer	The proposal does not impact on the previously approved parking provision and access way, therefore no objection is raised on the proposal on traffic grounds.

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 (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
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Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	11m	6.5m	6.5m	N/A	Yes
Floor Space Ratio	FSR: 0.75:1	FSR: 0.84:1	FSR: 0.84:1 *FSR remains unchanged under the proposed modifications.	N/A	No change proposed

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 503.8sqm	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	SW: 9m	6.5m	6.5m	Yes
	NE: 9m	6.5m	6.5m	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	SW 2.16m	3.9m	2.9m	Yes
	NE 2.16m	5.6m	5.7m	Yes
4.1.4.4 Rear Setbacks	8m	11.3m	9.7m	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5.1 Solar Access	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

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

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects,

all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2019/0177 for Section 4.55(2) Modification of Development Consent 219/2015 for the removal of rear external stairs, installation of rear lift and stairs and partial enclosure of front balcony - Unit 5. on land at Lot 5 SP 12289,5 / 9 The Crescent, MANLY, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
CC100, Revision F, Site Plan	12 February 2018	Hosking Munro
CC101, Revision J, First Floor Plan	12 February 2018	Hosking Munro
CC102, Revision J, Second Floor	12 February 2018	Hosking Munro
CC200, Revision F, Elevations	12 February 2018	Hosking Munro

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

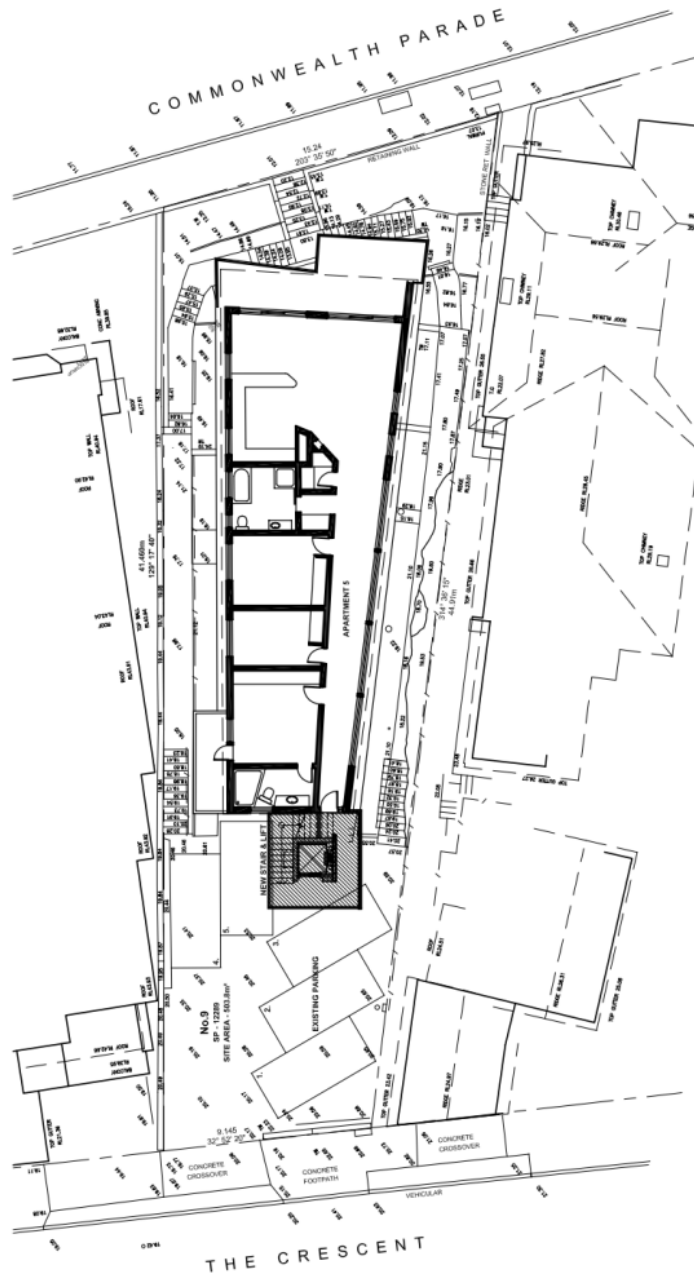
c) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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

