

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 5 FEBRUARY 2020



Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 5 February 2020
in the Walamai Room, Civic Centre, Dee Why**

| | | |
|------------|---|----------|
| 1.0 | APOLOGIES & DECLARATIONS OF INTEREST | |
| 2.0 | MINUTES OF PREVIOUS MEETING | |
| 2.1 | Minutes of Development Determination Panel held 18 December 2019 | |
| 3.0 | DEVELOPMENT DETERMINATION PANEL REPORTS | 5 |
| 3.1 | DA2019/1092 - 64 Fairlight Street, Fairlight - Alterations and additions to a dwelling house including swimming pool..... | 5 |
| 3.2 | Mod2019/0535 - 3 Moore Street, Clontarf - Modification of Development Consent DA115/2016 for alterations and additions to existing dwelling house | 62 |
| 3.3 | Mod2019/0199 - 33 Truman Avenue, Cromer - Modification of Development Consent DA2005/0168 granted for erection of New Three Storey Mixed Use Building to contain 9 Residential Units and 3 Commercial Units with Basement Parking | 87 |
| 3.4 | DA2019/1084 - 31 The Corso Manly - Alterations and Additions to the existing building and signage..... | 122 |

2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 18 DECEMBER 2019

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 18 December 2019 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1 **DA2019/1092 - 64 FAIRLIGHT STREET, FAIRLIGHT -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
INCLUDING SWIMMING POOL**

REPORTING MANAGER **Anna Williams**

TRIM FILE REF **2020/052082**

ATTACHMENTS **1 Assessment Report**
 2 Site and Elevation Plans
 3 Clause 4.6 Report - Height
 4 Clause 4.6 Report - Floor Space Ratio

PURPOSE

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

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/floor space ratio.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant Development Consent to DA2019/1092 for Alterations and additions to a dwelling house including swimming pool on land at Lot B DP 104229, 64 Fairlight Street, Fairlight subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

| | |
|---|---|
| Application Number: | DA2019/1092 |
| Responsible Officer: | Julie Edwards |
| Land to be developed (Address): | Lot B DP 104229, 64 Fairlight Street FAIRLIGHT NSW 2094 |
| Proposed Development: | Alterations and additions to a dwelling house including 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: | Ian Alexander Donaldson Lucy Katherine Susan Shepherd |
| Applicant: | MM & J Architects Pty Ltd |
| Application Lodged: | 03/10/2019 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Residential - Alterations and additions |
| Notified: | 17/10/2019 to 31/10/2019 |
| Advertised: | Not Advertised |
| Submissions Received: | 5 |
| Clause 4.6 Variation: | 4.3 Height of buildings: 12.6% 4.4 Floor space ratio: 16.6% |
| Recommendation: | Approval |
| Estimated Cost of Works: | \$ 350,000.00 |

This application seeks consent for the alterations and additions to residential dwelling including an attic addition, swimming pool within the front setback area and landscaping.

The application has been referred to the Development Determination Panel as the application exceeds the Building Height and Floor Space Ratio requirements of the Manly Local Environment Plan by more than 10%.

The proposed development does not comply with the requirements of Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height), Clause 4.1.4 Setbacks (front, side and rear) and Building Separation, Clause 4.1.5 Open Space and Landscaping and Clause 4.1.9 Swimming Pools, Spas and Water Features. These non-compliance's are discussed in detail within the report.

Each of the variations are considered reasonable and are supported by the assessing officer following merit assessment.

Public exhibition of the proposal resulted in five submission relating to the location of the swimming pool and fire pit within the front setback area, over development of the site and car parking.

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

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

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be approved subject to conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is seeking approval for alterations and additions to an existing dwelling house including the following:

Attic conversion:

- New bedroom with en-suite bathroom and storage areas.
- Windows and six new skylights.
- Accessed via new internal staircase from the first- floor level.
- The proposal includes 18.75m² of additional floor space at attic level.

External:

- Formalised landscape space within the front setback with retaining stone wall and 1250mm.
- Wooden boundary fence and sliding gate.
- Enclosed bin storage area within the front setback.
- A swimming pool and deck within the front yard.

