

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 9 OCTOBER 2019



Ashleigh Sherry
Manager Business Systems and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 9 October 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 25 SEPTEMBER 2019

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 25 September 2019 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2019/0276 - 7 CLIFFORD AVENUE, FAIRLIGHT - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2019/555234
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/0276 for alterations and additions to a dwelling house including a swimming pool on land at Lot B DP 315261, 7 Clifford Avenue, Fairlight, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0276
Responsible Officer:	Benjamin Price
Land to be developed (Address):	Lot B DP 315261, 7 Clifford Avenue FAIRLIGHT NSW 2094
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
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:	George Yuri Opadchy
Applicant:	George Yuri Opadchy
Application Lodged:	22/03/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	11/09/2019 to 25/09/2019
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,045,000.00

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

- The proposal has received three objections in relation to the loss of views from the properties opposite Clifford Avenue. Following the erection of height poles Council raised concerns with the applicant over the view loss. The plans were amended and re-notified. A detailed assessment of the amended plans, taking into consideration areas of non-compliance, has been carried out and found the development to achieve the reasonable sharing of views.

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.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes demolition works and alterations and additions to the existing dwelling house to provide for the following:

Lower Ground Floor

- Swimming Pool
- Terraced area
- Family room, bedroom, bathroom, undercroft storage
- Lift

Ground Floor

- Open plan living, kitchen and dining room, sunroom with attached balcony, mudroom/laundry, single garage, lounge and two WC
- Lift

First Floor Plan

- Three bedrooms, bathroom, WC master bedroom with ensuite study and walk in robe

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 3.4.4 Other Nuisance (Odour, Fumes etc.)

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot B DP 315261 , 7 Clifford Avenue FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Clifford Avenue.</p> <p>The site is regular in shape with a frontage of 11.4m along Clifford Avenue and a depth of 45.7m. The site has an area of 522.5m².</p> <p>The site is located within the R1 General Residential zone and accommodates a two storey dwelling house.</p> <p>The site slopes from north to south and includes a crossfall of 6.13m.</p> <p>The site is landscaped for the residential setting and includes lawns and a number of small trees. There are no significant landscape features within the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one, two and three storey dwelling houses, dual occupancies and residential flat buildings.</p>

Map:



SITE HISTORY

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

DA2019/0276 Alterations and additions to a dwelling house including a swimming pool (current application) - Council requested the applicant erect height poles to demonstrate the extent of view loss. On the 29 July 2019 Council advised that the application could not be supported due to the building height variation and the resultant unreasonable loss of views. The application was amended and re-notified for 14 days until the 25 September 2019.

PLM72/2017 - Alterations and additions to the existing dwelling house - The proposal included a variation to the building height development standard. It was advised that the variation could be supported subject to no unreasonable loss of views.

DA94/2001 - Alterations and additions including a First Floor to Existing Dwelling - This development involved a similar built form to the current proposal. There is no evidence of this application being commenced.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(iii) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in accordance with the regulations.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p>
	<p>(ii) Social Impact</p>

Section 4.15 Matters for Consideration'	Comments
	<p>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 5 submission/s from:

Name:	Address:
Mr Gordon Blues	22 Lauderdale Avenue FAIRLIGHT NSW 2094
Mrs Eva Tamara Edgecombe	2 Phyllis Street NORTH CURL CURL NSW 2099
Mary Kathryn Locke	37 Balgowlah Road MANLY NSW 2095
Mr Jean Marc Schwob Ms Mary Kathryn Locke	37 Balgowlah Road MANLY NSW 2095
Mrs Kerry Dorothy McGough	2 / 8 Clifford Avenue FAIRLIGHT NSW 2094

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

- **View Loss**
- **Sydney water sewer at rear**

The matters raised within the submissions are addressed as follows:

- **View Loss**

Concern was raised over the loss of views from 12, 10 and 8 Clifford Avenue Fairlight

Comment:

The views have been assessed below in accordance with clause 3.4.3 Maintenance of Views of the Manly DCP 2013 and the views Planning Principle established by the NSW Land and Environment Court. The assessment found the amended development to be reasonable and the view sharing acceptable.

- **Sydney Water sewer at rear**

Concern was raised over the impacts of the development on the sewer line at the rear.

Comment:

A condition requiring the plans to be submitted to Sydney Water has been included in this recommendation. This will ensure no unreasonable impacts to Sydney Water infrastructure.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	<p>General Comments</p> <p>Environmental Health have been requested to comment on the proposed extension of the chimney to the existing dwelling fire place which will be raised because of the addition on top.</p> <p>Note: The chimney is the visible outside structure – the brick, block, slate or rock. The flue is the internal shaft (from a fireplace, a wood stove or a burner) that vents the gases and smoke produced from the fire to the outside</p> <p>The increasing height will improve the drawing ability of the chimney flue which should reduce smoke generated in the vicinity of the neighbouring dwellings. The location of the new termination point of the flu will not create any adverse affect pending its correct use by the operator.</p> <p>it is not clear if the fire place is a pre 1970's open fire place or a more modern enclosed solid fuel heater. Irrespective the only proposal before us is to increase the height of the flue therefore installation conditions relate only to the extension.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p>
Landscape Officer	<p>The landscape component of the proposal is acceptable subject to the protection of nominated existing trees and vegetation, and the completion of landscaping.</p>

Internal Referral Body	Comments
	<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; and 4.1.5 Open Space and Landscaping.</p> <p>A Landscape Plan is provided with the development application, and this satisfies the requirements of Manly DCP2013, subject to conditions.</p> <p>A Arboricultural Impact Assessment is provided with the development application, and this satisfies the requirements of Manly DCP2013, subject to conditions.</p>
NECC (Development Engineering)	<p>2nd Engineering referral Additional information of stormwater and easement have been provided. Development Engineering has no objection to the application subject to the following conditions of consent.</p> <p>1st engineering referral The Engineering consultant proposed to discharge the on site stormwater into an existing easement within No. 5 Clifford Avenue. However, it is no further information has been submitted about the easement. Additional information of the easement shall be submitted to support the application.</p> <p>Furthermore, the total impervious areas of the development is over 60% of the total site area. In accordance with section 4.1 of Council's Manly Specification for On Site Stormwater Management 2003, an On Site Stormwater Detention System (OSD) is required. The design requirements and parameters can be found in the above specification.</p> <p>As such, Development Engineering cannot support the application.</p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A329994_02 dated 19 March 2019).

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Manly Local Environmental Plan 2013

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

aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m - 8.3m	N/A	Yes
Floor Space Ratio	FSR: 0.6:1 (313.5sqm)	FSR: 0.59:1 (312.8sqm)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 522.5sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 250sqm	1 dwelling per 522.5sqm	N/A	Yes
4.1.2.1 Wall Height	East: 7.3m (based on gradient 1:7.5)	8.7m	19.2%	No
	West: 7.5m (based on gradient 1:6)	8.6m	14.7%	No
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	1.8m	N/A	Yes
4.1.4.1 Street Front Setbacks	6m	Garage Nil Ground Floor 2.975m First Floor Balcony 3.4m First Floor 5.7m	100% 50.4% 43% 5%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	East Ground Floor 1m - 2m First Floor 1.9m - 2.9m	Ground Floor Existing 1.5m First Floor 2.4m Pop-out 2m	 0%-17.2% 27%	No

	(based on wall height)			
	West Ground Floor 0.9m-1.9 First Floor 1.86m - 2.86m (based on wall height)	Ground Floor nil-0.9m First Floor 2m Pop-out 1.4m	100% - 52.6% 0%-24.7% 30%	No
4.1.4.4 Rear Setbacks	8m	Terrace 14.4m Dwelling 20m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (287.4sqm)	60.4% (315.8sqm)	N/A	Yes
	Open space above ground Max. 25% of total open space (78.9sqm)	15.9% (50.5sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (110.53sqm)	37.2% (117.4sqm)	N/A	Yes
	3 native trees	2 trees	33%	No
4.1.5.3 Private Open Space	18sqm per dwelling	Ground Floor 17.6sqm Lower Ground 41.7sqm	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 (5.7m)	4.8m	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	2.5m	100%	No
	1m curtilage/1.5m water side/rear setback	Curtilage East 1.5m West 0.9m Water East 2.4m West 1.2	10% 20%	No
Schedule 3 Parking and Access	Dwelling 2 spaces	1 spaces	50%	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.3 Landscaping	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	No	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	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:

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 subject site and the adjoining properties will maintain a northerly aspect to the street. Solar access can be gained from this aspect all day throughout the winter solstice. The proposal will result in

additional overshadowing of the southern private open space areas of the neighbouring properties. These areas are self shadowed for the majority of the day. The proposal is compliant with the height of buildings development standard and the rear setback control. Compliance with the side setback control will not result in any significant improvement to the overshadowing. As such, the overshadowing is considered to be equitable.

Objective 2) To allow adequate sunlight to penetrate:

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

Comment:

The proposal will allow adequate solar access to the private open spaces and windows to living spaces/habitable rooms on the site and to the adjoining properties.

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

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

Comment:

The proposal will maximise the penetration of winter sunlight to living rooms and principal outdoor areas of the site. The proposal will also ensure the neighbouring properties receive adequate solar access.

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

3.4.3 Maintenance of Views

Merit consideration:

The proposal has been subject to submissions raising view loss concerns from 8, 10 and 12 Clifford Avenue Fairlight. With regard to the loss of views, the development is considered against the underlying Objectives of the Control as follows:

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

Comment:

The assessment below has found that the proposal provides for adequate view sharing for both the existing and proposed development and the future residents of Manly.

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

An assessment of view loss has also been undertaken with reference to the Views Principle established by the NSW Land and Environment Court as follows:

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

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

Comment:

Following concerns raised with the loss of views Council requested height poles be erected. The plans were later amended to reduce the rear 3.8m of roof from RL32.7 to 32.17 (0.53m) resulting in a compliant building height. The poles were not required to be amended and can be seen in the photographs below.

The following photo was taken from 2/8 Clifford Avenue Fairlight.



View loss concern from 2/8 Clifford Ave - Taken from balcony attached to living room

There are no views affected from this property. The predominant views from 8 Clifford Avenue are gained from directly overlooking the front boundary. The subject site is further to the west and will not have an unreasonable impacts on views from this property.

The following photographs were taken from 10 Clifford Avenue Fairlight.



View loss from 10 Clifford Avenue - Taken from Living Room (left) Family Room (right)

The views lost from this property are water views from the family room and bedroom levels gained from a sitting and standing position. The views are gained from directly overlooking the front boundary.

The following Photographs were taken from 1/12 Clifford Avenue Fairlight.





View loss from 1/12 Clifford Avenue - Taken from living room (left) and deck (right)

The views lost are from the deck, bedroom and living area of the property. The views are water views obtained from overlooking the front boundary and are gained from a standing and sitting position.

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

Comment:

The views impact on 8 Clifford Avenue is considered to be negligible. This property will retain extensive water views directly overlooking the front boundary.

The view impact from 10 Clifford Avenue is considered to be minor. This property is split into three main levels being the living room level (top) family room level (middle) and bedroom level (lower). This property will retain extensive water views including (obscured) views of south head from the living room level and family room level. The bedroom level will maintain some obscured views between 7 and 5 Clifford Avenue.

The view impact from 1/12 Clifford Avenue is considered to be minor. This property will retain extensive water views including a view of south head and a partial view of north head from the living area, bedroom and deck.

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

Comment:

The proposal complies the height of buildings and floor space ratio development standards of the Manly LEP 2013. The development does not comply with the wall height, side setbacks and front setback controls. The view loss is a result of the overall height of the building. The non-compliance with the controls have been assessed below and found to be satisfactory. Due to the minor extent of the impact and the compliance with the development standards the proposal is considered to reasonable and the view sharing acceptable.

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

Comment:

As discussed above the proposal will maintain a reasonable sharing of views within the locality.

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

3.4.4 Other Nuisance (Odour, Fumes etc.)

The proposal includes an outdoor fireplace. It is not clear what the intended use or fuel for the outdoor fireplace is and no supporting information has been submitted with the application. As such a condition is recommended to delete the outdoor fireplace.

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

Description of Non-compliance

The Manly DCP 2013 requires buildings to incorporate a maximum wall height based on the slope of the land. The proposal does not comply with this control due to the eastern and western elevations.

Merit Consideration

The Manly DCP 2013 does not include objectives relevant to this clause but refers to the objectives of clause 4.3 Height of Buildings of the Manly LEP 2013. With regard to the variation the development is considered under the relevant objectives below:

(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 proposal is consistent with the building height permitted by clause 4.3 Height of Buildings of the Manly LEP 2013. The surrounding area predominantly consists of pitched roof forms. The proposal incorporates a pitched roof presentation to the streetscape and is designed to step down with the topography to ensure that it is consistent with the topographic landscape. The non-compliances with the wall height are situated at the rear of the building and will not impact on the streetscape character of the locality.

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

Comment:

The proposal is of a bulk and scale that is consistent with surrounding and nearby developments. The proposal complies with the height of building and floor space ratio development standards of the Manly LEP 2013. These development standards are aimed to control the bulk and scale of buildings. Compliance with these standards indicates that the development is of a bulk and scale that could be reasonably expected within the locality.

(c) to minimise disruption to the following:

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

Comment:

The proposal has been assessed above with regard to clause 3.4.3 Maintenance of Views of the Manly DCP 2013 and the Views planning principle established by the NSW Land and Environment Court. This assessment has found that the proposal will not result in any unreasonable impact on views within the locality.

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

Comment:

The subject site and the adjoining properties are orientated with a north-south aspect. This orientation ensures the adjoining properties receive good solar access from the north all day during the winter solstice. The proposal will not result in any unreasonable overshadowing of the adjoining properties during the winter solstice. The proposal will not overshadow any public open spaces.

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

Comment:

Not applicable.

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

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

Description of non-compliance

The Manly DCP 2013 requires a 6m front setback, where the prevailing setback is variable, and a side setback of 1/3 of the wall height. The proposal is not compliant with the front setback due to the garage and dwelling. The proposal is non-compliant with side setback control due to the garage, ground floor western addition and the first floor.

Merit consideration:

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

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

Comment:

The streetscape includes a number of examples of garages constructed to the street front boundary. The proposed garage will replace the existing carport and is consistent with the streetscape character of the locality.

The proposed additions to the dwelling are setback behind the garage and are consistent with the front setback of the nearby properties. Furthermore the proposed first floor incorporates a balcony and an additional setback to provide greater physical separation from the street and ensure the development does not impose on the streetscape of the locality.

The proposal is of an adequate design to ensure the existing streetscape is maintained.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposal will ensure and enhance local amenity for the following reasons:

- The design of the proposal incorporates privacy screening and high level windows where

necessary to ensure no unreasonable overlooking of the neighbouring properties. Furthermore the layout of the floors restrict overlooking and long term entertainment in areas of potential overlooking.

- The adjoining properties will maintain a northerly aspect and access to solar access all day during the winter solstice. The development is compliant with the height of buildings development standard and compliance with the setback control will not generate any substantial improvement to overshadowing. The proposal will provide equitable access to light, sunshine and air movement within the locality.
- The proposal has been assessed above with regards to the maintenance of views and has been found to be satisfactory.
- The proposal is of a suitable design to complement the streetscape character and maintain the pattern of spaced between buildings.
- The proposal will not result in any unreasonable impacts on traffic conditions within the locality.

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

Comment:

The proposed flexibility is satisfactory in this circumstance.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal includes compliant landscaped areas and will enhance the planting on the site.

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

Comment:

Not applicable.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The Manly DCP 2013 requires the planting of three endemic trees on this site. The proposal includes two endemic trees of an unspecified species.

Merit consideration:

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

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

Comment:

The proposal does not include the removal of any significant landscape features. The tree removal was supported by an arborist report and, subject to compliance with the recommendations, Councils Landscape Officer. The proposal includes the replacement of the two mature trees with two endemic trees. The Manly DCP 2013 requires three endemic trees on this site. No justification was provided as to why three trees cannot be accommodated. As such, a condition of consent is recommended requiring compliance with this control. The condition will also ensure the "endemic" trees are of the correct species. The proposal subject to the condition of consent will augment the native vegetation on the site.

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

Comment:

The proposal is consistent with the minimum required landscaped area and maximises open space at ground level. The proposal subject to conditions will ensure appropriate tree planting and the maintenance of existing vegetation and bushland.

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

Comment:

The proposal has been assessed with regards to amenity and has been found to be satisfactory. The proposal will maintain an adequate level of amenity on the site, streetscape and surrounding area.

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

Comment:

The proposal includes sufficient landscaped areas to maximise water infiltration on site.

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

Comment:

The proposed landscaping will minimise the spread of weeds and degradation of private and public open space.

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

Comment:

The proposal subject to the conditions will maximise wildlife habitat on the site.

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

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

Description of non-compliance

The Manly DCP 2013 requires two parking spaces to be provided per dwelling. The proposal will maintain the existing one space servicing the dwelling.

Merit consideration:

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

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

Comment:

The proposed parking is accessible to the dwelling on the site. In relation to the number of parking spaces the Manly DCP 2013 provides the following exception:

In relation to the provision of parking for dwelling houses, Council may consider the provision of only 1 space where adherence to the requirement for 2 spaces would adversely impact on the streetscape or on any heritage significance identified on the land or in the vicinity.

The provision of two parking spaces on this site would dominate the street frontage and result in an unreasonable impact on the streetscape. Given the use of the site as a single dwelling and the likely impact of additional parking on the streetscape the provision of one parking space is considered adequate in this circumstance.

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

Comment:

As discussed, it is considered that an exception be granted in this circumstance. This is due to the likely impact an additional parking space will have on the streetscape and the use of the site as a single dwelling.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

The proposed design is efficient, safe and convenient. Furthermore the provision of a single carparking space on the street front boundary is consistent with the streetscape. The development will not have an unreasonable impact on the streetscape

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

Comment:

The proposal does not require any excessive excavation.

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

Comment:

The proposal will maintain the existing footpath crossing.

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

Comment:

The proposal is of an appropriate design to limit the amount of impervious surfaces and provide screening of internal accesses from public view.

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

Comment:

The proposal is not located within a local centre. However is located with close proximity to local shops and bus lines direct to Manly. The proposal will encourage the use of alternative modes of transport.

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

4.1.9 Swimming Pools, Spas and Water Features

Description of Non-compliance

The Manly DCP 2013 requires swimming pools be setback from the side and rear boundaries 1m to the curtilage and 1.5m to the waters edge. The western side of the proposed swimming pool is setback 0.9m to the curtilage and 1.2m to the waters edge from the side boundary.

The Manly DCP 2013 also permits swimming pools to be a maximum height of 1m above ground level. The proposal is up to a maximum height of 2.5m.

Merit Consideration

With regard to the consideration of the variation, the development is considered under the objectives of the control below.

Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;

Comment:

The swimming pool provides limited opportunities to stand at this height and incorporates landscaping on the side boundary to limit overlooking. The proposal will not result in any unreasonable impacts on the visual privacy of the neighbouring properties. The pool filter is not located in close proximity to any habitable areas of the neighbouring property. Furthermore compliance with the Protection of the Environment Operations Act 1997 will ensure the plant is maintained in a way to not result in unreasonable acoustic impacts.

Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;

Comment:

The proposal will not impact on the streetscape or established character of the locality.

Objective 3) To integrate landscaping; and

Comment:

The proposal incorporates adequate landscaping on the side boundaries to minimise any impacts of the swimming pool.

Objective 4) To become an emergency water resource in bush fire prone areas.

Comment:

Not applicable.

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

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 \$10,450 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,045,000.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2019/0276 for Alterations and additions to a dwelling house including a swimming pool on land at Lot B DP 315261, 7 Clifford Avenue, FAIRLIGHT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS**1. Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA.01 Cover Sheet + Site Plan Issue D	30/06/2019	Du Plessis & Du Plessis Architects
DA.02 Roof Plan Issue D	30/06/2019	Du Plessis & Du Plessis Architects
DA.05 Demolition Lower Ground Floor Plan Issue D	30/06/2019	Du Plessis & Du Plessis Architects
DA.06 Demolition Ground Floor Plan Issue D	30/06/2019	Du Plessis & Du Plessis Architects
DA.07 Lower Ground Floor Plan Issue D	30/06/2019	Du Plessis & Du Plessis Architects
DA.08 Ground Floor Plan Issue D	30/06/2019	Du Plessis & Du Plessis Architects
DA.09 First Floor Plan Issue D	30/06/2019	Du Plessis & Du Plessis Architects
DA.10 Elevation North/South Issue D	30/06/2019	Du Plessis & Du Plessis Architects
DA.11 Elevations East/West Issue D	30/06/2019	Du Plessis & Du Plessis Architects
DA.12 Sections Issue D	30/06/2019	Du Plessis & Du Plessis Architects
Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment	7/07/2018	Plateau Trees

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
L.001 Concept Landscape Plan Issue C	5/11/2018	Du Plessis & Du Plessis Architects

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. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house.

A dwelling house is defined as:

"dwelling house means a building containing only one dwelling."

(Manly Local Environment Plan 2013 (as amended) Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

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

3. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and

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

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

Reason: Legislative requirement.

4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that

occurs on Council's property.

- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$10,450.00 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 \$1,045,000.00.

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.

6. Security Bond

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

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

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

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is

located on Council's website at www.northernbeaches.nsw.gov.au).

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

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

7. Required Canopy Tree Planting (MLEP)

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

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

8. On-Slab landscape works

- i) Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing to all internal walls and slab, and drainage over the concrete slab upon which soil and planting is being provided,
- ii) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule,
- iii) The following soil depths are required to support landscaping as proposed:
 - 300mm for lawn
 - 600mm for shrubs,
- iv) Design certification shall be submitted to the Certifying Authority by a structural engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

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

9. Amendments to the approved plans

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

- o The outdoor fireplace is to be deleted from the plans.

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

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

10. On-site Stormwater Detention Compliance

Certification of Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003 and the concept drawing by GZ Consulting Engineer, drawing number DR-000 to DR004 dated 28/5/2019. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

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

11. **Stormwater Drainage Application**

A Stormwater drainage application under Section 68 of the Local Government Act 1993 is to be submitted to Council for approval. The submission is to include Civil Engineering plans for the design of the connection to Council's pipeline which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges.

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

Reason: To ensure appropriate provision for disposal and Maintenance Stormwater management and compliance with the BASIX requirements, arising from the development.

12. **Sydney Water "Tap In"**

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

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

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

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

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

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. **Tree removal**

In consideration of the assessment of development impact, the following existing trees are approved for removal based on the recommendations of the Arboricultural Impact Assessment (dated 7/7/18) prepared by Plateau Trees and as nominated on the Landscape Plan L.001 prepared by Du Plessis + Du Plessis Architects:

- T1 - Avocado (exempt)
 - T2 - Jacaranda (exempt)
-

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. Road Reserve

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

Reason: Public Safety.

16. Removing, Handling and Disposing of Asbestos

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act
- Work Health and Safety Regulation
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)] and
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)]
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005.
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

17. Traffic Control During Works

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety

18. Tree and vegetation protection

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

- i) all trees and vegetation on site, unless granted approval for removal, and excluding exempt trees and palms under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation,

B) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
- iii) existing ground levels shall remain under the tree protection zone of trees to be retained, unless authorised by AQF Level 5 Arborist,
- iv) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an AQF Level 5 Arborist. Details including photographic evidence of works undertaken shall be submitted to the Certifying Authority,
- v) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- vi) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a AQF Level 5 Project Arborist on site,
- vii) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF

Level 5 Arborist on site,
viii) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist, including advice on root protection measures,
ix) should either or all of vi), vii) and viii) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
x) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009,
xi) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

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

19. Survey

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 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

20. Landscape works

Landscaping is to be implemented in accordance with the Landscape Plan L.001, prepared by Du Plessis + Du Plessis Architects, inclusive of the following requirements:

- i) the proposed native tree planting documented on L.001 shall be typically expected to reach a height at maturity of 10 metres, to bring the proposal into compliance with Figure 37 of the Manly Development Control Plan 2013,
- ii) all tree planting is to be installed at 75 litre container size,
- iii) all tree planting shall comply with 3.3.1 Landscaping Design, section b) item iii) where trees should be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight as described in the clause, or where the proposed tree locations may otherwise be positioned to minimise any significant loss of views,
- iv) all tree planting shall have a minimum individual area of 3 metres x 3 metres of soil area, and shall be located a minimum of 5 metres from existing and proposed built structures, or minimum of 3 metres where pier and beam footings are used.

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

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

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

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

Reason: To create encumbrances on the land.

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

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

Reason: To identify encumbrances on land.

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

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

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

Reason: To ensure stormwater disposal is constructed to Council's satisfaction. (DACENF10)

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

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

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

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

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

25. **Installation or alteration of solid/fuel burning heaters**

Installation work for the flue/chimney extension must be carried out by an appropriately experienced and qualified person and in accordance with the relevant provisions of AS2918:2001 – Domestic Solid Fuel Burning Appliances – Installation

Reason: To ensure the installation is completed in a legislatively compliant manner.

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

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

27. **Environmental and priority weed control**

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

Reason: preservation of environmental amenity.

28. **Maintenance of solid fuel heaters**

The owner/occupier shall ensure servicing of the heater is maintained according to the manufacturer's specifications.