Waste Management Plan

Drawing No.	Dated	Prepared By
Waste Management Plan	22 March 2019	Applicant

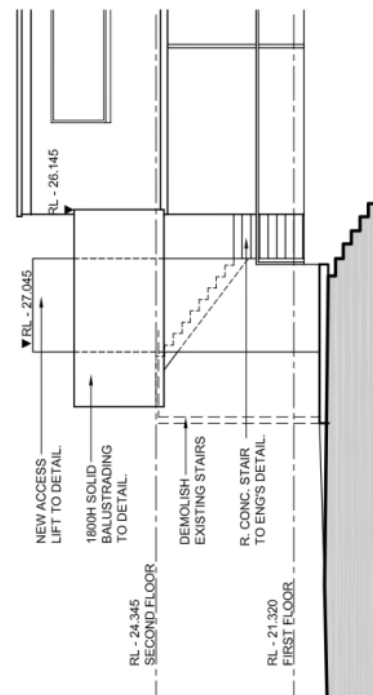
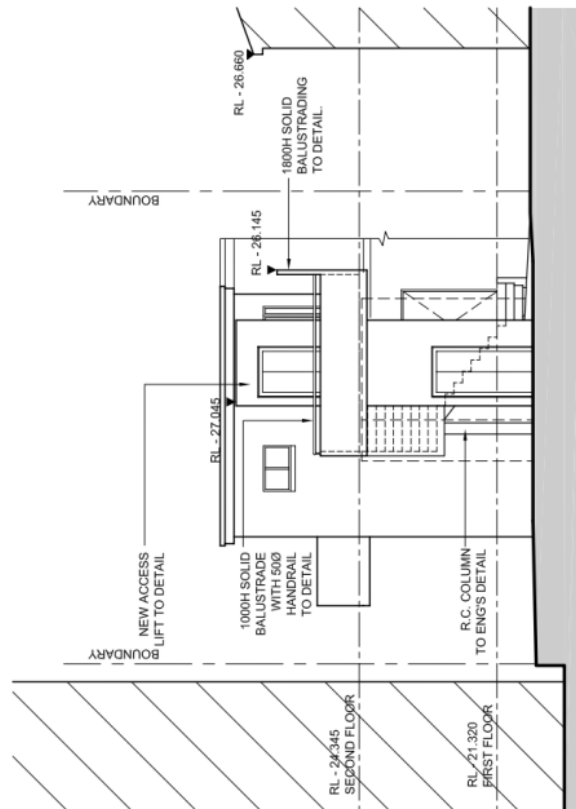
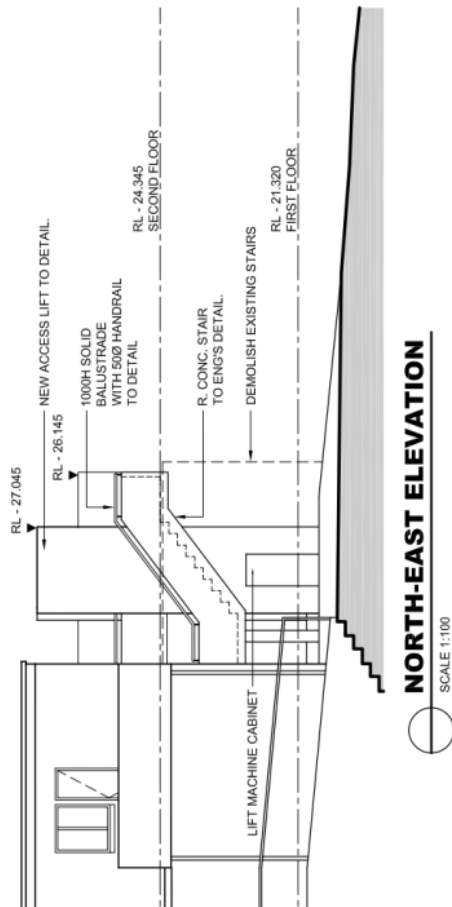
Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.



SITE PLAN
SCALE 1:200



Project	Drawing Title	Consultant	Issue	Amendment	Date	Drawn	Job No.	Drawn No.	Rev.
<p>ALL DIMENSIONS TO BE VERIFIED ON SITE. DIMENSIONS TO BE TAKEN IN PREFERENCE TO DIMENSIONS ON DRAWINGS. TO BE REFERRED TO ARCHITECT BEFORE PROCEEDING.</p>	<p>PROPOSED LIFT + ACCESS STAIR 5/9 THE CRESCENT MANLY NSW</p>	<p>HOSKING MUNRO ARCHITECTS 3.107 55 MILLER STREET PYRMONT 2009 ph 0660 1055 fax 0662 9290 email hnm@hosingmunro.com.au</p>	<p>A PRELIMINARY ISSUE B FOR TENDER C LIFT REVISED D STAIR REVISED E STAIR REVISED F STAIR REVISED</p>	<p>28.05.18 BY 08.06.18 BY 21.04.17 JAC 17.08.17 JAC 12.02.18 AG</p>	<p>HM1319 CC100 'F'</p>	<p>Scale: 1:200/0.3 Date: MAY 2018</p>			



Issue	Amendment	Date	Drawn	Job No.	Drawn No.	Rev.
A	PRELIMINARY ISSUE	26.05.16	BY			
B	FOR TENDER	09.06.16	BY			
C	FOR TENDER	30.05.17	JAC			
D	CC ISSUE	17.08.17	JAC			
E	STAIR REVISED	12.02.18	AG			
F	996 ISSUE					

Consultant:	HOSKING MUNRO ARCHITECTS 3.107 / 55 MILLER STREET, PYRMONT 2009 ph 9660 1055 fax 9692 9290 email hnm@hosingmunro.com.au
Project:	PROPOSED LIFT + ACCESS STAIR 5/9 THE CRESCENT MANLY NSW
Client:	H + E DONALDSON
Drawing Title:	STAGE 1 ELEVATIONS

ALL DIMENSIONS TO BE VERIFIED ON SITE. DIMENSIONS TO BE TAKEN IN PREFERENCE TO BE REFERRED TO ARCHITECT BEFORE PROCEEDING.	HM1319 CC200 'F'	Scale: 1:100 @ A3 Date: MAY 2016
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