Planners Note: The application, as lodged, did not comply with the requirements of the Manly LEP and DCP and was inconsistent with the streetscape. The applicant was requested to withdraw the application and resubmit plans that addressed Councils concerns with the proposal.

The applicant provided amended plans reducing the overall size of the proposed addition.

The amended plans were not re-notified as the development was substantially the same and provided a reduced environmental impact as per the requirements of the MDCP. However, details of the amended plans were provided to those who provided submissions for additional comments.

The assessment of the application is based on the above works relating to the amended plans from MM+J Architects.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.8 Landslide risk
 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 - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

| | |
|-----------------------------------|--|
| Property Description: | Lot B DP 104229 , 64 Fairlight Street FAIRLIGHT NSW 2094 |
| Detailed Site Description: | <p>The subject site consists of one allotment located on the southern side of Fairlight Street FAIRLIGHT.</p> <p>The site is regular in shape with a frontage of 11.035m along Fairlight Street and a depth of 21.335m. The site has a surveyed area of 235.5m².</p> <p>The site is located within the R1 General Residential zone and accommodates a two storey dwelling.</p> <p>The site sits below the street but is relatively flat.</p> <p>The site has minimal vegetation with a small area of lawn at the front.</p> |

| | |
|--|---|
| | <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one to two storey residential dwellings and multi-storey residential flat buildings.</p> |
|--|---|

Map:



SITE HISTORY

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

BC2018/0157

Timber decking and awning at front of the property, timber decking to the side and rear of the property, hardstand car space and timber stairs.

Determined - 16 October 2018

PLM2019/0117

A Pre-lodgement Meeting was held on 20/06/2019 for Alterations and Additions to a dwelling house. In the meeting and accompanying notes, the applicant was advised that Council would not support the proposed attic conversion as it did not meet the requirements of the MLEP and MDCP. The application as lodged amended the proposal in response to Council's comments.

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 | See discussion on "Environmental Planning |

| Section 4.15 Matters for Consideration' | Comments |
|--|---|
| environmental planning instrument | Instruments" in this report. |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument | None applicable. |
| Section 4.15 (1) (a)(iii) – | Manly Development Control Plan applies to this proposal. |
| Section 4.15 (1) (a)(iia) – Provisions of any planning agreement | None applicable. |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000) | <p><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 allow Council to request additional information. Additional information was requested in relation to the roof form and attic conversion.</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 WManly 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 | See discussion on "Notification & Submissions" |

| Section 4.15 Matters for Consideration' | Comments |
|--|---|
| in accordance with the EPA Act or EPA Regs | 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 Bernard Pierre Hemberger | 62 Fairlight Street FAIRLIGHT NSW 2094 |
| Mrs Doris Anne-Marie Hemberger | 62 Fairlight Street FAIRLIGHT NSW 2094 |
| Ms Marian Kirsten Hambly | 2 / 66 Fairlight Street FAIRLIGHT NSW 2094 |
| Mrs Pauline Evelyn Hole | 67 Fairlight Street FAIRLIGHT NSW 2094 |
| Kate Farrow | 2 / 66 Fairlight Street FAIRLIGHT NSW 2094 |

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

- Swimming pool and fire pit location - noise, fumes and safety
- Over development of the site - height, floor space ratios
- Parking

The matters raised within the submissions are addressed as follows:

- **Swimming pool and fire pit location - noise, fumes and safety**
The submissions raised concern with the location of the proposed swimming pool and fire pit within the front setback and issues regrading noise, fumes and potential safety hazard for children in the area

Comment:
The proposed swimming pool and fire pit are to be located within the front setback of the site. The site is separated from the adjoining neighbours at nos. 62 and 66 by two access driveways to the west and a driveway to the east. As recommended condition of consent, the swimming

pool equipment is to be located within an acoustic box and shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary. This is to ensure the proposal complies with the Protection of the Environment Operations Act 1997 and will not unreasonably impact on the amenity of the adjoining properties. Noise as a result of the use of the swimming pool and fire pit is not expected to produce noise above normal residential use and what is consistent with the surrounding residential area.