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

29. **Operation of solid fuel burning heaters**

You are requested to take all practicable measures to prevent the likelihood of causing smoke and/or odour nuisances. Such measures should include:

- Using dry seasoned hardwood
- Storing wood in a dry well ventilated place
- Having a hot and well oxygenated fire
- Ensuring that the chimney flue is clean
- Checking the chimney at different stages of the fire to see if there is any smoke

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







ITEM 3.2	DA2019/0741 - 3 BEACONSFIELD STREET, NEWPORT - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Matthew Edmonds
TRIM FILE REF	2019/555215
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 DA2019/0741 for alterations and additions to a dwelling house on land at Lot A DP 397484, 3 Beaconsfield Street, Newport, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0741
Responsible Officer:	Penny Wood
Land to be developed (Address):	Lot A DP 397484, 3 Beaconsfield Street NEWPORT NSW 2106
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Therese Mary Rushby
Applicant:	THW Architects
Application Lodged:	12/07/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	23/07/2019 to 06/08/2019
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 33.5%
Recommendation:	Approval
Estimated Cost of Works:	\$ 391,600.00

Executive Summary

This application seeks consent for the alterations and additions to an existing dwelling house.

The proposal is permissible with consent in the E4 Environmental Living zone under Pittwater Local Environmental Plan 2014. The proposal is non-compliant with the building height development standard of 8.5m under the LEP. The applicant has therefore lodged a request under Clause 4.6 to vary the standard.

The proposal involves a new three (3) car garage located in the north eastern corner of the site with access granted from the existing driveway from Beaconsfield Street. Other proposed changes to the existing dwelling include internal alterations to reconfigure the existing layout of the dwelling, an external staircase along the southern elevation, material changes to the facade of the dwelling and additional

landscaping to the site.

Notification of the application resulted in one (1) submission raising no objection to the proposed development. The issues raised in the submission were enquiries relating to the construction phase of the development and the times and days construction is able to commence.

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

PROPOSED DEVELOPMENT IN DETAIL

The subject development application proposes the following works:

Lower Ground Floor:

- internal alterations and additions to provide new entry, internal access stairs, a lift, bathroom, gym, rumpus room and laundry
- New garage to accommodate three (3) cars and a bin storage area
- existing workshop area to remain as existing

Ground Floor:

- Proposed alterations and additions to existing ground floor to provide internal access stairs, lift, two (2) bedrooms, one with an ensuite, a bathroom, open plan kitchen/living/dining area and balcony;
- external access stairs along the rear.

First Floor:

- Proposed alterations and additions to existing first floor to provide for internal access stairs, lift, media room, bathroom, three (3) bedrooms, master bedroom with ensuite and walk in robe and balcony.
- External access stairs.

Roof Level:

- Proposed alterations and additions to existing roof level to provide for internal access stairs, bathroom and outdoor roof terrace.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the

- development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

Pittwater 21 Development Control Plan - C1.1 Landscaping

Pittwater 21 Development Control Plan - D10.7 Front building line (excluding Newport Commercial Centre)

Pittwater 21 Development Control Plan - D10.8 Side and rear building line (excluding Newport Commercial Centre)

Pittwater 21 Development Control Plan - D10.11 Building envelope (excluding Newport Commercial Centre)

Pittwater 21 Development Control Plan - D10.13 Landscaped Area - Environmentally Sensitive Land

Pittwater 21 Development Control Plan - D10.15 Fences - Flora and Fauna Conservation Areas

SITE DESCRIPTION

Property Description:	Lot A DP 397484 , 3 Beaconsfield Street NEWPORT NSW 2106
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern corner of Barrenjoey Road and Beaconsfield Street, Newport.</p> <p>The site is irregular in shape with a primary frontage of 12.27m along Beaconsfield Street and a secondary frontage of 31.34 along Barrenjoey Road. The western side boundary measures 49.47m and the rear boundary measures 22.635m. The site has a surveyed area of 697m².</p> <p>The site is located within the E4 Environmental Living zone under the PLEP 2014 and accommodates a three (3) storey residential dwelling with a roof terrace. Vehicular access is provided from Beaconsfield Street to the site via a gravel and concrete driveway to an attached brick garage at the rear</p> <p>The site is identified as being within a Terrestrial Biodiversity zone and as 'W Hazard H1 on Council's Geotechnical Map.</p> <p>Detailed Description of Adjoining/Surrounding Development</p>

Adjoining and surrounding development is characterised by residential dwellings.

Map:



SITE HISTORY

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

The land has been used for residential purposes for an extended period of time.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p>Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from</p>

Section 4.15 Matters for Consideration	Comments
	<p>the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000. No additional information was requested.</p> <p>Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Michelle Spertalis	249 Barrenjoey Road NEWPORT NSW 2106

The submission did not raise any concerns with the proposed development. The concerns were raised were in relation to when works would commence should the DA be approved and what the hours of construction would be. The following issues were raised in the submissions and each have been addressed below.

The matters raised within the submissions are addressed as follows:

- When would works commence?
Comment:
The objector was advised that in the event the development application was approved, the applicant has five (5) years to commence works from the date of the Determination.
- Construction time frames
Comment:
The objector was advised that in the event the development application was approved, a condition of consent would be imposed outlining the permissible hours that construction may occur at the subject site.

A written response was sent to the person who made the enquiry on 19 August 2019.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The development application seeks approval for the construction of alterations and additions to an existing dwelling including a new garage, lift and alterations to the existing driveway.</p> <p>The proposal in terms of landscape outcome is acceptable subject to the protection of existing trees and vegetation on adjoining property, and the completion of landscaping.</p> <p>A Arboricultural Impact Assessment is provided assessing no existing trees worthy of retention and that all are exempt species not requiring Council approval. Conditions of consent shall be imposed to ensure protection of all other trees and vegetation on adjoining property.</p> <p>A Landscape Plan has been prepared in accordance with the DA Lodgement Requirements, and completion of landscaping is subject to conditions.</p> <p>Council's Landscape section has assessed the proposal against the following Pittwater 21 DCP Controls: B4.22 Preservation of Trees and Bushland Vegetation C1.1 Landscaping D10 Newport Locality</p>
NECC (Bushland and Biodiversity)	<p>This application was assessed against Pittwater LEP Clause 7.6 Biodiversity and Pittwater DCP B4.4 Flora and fauna habitat enhancement category 2 and wildlife corridor.</p> <p>The proposal is for the alterations and additions to the existing dwelling including a new garage, lift and alterations to the existing driveway. The submitted Arborist report (SAS Landscape and Tree Solutions, no date) indicates that no native trees or vegetation will be removed or impacted by the proposal.</p> <p>Council's Natural Environment - Biodiversity section supports the application subject to conditions.</p>
NECC (Development Engineering)	<p>Comments for Development Engineers:</p> <ol style="list-style-type: none"> 1. A new garage is to be constructed. Excavation is required. Council's Normal Profile shall apply. 2. No flood risk. The site is unlikely to be affected by overland flow. 3. Part of the site is located within the Geotechnical Hazard Area. An "Acceptable Risk Management" level is achieved in accordance with the geotechnical report prepared by Hodgson Consulting Engineers, dated 1 July 2019. 4. No OSD is required. The proposed stormwater system seems to be satisfactory. <p>No objection to approval, subject to conditions as recommended.</p>
External Referral Body	Comments

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. A349313, date 28 May 2019).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

power line.

Comment:

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	11.35m	33.5%	No (See Clause 4.6 variation discussion in report)

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	No
5.9 Preservation of trees or vegetation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	11.35m
Percentage variation to requirement:	33.5%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 - Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *REBELIMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

The proposed height non-compliance largely relates to the existing height of the building. The new works proposed will reduce the non-compliant height by 1.03m and in doing so will serve to increase

the amenity of the site, while maintaining a building bulk that is suitable for the area. The works do not propose unreasonable amenity impacts on adjoining properties and the majority of the works proposed remain compliant with the height of buildings development standard. The proposal is considered to maintain a consistent height and appearance with surrounding development.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

(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 proposed building height of the development is reasonable given the fall of the land, the existing building and the location of the dwelling being on the corner of Beaconsfield Street and Barerenjoey Road. The reduction in height will ensure that overall bulk and scale of the dwelling is reduced and will soften the appearance of a three (3) storey dwelling when viewed from a public place. The proposed flat roof will be of a more sympathetic design which will result in an overall reduction in height of 1.03m. The proposed finishes and materials will be of a darker nature which will result in a less dominating appearance and will improve the aesthetics of the dwelling.

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

Comment:

The proposed works will see a reduction in height of the overall development by 1.03m with the introduction of a flat roof as opposed to the existing pitched roof located above the existing staircase. The other works proposed for the dwelling will result in a development that will improve the articulation of the building through the use of materials that will ensure that the dwelling will be compatible with the form and nature of surrounding development.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The development does not impose any additional overshadowing as a result of the proposed changes to the existing dwelling. The development will reduce the overall ridgeline of the development which will maintain the neighbour's amenity and will not result in any unreasonable loss of solar access for the subject site and the neighbouring properties.

d) to allow for the reasonable sharing of views,

Comment:

The development will maintain existing views currently experienced towards Pittwater as a result of the proposed works. The location of the dwelling on the corner of Beaconsfield Street and Barrenjoey Road means no property located directly adjacent to the subject site are affected. The reduction in the overall height of the dwelling may result in improved views towards Pittwater from distant properties.

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

Comment:

The overall built form of the building responds well to the natural topography of the site with the general built form of the dwelling remaining unchanged.

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

Comment:

The development will not have any direct or adverse impacts on any heritage items of the conservation areas in the wider area.

Zone objectives

The underlying objectives of the E4 Environmental Living zone are:

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

Comment:

The development proposes to reduce the overall height of the dwelling by 1.03m. This reduction in height will result in the third storey element located within the roof terrace to alter the existing roof from a pitched roof to a flat roof. This will reduced the overall bulk and scale of the dwelling, particularly when viewed from Barrenjoey Road. The proposed alterations to the external fabric of the dwelling will ensure the visual bulk and appearance of the dwelling will also be reduced.

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

Comment:

The proposed design changes to the existing dwelling are considered to improve the appearance of the development which will not have an adverse impact on the special aesthetic values of the site.

- *To provide for residential development of a low density and scale integrated with the landform and landscape*

Comment:

The existing dwelling contains three (3) levels with a pitched roof over the existing stairwell located on the rooftop. The proposal removes the pitched roof and provides a new flat roof. The proposal maintains the existing general bulk and scale of the dwelling. The setbacks are compatible with the existing surrounding development and the proposal will not impact on any long distance views afforded to the subject property and adjoining properties.

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

Comment:

The existing dwelling will have no impact on riparian and foreshore vegetation. No trees are to be removed subject to the application and is supported by Council's natural Environment - Biodiversity section.

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.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line - Primary	6.5m	6.5m	N/A	Yes
Front building line adjoining Barrenjoey Road	10.0m	2.4m	76%	No
Side building line	2.5m (south)	900mm	Existing - no change	No
	1m (west)	1.0m	Existing - no change	Yes
Building envelope	3.5m	Outside envelope	Existing - no change	No
	3.5m	Outside envelope	Existing - no change	No
Landscaped area	60%	55.3%	7.9%	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 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
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.12 Stormwater Drainage Systems and Natural Watercourses	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	No	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.3 Scenic protection - General	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	No	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	No	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	No	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	No	Yes
D10.15 Fences - Flora and Fauna Conservation Areas	No	No
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

C1.1 Landscaping

See D10.13 Landscaped Area - Environmentally Sensitive Lands

D10.7 Front building line (excluding Newport Commercial Centre)

Description of Non-compliance

The Pittwater 21 DCP 2014 requires buildings within the E4 Environmental Living Zone adjoining Barrenjoey Road be setback 10.0m. The subject site proposes a front setback of 2.4m to Barrenjoey Road which is generally in keeping with the established building line. Where the outcomes are achieved, Council may except accept a non-compliant building setback to Barrenjoey Road where there is an established building line. The development proposes a 6.5m setback to the primary frontage (Beaconsfield Street) which complies with the prescribed setback control.

Merit Consideration

With regard to the consideration for the variation, the development is considered under the outcomes of the control below.

Achieve the desired future character of the Locality. (S)

Comment

The proposed non-compliance to Barrenjoey Road will retain an established building line. The development proposes to maintain the location of the existing dwelling along the eastern elevation of the site fronting Barrenjoey Road and as a result, will not impose on the streetscape. The development is not considered to dominate the streetscape at 'human scale' and is compatible with the height of the natural environment. The subject site is zoned E4 Environmental Living and whilst the subject site maintains a non-compliant building height when viewed from Barrenjoey Road, the dwelling will not dominate the streetscape due to the amount of vegetation along Barrenjoey Road and will maintain a development that resembles the desired future character of the locality.

Equitable preservation of views and vistas to and/or from public/private places. (S)

Comment

The proposed non-compliance will not result in any impacts on views within the locality.

The amenity of residential development adjoining a main road is maintained. (S)

Comment

The proposed non-compliance is existing along Barrenjoey Road and is consistent with established building lines within the vicinity. The non-compliance runs along the entire eastern elevation of the dwelling and is largely shielded by the boundary wall and existing vegetation. The setback does increase along the Barrenjoey Road setback to 6.9 at the rear of the dwelling due to the splayed eastern boundary. The non-compliant element is designed to ensure no unreasonable impacts on the amenity of the adjoining properties.

Vegetation is retained and enhanced to visually reduce the built form. (En)

Comment

The development will maintain suitable vegetation forward of the building line to visually reduce the built form of the development.

Vehicle manoeuvring in a forward direction is facilitated. (S)

Comment

The non-compliant setback to Barrenjoey Road is largely resultant of the proposed three (3) car garage located within the north eastern corner of the site. HOWEVER the car parking arrangement is considered an improvement to the accessibility of the site and will facilitate vehicle manoeuvring in a forward direction.

To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.

Comment

The proposed works reduce the height of the existing development from 12.38m to 11.35m which is a reduction of 1.03m in height. Whilst not complying with the maximum 8.5m height control prescribed for the site, the proposed flat roof over the stairs to the rooftop will be a more appropriate and visually

sympathetic building form and will be an improvement to the existing design. The location of the garage will propose a 2.4m setback to Barrenjoey Road. This is considered acceptable as it will retain a similar existing established building line when viewed from Barrenjoey Road. Whilst the development proposes a non-compliant frontage to Barrenjoey Road, the structure is not overly visible due to the slope of the site with the garage being excavated below a section of natural ground level with the north eastern corner of the site and will be adequately landscaped to reduce any visual bulk of the development when viewed from Barrenjoey Road. The proposal is suitably designed to ensure it is in keeping with the streetscape and the height of the natural environment.

To encourage attractive street frontages and improve pedestrian amenity.

Comment

As discussed above the development will result in an attractive street frontage and will not impact pedestrian amenity.

To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.

Comment

The proposal is an appropriate response to the spatial characteristics of the existing urban environment.

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

D10.8 Side and rear building line (excluding Newport Commercial Centre)

Description of non-compliance

The control requires development located in the E4 Environmental Living zone to be setback 2.5m to at least one side and 1m for other side. The proposal is setback 1m to the western side boundary and 1m to the southern side boundary.

The site is located on a corner lot and therefore the side boundaries are identified as being along the southern and western side of the site. The western side complies with the minimum 1.0m side setback requirement with the southern side encroaching within the 2.5m minimum. The encroachment within the side setback is due to the siting of the existing dwelling house. The proposed works will have a minimal impact on the amenity to the surrounding properties.

As such, despite non-compliance, the proposal is considered to achieve consistency with the outcomes of this control and is supportable on merit, as follows:

To achieve the desired future character of the Locality

Comment: The proposed development has been designed in consideration of the constraints and natural features of the site, and represents a balanced approach to the retention of natural features and the development of the site. Overall, the proposed development is considered to be consistent with the desired character of the locality.

The bulk and scale of the built form is minimised

Comment: The proposed works do not attribute to excessive bulk and scale. The development reduces the overall height of the development which will contribute to a reduced bulk and scale when viewed from a public place.

Equitable preservation of views and vistas to and/or from public/private places

Comment: The proposed do not result in any unreasonable impacts upon views.

To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping

Comment: As above, the proposal does 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 proposed works do not result in any unreasonable impacts upon the amenity of the adjoining property to the rear and to the west with respect to privacy or solar access.

Substantial landscaping, a mature tree canopy and an attractive streetscape

Comment: The proposal has been designed and located to minimise impacts upon existing vegetation. Furthermore, the application is supported by the increased amount of landscaping particularly towards the front of the site.

Flexibility in the siting of buildings and access

Comment: As mentioned, the dwelling is existing with only minor external changes proposed. These works will not alter the existing siting of the dwelling or access to the site.

Vegetation is retained and enhanced to visually reduce the built form

Comment: The development proposes a substantial increase in vegetation to the site which will help soften the building and create a development which is more in keeping with the existing streetscape.

To ensure a landscaped buffer between commercial and residential zones is established

Comment: N/A

Based on the above, the proposed setbacks in this instance are supported on merit and considered to satisfy the outcomes of the control.

D10.11 Building envelope (excluding Newport Commercial Centre)

The building envelope controls prescribed for the site requires a building to maintain an envelope which provides for a height of 3.5m with an angle projected at 45 degrees.

The proposed works to the existing dwelling will not alter the existing envelope. The proposed works will improve the appearance of the dwelling in that the overall height of the dwelling will be reduced by approximately 1.03m when viewed from both Barrenjoey Road and Beaconsfield Street with an increased amount of landscaped open space which will significantly improve the appearance of the dwelling when viewed from a public space and will soften the overall appearance of the development.

The proposed alterations and additions will have no additional impact on the amenity of the surrounding neighbours.

D10.13 Landscaped Area - Environmentally Sensitive Land

Proposed

386m² or 55.3% (without variation)

463.2m² or 66.3% (with variation)

Requirement

418.8m² or 60%

There is a shortfall in landscaped area of 32.8m² (without variation). Clause D10.13 of P21 DCP permits a variation up to 6% of the total site area that is provided as impervious landscape treatment for the purpose of outdoor recreation. The variation also includes impervious areas less than 1.0m in width. Council may consider these variations where it can be demonstrated that the outcomes of the Clause can be achieved. The outcomes are achieved in the following ways:

Achieve the desired future character of the Locality.

Comment

The desired future character of the Newport locality is maintained. The increased level of landscaping, particularly within the north eastern corner of the site reduces the visual impact of the proposed garage and is not considered to be a dominant site feature when viewed from a public place.

The bulk and scale of the built form is minimised.

Comment

The bulk and scale of the structure is minimised as the application proposes to reduce the overall height of the development by 1.03m. The development does not alter the existing building envelope. The built form is further softened through the retention of vegetation on and around the site, proposed screen planting and the introduction of generous planting and turf located along the northern elevation fronting Beaconsfield Street.

A reasonable level of amenity and solar access is provided and maintained.

Comment

A reasonable level of privacy, amenity and solar access is maintained by the residents of the subject site and the adjoining dwellings.

Vegetation is retained and enhanced to visually reduce the built form.

Comment

One non-native tree is proposed for removal as part of this application. The proposal incorporated screen planting along the southern elevation of the swimming pool to enhance the existing vegetation onsite and visually reduce the built form.

Conservation of natural vegetation and biodiversity.

Comment

No native vegetation or wildlife species will adversely be affected by the proposed works.

Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.

Comment

The increased level of soft landscaping and will result in a reduction of runoff. No OSD is recommended with the existing stormwater system considered to be satisfactory.

To preserve and enhance the rural and bushland character of the area.

Comment

Consistency with the relevant built form controls and the retention and introduction of additional vegetation on the site will ensure the character of the area is maintained. The amount of addition landscaping is a vast improvement to the appearance of the site and will significantly assist in softening the appearance of the built form when viewed from both Barrenjoey Road and Beaconsfield Street.

Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.

Comment

Soft surfaces and porous materials have been utilised where possible to minimise run-off and assist with stormwater management.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

D10.15 Fences - Flora and Fauna Conservation Areas

The development application proposes a new boundary fence along the northern (front) boundary and part of the eastern boundary front Barrenjoey Road. The proposed plans have indicated that the proposed fence is subject to compliance with the Exempt and Complying Codes SEPP and therefore does not form part of the subject development application. A condition is imposed as part of the consent to not include the fence as part of the proposal.

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 \$3,916 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$391,600.

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

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

- PLEP2014 - Clause 4.3 Height of Buildings
- D10.7 - Front Building Line (excluding Newport Commercial Centre)
- D10.8 - Side and Rear Building Line (excluding Newport Commercial Area)
- D10.13 - Landscaped Area - Environmentally Sensitive Land

The non-compliance's 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 Height development standard of 33.5%. The non-compliance has been considered in the context of the site and the surrounding properties and in considered of the development for this site. On balance, the non-compliance with the height has been assessed as reasonable given the slope of the site and the high level of vegetation screening along the eastern elevation fronting Barrenjoey Road. The reduction of the overall height of the development along with improvements to the materials and finishes of the dwelling will result in a dwelling that is more compatible with the surrounding development and the E4 Zone.

In conclusion, the application has complied with the relevant policies and is recommended for

approval.

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

RECOMMENDATION

Council is satisfied that:

1) the applicant's written request under clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of clause 4.3 Height of Buildings 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 DA2019/0741 for Alterations and additions to a dwelling house on land at Lot A DP 397484, 3 Beaconsfield Street, NEWPORT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
MD 00 - B	29 May 2019	THW Architects
A 00 - A	31 May 2019	THW Architects
A 01 - A	31 May 2019	THW Architects
A 02 - A	31 May 2019	THW Architects
A 03 - A	31 May 2019	THW Architects
A 04 - A	31 May 2019	THW Architects
A 10 - A	31 May 2019	THW Architects
A 11 - A	31 May 2019	THW Architects
A 12 - A	31 May 2019	THW Architects
A 13 - A	31 May 2019	THW Architects
A 20 - A	31 May 2019	THW Architects
A 21 - A	31 May 2019	THW Architects

L1	15 June 2019	SAS Landscapes
L2	15 June 2019	SAS Landscapes

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report	1 July 2019	Hodgson Consulting Engineers
BASIX Report No. A349313	28 May 2019	THW Architects

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Northern Beaches Waste Management Plan	19 June 2019	THW Architects

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 \$3,916.00 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 \$391,600.00.

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

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

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

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

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

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

6. **Stormwater Disposal**

Stormwater shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's Clause B5.10 in PITTWATER DCP21.

Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Northern Beaches Council's Clause B5.10 in PITTWATER DCP21 are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Hodgson Consulting Engineers dated 1 July 2019 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

8. **Structural Adequacy and Excavation Work**

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

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

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

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

Reason: To provide public and private safety.

9. **Vehicle Crossings Application**

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

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

Reason: To facilitate suitable vehicular access to private property.

10. **Compliance with Standards**

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

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

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

11. **External Finishes to Roof**

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

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

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

12. **Blank condition for prior construction certificate**

A boundary survey, prepared by a Registered Surveyor, shall be provided as evidence that all buildings/works are within the appropriate property, easement boundaries and rights of carriageway.

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

Reason: To ensure the accurate location of buildings in relation to boundaries, easements and

rights of way.

13. **Boundary Survey**

A boundary survey, prepared by a Registered Surveyor, shall be provided as evidence that all buildings/works are within the appropriate property, easement boundaries and rights of carriageway.

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

Reason: To ensure the accurate location of buildings in relation to boundaries, easements and rights of way.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

14. **Tree removal**

The following existing trees are granted approval for removal following assessment and recommendation in the Tree Report prepared by SAS Landscape and Tree Solutions:

- Trees numbered 1 to 7 - all exempt species

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. **Vehicle Crossings**

The provision of one vehicle crossing 6 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

16. **Maintenance of Road Reserve**

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

Reason: Public Safety.

17. **Tree and vegetation protection**

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation located on adjoining properties, and in particular the existing Gum within property No. 243 Barrenjoey Road,
- ii) all road reserve trees and vegetation.

b) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on

- Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
 - iii) existing ground levels shall remain under the tree protection zone of trees to be retained, unless authorised by AQF Level 5 Arborist,
 - iv) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an AQF Level 5 Arborist. Details including photographic evidence of works undertaken shall be submitted to the Certifying Authority,
 - v) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - vi) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a AQF Level 5 Project Arborist on site,
 - vii) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
 - viii) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist, including advice on root protection measures,
 - ix) should either or all of vi), vii) and viii) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
 - x) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009,
 - xi) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.
- c) All protected trees are to be retained for the life of the development, or for their safe natural life. Trees that die or are removed by approval must be replaced with a locally native canopy tree.

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

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

18. Landscape works

Landscaping is to be implemented in accordance with the Landscape Plans L1 and L2 prepared by SAS Landscapes, inclusive of the following requirements:

- i) the eastern boundary garden bed planting along Barrenjoey Road shall consist of screening planting selected from the following list: *Elaeocarpus reticulatus*, *Syzygium 'resilience'*, or *Syzygium 'pinnacle'*, planted no more than 1 metre apart, and planted at a minimum pot container size of 300mm.

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

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

19. **Stormwater Disposal**

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

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

21. **Landscape maintenance**

Any existing landscaping including trees required to be retained together with any additional landscaping required by this Consent is to be maintained for the life of the development.

A 12 month establishment period shall apply for all new landscaping. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. All planting must be maintained for the life of the development, or for their safe useful life expectancy. Planting that may die or is approved for removal must be replaced.

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

22. **Environmental and priority weed control**

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

Reason: preservation of environmental amenity.

23. **Control of Weeds**

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

Reason: Weed management.

24. **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.

25. **Dead or Injured Wildlife**

If construction activity associated with this development results in injury or death of a native

mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

26. **Domestic Animals Exclusion**

For the life of the development, cats are to be kept in a cat run and/or inside the dwelling such that they are prevented from entering wildlife habitat areas at all times. Dogs are to be kept in an enclosed area such that they cannot enter areas of bushland, unrestrained, on surrounding properties.

Reason: Wildlife protection

27. **Use of Premises**

The dwelling is to be solely used as a single dwelling.

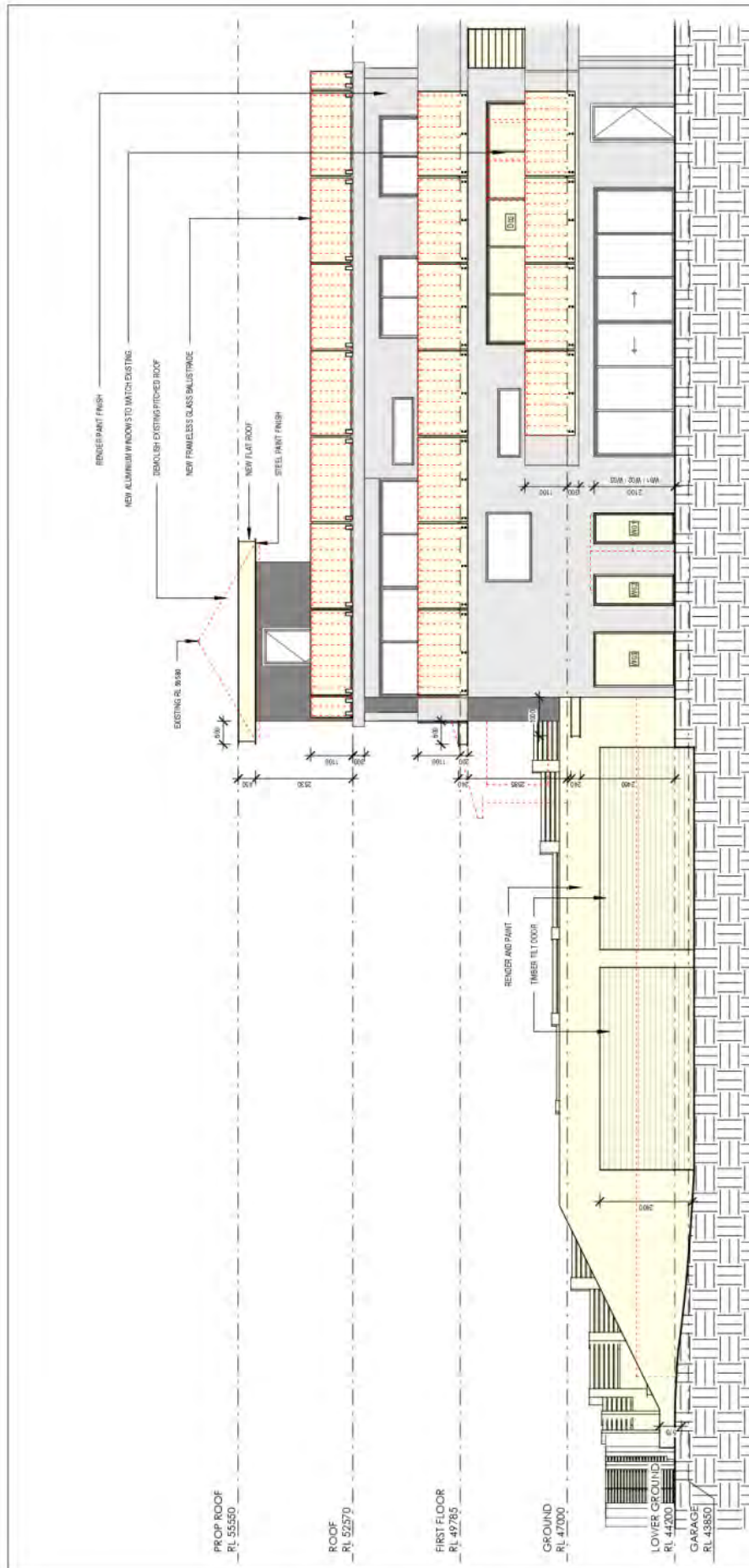
Reason: To ensure the development is not to be used for the purpose of a dual occupancy.

28. **Boundary Fence and Gate**

The front fence and gate located along the northern boundary and along part of the eastern side boundary on approved Plan No's A 00 - A, A 10 - A, A 11 - A, A 12 - A and A 21 - A is not approved and does not form part of the consent.

Reason: The fence does not comply with Part D10.5 Fences - Flora and fauna Conservation Areas prescribed in Pittwater 21 Development Control Plan.



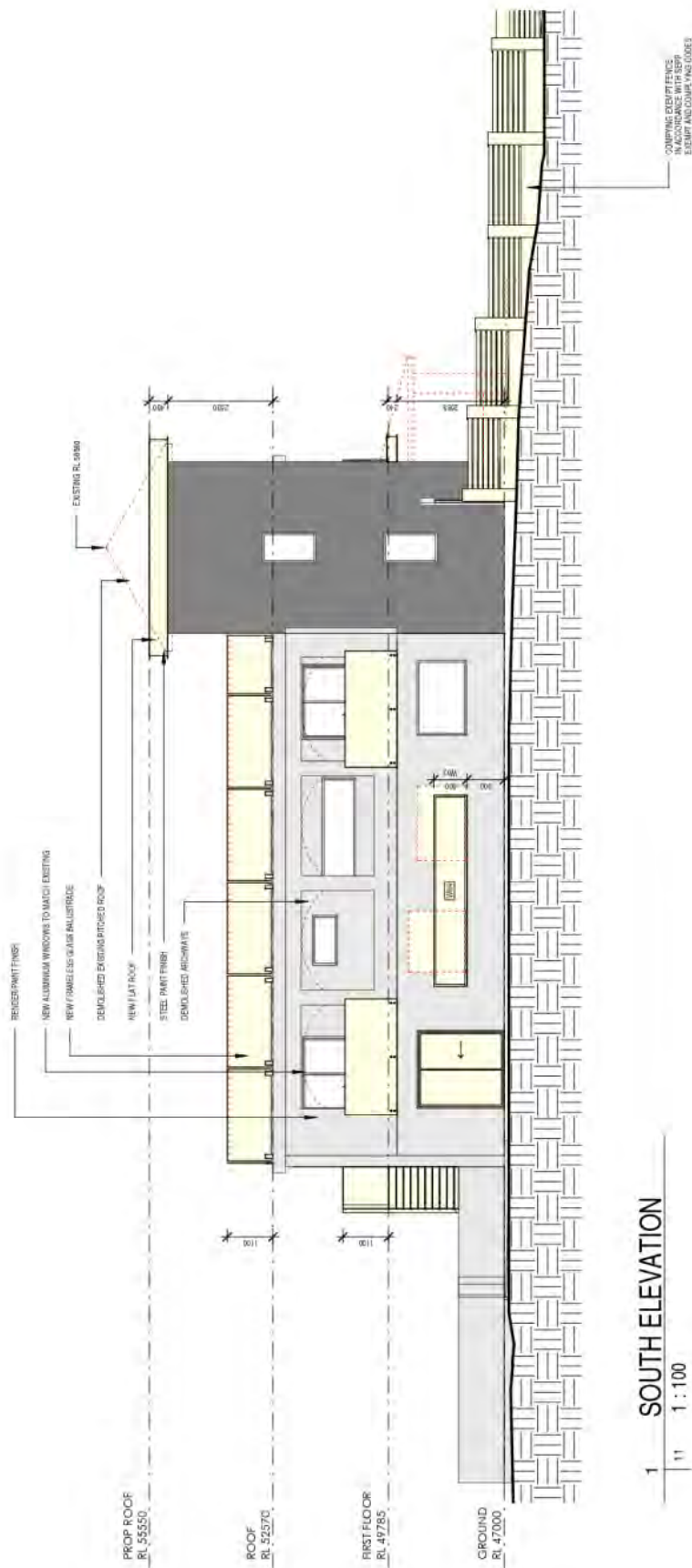


1 NORTH ELEVATION
10 1 : 100

--- DEMOLISHED
... HIDDEN
--- OVERHEAD
--- EXISTING
--- PROPOSED
--- NEW WORK

0 5 10 m

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THW ARCHITECTS	DAN & NALON PO BOX 3222 ADELPHI NSW 2516 P 803 1154 E 3399 8048 WATSON COW AU	BARRIERS CONSULTING ENGINEERS PO BOX 672 AVALON NSW 2107 P 803 80 339 E 3399 8048 WATSON COW AU	GEOGRAPHICAL CONSULTANT 181 121 64 WATSON ROAD WATSON NSW 2116 (02) 939 1161	3 BEACONSFIELD STREET NEWPORT NSW 2116	144	MV	TW	A3
Reg# NSW 75417 - TIA WEST Ph: 02 9918 5985 E: tim@thw.net.au M: Suite 101 - Level 1, 40 Old Barron Way, Avalon NSW 2107	PLANNER	ABORIST / LANDSCAPE	CLIENT	PROJECT	PROJECT NAME	DRAWING NAME	DRAWING NUMBER	SCALE
	VALUATION AND ENVIRONMENT CONSULTING VALUATION AND ENVIRONMENT CONSULTING P 803 80 339 E 3399 8048 WATSON COW AU	S&L LANDSCAPE	Theresa Butler theresa.butler@cmr.com.au	3 BEACONSFIELD STREET NEWPORT NSW 2116	3 BEACONSFIELD	NORTH ELEVATION	A 10 -A	1 : 100
				DATE	DATE	DATE	DATE	DATE
				COMMENTS				

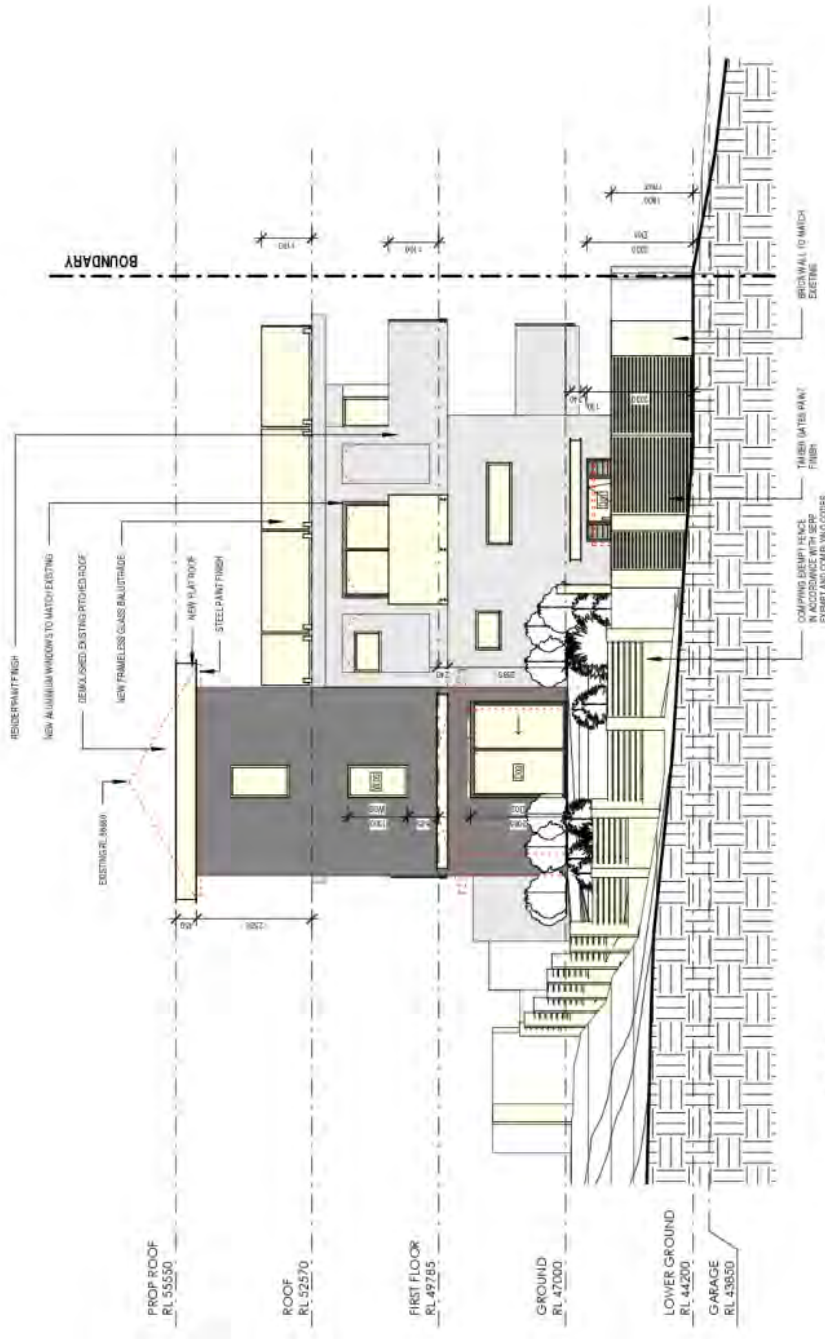


1 SOUTH ELEVATION
1:100

DEMOLISHED
HIDDEN
OVERHEAD
EXISTING
PROPOSED
NEW WORK

0 5 10 m

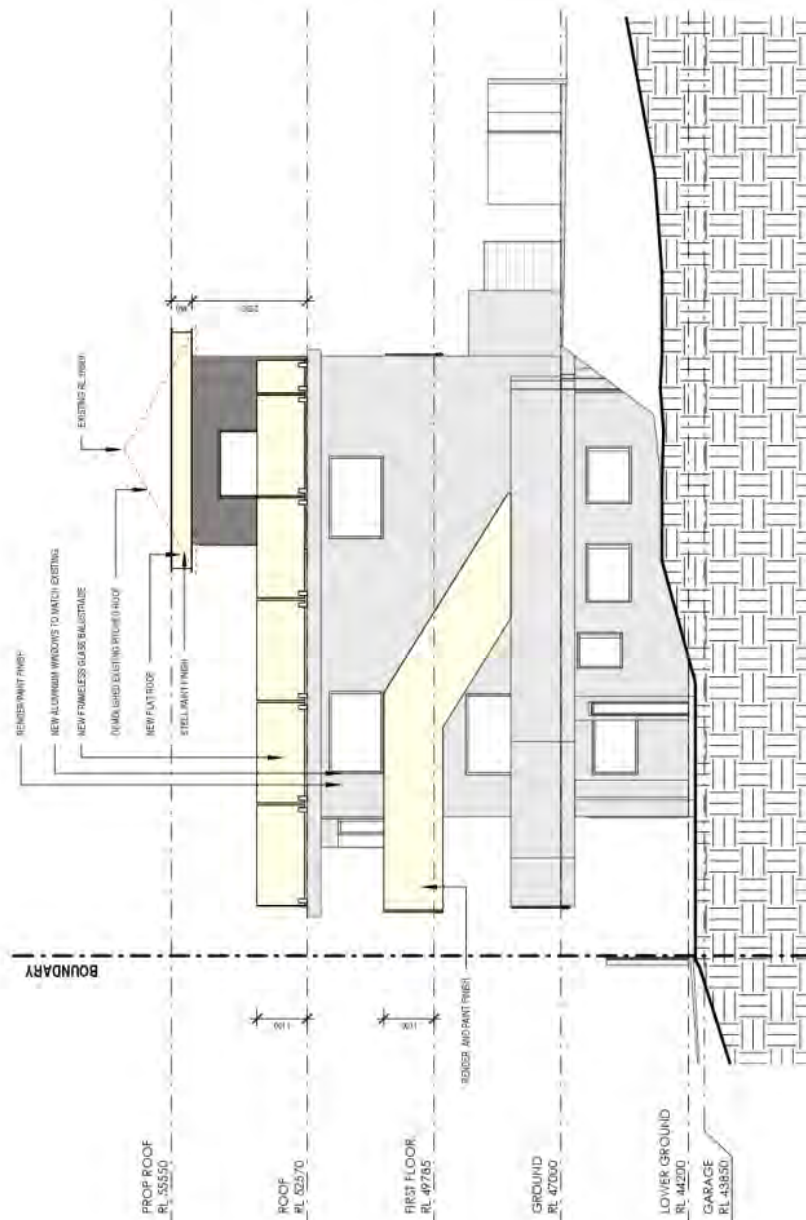
<p>ARCHITECT</p> <p>THW ARCHITECTS</p> <p>reg# NSW 7417 - TINA WEST ph 02 9918 5985 e. tin@thw.net.au m. Suite 101 - Level 1, 40 Old Barrerajway rd, Avoca NSW 2107</p>	<p>PLANNER VALERIE HEDDERLEY PO BOX 1154 E. 1511 E. 1511</p>	<p>ENGINEER BARRISTER CONSULTING ENGINEERS PO BOX 472 AVALON NSW 2107 E. 1511 E. 1511</p>	<p>GEO GEOGRAPHICAL CONSULTANTS 100/121 64th AVALON RD AVALON NSW 2107 (02) 959 1812</p>	<p>PROJECT 3 BEACONSFIELD STREET NETWORK NSW 2107</p>	<p>CLIENT Beaconsfield council@beaconsfield.nsw.gov.au</p>	<p>DATE A 31/05/2019 DA</p>	<p>COMMENTS</p>	<p>JOB NUM 144</p>	<p>DRAWN BY MV</p>	<p>CHK BY TW</p>	<p>PAGE SIZE A3</p>	<p>SCALE 1:100</p>	<p>DRAWING NUMBER A 11 -A</p>
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DEMOLISHED
HIDDEN
OVERLAP
EXISTING
PROPOSED
NEW WORK

0 5 10 m

<div>ARCHITECT</div> <div></div> <div>reg# NSW 7417 - TIA WEST ph. 02 9918 5085 e. info@thw.net.au m. Suite 101 - Level 1, 40 Old Barreripway, Avoca NSW 2107</div>	<div>SURVEY</div> <div>DAN & NATALIE PO BOX 2222, WILSON, NSW 2014 P 02 9918 5085 E survey@thw.net.au</div>	<div>ENGINEER</div> <div>BARRISTER / CONSULTING ENGINEER LUCAS & LUCAS PO BOX 472, WILSON, NSW 2014 P 02 9918 5085 E lucask@thw.net.au</div>	<div>GEO</div> <div>GEOTECHNICAL CONSULTANT WILLIAMS & WILSON PO BOX 111, WILSON, NSW 2014 P 02 9918 5085</div>	<div>PROJECT</div> <div>3 BEACONSFIELD EAST ELEVATION 3 BEACONSFIELD EAST ELEVATION</div>
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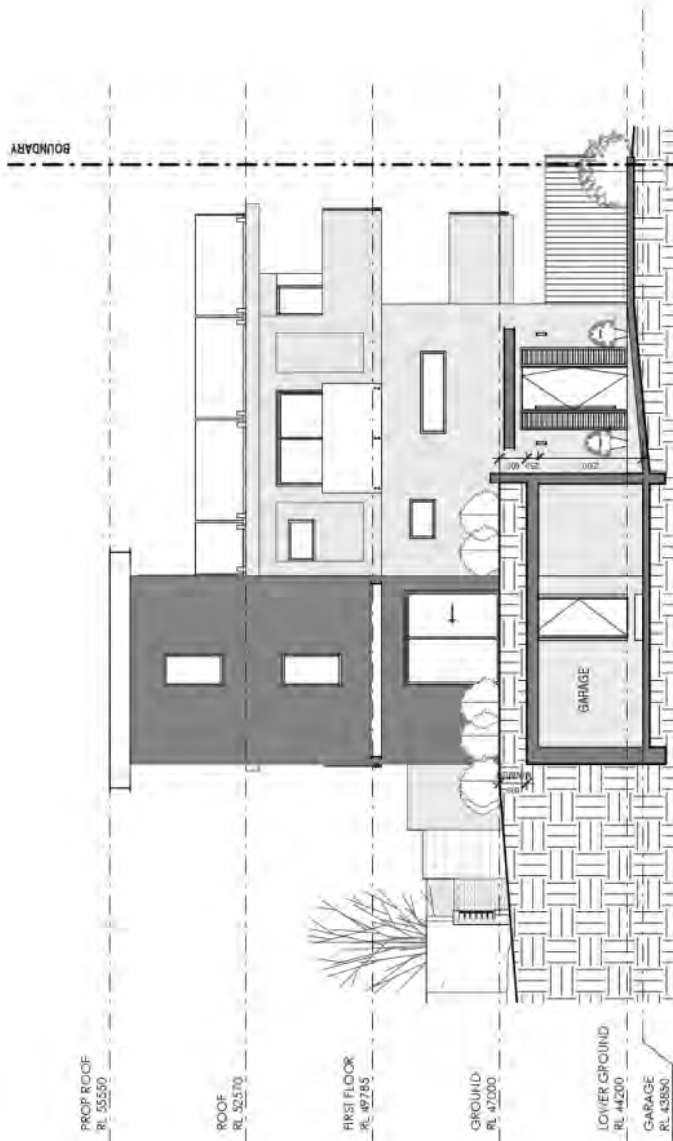
1 WEST ELEVATION

13 1:100

DEVELOPED
HIDDEN
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EXISTING
PROPOSED
NEW WORK

0 5 10 m

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THW ARCHITECTS	DAN & NADINE PO BOX 2222 JERRIBIN NSW 2514 P 0813 5151 E SURVEY@THW-ARCHITECTS.COM.AU	BARRINGTON CONSULTING ENGINEERS LOCAL ACTIVITY PO BOX 472 MACKIN NSW 2011 P 02 9360 3333 E SURVEY@BARRINGTON.COM.AU	GEOGRAPHICAL CONSULTANTS 3881 121 64 44 WHITE ROAD ROCKVALE NSW 2106 (02) 9397 1881	3 BEACONSFIELD MURPHY NSW 2106	144	MV	TW	A3
reg# NSW 7417 - RIA WEST ph 02 9918 5085 e. tin@thw.net.au m. Suite 101 - Level 1, 40 Old Barrer Highway, Avoca NSW 2107	PLANNER	ARCHITECT / LANDSCAPE	CLIENT	DRAWING NAME	3 BEACONSFIELD	WEST ELEVATION	SCALE	DRAWING NUMBER
	NADINE MILD ARCHITECTURE CONSULTING NADINE MILD 10/100 BARRER HIGHWAY, AVOCA NSW 2107	SAS LANDSCAPE	THW ARCHITECTS	A 31/05/2019 DA	A 13	A 13	1:100	A 13 - A



1 SECTION A
01 20 1 : 100

SHADING
HATCH
OVERHEAD
SETTING
REPOSED
NEW WORK

0 5 10 m

ARCHITECT	SURVEY	ENGINEER	GEO	PROJECT	JOB NUM	DRAWN BY	CHK BY	PAGE SIZE
THW ARCHITECTS	DAN A. HAYDON P. 02 9918 5065 F. 02 9918 5065 E. dan@thw.net.au	MARKUS COOPER P. 02 9918 5065 F. 02 9918 5065 E. markus@thw.net.au	GEOGRAPHICAL CONSULTING 100/121 64th AVE WILLOWBUSH NSW 2156 (02) 9918 5065	3 BEACONSFIELD NORTH PT. A20, 2019	144	MV	TW	A3
reg# 1557417 - TIA WEST	PLANNER	ARCHITECT / LANDSCAPE	CLIENT	PROJECT NAME	DRAWING NAME	SCALE	DRAWING NUMBER	DRAWING NUMBER
m. Suite 101 - Level 1, 40 Old Berriman Rd, Avoca NSW 2107	HAYDON ARCHITECTS P. 02 9918 5065 F. 02 9918 5065 E. dan@thw.net.au	TAX LANDSCAPE	THW ARCHITECTS	3 BEACONSFIELD	SECTIONS	1 : 100	A 20 - A	A 20 - A

Vaughan Milligan Development Consulting Pty Ltd

APPENDIX
CLAUSE 4.6 – MAXIMUM BUILDING HEIGHT

Vaughan Milligan Development Consulting Pty Ltd

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

3 BEACONSFIELD STREET, NEWPORT

PROPOSED CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO EXISTING DWELLING INCLUDING GARAGE, DRIVEWAY AND LIFT

For: For proposed construction of alterations and additions to existing dwelling including a new garage, lift and alterations to existing driveway
At: 3 Beaconsfield Street, Newport
Owner: Craig and Therese Rushby
Applicant: Craig and Therese Rushby
C/- Vaughan Milligan Development Consulting

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Pittwater Local Environmental Plan 2014. In this regard, it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Pittwater Local Environmental Plan 2014 (PLEP 2014).

2.0 Background

Clause 4.3 restricts the height of a building in this locality to a maximum of 8.5m and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed alterations and additions to the dwelling will see a reduction in the overall building height from RL 56.580 (12.380m height) by 1.03m to a new maximum building height of RL 5.550 (11.35m height) which exceeds Council's maximum building height by 2.85m or 33.5% and therefore does not comply with this control.

The controls of Clause 4.3 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 Pittwater Local Environmental Plan 2014 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.

3 Beaconsfield Street, Newport

32

Vaughan Milligan Development Consulting Pty Ltd

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

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for alterations and additions to an existing approved dwelling, which is consistent with the stated Objectives of the E4 Environmental Living Zone, which are noted as:

- *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.*

As sought by the zone objectives, the proposal will provide for alterations and additions to an existing dwelling including a new garage, lift and alterations to existing driveway to provide for increased amenity for its residents.

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

The proposal will see a reduction in the overall maximum building height by 1.03m from RL 12.380 to RL 11.35, which does not comply with the statutory height limit.

Notwithstanding the reduction in the extent of the building's existing non-compliance with the maximum overall height, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood.

The demolition of existing pitched roof form and the construction of a new flat roof will see a reduction in the overall height of the existing dwelling by 1.03m.

Vaughan Milligan Development Consulting Pty Ltd

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

6.0 Justification of Proposed Variation

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

Paragraph 27 of the 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)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(ii)).

Precondition 1 - Consistency with zone objectives

The site is located in the E4 Environmental Living Zone. The objectives of the E4 zone are noted as:

- *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.*

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

Comments

It is considered that notwithstanding the extent of the non-compliance with the maximum building height control (2.8m), the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the E4 Environmental Living zone for the following reasons:

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

The proposal will see a decrease in the overall building height by 1.03m. The works to the dwelling are modest and will not see any major external works changing the bulk and scale.

The contemporary building form with flat roof and recessive external finishes will reduce the visual bulk of the development.

As the form of the dwelling remains largely unchanged, the existing view corridors and solar access received by neighbouring properties will be maintained.

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

The design is considered to be an improvement in terms of the building's appearance and visual impact and for these reasons, the development does not result in an adverse impact on the special aesthetic values of the site.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

The existing dwelling contains three levels, with a pitched roof over the existing stairwell. The proposal removes the pitched roof and provides for a new flat roof form.

The general bulk and scale of the dwelling remains unchanged.

The setbacks are compatible with the existing surrounding development and the proposal does not have an adverse impact on long distance views.

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

Precondition 2 - Consistency with the objectives of the standard

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

- (1) *The objectives of this clause are as follows:*
 - (a) *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*

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- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) to minimise any overshadowing of neighbouring properties,*
- (d) to allow for the reasonable sharing of views,*
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

Despite the minor to the maximum building height, the proposed alterations and additions are considered to be in keeping with the relevant Objectives of Clause 4.3 for the following reasons:

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

The Objective of Clause 4.3 (1)(a) seeks to ensure buildings, by virtue of their height and scale are consistent with the desired future character of the locality.

The surrounding area is predominantly characterised by one and two storey development, however the existing approved dwelling contains three levels and it also forms part of the local character and streetscape.

The proposal seeks to accommodate the existing upper level facilities within a more appropriate and visually sympathetic building form, with the contemporary flat roof reducing the overall building height by 1.03m.

The proposed external colour and materials palette utilises darker finishes to the upper floor level and is intended to ensure that the building's visual height and scale is minimised.

The new works will see an improvement on the current situation.

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

The works will see a reduction in the overall height through the introduction of a flat roof form. The modifications to the existing building which will introduce increased modulation and a recessive materials treatment to the external finishes of the dwelling will ensure that the dwelling will be compatible with the form and nature of the surrounding development.

(c) to minimise any overshadowing of neighbouring properties,

As the proposal will see a reduction in overall ridge height and will not see any change to the general form of the existing building, the overall bulk and scale of the new works will appropriately maintain the neighbour's amenity and will not see any unreasonable loss of solar access for the subject site and neighbouring properties.

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(d) to allow for the reasonable sharing of views,

The surround properties will maintain their views to the west towards Pittwater as a result of the sloping land. Views past the site are generally along the side setback areas.

Given the proposal will reduce the overall height of the dwelling, some improved views may be available for more distant properties across Barrenjoey Road.

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

The site responds to the topographical constraints to development. The general form of the dwelling remains unchanged.

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

The development will not have any direct or adverse impacts on any heritage items of the conservation areas in the wider area.

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

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

Council's controls in Clause 4.3 provide a maximum building height of 8.5m above the natural ground level.

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

- The proposed new works are modest in bulk and scale and will complement the character of the existing locality. The works will see a reduction in the existing overall height of the dwelling.
- As the proposal will not exceed the existing ridge height and presents only a minor change to the existing side setbacks which remain compliant, the overall bulk and scale of the new works will appropriately maintain the neighbour's amenity and will not see any unreasonable loss of solar access for the subject site and neighbouring properties.

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

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

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

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

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

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

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

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

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.

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

The proposed alterations and additions to the dwelling will provide a height of 11.35m or a 2.85m variation, reduced from an existing non-compliance of 3.88m above the 8.5m height control.

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

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

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

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

The recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether 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, when assessed against the relevant Objects of the Environmental Planning & Assessment Act 1979, (NSW) outlined in s1.3, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The proposed additions to the dwelling are compatible with the nature of the surround locality and, which promotes the orderly & economic use of the land.
- Similarly, the new works will provide for an appropriate level of family accommodation and improved amenity within a built form which is compatible with the streetscape of Beaconsfield Street, which also promotes the orderly and economic use of the land.
- The proposal is considered to promote good design and amenity to the local built environment as appropriate views, solar access and privacy will be maintained for the 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.

3 Beaconsfield Street, Newport

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7.0 Conclusion

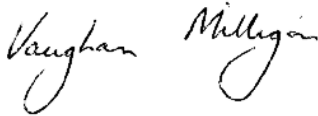
This development proposes a departure from the maximum building height control, with the proposed alterations and additions to the existing building to include a reduction in the overall height of the building by 1.03m to a maximum building height of 11.35m.

This variation occurs as a result of the siting of the existing development on site and the design introducing a flat roof form which results in an overall reduction in the building height.

This written request to vary the maximum building height control specified in Clause 4.3 of the Pittwater LEP 2014 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 building height would be unreasonable and unnecessary in the circumstances of this case.



VAUGHAN MILLIGAN
Town Planner

ITEM 3.3

**DA2019/0509 - 52 LAUDERDALE AVENUE, FAIRLIGHT -
DEMOLITION WORKS, SUBDIVISION OF ONE LOT INTO TWO
AND CONSTRUCTION OF TWO SEMI-DETACHED DWELLINGS**

REPORTING MANAGER

Matthew Edmonds

TRIM FILE REF

2019/554134

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 DA2019/0509 for demolition works, subdivision of one lot into two and construction of two semi-detached dwellings on land at Lot 1 DP 172127, 52 Lauderdale Avenue, Fairlight, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0509
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 1 DP 172127, 52 Lauderdale Avenue FAIRLIGHT NSW 2094
Proposed Development:	Demolition works, subdivision of one lot into two and construction of two semi-detached dwellings
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:	Constantine Tziomakis Chris Tziomakis Maria Tziomakis
Applicant:	Platform Architects Pty Ltd
Application Lodged:	23/05/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	07/06/2019 to 21/06/2019
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 15.29% 4.4 Floor space ratio: 9.87%
Recommendation:	Approval
Estimated Cost of Works:	\$ 4,196,500.00

EXECUTIVE SUMMARY

The proposal seeks consent for demolition works, subdivision of one lot into two and the construction of two semi-detached dwelling houses.

(See Proposed Development in Detail within the report)

The development is referred to the Development Determination Panel for determination as the development contravenes the Height of Buildings development standard by more than 10%. It is also

noted that the proposal contravenes the Floor Space Ratio development standard (less than 10%). Two submissions were received relating to solar access, parking and view loss. A detailed assessment has been conducted and found the application to be satisfactory for approval.

Whilst not applicable to this application, consent was granted by Council in 2017 (DA311/2016) for demolition and construction of a dual-occupancy. The current proposal has a lesser building footprint, height and earthworks to that previously approved by Council.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for demolition works, subdivision of one lot into two and the construction of two semi-detached dwelling houses. Specifically consent is sought for:

- Demolition of the existing house and associated structures.
- Torrens title subdivision of the existing single lot into two lots.
- Construction of two semi-detached dwelling houses, comprising;
 - Shared basement level parking with 2 parking spaces per dwelling.
 - 3 bedrooms
 - Outdoor living
- Removal of twenty-one (21) trees.
- Associated landscaping.
- New driveway and crossover.
- Replacement of existing footpath on road reserve over the new driveway.

REVISED PLANS

On 6 September 2019 Council requested a revised set of architectural drawings to include the roof ridge RL. No further changes were requested. The applicant provided revised plans to Council on 17 September 2019.

Re-notification was not required in accordance with Clause 2.6 of the Manly DCP.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 3.9 Mechanical Plant Equipment
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.8 Development on Sloping Sites

SITE DESCRIPTION

Property Description:	Lot 1 DP 172127 , 52 Lauderdale Avenue FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Lauderdale Avenue, Fairlight</p> <p>The site is irregular in shape with a frontage of 20m along Lauderdale Avenue and an average depth of 35m. The site has a surveyed area of 531m².</p> <p>The site is located within the R1 General Residential zone and accommodates a two storey dwelling house.</p> <p>The property slopes approximately 16.5m from north to south.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>The adjacent property to the east, at 50 Lauderdale Avenue, is developed with two-storey detached dwelling. The adjacent property to the west, at 54 Lauderdale Avenue, is developed with a five-storey dual occupancy.</p> <p>Adjoining and surrounding development is characterised by detached dwellings, dual occupancies and residential flat buildings.</p>

Map:



SITE HISTORY

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

Prelodgement Meeting PLM2019/0012

On 14 February 2019 Council met with applicant to discuss the preliminary proposal for demolition works, and Subdivision and construction of two semi-detached dwelling houses. Council raised in fundamental objection to this proposal subject to built form modifications and amenity concerns in regards to views.

Development Application 311/2016- Demolition and construction of a dual-occupancy. (Approved 20 April 2017).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<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

Section 4.15 Matters for Consideration	Comments
	<p>addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

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:
Symons Goodyer Pty Ltd	PO Box 673 BALGOWLAH NSW 2093
Katherine Chick	48 Lauderdale Avenue FAIRLIGHT NSW 2094

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

- **Sunlight Access and Overshadowing**
- **Parking**
- **Height of Landscaping**

The matters raised within the submissions are addressed as follows:

- **Sunlight Access and Overshadowing**
Comment:
Concerns have been raised in relation to the potential overshadowing created by the proposed development. The proposed development is multi storey, excavated into the natural landform and the site has a north-south orientation. An amended shadow diagram was provided to Council on 18 July 2019, detailing the shadowing impacts upon No. 48 Lauderdale Avenue. It is found that the development does not unreasonably overshadow adjoining properties living room windows and private open space of adjoining properties. The proposal complies with the requisite provisions of CI 3.4.1 of the Manly DCP.
- **Parking**
Comment:
Concern is raised in regards to loss of on street parking for residents. The submission requests that Council provide further parking for neighbouring properties to offset the impact of this development.

The development provided for compliant off-street parking for both proposed new dwellings, being two off-street parking spaces for each dwelling. The driveway proposed is to be utilised for both dwellings for the off-street parking, and is not considered to be onerous or unreasonable. The resultant loss of street parking that will result from the proposed driveway is not unreasonable in this residential setting. The proposed development does not warrant the need for Council to provide additional parking to neighbouring properties.

• **View Loss (Height of Landscaping)**

Comment:

Concern was raised from the adjoining property to the rear (No. 37 Upper Clifford Avenue, Fairlight) in regards to the height of proposed landscaping and its impact upon views. The submission recommended the restriction of height of the proposed landscaping to the rear of the property. The condition as proposed is a reasonable compromise to allow for valued views to be maintained throughout the life of the development, and is included as part of this recommendation.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Landscape Officer	<p>The landscape component of the proposal is acceptable subject to the completion of landscaping.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types, and specifically: 3.3.1 Landscaping Design.</p> <p>A Landscape Plan is provided with the development application, and this satisfies the requirements of Manly DCP2013, subject to conditions.</p> <p>A Arboricultural Impact Assessment is provided with the development application, and this satisfies the requirements of Manly DCP2013.</p>
NECC (Development Engineering)	<p>In general, Development Engineering has no objection to the application.</p> <p>However, there is a few issues shall be commented by Transport & Civil Infrastructure Asset in related to the proposed footpath and stair. Development Engineering cannot provide the adequate conditions prior to the comment of Transport & Civil Infrastructure Asset on:</p> <p>1) the design criteria of the proposed footpath over the new driveway</p>

Internal Referral Body	Comments
	<p>crossing and the related supporting structure</p> <p>2) the design of the new stair</p> <p>3) the future maintenance of these footpath and stair (is any lease agreement required?).</p> <p>Please refer the application back to Development Engineering after the comment from Transport & Civil Infrastructure Asset .</p> <p>Further assessment Development Engineering has no objection to the application subject to the following conditions.</p>
Road Reserve	<p>No objection to the proposed stairs subject to development engineers conditioning the requirement for s138 approval.</p> <p>Planners Comment: Upon receiving the above comments, the application was referred back to Council's Development Engineers for comment and the drafting of conditions to form part of the final recommendation.</p>
Traffic Engineer	<p>- the proposal is for construction of two semi-detached dwellings with basement parking providing 2 offstreet car parking spaces for each dwelling</p> <p>Traffic: Traffic generation from the redeveloped site will be minimal and is acceptable</p> <p>Parking: The development is required to provide 2 parking spaces fro each dwelling. This has been provided. the use of a turntable enables vehicles to enter and exit the site in a forwards direction which, given the volume fo traffic on Lauderdale Street is highly desirable. It is noted that the traffic report has included swpt path plots showing access to and from the parking is possible with the 99th percentile vehicle in accordance with AS2890.1 requirements</p> <p>Pedestrian: There are no issues from a pedestrian safety or amenity perspective</p> <p>Access: No access issues</p> <p>Servicing: While concerns are not raised with regard to the servicing of the finished development there are concerns with regard to the servicing arrangements outlined in the Construction Management Plan. This plan will need to be resubmitted for separate consideration prior to release of the construction certificate.</p>
External Referral Body	Comments

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. 999396S dated 17 April 2019 and 999403S dated 17 April 2019).

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

Commitment	Required Target	Proposed- House 1	Proposed- House 2
Water	40	42	42
Thermal Comfort	Pass	Pass	Pass
Energy	50	51	51

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	Proposed	% Variation	Complies
Minimum subdivision lot size:	250m ²	Lot 1: 281.3m ²	-	Yes
		Lot 2: 251.8m ²	-	Yes
Height of Buildings:	8.5m	9.8m	15.29%	No
Floor Space Ratio	FSR: 0.6:1 (Lot 1-168.78m ²)	FSR: 0.59:1 (166m ²)	-	Yes
	FSR: 0.6:1 (Lot 2-151.08m ²)	FSR: 0.66:1 (166m ²)	9.87%	No

Compliance Assessment

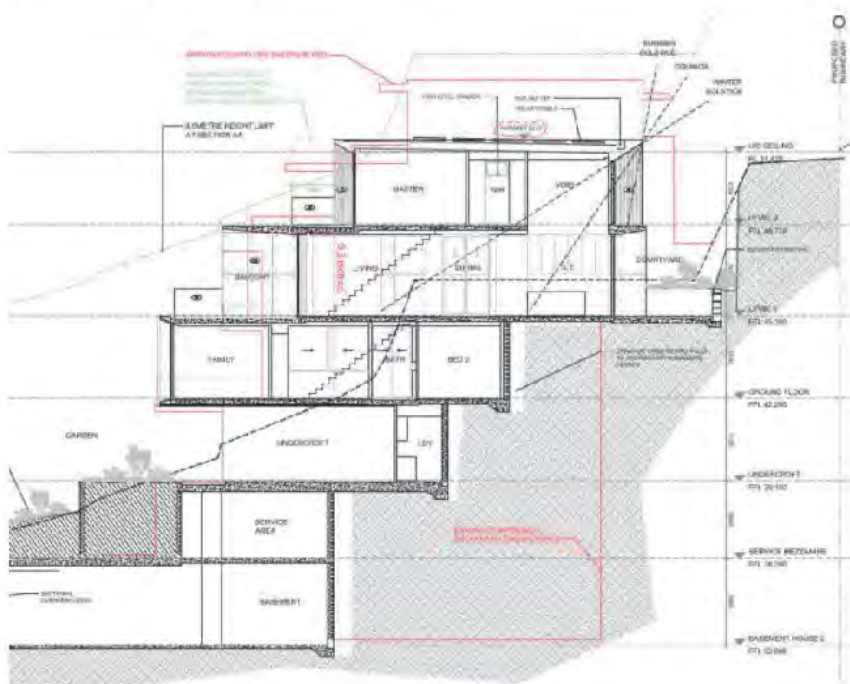
Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes
4.1 Minimum subdivision lot size	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

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



Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *The height, bulk and scale of the development is entirely consistent with the built form characteristics established by the adjoining dual occupancy development at No. 54 Lauderdale Avenue and other residential development within the site's visual catchment*
- *The overall height of the development, and associated extent of height non-compliance, is*

significantly less than that previously approved pursuant to development consent 311/2016 with the deletion of the uppermost storey resulting in a reduction in overall building height of 2.23 metres.

- *The non-compliance is directly attributed to the topography of the land which at a gradient of 1:2.2 makes strict compliance extremely difficult.*
- *The minor breaching elements do not in any quantitative or qualitative manner contribute to unacceptable bulk and scale with the overall height of the development, and associated extent of height non-compliance.*

Planners comment:

The proposal does not comply with the Height of Buildings development standard. An assessment of the plans revealed that roof parapet has a maximum height of 9.8m above natural ground level, which is the highest part of the building. The location of the noted non-compliance with the height is where the site begins to steeply slope away. The above mentioned reasons provided within the Applicant's written request are considered well-founded in that the proposed development will maintain consistency with existing surrounding residential development and does not result in unreasonable amenity impacts for occupants of adjoining and surrounding properties. It is acknowledged the subject site is located within an established residential area comprised of buildings that extend across multiple development eras thus contributing to an array of architectural styles, building forms and landscape treatments.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The proposed building height is deemed appropriate is deemed to be reasonable given the significant fall of the land from the rear to the front of the property. The development is predominantly beneath the maximum permissible height limit as evident on the architectural plans, and overall achieves a building height that is consistent with other residential dwelling on the northern side of Lauderdale Avenue. The proposed development integrates staggered wall planes and a generous front setback to reduce apparent building mass. The development responds appropriately to the constraints of the site.

b) to control the bulk and scale of buildings,

Comment:

The bulk and scale of the development is consistent with nearby development and will not result in any unreasonable impacts within the locality. The proposed bulk and scale is satisfactory in this circumstance. The predominant compliance achieved by the building demonstrates a considered built form that is likely to be compatible with any future development on surroundings lands.

c) to minimise disruption to the following:

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

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

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

Comment:

The proposal has been assessed against the view loss provisions under Section 3.4.3- Maintenance of Views of the Manly DCP and *Tenacity Consulting v Warringah* [2004] NSWLEC 140 when considering the impacts on the views of adjoining properties in this report. In summary, the proposed development does not cause unreasonable view loss to and from public and private open spaces.

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

Comment:

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

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

Comment:

Not applicable.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposed development retains the residential use of the site.

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

Comment:

The proposed semi-detached dwellings promote a variety of housing types and variety.

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

Comment:

Not applicable.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation is not greater than 10%. Following the release of PS-003, Council received correspondence from a delegate of the Secretary which granted Council's Development Determination Panel, for a period of 30 months from 24 May 2019, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary the Height of Buildings development standard by more than 10%.

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	FSR: 0.6:1 (Lot 1- 168.78m ²)
	FSR: 0.6:1 (Lot 2- 151.08m ²)

Proposed:	FSR (Lot 1): 0.59:1 (166m ²)
	FSR (Lot 2) : 0.66:1 (166m ²)
Percentage variation to requirement:	-
	Lot 2- 9.87%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

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

within cl 4.6(3) and these are addressed as follows:

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *The height, bulk and scale of proposed House 2, as reflected by floor space, are entirely consistent with the built form characteristics established by adjoining development and development generally within the site's visual catchment.*
- *Sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the site's visual catchment.*
- *The developments compliance with the objectives of the FSR standard and the general paucity of adverse environmental impact also give weight to the acceptability of the variation sought.*

Planners comment:

It is agreed that there are varying types of development in the close vicinity of the subject site and that proposed development would be in keeping with the bulk and scale of the majority of development in the locality.

Further, it is agreed the proposed development that there is no unreasonable streetscape or residential amenity impacts.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The proposed gross floor area non-compliance for lot 2 is the same as that proposed as lot 1. The non-compliance is a result of a slightly smaller lot size, as a result of the subdivision. As viewed from the street, the building would present as consistent with that of adjoining properties. The bulk and scale of this development is significantly lesser bulk than that of the 2017 dual occupancy approval on the site (DA311/2016).

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 development is well articulated and modulated so as to break down the visual appearance of the built form. The subject site allows for a presentation of landscaping and vegetation that is complementary to the area. The proposal will not unreasonably impact upon the streetscape.

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

Comment:

The development overall is found to enhance the visual continuity of the existing character of the area and improve the aesthetics of the development on site. The two new dwellings are not considered dominant within the streetscape. The proposal is suitable in design such that it maintains the character of the site and consistency with surrounding development.

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

Comment:

The proposed floor space non-compliance for lot 2 does not adversely increase visual and aural privacy impacts on adjoining development, nor is there unreasonable levels of shadowing to the adjoining dwellings to the east and west (Nos. 50 and 54 Lauderdale Avenue). The proposal is consistent with the numeric control under clause 3.4.1 and 3.4.2 of the Manly DCP. The proposal has also been assessed against the view loss provisions under Clause 3.4.3 of the Manly DCP and *Tenacity Consulting v Warringah* [2004] NSWLEC 140, with no unreasonable impact to neighbouring private open space or the public realm.

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

Comment:

The development is for residential use.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposed development retains the residential use of the site.

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

Comment:

The proposed semi-detached dwellings promote a variety of housing types and variety.

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

Comment:

Not applicable.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation is not greater than 10%. Following the release of PS-003, Council received correspondence from a delegate of the Secretary which granted Council's Development Determination Panel, for a period of 30 months from 24 May 2019, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary the Floor Space Ratio development standard by more than 10%.

6.2 Earthworks

The proposal includes significant cut and fill works to the front of the dwelling are necessary due to the natural topography of the site. The proposed earthworks will not unreasonably impact the natural processes or future development of the site, or the amenity of adjoining properties.

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 531m ²	Requirement	Proposed	% Variation*	Complies
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4.1.1.1 Residential Density and Dwelling Size	Density: 250sqm per dwelling	251.8sqm (Lot 2) and 281.7sqm (Lot 1)	-	Yes
	Dwelling Size: 95sqm	>90sqm	-	Yes
4.1.2.1 Wall Height	East: 8m (based on gradient >1:4)	8.6m	7.5%	No
	West: 8m (based on gradient >1:4)	9.3m	16.25%	No
4.1.2.2 Number of Storeys	2	4	100%	No
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.5m	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	0m, consistent with prevailing setback	100%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.86m (based on house 1 eastern wall height)	0m-1.1m- 1.95m	33%- 100%	No
	3.1m (based on house 2 western wall height)	0m- 1.1m- 1.95m	37%- 100%	No
	Windows: 3m	House (Lot 1): 1.1m - 2.1m House (Lot 2): 1.9m - 2.1m	30%- 64%	No
4.1.4.4 Rear Setbacks	8m	House (Lot 1): 5.9m House (Lot 2)- 4.4m	26- 55%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Lot 1- Open space 55% (154.7m ²) site area	56.97% (160.5m ²)	-	Yes
	Lot 2- Open space 55% (138.5m ²) of site area	52% (130.98m ²)	5.5%	No
	Lot 1- Open space above ground 25% (40.13m ²) of total open space	23% (38m ²)	-	Yes
	Lot 2- Open space above ground 25% (32.75m ²) of total open space	28% (37.5m ²)	12%	No
4.1.5.2 Landscaped Area	Lot 1- Landscaped area 35% (56.18m ²) of open space	54.4% (87.3m ²)	-	Yes
	Lot 2- Landscaped area 35% (45.84m ²) of open space	51% (66.8m ²)	-	Yes
	3 native trees	0 trees	100%	No
4.1.5.3 Private Open Space	18sqm per dwelling	Lot 1- 46.4sqm	-	Yes
		Lot 2- 49.8sqm	-	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	8.8m	64%	No
Schedule 3 Parking and	Dwelling 2 spaces	Lot 1- 2 spaces	-	Yes

Access		Lot 2- 2 spaces	-	Yes
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***Note:** See comments related to non-compliance's under detailed assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.1.2 Residential Land Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	No	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.8 Subdivision	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

Merit consideration:

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

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

The proposed development will result in a negligible loss of view from No. 37 Upper Clifford to North

Harbour as well as North, South and Dobroyd Head. The loss of view is not unreasonable and will maintain adequate view sharing between properties.

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

The proposal results in a disruption of views from neighbouring properties. Council received one (1) submissions on behalf of the adjoining dual occupancy to the north of the subject site (No. 37 Upper Clifford Avenue, Fairlight) in relation to view loss. The Manly DCP refers to the planning principal within *Tenacity Consulting v Warringah* [2004] NSWLEC 140 when considering the impacts on the views of the adjoining properties. This is provided below:

1. Nature of the view affected

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

Comment:

The nature of the view affected from this property would be harbour views and north and south head to the south. The views are filtered through existing development and vegetation.

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

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

Comment:

The views from both of the units of No. 37 Upper Clifford Avenue are obtained over the rear boundary. The views are over the top of the existing subject site dwelling house. Views are obtained from both the lower ground floor common area as well as ground and first floor living rooms and terraces of both units 1 and 2. Views are taken from both a standing and sitting position.

3. Extent of Impact

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

Comment:



Photo 1- Ground floor terrace (looking south)



Photo 2- Ground floor terrace (looking south-east)



Photo 3- Ground floor terrace (looking west)



Photo 4- Outdoor living area



Photo 5- Outdoor living area

No. 37 (Unit 1 and 2) Upper Clifford Avenue, Fairlight currently have substantial views to the harbour and the heads. Panoramic views are available from the living room and terraces and more obscured views are available from the shared outdoor living space (terrace and swimming pool) to the rear of the site that serves both dwellings.

The living rooms and adjoining terraces of both unit 1 and 2 the views to the harbour will be impacted to a negligible extent. Views of the harbour, the land water interface as well as heads would be retained.

In regards to the shared terrace and swimming pool to the rear of the No. 37 Upper Clifford the views to the harbour will, to at worst a minor extent, be lost as a result of the proposed works. However, the majority of harbour views would be retained. Views of the heads (North, South and Dobroyd) would be retained in full. Qualitatively and considering the existing panoramic views available for both units of No. 37 Upper Clifford Avenue, the overall extent of the view loss proposed is negligible.

4. Reasonableness of the proposal causing the impact

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

Comment:

In considering the totality of impact it is noted that proposal is non-compliant with the Height of Buildings and Floor Space Ratio development standards under Manly LEP 2013. The proposal, while

non-compliant with these controls has adopted a more skillful design than the previous approval (DA311/2016), incorporating building articulation with reduced building bulk to the top of the building and a flat roof design that retains the large majority of existing views to the harbour and the heads over the top of the subject site.

Given the above, it is considered that the proposal is acceptable and view sharing is achieved.

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

Comment:

As discussed above, the development is considered to be of a reasonable design that will minimise the loss of views including accumulated view loss 'view creep'. The proposal is consistent with 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.

3.9 Mechanical Plant Equipment

The development proposes two lifts for each dwelling as part of this application. To ensure the lifts are acoustically treated in accordance with this clause a suitable condition of consent has been included as part of this recommendation to ensure the does not result in excessive noise to neighbouring properties.

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

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

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

Description of non-compliance

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

Clause 4.1.4.2 of the Manly DCP requires development be setback at least 2.86m from the eastern boundary, 3.1m from the western boundary. Further new windows facing side boundaries are to be setback at least 3m from the side boundary.

Clause 4.1.4.4 of the Manly DCP requires development be setback at last 8m from the rear boundary.

The development proposes the following:

Front setback- 0m, consistent with (20-74% variation to the numeric control).

East side setback- 0m-1.1m- 1.95m (33%- 100% variation to the numeric control).

West side setback- 0m- 1.1m- 1.95m (37%- 100% variation to the numeric control).

Rear setback- 4.4m (lot 2)- 5.9m (lot 1) (26- 55% variation to the numeric control).

Windows- 1.1m- 2.1m (lot 1), 1.9m- 2.1m (lot 2) (30% - 64% 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 development proposes a garage on the front boundary and a driveway supporting structure on the Council road reserve. Similar types of parking arrangement are seen along the northern side of Lauderdale Avenue. This proposed development is consistent with the spatial proportions of the street and the street edge.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed development allows for adequate visual and acoustic privacy to be retained between the subject site and neighbouring properties. In regards to sunlight access, the proposed development is consistent with the numeric requirement for solar access under Clause 3.4.1 of the Manly DCP. The proposed development will ensure view of the harbour and heads will be retained from surrounding properties. There is no significant impact on the streetscape, subject to conditions.

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

Comment:

Flexibility is provided in this circumstance as the proposed dwellings will not result in any unreasonable impacts upon adjoining properties.

Objective 4) To enhance and maintain natural features by:

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

Comment:

Suitable landscaping is provided across the site. Subject to conditions imposed by Council's Landscape Architect the proposal complies with this clause.

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

Comment:

The subject site is not located in bush fire prone land.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5.2 of the Manly DCP requires at least 55% (283.56m²) of the site area be total open space for Lot 2. The proposed total open space for Lot 2 is 52% (130.98m²), non-compliant with the numeric control. This represents a 5.5% variation to the numeric control.

Clause 4.1.5.2 of the Manly DCP requires total open space above ground be no more than 25% of total open space for Lot 2. The proposed total open space above ground for lot 2 is equal 28% (37.5m²), non-compliant with the numeric control. This represents a 12% variation to the numeric control.

Merit consideration:

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

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

Comment:

Subject to conditions imposed by Council's Landscape Architect and recommendation proposed within the arboricultural report the proposal will ensure significant landscaping and vegetation across both lots of the subject site.

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

Comment:

Both new lots for the proposed works propose a suitable level of landscaped open space, compliant with the landscaped open space control under Clause 4.1.5.2 of the Manly DCP.

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

Comment:

Amenity considerations including sunlight access, privacy and views have all been considered as part of this application, with no unreasonable impacts upon the subject site or neighbouring properties. The established streetscape character is not likely to be impacted by the proposed works.

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

Comment:

Significant levels of deep soil areas are proposed around the site to ensure no unreasonable stormwater runoff, subject to conditions.

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

Comment:

The proposed planting on site is suitable for the site, so as not to contribute to the spread of weeds and the degradation of nearby public open space.

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

Comment:

The proposed development does not compromise any wildlife habitats or potential wildlife corridors.

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

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

Description of non-compliance

Clause 4.1.6.1 of the Manly DCP requires that the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m.

The proposed garage has a width of 8.8m, non-compliant with the numeric control. This results in a 64% variation to the numeric control.

Merit consideration:

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

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

Comment:

Each of the two lots will have the required 2 spaces per dwelling, through the use of the shared basement.

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

Comment:

Adequate on-site parking is provided, consistent with the numeric control.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

The proposed parking spaces for each dwelling are located underground, which will limit the impact upon the streetscape. Sufficient area is provided in the basement to allow for all vehicles to exit the site in a forward direction.

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

Comment:

Subject to conditions of consent, imposed by Council's Development Engineer, the proposal is consistent with this control. The parking proposed to the front portion of the site, to limit excavation across the site.

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

Comment:

The two lots will use a single driveway and cross over to reduce the disruption to the existing footpaths.

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

Comment:

The existing bedrock and surrounding vegetation to the front of the property will be largely retained as part of this proposal. The use of a single vehicular entrance reduces the loss of natural landscape features on site.

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

Comment:

The subject site is not located within an established town centre noted within the Manly DCP.

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

4.1.8 Development on Sloping Sites

A geotechnical report has been submitted with the application, assessing the potential impact of the steep topography of the site and any excavation of the site. The dwelling house responds appropriately to the sloping site, stepping down at each level to reduce the visual bulk and scale of the dwelling house. The recommendations included as part of this report have been included as part of the final conditions of consent.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

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 \$41,965 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$4,196,500.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

Council is satisfied that:

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

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

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

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

Accordingly Council as the consent authority grant Development Consent to DA2019/0509 for Demolition works, subdivision of one lot into two and construction of two semi-detached dwellings on land at Lot 1 DP 172127, 52 Lauderdale Avenue, FAIRLIGHT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A0.00/ Site Analysis Plan/ Revision A	1 May 2019	Platform Architects
A0.04/ Excavation and Fill Section/ Revision A	1 May 2019	Platform Architects
A1.00/ Basement Floor Plan/ Revision A	1 May 2019	Platform Architects
A1.01/ Mezzanine Floor Plan/ Revision A	1 May 2019	Platform Architects
A1.02/ Undercroft Floor Plan/ Revision A	1 May 2019	Platform Architects
A1.03/ Ground Floor Plan/ Revision A	1 May 2019	Platform Architects

A1.04/ First Floor Plan/ Revision A	1 May 2019	Platform Architects
A1.05/ Second Floor Plan/ Revision A	1 May 2019	Platform Architects
A1.06/ Roof/Site Plan/ Revision B	6 September 2019	Platform Architects
A2.01/ South Elevation/ Revision B	6 September 2019	Platform Architects
A2.02/ West Elevation/ Revision B	6 September 2019	Platform Architects
A2.03/ North Elevation/ Revision B	6 September 2019	Platform Architects
A2.04/ East Elevation/ Revision B	6 September 2019	Platform Architects
A3.01/ Section AA/ Revision B	6 September 2019	Platform Architects
A5.01/ Driveway Plan/ Revision A	1 May 2019	Platform Architects
A5.02/ Driveway Section 1 and 2/ Revision A	1 May 2019	Platform Architects
A5.03/ Driveway Elevation/ Revision A	1 May 2019	Platform Architects
Sheet 1 of 1/ Plan of Proposed Subdivision Of Lot 1 in D.P. 172127	4 March 2019	Platform Architects

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment of Existing Public Stairway	26 April 2019	Crozier Geotechnical Engineers
Report of Geotechnical Site Investigation	February 2019	Crozier Geotechnical Engineers
Construction Management Plan	16 April 2018	Grace Osunneye
BASIX Certificate No. 999396S	17 April 2019	Eco Certificates
BASIX Certificate No. 999403S	17 April 2019	Eco Certificates
Arboricultural Impact Report	15 June 2015	Guy Paroissien

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Site Plan/ Landscape Calculations	30 April 2019	Paul Scrivener
Landscape Planting Plan	30 April 2019	Paul Scrivener

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	February 2019	Platform Architects

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 sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

4. **Policy Controls**
Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$41,965.00 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 \$4,196,500.00.

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.

6. **Construction, Excavation and Associated Works Bond (Crossing / Kerb)**

A Bond of \$20000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter and any footpath works required as part of this consent.

Reason: Biodiversity/Vegetation Conservation and Management.

Reason: Protection of Council's Infrastructure.

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

7. **Fire Separation – Separating Walls**

The new building that is proposed to be constructed is required to comply with Part 3.7.1.8 of the Building Code of Australia – 'Fire Separation-Separating Walls'. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for fire safety and for building occupant safety.

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

Certification of Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003 and the concept drawing by RTS Civil Consulting, Job number 181204, drawing SW 100-104 dated 23/04/2019. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

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

9. **Submission Roads Act Application for Civil Works in the Public Road**

An Application for Works to be approved within Council Roadway, including engineering plans is to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of the retaining walls through the nature strip, driveway crossing and footpath which are to be generally in accordance with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and/ or Council's Minor Works Policy. The plan shall be prepared by a qualified structural engineer.

The design must include the following information:

- The proposed retaining wall shall be designed in complies with Australian Standard: Earth-retaining Structure AS 4678-2002
- An appropriate drainage system for the retaining wall shall be design and included on the drawing
- All Public and private utility services are to be located on the plan and cross-section plan. All costs related to any relocation of utility service shall be borne by the applicant.
- The proposed footpath must be designed with Council's standard and satisfaction

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges. An approval is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

10. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are

to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
 - (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.
- Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

11. **Shoring of Adjoining Property**

Should the proposal require shoring to support an adjoining property or Council land, owner's consent for the encroachment onto the affected property owner shall be provided with the engineering drawings.

Council approval is required if temporary ground anchors are to be used within Council land. A Temporary Ground Anchors (Road Reserve) Application is to be submitted with Council for assessment and approval subject to Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

12. **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.

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

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

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

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

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

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

14. **Boundary Survey**

A boundary survey, prepared by a Registered Surveyor, shall be provided as evidence that all buildings/works are within the appropriate property, easement boundaries and rights of carriageway. Details demonstrating compliance are to be submitted to the Principal Certifying

Authority prior to the issue of any construction certificate.

Reason: To ensure the accurate location of buildings in relation to boundaries, easements and rights of way.

15. **Boundary Fencing**

No approval is provided for any boundary fence. No consent has been provided by the owners of the common boundary.

Reason: To ensure compliance with the Dividing Fences Act 1991.

16. **Road Occupancy Licence (ROL) from Roads & Maritime Services**

Lauderdale Avenue is a Regional Road and the developer shall therefore require a Road Occupancy Licence (ROL) from the RMS Transport Management Centre (TMC) prior to commencing work within the road reserve. The application will require a Construction Traffic Management Plan (CTMP) to be prepared by a person who is certified with 'Prepare a Work Zone Traffic Management' accreditation or equivalent. The CTMP will require separate approval by Council prior to issue of the construction certificate. Should the CTMP require a reduction of the speed limit, a Direction to Restrict will also be required from the TMC.

Reason: To inform the relevant roads authority of traffic impacts and obtain required approvals (DACTRCPC1)

17. **Construction Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Certifying Authority prior to issue of any Construction Certificate.

The CTMP must address following:-

- The proposed phases of construction works on the site, and the expected duration of each construction phase;
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- Make provision for all construction materials to be stored on site, at all times;
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck rates through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property

owners prior to the implementation of any temporary traffic control measure.

- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent;
- Proposed protection for Council and adjoining properties;
- The location and operation of any on site crane; and

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. Confirming appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner’s property rights and protects amenity in the locality, without unreasonable inconvenience to the community. The CTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site. (DACTRCPC2)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

18. **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.

19. **Tree removal**

Tree removal as recommended in the Arboricultural Impact Report prepared by Landscape

Matrix is granted approval. The majority of existing vegetation are Exempt Species and Environmental Weeds.

20. **Works Zone**

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road reserve for the parking of vehicles associated with a construction site. Separate application is required with a Traffic Control Plan for standing of construction vehicles in a trafficable lane. Applications for a Works Zone must be submitted to Council no less than 28 days in advance of the commencement date

Reason: To allow sufficient time for assessment, processing and implementation of Works Zone. (DACTRDPC1)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

21. **Road Reserve**

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

Reason: Public safety.

22. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

23. **Vehicle Crossings**

The provision of one vehicle crossing 6 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.

24. **Maintenance of Sediment**

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

Reason: To ensure sediment controls are effective.

25. **Protection of Adjoining Property - Excavation**

Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.

Reason: To ensure private and public safety

26. **Tree and vegetation protection**

- a) Existing trees and vegetation shall be retained and protected as follows:
 - i) all trees and vegetation located on adjoining properties,
 - ii) all road reserve trees and vegetation,
- b) Tree protection shall be generally undertaken as follows:
 - i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites,
 - ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
 - iii) 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) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
 - v) excavation for utility lines is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist, to provide for root protection measures,
 - vi) should either or all of ii), iii), iv) and v) 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,
 - vii) 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,
 - viii) 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.

27. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council officers for approval . A copy of the approved CTMP is to be kept onsite at all times and made available to

the accredited certifier or Council on request.

Reason: to ensure compliance of the developer/builder in adhering to the agreed Construction Traffic Management procedures and that they are held liable to the conditions of consent (DACTREDW1)

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

28. **Landscape works**

Landscaping is to be implemented in accordance with the Landscape Plans sheet 1 of 2 and sheet 2 of 2, prepared by Paul Scrivener Landscape, inclusive of the following requirements:

- i) all tree planting is to be installed at 75 litre container size,
- ii) all tree planting shall comply with 3.3.1 Landscaping Design, section b) item iii) where trees should be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight as described in the clause, or where the proposed tree locations may otherwise be positioned to minimise any significant loss of views,
- iii) all tree planting shall have a minimum individual area of 3 metres x 3 metres of soil area, and shall be located a minimum of 5 metres from existing and proposed built structures, or minimum of 3 metres where pier and beam footings are used.

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

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

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

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

Reason: To create encumbrances on the land.

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

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

Reason: To identify encumbrances on land.

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

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

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

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

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

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

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

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

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

33. **Acoustic Privacy**

The proposed lifts are to be acoustically treated so that they do not emit any noise of 5dba above background noise at the nearest residential receiver.

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

Reason: To ensure the acoustic amenity of the neighbouring residents. (DACPLFPOC1)

34. **Height Survey**

A survey prepared by a Registered Surveyor shall be provided as evidence that all buildings are constructed in accordance with the approved RL's for each of the floor levels and roof ridge levels of the building. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any occupation certificate.

Reason: To ensure the dwelling and associated structures are constructed in accordance with the approved levels.

35. **Footpath & Steps Construction**

The footpath and steps, in accordance with Council's standard specifications, shall be reconstructed along the property frontage to Council's satisfaction. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To provide pedestrian access to and from the property (DACTRFPOC1)

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

36. **Landscape maintenance**

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

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

37. **Environmental and priority weed control**

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

Reason: preservation of environmental amenity.

38. **View Sharing**

All vegetation within the rear setback area is to be maintained at a height of no more than 4.0 metres above existing ground level for the life of the development.

Reason: To maintain views over the property.

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

39. **Provision of Services for Subdivision**

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

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

40. **Survey Plan - Construction Identification**

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

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

41. **Sydney Water Compliance Certification**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance. Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and

building, driveway or landscape design. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

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

42. **Release of Subdivision Certificate**

To enable the lodgement of the final plan at the NSW Land and Property Information Department the Subdivision Certificate shall not be issued until the Final Occupation Certificate for the approved development has been issued.

Reason: To ensure that the plans relate to approved development.

43. **Subdivision Certificate Application**

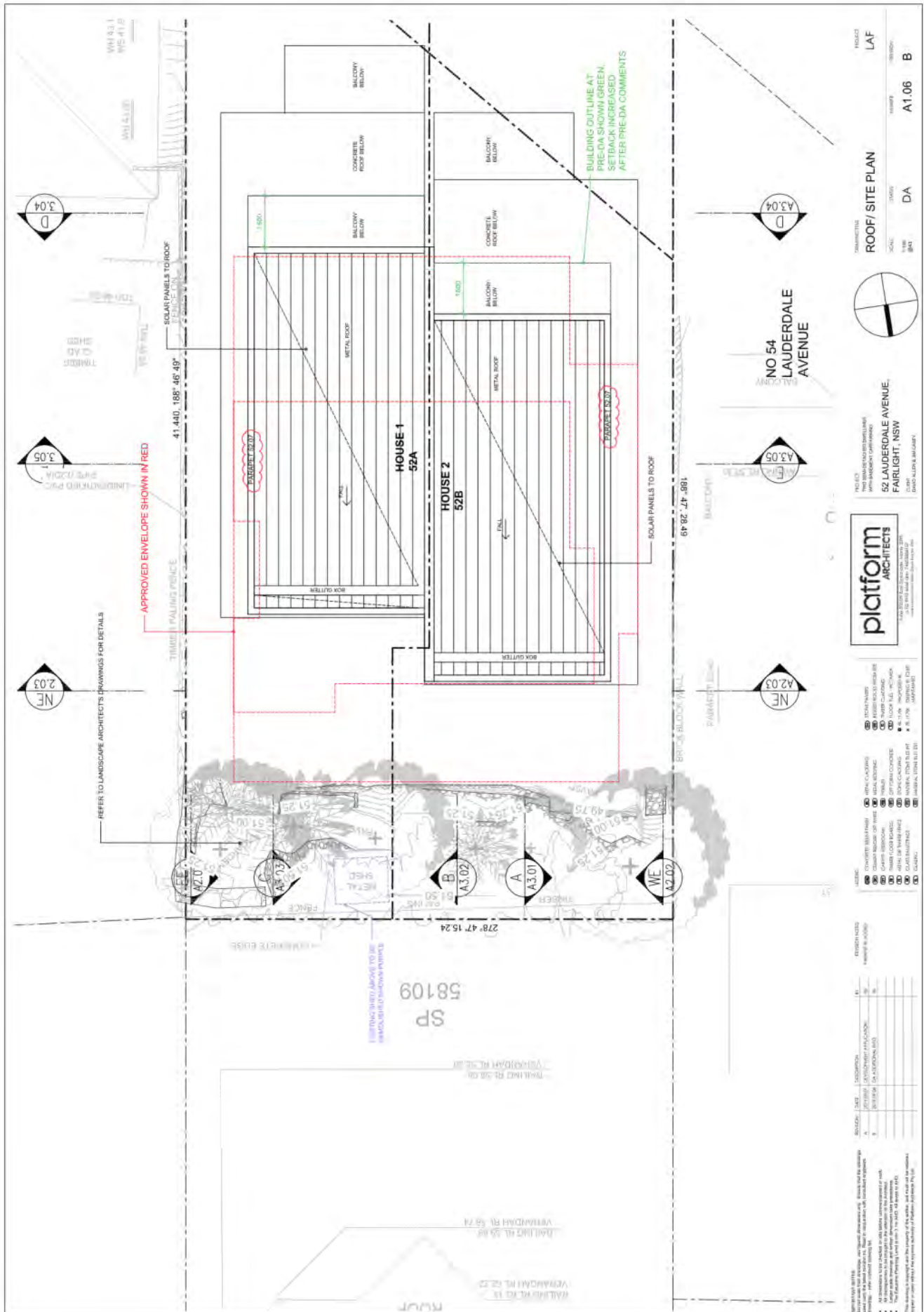
Prior to the issue of the Subdivision Certificate, a completed Subdivision Certificate form, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919 are to be submitted to Council. Nine copies of the final plan of subdivision are to be submitted. All plans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

Reason: Statutory requirement of the Conveyancing Act 1919

44. **Title Encumbrances**

All easements, rights of carriageway, positive covenants and restrictions as to user as indicated on the plans and required by this consent are to be created on the title naming Northern Beaches Council as the sole authority empowered to release or modify. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure proper management of land.











4.2.2 Height of Buildings

Pursuant to Clause 4.3 of MLEP 2013 the height of a building on the subject land is not to exceed 8.5 metres in height.

The objectives of this control are as follows:

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

Building height is defined as follows:

building height (or ***height of building***) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

Ground level existing is defined as follows:

ground level (existing) means the existing level of a site at any point.

It has been determined that the majority of the development sits comfortably below the 8.5 metre height standard with the exception of the southern edge of the second floor roof form and integrated privacy blades. The maximum building height in this location is 9.5 metres representing a non-compliance of 1000mm or 11.7%. The balance of the development sits well below the maximum prescribed building height by up to 5 metres.

The overall height of the development and associated extent of height non-compliance is significantly less than that previously approved pursuant to development consent 311/2016 with the extent of non-compliance depicted in Figures 6, 7 and 8 below and over page.

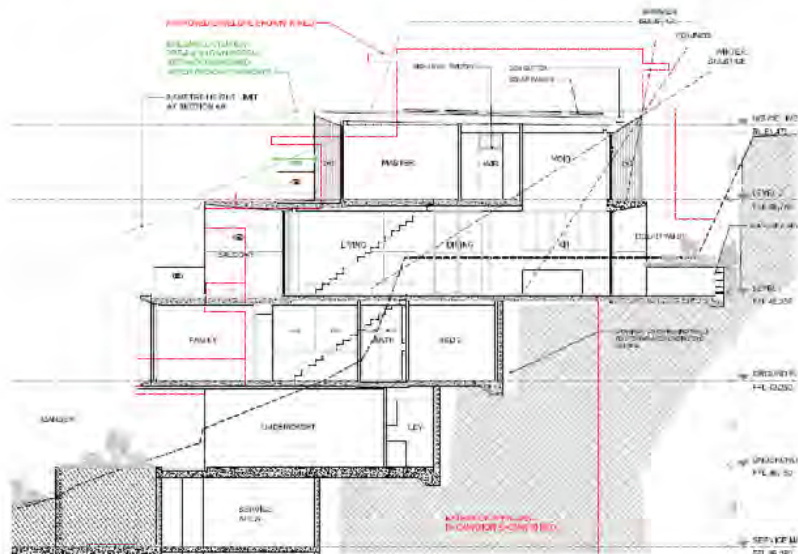


Figure 6 – Plan extract Section AA showing minor 8.5m height breach

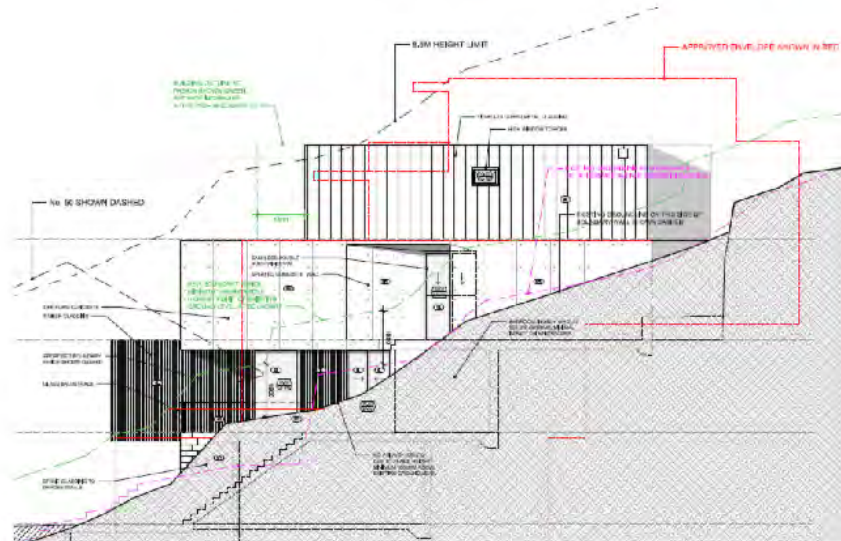


Figure 7 – Plan extract Eastern Elevation showing minor 8.5m height breach

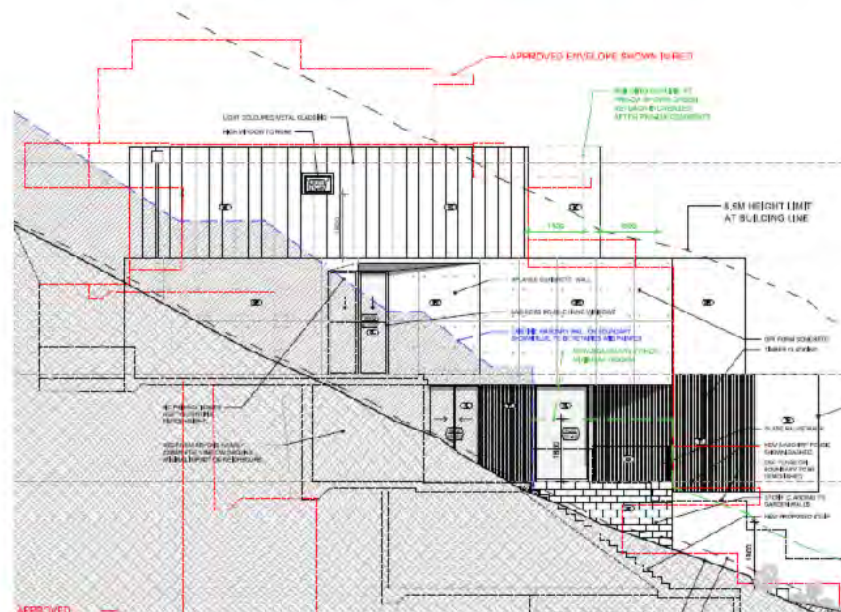


Figure 8 – Plan extract Western Elevation showing 8.5m height breach

Clause 4.6 of MLEP 2013 provides a mechanism by which a development standard can be varied. The objectives of this clause are:

- (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.*

Pursuant to clause 4.6(2) 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.

This clause applies to the clause 4.3 Height of Buildings Development Standard.

Clause 4.6(3) states 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.*

Clause 4.6(4) states 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 Director-General has been obtained.*

Clause 4.6(5) states that in deciding whether to grant concurrence, the Director-General must consider:

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

Claim for Variation

Zone and Zone Objectives

The developments permissibility and consistency with the zone objectives has been discussed in detail in section 4.2.1 of this statement.

Height of Buildings Standard and Objectives

This standard and the associated objectives have been previously identified. Having regard to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

- (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: In the context of the steep topography of the site (gradient of 1:2.2) the extent of non-compliance is appropriately described as minor.

The height, bulk and scale of the development is entirely consistent with the built form characteristics established by the adjoining dual occupancy development at No. 54 Lauderdale Avenue and other residential development within the site's visual catchment.

The overall height of the development, and associated extent of height non-compliance, is significantly less than that previously approved pursuant to development consent 311/2016 with the deletion of the uppermost storey resulting in a reduction in overall building height of 2.23 metres. This reduction in building height provides for a significant enhancement of views available across the subject site from the properties to the rear on Upper Gilbert Street and places the overall building height well below that established on No. 54 Lauderdale Avenue.

We have formed the considered opinion that the building height and roof form proposed are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality noting that required excavation is significantly less than that previously approved on the site pursuant to development consent 311/2016. In forming such opinion, we rely on the photomontage at Figure 9 below.



Figure 9 – Photomontage of development as viewed from Lauderdale Avenue with the previously approved development outlined in black

The proposal is consistent with this objective.

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

Comment: The minor breaching elements do not in any quantitative or qualitative manner contribute to unacceptable bulk and scale with the overall height of the development, and associated extent of height non-compliance, significantly less than that previously approved pursuant to development consent 311/2016.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development by virtue of its height offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.

The proposal is consistent with 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 deletion of the uppermost storey previously approved pursuant to development consent 311/2016 and the resultant reduction in overall building height of 2.23 metres significantly enhances views available across the subject site from the properties to the rear on Upper Gilbert Street. Letters of support from all immediately adjoining property owners are at Attachment 1.

The proposal provides for the sharing of private views as depicted on the view study plans A4.01(A) to A4.03(A) which demonstrate that both seated and standing views across Middle Harbour from the upper and lower balconies and adjacent living rooms of No. 37 Upper Clifford Avenue will be maintained with such views significantly enhance compared to the outcome approved pursuant to development consent 311/2016. This is depicted in Figure 10 over page.



Figure 10 – View analysis diagram

The height and front alignment of the proposal, relative to No's 50 and 54 Lauderdale Avenue, will ensure that all critical view elements will be maintained from both a standing and seated position within the living rooms and adjoining private open space areas across Middle Harbour from both these properties.

Accordingly, we have formed the considered opinion that a view sharing scenario is maintained in accordance with the DCP provision and the view sharing principles established in the matter of Tenacity Consulting Pty Ltd v Warringah Council [2004] NSWLEC140.

The proposal is consistent with 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: Detailed shadow diagrams have been prepared demonstrating the maintenance of existing levels of solar access to the north, east and west facing living room windows and adjacent private open space area of both adjoining properties between 9am and 3pm on 21st June.

The proposal is consistent with 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: Not applicable

Sufficient site specific environmental planning grounds exist to justify the variation in circumstances where the relatively minor non-compliances are directly attributed to the topography of the land. Compliance with the objectives of the standard and the absence of environmental impact also give weight to the acceptability of the variation sought. Further, the built form outcome able to be achieved through approval of the building heights proposed is consistent with objectives 1.3(c) and 1.3(g) of the Act.

Conclusions

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and
- (b) that the contextually responsive development is consistent with the objectives of the height of buildings standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and

- (e) that given the developments ability to comply with the zone and height of buildings standard objectives that approval would not be antipathetic to the public interest, and
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such, we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

4.2.3 Floor Space Ratio

Pursuant to Clause 4.4 MLEP 2013 the maximum FSR for development on the site is 0.6:1 representing a gross floor area of 319.8 square metres. The stated objectives of this clause are:

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

It has been determined that the overall proposal, involving floor space across both Lots has a total combined GFA of 320.6 square metres representing a compliant floor space ratio of 0.6:1. Notwithstanding, as the proposal involves the Torrens Title subdivision of the completed development, and given the irregular geometry of the site which prevents a 50/50 lots size/ compliant GFA split, the proposal results in the following GFA/ FSR outcome:

TOTAL HOUSE 1 - 52A

SITE AREA	281.3M ²
TOTAL GFA	160.3M ²
FSR	0.57:1

TOTAL HOUSE 2 - 52B

SITE AREA	251.7M ²
TOTAL GFA	160.3M ²
FSR	0.63:1

This represents a non-compliance for proposed House 2 of 9.28 square metres or 6% with proposed House 1 having a GFA/ FSR below the maximum prescribed by the same amount.

Again, clause 4.6 of MLEP 2013 provides a mechanism by which a development standard can be varied. With such clause applying to the clause 4.4 FSR Development Standard.

Claim for Variation

Zone and Zone Objectives

The developments permissibility and consistency with the zone objectives has been discussed in detail in section 4.2.1 of this statement.

Floor Space Ratio Standard and Objectives

This standard and the associated objectives have been previously identified. Having regard to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

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

Response: The height, bulk and scale of proposed House 2, as reflected by floor space, are entirely consistent with the built form characteristics established by adjoining development and development generally within the site's visual catchment. We note that the overall GFA/ FSR of the development across the consolidated development site is compliant with the FSR standard with the non-compliance a consequence of the Torrens Title subdivision of the completed development. In this regard, the irregular geometry of the site prevents a 50/50 lots size/ compliant GFA split.

We have formed the considered opinion that the bulk and scale of House 2 are consistent with the bulk and scale of surrounding development and development generally within the site's visual catchment.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development by virtue of its form, massing or scale (as reflected by FSR), offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.

The proposal is consistent with 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,*

Response: Having inspected the site and its surrounds we have formed the considered opinion that the development will not obscure any important landscape or townscape features with a compliant landscape area curtilage maintained.

The proposal is consistent with this objective.

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

Response: The minor variation proposed will not compromise the developments ability to satisfy this objective. Deep soil landscaped areas at the front and rear of the site provide appropriately for landscaping such that the development will sit within a complimentary and compatible landscape setting.

The proposal is consistent with this objective.

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

Response: Detailed shadow diagrams have been prepared demonstrating the maintenance of existing levels of solar access to the north, east and west facing living room windows and adjacent private open space area of both adjoining properties between 9am and 3pm on 21st June.

The deletion of the uppermost storey previously approved pursuant to development consent 311/2016 and the resultant reduction in overall building height of 2.23 metres significantly enhances views available across the subject site from the properties to the rear on Upper Gilbert Street. Letters of support from all immediately adjoining property owners are at Attachment 1.

The proposal provides for the sharing of private views as depicted on the view study plans A4.01(A) to A4.03(A) which demonstrate that both seated and standing views across Middle Harbour from the upper and lower balconies and adjacent living rooms of No. 37 Upper Clifford Avenue will be maintained with such views significantly enhance compared to the outcome approved pursuant to development consent 311/2016. This is depicted in Figure 11 over page.

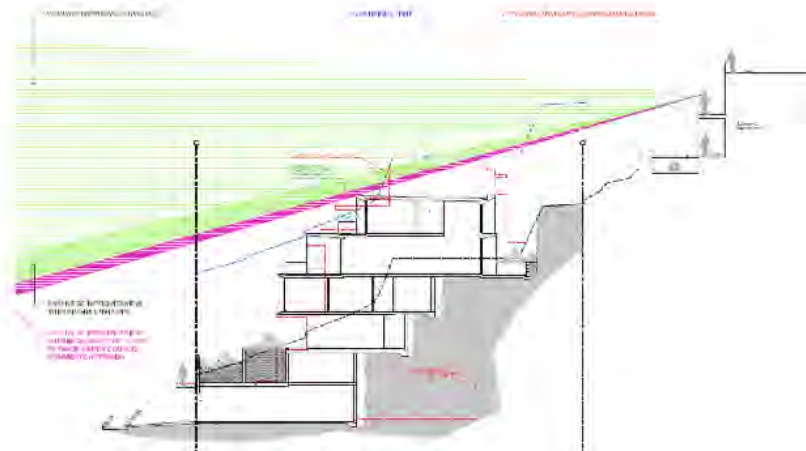


Figure 11 – View analysis diagram

The height and front alignment of the proposal, relative to No's 50 and 54 Lauderdale Avenue, will ensure that all critical view elements will be maintained from both a standing and seated position within the living rooms and adjoining private open space areas across Middle Harbour from both these properties.

Accordingly, we have formed the considered opinion that a view sharing scenario is maintained in accordance with the DCP provision and the view sharing principles established in the matter of Tenacity Consulting Pty Ltd v Warringah Council [2004] NSWLEC140.

In relation to privacy, we confirm that in the preparation of the current building design particular attention was given to orientating all elevated living rooms and adjacent primary balconies towards the front and rear of the site. The living areas open onto a south facing balconies with integrated privacy screening provided to the outside edge of the balcony to prevent overlooking between properties. Side boundary facing fenestration is blinkered through building design which directs the line of sight away from the neighbouring properties towards available views and outlook.

The proposal will not give rise to any public domain amenity impacts with pedestrian safety significantly enhanced through the replacement of the existing antiquated and dangerous public stairs located within the road reserve with new compliant and safe access stairs.

The proposal is consistent with this objective.

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.

In this regard, we have formed the considered opinion that sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the site's visual catchment.

Further, the floor space proposed promotes/ reflects the orderly and economic use and development of the land, consistent with objectives 1.3(c) and (g) of the Act.

The developments compliance with the objectives of the FSR standard and the general paucity of adverse environmental impact also give weight to the acceptability of the variation sought.

Conclusions

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and
- (b) that the contextually responsive development is consistent with the objectives of the floor space ratio standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the floor space ratio development standard is unreasonable or unnecessary in the circumstances of the case, and

- (e) that given the developments ability to comply with the zone and floor space ratio standard objectives that approval would not be antipathetic to the public interest, and
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such, we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a floor space ratio variation in this instance.

4.2.4 Minimum Lot Size

Pursuant to clause 4.1 of the MLEP 2013 the minimum lot size development standard is 250m². The objectives of the clause are as follows:

- a) to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping,*
- b) to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns,*
- c) to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential,*
- d) to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.*

The subdivision component of the application proposes the Torrens Title subdivision of the allotment to create 2 Lots having areas of 251.8 and 281.3 square metres respectively as detailed on the accompanying plan of subdivision prepared by Bee & Lethbridge Surveyors. The propose Lot sizes are compliant with the standard and associate objectives.

ITEM 3.4	DA2019/0824 - 6 PLANT STREET, BALGOWLAH - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE
REPORTING MANAGER	Matthew Edmonds
TRIM FILE REF	2019/555253
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/0824 for demolition works and construction of a dwelling house on land at Lot 51 DP 849712, 6 Plant Street, Balgowlah, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0824
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 51 DP 849712, 6 Plant Street BALGOWLAH NSW 2093
Proposed Development:	Demolition works and construction of a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Stuart Hamilton Cameron
Applicant:	Roslyn Enid Becke Stuart Hamilton Cameron
Application Lodged:	01/08/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	12/08/2019 to 26/08/2019
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,358,466.00

Northern Beaches Council is in receipt of Development Application DA2019/0824 for demolition works and construction of a dwelling house at 6 Plant Street, Balgowlah.

The proposed development is compliant with all relevant development standards of the Manly Local Environmental Plan 2013 (MLEP 2013). The proposed development is not compliant with Clauses 3.4.1 Sunlight Access and Overshadowing, 4.1.2.1 Wall Height, and 4.1.4.4 Rear Setbacks of the Manly Development Control Plan 2013 (MDCP 2013). The matters of non-compliance are supported on merit. The proposed development is otherwise compliant with applicable planning controls. The proposed development received three submissions relating construction matters, services, privacy, overshadowing and drainage/runoff. As the proposed development has received three submissions and has an estimated cost of works of greater than \$1 million (\$2,358,466), the application is referred to the Development Determination Panel (DDP) for review and determination.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for demolition of the existing dwelling house, and construction of a new dwelling house, with double garage (attached).

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

Manly Development Control Plan - 4.1.2 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 51 DP 849712 , 6 Plant Street BALGOWLAH NSW 2093
Detailed Site Description:	<p>The Assessing Officer visited the site on 19 September 2019.</p> <p>The subject site consists of one (1) allotment located on the western side of Plant Street, Balgowlah.</p>

	<p>The site is irregular in shape with a frontage of 15.24m along Plant Street and a depth of 34m. The site has a surveyed area of 647.8m².</p> <p>The site is located within the R2 Low Density zone and accommodates a part-two, part-one storey detached dwelling house.</p> <p>The site slopes approximately 3m from west to east, and contains several small trees and shrubs.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by low-density residential dwellings.</p>
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Map:

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SITE HISTORY

A search of Council's records has revealed that there are no recent relevant applications for this site. The land has been used for residential purposes for an extended period of time.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the survey plan. All requested information has been received.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental	<p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed</p>

Section 4.15 Matters for Consideration'	Comments
impacts on the natural and built environment and social and economic impacts in the locality	development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Andrew Milburn	7 A Plant Street BALGOWLAH NSW 2093
Ms Caroline Cassidy Mr John David Peters	10 Kanangra Crescent BALGOWLAH NSW 2093
Mr Nerina Musumeci	8 Kanangra Crescent BALGOWLAH NSW 2093

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

- Construction traffic will cause vehicular / pedestrian conflict and safety risks.
- Construction noise will disrupt quiet enjoyment of nearby properties.

- Vibration during construction will cause damage on adjoining properties.
- Construction vehicles will spread dirt into the street.
- Demolition works may lead to asbestos contamination.
- Stormwater drainage and runoff will impact on downhill properties.
- Gas and water meters for 10 Kanangra Crescent are located in front of the subject site - access should not be restricted.
- The proposed development will overshadow 8 Plant Street.
- The proposed development will overlook 8 Plant Street.

The matters raised within the submissions are addressed as follows:

- Demolition / Construction Concerns
Comment:
The subject site is located on a low-traffic secondary street with on-street parking available. Construction of the proposed single dwelling house is not considered to result in unacceptable construction traffic impacts. Along with this, construction is not anticipated to require large numbers of vehicles on site and sediment is not anticipated to be spread into the street. Any instances of significant sediment spillage may be reported to Council for investigation and action. The development is subject to standard conditions limiting construction hours and noise and vibration levels during construction, and addressing asbestos handling. The proposed development does not involve extensive excavation, not excavation immediately adjacent to boundaries. however, conditions of consent require dilapidation reports to be prepared to record any existing damage and any damage as a result of works.
- Stormwater Drainage and Runoff
Comment:
The proposed development is supported by stormwater management plans that include an onsite detention system. This system will capture and slowly disperse any stormwater, in order to reduce flows and runoff. The proposed development will lead to an improved stormwater drainage scenario. The proposed development (including its stormwater management measures) has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.
- Gas and Water Meters
Comment:
The proposed development does not restrict access to the easement for services and the existing gas and water meters along the southern boundary of the subject site beyond the existing scenario. A condition of consent has been applied to ensure development of the subject site retains use and access to the services as per the terms of the easement.
- Impacts to 8 Plant Street
Comment:
The proposed development is acceptable in relation to privacy and solar access for the reasons detailed in the sections of this report relating to Clauses 3.4.1 Sunlight Access and Overshadowing and 3.4.2 Privacy and Security of the MDCP 2013.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application seeks demolition of the existing dwelling house and its associated structures and construction of a new dwelling house, landscaping and other required site works.</p> <p>The landscape component of the proposal is acceptable subject to the protection of existing trees and vegetation adjoining the property, and the completion of landscaping.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types.</p> <p>There are no significant trees within the site impacted by the works. Significant trees are located within adjoining properties and these shall be protected during all stages of works. Conditions of consent shall be imposed to ensure tree protection measures are in place, including protection of trees on adjoining properties and within the road verge.</p> <p>A Landscape Plan numbered DA3.06 issue C, prepared by Cargill Moore Architects is provided and satisfies the DA Lodgement Requirements, subject to conditions.</p>
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following condition of consent.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1016845S_02 dated 26 July 2019). The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	63

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.2m	N/A	Yes
Floor Space Ratio	0.45:1 (291.5sqm)	0.447:1 (289.8sqm)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 647.8sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: Max. 1 dwelling per 500sqm	1 dwelling per 647.8sqm site	N/A	Yes
	Dwelling Size: Min. 90sqm	289.8sqm	N/A	Yes
4.1.2.1 Wall Height	N: 7.1m (based on gradient 1:10)	GF: 4.7m	N/A	Yes
		FF: 7.8m	9.8%	No
	S: 7.1m (based on gradient 1:10)	GF: 4.3m	N/A	Yes
		FF: 7.4m	4.2%	No
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	Flat roof	N/A	Yes
	Pitch: maximum 35 degrees			
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	1.7m to garage, consistent with prevailing setbacks for garages	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N (GF): 1.56m (based on wall height)	Min. 3.7m	N/A	Yes
	N (FF): 2.6m (based on wall height)	Min. 3.7m	N/A	Yes
	S (GF): 1.43m (based on wall height)	Min. 1.85m	N/A	Yes
	S (FF): 2.46m (based on	Min. 2.35m	N/A	Yes

	wall height)			
	Windows: 3m	Min. 3.7m	N/A	Yes
4.1.4.4 Rear Setbacks	8m	800mm to stairs	90%	No
		5.03m to dwelling	37.1%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Total open space: Min. 55% of site area (356.29sqm)	61.6% (399.3sqm)	N/A	Yes
	Open space above ground: Max. 40% of total open space (159.72sqm)	6.4% (25.6sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area: Min. 35% of total open space (139.75sqm)	59.7% (238.5sqm)	N/A	Yes
	3 native trees	>3 trees	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	260sqm	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	6.1m	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0m	N/A	Yes
	1m curtilage / 1.5m water to side/rear setback	Pond: 1.6m curtilage / 1.7m water to side	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	No	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	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
4.1.8 Development on Sloping Sites	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

A submission has raised concern that the proposed development is unreasonable in relation to maintaining privacy for 8 Plant Street, to the south of the subject site. Clause 3.4.1 Sunlight Access and Overshadowing of the MDCP 2013 requires that for adjacent buildings with an east-west orientation (as in this case), the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June). The proposed development reduces sunlight to the windows to the living room of 8 Plant Street (identified as W6 and W7 on shadow diagrams) to one hour of full sunlight and one hour of partial sunlight on the winter solstice. The proposed development is addressed in relation to the relevant objectives of this clause as follows:

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

Comment:

With the east-west orientation of the site, the northern side windows of 8 Plant Street are particularly vulnerable to overshadowing by the subject site. While the proposed development results in additional overshadowing to 8 Plant Street, this overshadowing is not considered unreasonable. The proposed dwelling is compliant with the height of buildings and floor space ratio development standards set by the MLEP 2013. The proposed development is also compliant with the side setback and open space

requirements set by the MDCP 2013. In fact, the proposed development includes greater southern side setbacks than the existing dwelling, and sets the proposed upper level further in from the southern boundary than the proposed ground floor. Further, the proposed development employs a flat roof design, to minimise the overall height of the structure. As such, the proposed development is demonstrated to be suitably designed for the subject site, does not present an overdevelopment, and is overall equitable. The proposed development allows for adequate sunlight penetration to 8 Plant Street, as detailed below in relation to Objective 2.

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:

In relation to the subject site, the proposed development is designed so as to allow for meaningful, usable private open space to the north of the site, which achieves reasonable sunlight penetration. In relation to the objecting site (8 Plant Street), the proposed development is reasonable in its impact to private open spaces and windows to habitable rooms. The north-facing windows on the lower level receive the greatest impact, in that sunlight access is reduced to one full hour and one partial hour of sunlight in the morning. However, the proposed development does not impact upon the north-facing windows at the upper level in a meaningful manner until 3pm. That is to say, the proposed development retains 5 hours of full sunlight to those windows, and another hour of partial sunlight. The upper level balconies also retain meaningful sunlight access, with no additional impact until 3pm.

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:

As above, the proposed development is compliant with the side setback requirements set by the MDCP 2013, with a greater southern side setback than the existing dwelling. Further, the proposal sets the proposed upper level further in from the southern boundary than the proposed ground floor. As such, the proposed development demonstrates suitable southern setbacks, modulation and articulation in respect of the property to the south.

3.4.2 Privacy and Security

A submission has raised concern that the proposed development is unreasonable in relation to maintaining privacy for 8 Plant Street, to the south of the subject site. The proposed development is addressed in relation to the relevant objectives of this clause, as follows:

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

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

Comment:

The objection in relation to privacy raised concern about overlooking from the windows on the western end of the southern elevation of the proposed dwelling to 8 Plant Street. These proposed windows are set back 4.4m from the common boundary between 6 and 8 Plant Street, and 6.5m from the balcony of 8 Plant Street. This presents significant and meaningful separation between the two developments. Additionally, these proposed windows are a minimum of 2m further away from 8 Plant Street than the existing windows, thereby providing an improvement on the existing scenario. Notwithstanding the above, the proposed windows are set forward of the balcony at 8 Plant Street, so do not result in direct viewing. Residents in the proposed dwelling would have to be viewing backwards, away from the expansive water and district views to observe the private open space of 8 Plant Street. As such, the proposed development is suitably designed and sited for privacy and to mitigate direct viewing between 6 and 8 Plant Street.

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 development maintains an appropriate balance of providing adequate privacy to adjacent dwellings and access to light and air for the subject site. The proposed development allows for generous views from the subject site as well as adjacent sites from their respective habitable spaces and private open spaces.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development includes windows to the street frontage, thereby allowing for passive surveillance and increasing awareness of neighbourhood security.

3.4.3 Maintenance of Views

No objection to the proposed development was raised in relation to view loss. The proposed development is compliant with the requirements of Clause 3.4.3 Maintenance of Views of the MDCP 2013. An assessment of the proposal in relation to views from the relevant properties (8 Plant Street, to the south of the subject site, and 5 Plant Street, to the east of the subject site) is as follows:

8 Plant Street:

The proposed development will result in a negligible loss of view to 8 Plant Street, as a result of the additional storey proposed. However, this loss of view is across the side boundary and is of the distant district and sky. The more valuable view to the Spit Bridge and harbour will be unaffected by this proposal.



Above: Photographs of the view from the balcony of 8 Plant Street, from a standing position, with the subject site to the right beyond the masonry wall.

5 Plant Street:

Access to 5 Plant Street was not available at the time of the site visit to the subject site. A photograph was taken from the entry porch of 5 Plant Street, in between (though lower than) the location of the first floor balconies of 5 Plant Street (see below). This indicates that the height of the proposed dwelling may disrupt views to the district to the west and north-west, but is unlikely to impact upon current views to the water to the south-west. Views to the water are likely already impacted by 8 Plant Street. The impact to 5 Plant Street is minor.



Above: The view from the entry porch of 5 Plant Street, from a standing position, towards the subject site (centre).

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

The proposed development results in non-compliance with the wall height control of up to 9.8% on the northern elevation, and up to 4.2% on the southern elevation. Additionally, the proposal includes a portion of the dwelling as three storeys, where two storeys are allowed. Clause 4.1.2 Height of Buildings of the MDCP 2013 relies on the objectives of Clause 4.3 Height of Buildings of the MLEP 2013. The development is addressed in relation to these objectives as follows:

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

Comment:

The proposed development provides an overall height that is consistent with, and complementary to, existing development in the locality, including the sites immediately to the north and south of the subject site. The portions of the development that are not-compliant with the wall height and number of storeys are to the rear of the development and not readily visible from the street. As such, the proposed development is consistent with the existing and anticipated streetscape character in the locality.

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

Comment:

The proposed dwelling is compliant with the height of buildings and floor space ratio development standards set by the MLEP 2013. The proposed development is also compliant with the side setback and open space requirements set by the MDCP 2013. The proposed development includes greater southern side setbacks than the existing dwelling, and sets the upper level further in from the southern

boundary than the ground floor. Further, the proposed development employs a flat roof design, to minimise the overall height of the structure. As such, the proposed development is demonstrated to be suitably designed for the subject site in relation to bulk and scale, and does not present an overdevelopment of the site.

(c) to minimise disruption to the following:

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

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

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

Comment:

The proposed development is acceptable in relation to view sharing for the reasons detailed in the section of this report relating to Clause 3.4.3 Maintenance of Views of the MDCP 2013.

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

Comment:

The proposed development is acceptable in relation to overshadowing for the reasons detailed in the section of this report relating to Clause 3.4.1 Sunlight Access and Overshadowing of the MDCP 2013.

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

Comment:

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

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

The proposed development includes a rear setback of 800mm to the rear stairs, and 5.03m to the dwelling proper, equating to 90% and 37.1% variations to the minimum requirement. The proposed development is acceptable in relation to the relevant objectives of this clause, 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 rear setback presents an improvement on the existing rear setback. Further, the proposed non-compliance with the rear setback is not visible from the street level, and therefore will not impact on the existing streetscape character.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed development is acceptable in relation to privacy, access to light, and view sharing, as

detailed throughout this report. The proposed development proposes alteration to the location and width of the existing driveway, though does not result in additional safety risks in relation to traffic conditions.

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

Comment:

The proposed development is adequately designed so as to provide flexibility in the siting of the dwelling, without resulting in unreasonable impacts on the amenity of the subject site or adjacent sites. The proposed rear setback is consistent with existing developments in the near vicinity.

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 rear setback does not impede on the site's ability to provide compliant open space and landscaping, including significant vegetation planting. The rear setback does not detract from the visual quality of the site. The subject site does not include any bushland.

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

Comment:

Not applicable. The subject site is not classified as bush fire prone land.

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 \$23,585 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,358,466.

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

A detailed assessment has been required for the following specific issues:

- Overshadowing of 8 Plant Street;
- Privacy impacts to 8 Plant Street;
- Maintenance of views from 8 Plant Street and 5 Plant Street;
- Wall height non-compliance; and
- Rear setback non-compliance.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2019/0824 for Demolition works and construction of a dwelling house on land at Lot 51 DP 849712, 6 Plant Street, BALGOWLAH, 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
DA1.02_C Proposed Site Plan	1 August 2019	Cargill Moore Pty Ltd

DA1.04_C Proposed Site Section	1 August 2019	Cargill Moore Pty Ltd
DA2.05_C Materials Palette	1 August 2019	Cargill Moore Pty Ltd
DA3.01_C Demolition Plan	1 August 2019	Cargill Moore Pty Ltd
DA3.02_C Proposed Basement Plan	1 August 2019	Cargill Moore Pty Ltd
DA3.03_C Proposed Ground Floor	1 August 2019	Cargill Moore Pty Ltd
DA3.04_C Proposed First Floor	1 August 2019	Cargill Moore Pty Ltd
DA3.05_C Proposed Roof Plan	1 August 2019	Cargill Moore Pty Ltd
DA3.07_C Excavation Plan	1 August 2019	Cargill Moore Pty Ltd
DA4.02_C Plant Street Elevation - Proposed	1 August 2019	Cargill Moore Pty Ltd
DA4.04_C South Elevation - Proposed	1 August 2019	Cargill Moore Pty Ltd
DA4.06_C North Elevation - Proposed	1 August 2019	Cargill Moore Pty Ltd
DA4.08_C West Elevation - Proposed	1 August 2019	Cargill Moore Pty Ltd
DA5.01_C Section 0	1 August 2019	Cargill Moore Pty Ltd
DA5.02_C Section 1	1 August 2019	Cargill Moore Pty Ltd
DA5.03_C Section 2	1 August 2019	Cargill Moore Pty Ltd
DA5.04_C Section 5	1 August 2019	Cargill Moore Pty Ltd
DA5.05_C Section 3	1 August 2019	Cargill Moore Pty Ltd
DA5.06_C Section A	1 August 2019	Cargill Moore Pty Ltd
DA5.07_C Section H	1 August 2019	Cargill Moore Pty Ltd
DA5.08_C Section E	1 August 2019	Cargill Moore Pty Ltd
DA5.09_C Section B2	1 August 2019	Cargill Moore Pty Ltd
DA5.10_C Section B1	1 August 2019	Cargill Moore Pty Ltd

Engineering Plans		
Drawing No.	Dated	Prepared By
C-10 Proposed OSD & Rainwater Tank Plans	26 July 2019	James Taylor & Associates
C-11 Proposed OSD & Rainwater Tank Section	26 July 2019	James Taylor & Associates
DA3.09_C Stormwater Management Plan	1 August 2019	Cargill Moore Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
NatHERS Certificate No. 0004059457	27 July 2019	Efficient Living Pty Ltd
BASIX Certificate No. 1016845S_02	26 July 2019	Efficient Living Pty Ltd
Geotechnical Assessment	26 July 2019	James Taylor & 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:

Landscape Plans		
Drawing No.	Dated	Prepared By
DA3.06_C Landscape Plan	1 August 2019	Cargill Moore Pty Ltd

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
DA3.10_C Waste Management Site Plan	1 August 2019	Cargill Moore Pty Ltd
Waste Management Plan	1 August 2019	Stuart Cameron & Roslyn Becke

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 \$23,584.66 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 \$2,358,466.00.

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. Required Canopy Tree Planting

- i) Details are to be provided of the existing or proposed native trees for the site that are typically expected to reach a height at maturity of 10 metres, to bring the proposal into compliance with Figure 37 of the Manly Development Control Plan 2013.
- ii) Details of new planting are to include appropriate siting and pot size (minimum of 75 litres) in accordance with section 2.1.3 of the Manly Development Control Plan 2013, and schedule 4, Part B, Native Tree Selection.
- iii) A minimum of 3 native trees shall be provided within this site.
- iv) Details are to be submitted with the Construction Certificate to the satisfaction of the Certifying Authority.

Reason: To ensure the planting of endemic trees back onto the site.

7. On Slab Landscape Works

- i) Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to of the proposed 'planted roof' over the garage and over the ground floor living area, to which soil and planting is being provided,
- ii) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule,
- iii) The following soil depths are required to support landscaping as proposed:
 - 300mm for lawn
 - 600mm for shrubs
- iv) Design certification shall be submitted to the Certifying Authority by a structural engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

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

8. On-site Stormwater Detention Compliance

Certification of Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003 and the concept drawing by James Taylor & Associates Pty Ltd, project number 6111, drawing number C-9 and C-10 dated 26/7/2019. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the

issue of the Construction Certificate.

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

9. **Structural Adequacy and Excavation Work**

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

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

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

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

Reason: To provide public and private safety.

10. **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.

11. **Pre-commencement Dilapidation Report**

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public and private properties and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

Reason: Protection of Council's and Private Party's Infrastructure during construction.

12. **Compliance with Standards**

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

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

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

13. **Submission of Survey**

All works are to be contained wholly within the subject site. A survey, prepared by a Registered Surveyor, identifying the boundaries of the subject site and all existing structures/buildings, is to be prepared. The plans submitted for the Construction Certificate are to accurately reflect the boundaries as shown on the survey. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. **Road Reserve**

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

Reason: Public safety.

16. **Vehicle Crossings**

The provision of one vehicle crossing 4.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

17. **Maintenance of Sediment**

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

Reason: To ensure sediment controls are effective.

18. **Protection of Adjoining Property - Excavation**

Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.

Reason: To ensure private and public safety.

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 not impacted by development, excluding exempt vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be generally undertaken as follows:

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

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

20. **Existing Meters and Easement for Services - During Works**

During all works, the existing service meters and easement for services on the subject site benefiting Lot 52 DP 849712 are to remain usable and accessible in accordance with the relevant terms of the easement. Structures and planting on the subject site are not to impede use or access of the service meters or easement for services at any time.

Reason: To ensure access to services.

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

21. **Landscape Works**

Landscaping is to be implemented in accordance with the Landscape Plan numbered DA.21 prepared by All Australian Architecture, inclusive of the following requirements:

- i) all tree planting is to be installed at 75 litre container size;
 - ii) all tree planting, including the required native tree planting, shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree locations may otherwise be positioned to minimise any significant loss of views; and
 - iii) all native tree planting shall have a minimum individual soil area wholly within the site of 3 metres x 3 metres, and shall be located a minimum of 5 metres from existing and proposed built structures, or minimum of 3 metres where pier and beam footings are used.
- Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the approved landscape plan and inclusive of any conditions of consent.

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

22. **Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with AQZ Level 5 qualifications in arboriculture/horticulture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, and in particular the existing large Brushbox located within the front of property at 4 Plant St, as a result of the proposed development, including the following information:

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

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

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

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

Reason: To create encumbrances on the land.

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

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

Reason: To identify encumbrances on land.

25. **Reinstatement of Kerb**

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

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

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

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council. Additionally a Compliance Certificate is to be issued by an Accredited Certifier in Civil Works registered with the Institute of Engineers Australia, stating that the works are in accordance with the approved plans. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

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

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

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

28. **Post-Construction Dilapidation Report**

The applicant must prepare and submit a post-construction dilapidation report. The report must clearly detail the final condition of all property, infrastructure, natural and man-made features that were originally recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties

Reason: To ensure security against possible damage to Council and private property.

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

29. **Landscape Maintenance**

Any existing landscaping including trees required to be retained together with any additional landscaping required by this consent is to be maintained for the life of the development. A 12-month establishment period shall apply for all new landscaping. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. All planting must be maintained for the life of the development, or for their safe useful life expectancy. Planting that may die or is approved for removal must be replaced.

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

30. **Environmental and Priority Weed Control**

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

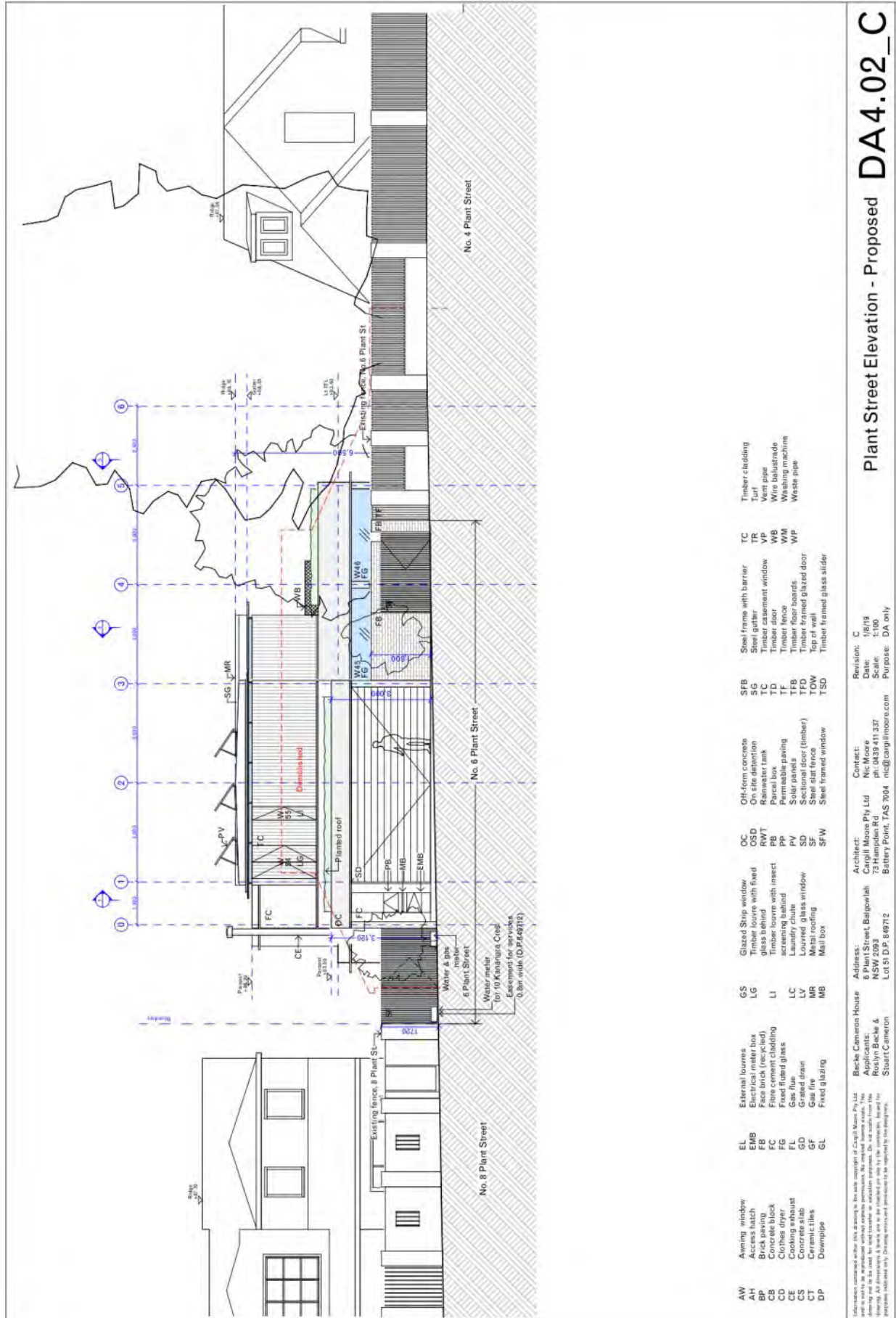
Reason: Preservation of environmental amenity.

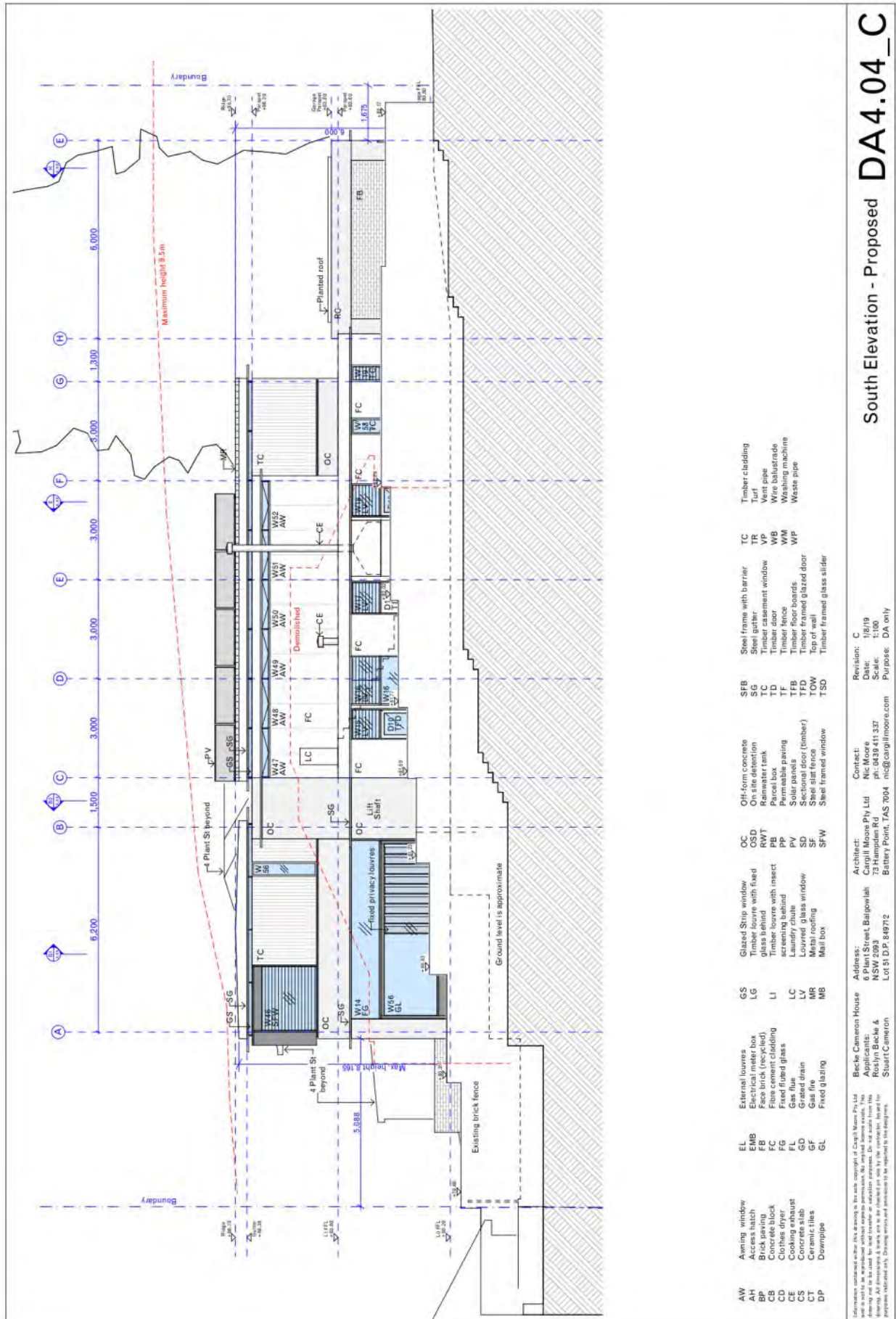
31. **Existing Meters and Easement for Services - Ongoing**

The existing service meters and easement for services on the subject site benefiting Lot 52 DP 849712 are to remain usable and accessible in accordance with the relevant terms of the easement. Structures and planting on the subject site are not to impede use or access of the service meters or easement for services at any time.

Reason: To ensure access to services.











ITEM 3.5**DA2018/1803 - 141 FULLER STREET, NARRABEEN -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
INCLUDING A SWIMMING POOL****REPORTING MANAGER****Steve Findlay****TRIM FILE REF****2019/555432****ATTACHMENTS**

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

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2018/1803 for alterations and additions to a dwelling house including a swimming pool on land at Lot 3 DP 222881, 141 Fuller Street, Narrabeen, subject to the conditions outlined in the Assessment Report.

12/09/2019

Assessment Report

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1803
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Responsible Officer:	Danielle Deegan (Consultant Planner)
Land to be developed (Address):	Lot 3 DP 222881, 141 Fuller Street NARRABEEN NSW 2101
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Determination Level	Development Determination Panel
Land and Environment Court Action:	No
Owner:	Kobi Conde Simmat
Applicant:	Kobi Conde Simmat Fiona Faye Simmat

Application lodged:	09/11/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	16/11/18 to 04/12/2018 (Original Plans) 02/08/2019 to 16/08/2019 (Amended Plans)
Advertised:	Not Advertised
Submissions Received:	6 (original plans) 2 (amended plans)
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 945,000.00
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EXECUTIVE SUMMARY

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

The proposed development demonstrates compliance with the relevant built form controls of the WLEP 2011 and WDCP 2011 with the exception being a minor breach to the wall height control. This variation is reasonable given the sloping topography of the site and the very minor nature of the breach.

The impact on views is a significant issue in the assessment of this application, given the location of the site on the edge of Collaroy Escarpment and the expansive views available. A detailed analysis has been undertaken at Clause D7 Views of the WDCP 2011 for the dwelling house to the west of the site, at 139A Fuller St. It is established that the view loss to this property is moderate with some water views being retained. As the proposal is predominantly compliant with all relevant built form controls, adequate view sharing has been achieved and it is concluded that the proposal is consistent with Clause D7 Views, and the view sharing Principles of Tenacity Consulting Pty Ltd. vs Warringah Council.

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Assessment Report

Privacy was another planning consideration and another issue raised by adjoining properties. Given the generous setbacks of the additions from the adjoining properties, privacy impacts from the proposed windows and balconies are satisfactory. Conditions have been included to minimise acoustic impacts from the swimming pool equipment and to provide additional screen planting along the northern boundary.

The proposed development will require excavation to provide the basement garage and the swimming pool. A geotechnical report was submitted with the application and recommendations within this report will form part of the approval documents. In addition, conditions have been included to ensure that a dilapidation report is prepared for the adjoining property to the north at 141A Fuller Street.

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.

Given all considerations, submissions, variations and analysis of the proposal, it is recommended that the proposed development be approved subject to recommended 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

Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - C7 Excavation and Landfill
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy

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Assessment Report

SITE DESCRIPTION

Property Description:	Lot 3 DP 222881, 141 Fuller Street NARRABEEN NSW 2101
Detailed Site Description:	<p>The subject site consists of one allotment located on the eastern side of Fuller Street.</p> <p>The site is a battle-axe shaped allotment with a frontage of 9m to Fuller Street and the access handle having a length of approximately 74m. The site has a total surveyed area of 2,091m². When the access handle is excluded the developable lot size is 1,424m².</p> <p>The driveway is shared with two neighbouring properties to the north (141A and 141B Fuller St).</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a part one / part two storey dwelling house, swimming pool and landscaping.</p> <p>The site is located on the edge of Collaroy Escarpment and enjoys expansive views of the coastline and ocean to the north and east. The site has cross-fall from the south-west to north-east.</p> <p>The site is well vegetated with mature native species. Most of the significant trees are located in the access handle.</p> <p>The site benefits from a drainage easement over the adjoining property to the north.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>The character of the immediate locality is predominately residential in nature and consists of two to three storey detached dwelling houses in landscaped settings.</p> <p>The property to the north (141A Fuller St) is a two storey rendered dwelling house and the property to the south is a single storey brick dwelling house.</p> <p>It is notable that all surrounding allotments are smaller in size than the subject site.</p>

Map:

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SITE HISTORY

On 8 May 2018, a Pre-Lodgement Meeting was held at Council (PLM2018/0075). The following issues were identified and discussed:

- View corridors
- Reflectivity
- Swimming pool
- Landscaped open space

On 9 November 2018, the subject development application was lodged with Council.

On 11 June 2019, a letter was sent to the applicant to advise that Council could not support the application in its current form. The following issues were identified:

- Unacceptable view sharing
- Unacceptable visual impact
- Glare and reflection from excessive glazing
- Landscape plan
- Inadequate plans and documentation

On the 29 July 2019, in response to issues raised by Council, amended plans and additional information were submitted to Council. The amended plans have reduced the length of the upper level, removed solar panels from the roof, reduced the amount of glazing, amended the landscape plan and addressed deficiencies in the original documentation. It is the amended plans that are the subject of this report.

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Assessment Report

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for alterations and additions to a dwelling house including the construction of a swimming pool and landscaping works.

In detail, the proposed alterations and additions to the dwelling house comprise of:

New Garage Level Floor (RL49.75)

- excavation
- double garage
- gym area
- workshop
- area for water tanks
- pool equipment storage
- internal stairs leading to the level above

Ground Floor Level (RL52.74)

- alterations to entrance
- rumpus room
- bathroom (toilet, sink and shower)
- external deck

First Floor Level (RL55.73)

- master bedroom with walk-in wardrobe and ensuite
- deck leading off bedroom
- study
- bridge adjacent to a void area linking the bedroom to the study

A new swimming pool and surrounding decking are proposed to the east of the dwelling house.

Changes to the existing driveway are proposed to enable access to the basement garage.

Landscaping works are proposed including; changes to ground levels, tree removal and additional plantings.

The proposed external materials and finishes are neutral in colour. Materials include non-reflective glazing, bagged and painted brick walls, cladding, timber window and door frames, timber fencing and stone facing to pool wet edge.

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.

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Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>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. Additional information was requested on 11 June 2019 in relation to:</p> <ul style="list-style-type: none"> • View sharing • Unacceptable Visual Impact • Glare and reflection • Amended Landscape Plan. <p>Amended plans and documentation were requested on 26 July 2019 from the applicant.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <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.

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Assessment Report

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 initial public exhibition process Council is in receipt of 6 submissions from:

Name:	Address:
Mrs Martina Frances Castle	141A Fuller Street NARRABEEN NSW 2101
Mrs Joyce Irene Forbes Mr Robert James Forbes	1762 Pittwater Road BAYVIEW NSW 2104
Boston Blyth Fleming Pty Ltd	Suite 1, 9 Narabang Way BELROSE NSW 2085
Turnbull Planning International Pty Ltd	2301 / 4 Daydream Street WARRIEWOOD NSW 2102
Paul Alfred Najar	139 A Fuller Street NARRABEEN NSW 2101

As a result of the second public exhibition process Council is in receipt of 2 submissions from:

Name:	Address:
Mrs Martina Frances Castle	141A Fuller Street NARRABEEN NSW 2101
Paul Alfred Najar and Amanda Graham	139A Fuller Street NARRABEEN NSW 2101

Some of the concerns raised relating to the original plans have been addressed in the amended plans. These concerns relate to the solar panels (removed), plan inaccuracies (corrected), privacy impacts on 79A Edgcliffe Blvd (study balcony removed and setback increased).

The following issues raised in the submissions remain unresolved and are addressed below:

- view loss
- privacy impacts from windows, balconies and swimming pool
- wall height and building height non-compliance
- building bulk
- potential damage to common driveway
- glare and reflection from excessive glazing
- potential risks from excavation
- stormwater disposal
- cost of works
- lack of landscaping along northern boundary

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The matters raised within the submissions are addressed as follows:

- *The amended plans continue to significantly impact on the easterly ocean views from 139A Fuller St.*

Comment:

An assessment of view impacts has been undertaken in accordance with the Planning Principle established by the Land and Environment Court, in section D7 of this report. The assessment finds that the proposed development (as amended) provides for the reasonable sharing of views.

- *The excessive glazing on the western elevation will result in unacceptable privacy impacts on 139A Fuller St. External privacy screens are requested.*

Comment:

The windows proposed in the western elevation do not directly face 139A Fuller St, rather they predominantly look onto the shared access handle. The proposed windows are located a minimum of 18m from the private open space of 139A Fuller St and a minimum of 25m from the deck and windows of this property. Clause D8 Privacy of Warringah DCP, requires that windows within 9m of each other be located so they do not provide direct overlooking. Windows with greater spatial separation are not considered to pose unreasonable privacy impacts and therefore external privacy screens are not warranted in this instance.

- *Concern is raised that the amended cost of works from \$1,149,000 to \$946,050 is a deliberate attempt to avoid the Development Determination Panel.*

Comment:

The submitted cost of works provides a legitimate estimate of the proposed cost of works given the reduction of works and material changes.

- *The height of the northern wall is imposing and appears to exceed the 7.2m maximum wall height requirement.*

Comment:

The maximum height of the northern wall is 7.33m representing a minor breach of the control. This non-compliance has been addressed at section B1 of this report and has been found to be reasonable in the circumstances. The 4m setback of the wall from the northern boundary, along with the existing landscaping will minimise the visual impact of this wall.

- *The proposed development appears to exceed the 8.5m building height.*

Comment:

Building height is measured from existing ground level (not finished/excavated ground level). Therefore, the proposal complies with the 8.5m building height standard.

- *The orientation of windows and balconies will severely comprise the privacy of 141A Fuller St.*

Comment:

There is only one window facing directly onto this property which is a walk-in robe window and therefore not anticipated to pose a privacy threat. The proposed balconies are angled to the north-east with blade walls minimising direct overlooking of 141A Fuller St directly to the north. Satisfactory privacy levels are provided between dwellings.

- *Concerns are raised over extent of excavation and fill proposed and lack of detail provided.*

Comment:

The information provided is adequate to allow an assessment of excavation and fill impacts. Conditions of consent will require compliance with the recommendations of the Geotechnical Report as well as the preparation of a dilapidation report for the adjoining property to the north (141A Fuller Street).

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- *Uncertainty regarding proposed driveway, potential impact on shared driveway and stormwater management*

Comment:

The plans do not show any new work beyond the lot boundary. This will be enforced by a recommended condition of consent. Any new works within the right of carriageway will be subject to separate agreement between the private property owners. Council's Engineers are satisfied with the Stormwater Management Plan.

- *Clarification is sought regarding the swimming pool height relative to the existing pool and existing ground levels.*

Comment:

The existing pool coping is at RL51.9. The proposed pool coping is 400mm higher at RL52.3. The northern end of the pool has a height of 1.8m above existing ground level. Excavation will be required toward the southern end of pool, as the topography slopes upwards.

- *Concerns are raised regarding visual and acoustic privacy impacts from the proposed swimming pool on 141A Fuller St.*

Comment:

These concerns are addressed by conditions of consent requiring the appropriate location of pool equipment away from the common boundary and additional screen planting between the pool and the northern boundary.

- *There is confusion of the fencing treatment along the northern boundary.*

Comment:

There are no changes proposed to boundary fencing. Any future changes will be subject to the provisions of the Dividing Fences Act 1991.

- *Request retention of the Chinese Elm tree and raise concerns over lack of landscaping along northern boundary*

Comment:

This tree is exempt from requiring approval for its removal. Conditions of consent will require additional screen planting along the northern boundary.

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Assessment Report

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The Arborists Report submitted with the application is noted. Some concern was raised in relation to the proposed excavation for the garage access drive adjacent to the <i>Corymbia citriodora</i> (Lemon Scented Gum - Tree 5) located on the site. The Arborist's Report has assessed impacts on the tree's root zone via excavation of an exploratory trench to assess the presence of significant roots. The report concludes that due to existing underground structures root development in this area has been limited and that no significant impacts on roots have been identified.</p> <p>As such, the findings of the report are considered acceptable, subject to ongoing monitoring of the tree. The appointment of a Project Arborist has been included in the conditions if the proposal is to be approved.</p> <p>The plans also indicate removal of 1 x <i>Ulmus parvifolia</i> (Chinese Elm). This species is exempt from requiring approval to remove under Cl E1 of Warringah DCP. As such, no objection to removal is raised.</p> <p>If screening to the adjoining property at No. 141A Fullers Rd is required, the following condition could be included (amended as required):</p> <p>Required Planting - Screening</p> <p>a) <i>Screen planting is to be provided along the northern boundary of the site for the length of the adjoining dwelling at No. 141A Fullers Road.</i></p> <p>b) <i>The selected planting is to comprise of native species capable of attaining a minimum height of 3 metres at maturity and located in a prepared garden bed a minimum of 1 metre wide.</i></p> <p>c) <i>Plants are to be planted at minimum 1.5 metre centres and be of a minimum pot size of 25 litres at planting, mulched, watered and fertilized in accordance with industry best practice.</i></p> <p>In consideration of the above, the DA is considered acceptable with regard to the relevant controls relating to landscape issues, subject to conditions.</p> <p>It is noted that the amended landscape plan shows 6 x <i>banksia integrifolia</i> (4m high) along the northern boundary.</p>
NECC (Bushland and Biodiversity)	<p>The proposal has been assessed against Warringah DCP E1, E2 and E4. An Arborist report was provided that assessed 5 trees. Tree 3 and 5 are native to be retained. Trees 1, 2 and 4 are exempt trees and can be removed.</p> <p>The Planting schedule shows a number of Kentia Palms along the western and northern boundaries. The planting of exempt species is inconsistent with the E4 objective to <i>retain and enhance native vegetation and the ecological functions of wildlife corridors</i> and is not supported. A condition will be imposed to replace the Kentia palms with locally native species from the Narabeen Slopes Forest and/or the Sydney Sandstone Ridgetop Woodland community.</p>



Internal Referral Body	Comments
NECC (Coast and Catchments)	The proposed development is supported without condition and has been assessed to comply with SEPP Coastal Management. It is not likely to alter coastal processes to the detriment of the environment or other land and is not likely to reduce public amenity or existing access to and use of the foreshore.
NECC (Development Engineering)	Development Engineer has no objection to the application subject to the following conditions of consent.
NECC (Riparian Lands and Creeks)	Approved, subject to conditions. The property lies more than 200m from the riparian margin of Narrabeen Lagoon with several residential blocks between the development and the lagoon. A sediment and erosion control plan has been provided. Control measures must be maintained throughout the period of construction and landscaping to minimise sediment leaving the property and entering the waterway which has substantial sea grass meadows.

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.
External Referral Body	Comments
Aboriginal Heritage Office	<p><i>"There are known Aboriginal sites in the area although no sites are recorded in the current lot and the area has been subject to previous disturbance reducing the likelihood of unrecorded Aboriginal sites."</i></p> <p><i>An inspection of the property by the Aboriginal Heritage Office and Council (12-12-2018) did not identify any Aboriginal heritage issues in the proposed development area. Two areas of potential, sandstone overhangs, were identified at the north and south boundary at the rear of the property. Provided that this area is not impacted then the Aboriginal Heritage Office would not foresee any further Aboriginal heritage issues on the proposal. If the area would be impacted, then the Aboriginal Heritage Office would recommend further investigation ('due diligence' under the National Parks and Wildlife Act 1974) by a qualified Aboriginal heritage professional prior to any development."</i></p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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



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

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

(SREPs) SEPP 55 - Remediation of Land

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

SEPP (Coastal Management) 2018

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

10 Development on certain land within coastal wetlands and littoral rainforests area

"(1) The following may be carried out on land identified as "coastal wetlands" or "littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:

- (a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
- (b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
- (c) the carrying out of any of the following:*
 - (i) earthworks (including the depositing of material on land),*
 - (ii) constructing a levee,*
 - (iii) draining the land,*
 - (iv) environmental protection works,*
- (d) any other development."*

Comment: Not applicable to the site.

Development on certain land within coastal wetlands and littoral rainforests area

"(1) The following may be carried out on land identified as "coastal wetlands" or "littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:

- (a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
- (b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
- (c) the carrying out of any of the following:*
 - (i) earthworks (including the depositing of material on land),*
 - (ii) constructing a levee,*
 - (iii) draining the land,*
 - (iv) environmental protection works,*
- (d) any other development."*

Comment: Not applicable to the site.

11 Development on land in proximity to coastal wetlands or littoral rainforest

"(1) Development consent must not be granted to development on land identified as "proximity area for coastal wetlands" or "proximity area for littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly



impact on:

- (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
- (b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest."

Comment: Not applicable to the site.

12 Development on land within the coastal vulnerability area

"Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- (b) the proposed development:
 - (i) is not likely to alter coastal processes to the detriment of the natural environment or other land, and
 - (ii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and
 - (iii) incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- (c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazard."

Comment: At the commencement of this Policy, no Coastal Vulnerability Area Map was adopted and therefore no coastal vulnerability area has been identified.

13 Development on land within the coastal environment area

"(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
- (b) coastal environmental values and natural coastal processes,
- (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- (f) Aboriginal cultural heritage, practices and places,
- (g) the use of the surf zone."

Comment: The proposed works are unlikely to cause an adverse impact upon the matters identified in this clause. The proposal is located wholly within the subject site and does not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes.

"(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will



*be managed to minimise that impact, or
(c) if that impact cannot be minimised—the development will be managed to mitigate that impact."*

Comment: The proposal has been designed in such a way that it satisfies the relevant matters identified in this clause.

14 Development on land within the coastal use area

"(1) (a) has considered whether the proposed development is likely to cause an adverse impact on the following:

- (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*
- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,*
- (iv) Aboriginal cultural heritage, practices and places,*
- (v) cultural and built environment heritage, and*
- (b) is satisfied that:*

- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
- (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development."*

Comment: The proposal does not impact upon the existing and safe access to and along the foreshore. The visual amenity from private and public space is not adversely effected and the surrounding area consists of examples of similar developments.

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

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

Comment: Council is satisfied that the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land.

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A310148, dated 13 March 2018). A condition has been included in the recommendation of this report requiring the submission of an amended BASIX Certificate to reflect the amended plans.

SEPP (Infrastructure) 2007

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity



substation. within 5.0m of an overhead power line.

- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

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

Warringah Local Environmental Plan 2011

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



Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.5m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	7.33m	1.8%	No
B3 Side Boundary Envelope	4m and 45 degrees	within envelope	N/A	Yes
B5 Side Boundary Setbacks	0.9m (north)	4m	N/A	Yes
	0.9m (south)	12m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	83m	N/A	Yes
B9 Rear Boundary Setbacks	6m	7.3m - 14m (dwelling) 2m (swimming pool)	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	40%	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes



C6 Building over or adjacent to Constructed Council Drainage Easements	N/A	N/A
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	N/A	N/A
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The wall height along the northern elevation has a maximum height of 7.33m (measured from a ground level of RL50.5 to the eave level of RL57.83. This represents a 1.8% variation to the maximum requirement.

Merit consideration:

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

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

As the site is a battle-axe allotment, the proposed development will have limited visual presence when viewed from the street. The non-complying wall height is along the northern elevation and will be not be readily visible from the public domain. The extent of the variation on this elevation is minor in scale and when viewed from the adjoining dwelling will have a limited visual impact.



Screen planting, both existing and proposed, will further reduce the visual impact. The proposal is consistent with this objective.

- *To ensure development is generally beneath the existing tree canopy level*

Comment:

The proposed northern elevation is well below the height of the nearby canopy tree (a Lemon scented gum) which has a height of 18m. The proposal is consistent with this objective.

- *To provide a reasonable sharing of views to and from public and private properties.*

Comment:

The extent of non-compliance will not result in any adverse view loss from adjoining properties and hence this objective is achieved.

- *To minimise the impact of development on adjoining or nearby properties.*

Comment:

The northern wall has a setback of 4m to the northern boundary and visual impacts will be negligible. The development is consistent with this objective.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Comment:

The proposed addition provides an adequate response to the topography of the site, utilising generous setbacks to minimise any impacts resulting from the breach in wall height. The proposal is consistent with this objective.

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Comment:

The proposed skillion roof follows the slope of the land and is complementary to the existing roof. The proposal is consistent with this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

C7 Excavation and Landfill

The excavated material on site will not contain any contamination. The proposed excavation works are adequately setback from the adjoining properties.

A geotechnical report has been prepared by White Geotechnical Group and adequate measures are provided to ensure adjoining properties will not be adversely impacted from any excavation works. The recommendations included in this report, including inspections during construction, will form part of the consent conditions.



D7 Views

The outcomes for view sharing are as follows:

- *A reasonable sharing of views amongst dwellings*
- *Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced*
- *No loss of canopy trees take priority over views*

The proposed addition complies with the 8.5m height of buildings development standard and this is evidence that the proposal has been designed to achieve a reasonable sharing of views with surrounding and nearby properties.

It is noted that a view loss objection has been received from the owners of No 139A Fuller Street.

Merit consideration

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

- *To allow for the reasonable sharing of views.*

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

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

Comment to Principle 1:

No 139A Fuller St currently enjoys views in an easterly and north-easterly direction over the subject site from an elevated deck/terrace (and associated living areas and kitchen) on its northern elevation. Views are also obtained from an east facing bedroom window. The views affected are coastline views to the north-east and ocean views to the east.

The views are depicted in the photographs below.



Figure 1. Easterly view from the balcony of 139A Fuller St (views left of the roof apex in the centre of the photograph will be lost, views to the right will be retained)



Figure 2. Easterly view from the bedroom of 139A Fuller St (views left of the palm in the centre of the photograph will be lost, views to the right will be retained)



Figure 3. North-easterly view from the balcony of 139A Fuller St (water views between the first two balcony posts will be lost, views either side will be retained)

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

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

Comment to Principle 2:

The views of the ocean are obtained from an east facing bedroom window and the balcony. The coastline views are available from the north-facing windows and balcony. This property also enjoys filtered district views and views of Narrabeen Lagoon directly to the north. These northerly views will be unaffected by the proposed development. The views affected are across the rear (eastern) boundary predominantly from a standing position.

3. Extent of impact

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

Comment to Principle 3:

The filtered district/lake views to the north will be unaffected.



The 3 storey addition to the north-east will result in the loss of some coastal views. Ocean views directly to the east will also be lost as a result of the first floor addition. The proposed development will result in the loss of approximately 50% of the available ocean view directly to the east. It is the loss of these easterly views that is of greatest concern to the owners of 139A Fuller St.

Overall the view loss to 139A Fuller St is assessed as **moderate**.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

While there will be moderate view loss to 139A Fuller St, the majority of the proposal complies with building height, wall height and building setback controls. As previously discussed, the minor non-compliance with wall height along the northern elevation, does not result in view loss.

The view assessment of the original proposal determined that while the proposal was compliant, there was the opportunity to lessen the impact on views by adjusting the design of the proposal so as to increase the southern setback of the first-floor level study. The applicant was asked to investigate alternate design solution(s) that would facilitate a better outcome in relation to view sharing by reducing the view impacts on 139A Fuller Street.

Consequently, in response to the 'more skillful design' question, the plans were amended to increase the setback of the study to the southern boundary by a further 3m. This enables a greater portion of the easterly ocean view to be retained.

The view loss resulting from this predominantly complying development is now assessed as reasonable and appropriate view sharing has been achieved.



- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposed development represents an innovative design which is complementary to the existing dwelling and the surrounding urban environment.

- *To ensure existing canopy trees have priority over views.*

Comment:

Not applicable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 and WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D8 Privacy

Merit consideration

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

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

The proposed windows and balconies have been sufficiently setback and positioned away from the neighbouring living spaces so as to provide satisfactory levels of privacy for the adjoining dwellings. In particular windows are within a compliant building envelope and are off-set from the windows of neighbouring dwellings so as to prevent overlooking. Additionally, the balconies are angled toward the views to the north-east. The amended plans have removed the south-facing balcony from the study (to address privacy concerns from 79A Edgecliffe Blvd). Additional screen landscaping will be required by conditions of consent to provide additional screening to the adjoining property to the north.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The generous boundary setbacks, orientation of the balconies and landscaping provide satisfactory levels of privacy.

- *To provide personal and property security for occupants and visitors.*

Comment:

The proposal provides appropriate levels of security of occupants and visitors.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 and WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.



THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect 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.

CONCLUSION

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

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

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 assessment has taken into consideration the submitted plans, Statement of Environmental Effects, other documentation supporting the application and the public submissions, and the conclusion is that the proposal does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties. A number of conditions have been imposed which lessen the impacts and are contained within the recommendation.

A detailed views analysis was completed to assess consistency with Clause D7 Views of the WDCP 2011 and establishes that, while the proposal will result in moderate view loss to 139A Fuller Street, some water views from this property will be maintained. As the proposal is predominantly compliant with the relevant built form controls, the proposal is assessed as a reasonable development and satisfactory view sharing is achieved.

Suitable conditions will ensure reasonable privacy/amenity can be maintained to adjoining and surrounding properties. Additionally, a condition is included requiring that a dilapidation report to be undertaken for 141A Fuller St prior to works and that compliance with the recommendations within the Geotechnical report will ensure stability and safety of buildings/property.

Given all considerations, submissions, variations and analysis of the proposal, it is considered that subject to the recommended conditions, the proposed development should be approved.

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



RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1803 for alterations and additions to a dwelling house including a swimming pool on land at Lot 3 DP 2222881, 141 Fuller St, Narrabeen, 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
DA-01 Site Plan (Rev B)	14/07/2019	Tom Simmat & Associates
DA-03 Garage level (Rev B)	14/07/2019	Tom Simmat & Associates
DA-04 Entry / rumpus level (Rev B)	14/07/2019	Tom Simmat & Associates
DA-05 Study / bedroom level (Rev B)	14/07/2019	Tom Simmat & Associates
DA-06 Roof Plan (Rev B)	14/07/2019	Tom Simmat & Associates
DA-07 South, west elevations	14/07/2019	Tom Simmat & Associates
DA-08 North, east elevations	14/07/2019	Tom Simmat & Associates
DA-09 Section AA (Rev B)	14/07/2019	Tom Simmat & Associates
DA-09a Section BB (Rev B)	14/07/2019	Tom Simmat & Associates
DA-10 - Landscape Plan (Rev B)	14/07/2019	Tom Simmat & Associates
DA-12 Excavation Plan (Rev B)	14/07/2019	Tom Simmat & Associates

Engineering Plans		
Drawing No.	Dated	Prepared By
Stormwater Management Plan	undated	Tom Simmat & Associates
Sediment Control Plan	undated	Tom Simmat & Associates

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Revised Statement of Environmental Effects	undated	Tomasy Pty Ltd
Geotechnical Investigation	8 May 2018	White Geotechnical Group
BASIX Certificate A310148	13 March 2018	Tom Simmat & Associates
Reflectivity Report	undated	Tom Simmat & Associates
Certification of shadow diagrams	3.11.2018	Tom Simmat & Associates
Arborist Report	19.11.2018	Perfect Outdoors Pty Ltd

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



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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	04.11.2018	K and F Simmat

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



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occurs on Council's property.

- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

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

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



FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$8,500.00 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 \$850,000.00.

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

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

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

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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. Amended BASIX Certificate

An Amended Basix Certificate, consistent with the approved plans, shall be provided to the certifying authority prior to issue of the Construction Certificate.

Reason: To ensure the amended design satisfies BASIX requirements

7. Amendments to the approved plans

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

- a) The location of the swimming pool plant shall be shown and shall be located away from adjoining property boundaries.
 - b) The swimming pool volume shall be noted and demonstrated on the plans to ensure that the volume is consistent with the volume stated in the BASIX Certificate commitments.
- Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

8. Amended Landscape Plan

An amended landscape plan is required to include the following:

- a) Additional screen planting is to be provided in the area between the northern wall and the northern boundary. The selected planting is to comprise of native species capable of attaining a minimum height of 4 metres at maturity.
- b) Plants are to be planted at minimum 1.5 metre centres and be of a minimum pot size of 25 litres at planting, mulched, watered and fertilized in accordance with industry best practice.
- c) An amended Planting Schedule is required which shows the replacement Kentia Palms with a locally native species from the Narrabeen Slopes Forest and/or the Sydney Sandstone Ridgetop Woodland Community. Two additional plants, capable of achieving a maximum height of 4m, are required between the proposed swimming pool and the northern boundary.

Details to be shown on an amended landscape plan to be submitted with the Construction Certificate.

Reason: Local amenity

9. Colours and Materials

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

Reason: To minimise visual impacts on properties overlooking the site and views of the Collaroy Escarpment

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10. Dilapidation Survey

A dilapidation survey of adjacent buildings and adjoining driveway (No 141A Fuller St) must be conducted prior to any site work. The lateral extent of the survey must cover the likely "zone of influence" of any excavation or construction induced vibration. The survey must be properly documented. The dilapidation report must be submitted to Council and the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Proper management of records.

11. Stormwater Disposal from Low Level Property

Stormwater shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's WARRINGAH WATER MANAGEMENT POLICY PL850 in particular the Stormwater Drainage from Low Level Properties Technical Specification.

Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Northern Beaches Council's "Warringah Water Management Policy PL 850" 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.

12. Tree Protection Plan

In order to protect and enhance onsite vegetation and trees the following applies to the development site:

(a) A Tree Protection Plan prepared by a AQF Level 5 Arborist (or equivalent) showing the following:

- Layout of the approved development
- Location of trees identified for retention, including trees located along the access driveway to the site.
- Extent of canopy spread
- Location of tree protection fencing / barriers (fencing in accordance with AS2470 – 2009)
- General tree protection measures

(b) The Tree Protection Plan is to be submitted to the Principal Certifying Authority for approval prior to issue of a Construction Certificate.

(c) Tree protection measures identified on the plan are to be in place prior to commencement of works.

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

13. Erosion and Sediment Control Plan

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and

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Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:-

- Site Boundaries and contours;
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities);
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls;
- North point and scale.

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

Reason: To mitigate environmental impact resulting from site disturbance (DACNEC22)

14. 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.

15. Sydney Water "Tap In"

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. Tree protection

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

- i) all trees and vegetation to be retained shall be in accordance with the Landscape Architectural Plans prepared by Tom Simmat and Associates Architects Pty Ltd and as reported in the Tree Assessment Report prepared by Perfect Outdoors Pty Ltd dated 19 September 2018.
- ii) all other trees and vegetation located on the site (including the access driveway into the site) and adjoining properties
- iii) all road reserve trees and vegetation.

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- b) Tree protection shall be generally undertaken as follows:
- i) all tree protection shall be in accordance with the approved Tree Protection Plan, the Tree Assessment Report prepared by Perfect Outdoors Ptd Ltd dated 19 September, 2018 and as required by AS4970-2009 Protection of trees on development sites, with particular attention to Section 4, and AS4373-2007 Pruning of amenity trees,
 - ii) any tree roots exposed during excavation with a diameter greater than 25mm within the TPZ must be assessed by the Project Arborist,
 - iii) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - iv) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorized by the Project Arborist on site,
 - v) all structures are to bridge tree roots greater than 25mm diameter unless directed by the Project Arborist on site,
 - vi) should either or both iv) and v) occur during site establishment and construction works, the Project Arborist shall provide recommendations and shall report on the tree protection action undertaken, including photographic evidence,
 - vi) 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, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009.

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

17. **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

18. **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.

19. **Traffic Control During Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety

20. **Trees Condition**

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all

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identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

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

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

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

Reason: Protection of Trees.

21. Protection of rock and sites of significance

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

Reason: Preservation of significant environmental features.

22. Works not to Encroach Beyond Boundaries

No part of the proposed works, including the driveway, are to encroach beyond the boundaries of the subject property.

Reason: To ensure works within the property.

23. Dilapidation Report

The applicant shall supply Council with a dilapidation report for the adjoining properties at 141A Fuller Street which documents and photographs the condition of the buildings and improvements (including the driveway) on that property. The dilapidation report shall be submitted as a PDF in Adobe format or in A4 format. A copy of the report must be provided to Council, any other owners of public infrastructure and the owner of nominated properties. Council shall be provided with a list of owners to whom a copy of the report has been provided.

Reason: Proper management of records.

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

24. Stormwater Disposal

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

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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. Swimming Pool Requirements

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

(i) Swimming Pools Act 1992;

(ii) Swimming Pools Amendment Act 2009;

(iii) Swimming Pools Regulation 2008

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926. (c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating 'YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

(g) Swimming pools and spas must be registered with the Division of Local Government.

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

Reason: To protect human life

26. Post-Construction Dilapidation Report

The applicant must prepare and submit a post-construction dilapidation report. The report must clearly detail the final condition of all the adjoining properties, infrastructure, natural and manmade features that were originally recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties

Reason: To ensure security against possible damage to Council and private property.

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

27. 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.

28. Dead or Injured Wildlife

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation

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organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

29. **Noise**

Noise generating plant including pool/spa motors, air conditioning units and the like shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: Local amenity