The proposed swimming pool is separated from Fairlight Street by two fences being the front, side boundary fence and the proposed swimming pool fence and landscaping as shown on the plans submitted with the Development Application. The swimming pool fence is to be installed in accordance with the requirements of the Swimming Pool Act 1992 and Australian Standards. The swimming pool can also not be filled or retain water until safety fencing has been erected in accordance with the relevant legislative requirements. As a condition of the consent, the proposal must comply with the swimming pool act and Australian Standards. All aspects of the proposal will be certified for compliance with the relevant swimming pool legislation and requirements by the Certifying Authority.

The fire pit is to be used in accordance with the *Protection of the Environment Legislation Amendment Act 2014*. If the fire pit unreasonably impacts on the amenity of the adjoining properties in regards to smoke and fumes those impacted should contact Councils Environmental Health team to investigate.

- **Over development of the site - height, floor space ratios**

The submissions raised concern regarding the proposed addition was excessive, an over development of a small site, did not comply with the requirements of the Manly LEP and DCP and was out of character with the streetscape.

Comment:

The matters regarding the non-compliance with the Manly LEP and DCP have been addressed in detail elsewhere in the report. In summary, the assessment of this application has found the development achieves consistency with the underlying objectives of Clause 4.3, Clause 4.4 and Clause 4.6 of the MLEP and that compliance with the standards are unreasonable, unnecessary and that there is sufficient environmental planning grounds to justify and support the variation.

- **Parking**

A submission questioned if car parking was going to be provided on the site.

Comment:

The proposal will be maintaining one off street car parking space on the site.

REFERRALS

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)**SEPP 55 - Remediation of Land**

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A353081_02 dated 9 January 2020).

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

SEPP (Infrastructure) 2007Ausgrid

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 | 9.6m | 12.9% | No |
| Floor Space Ratio | FSR: 0.6:1 | FSR: 0.71:1 | 16.6% | No |

Compliance Assessment

| Clause | Compliance with Requirements |
|--|------------------------------|
| 4.3 Height of buildings | No |
| 4.4 Floor space ratio | No |
| 4.5 Calculation of floor space ratio and site area | No |
| 4.6 Exceptions to development standards | Yes |
| 6.2 Earthworks | Yes |
| 6.4 Stormwater management | Yes |
| 6.8 Landslide risk | Yes |

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

| | |
|--------------------------------------|---|
| Development standard: | Height of buildings / Floor space ratio |
| Requirement: | Height of Building - 8.5m Floor Space Ratio - 0.6:1 |
| Proposed: | Height of Building - 9.5m Floor Space Ratio - 0.7:1 |
| Percentage variation to requirement: | Height of Building - 12.9% Floor Space Ratio - 16.6% |

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings and 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, Baron Corporation Pty*

Limited v Council of the City of Sydney [2019] NSWLEC 61, and RebelMH 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 4.1 - Minimum subdivision lot size OR Clause 4.3 – Height of Buildings and Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

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

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

cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

Building Height

- *'The proposed additional bedroom within the attic level requires additional height to accommodate a BCA compliant ceiling. The additional height is not highly perceptible from the public domain or the street and would not impact upon the streetscape presentation of the dwelling.*
- *The proposal conforms to the bulk, scale and rhythm of buildings in the locality and has been designed to be read as a contemporary attic addition.*
- *The proposal generally sits comfortably within the existing roof form and is adequately recessed from the walls of the floor below.*
- *The proposal does not result in unacceptable solar impacts nor does it interrupt views.*
- *The site is flanked by a double driveway to the west and a driveway to the east. The additional space around the building creates space for the height to be accepted without impact.*

- *The proposed contemporary attic addition allows for the interpretation of the original roof form and does not dominate the existing dwelling. The over height element does not contain any windows and will not introduce any opportunities for overlooking.*
- *The site and the surrounding locality can support the increased height, as the primary controls for setbacks are generally maintained, and the proposal would not unreasonably overshadow or present a bulk and scale impact upon adjoining properties as surrounding dwellings are either located well above or well away from the proposed dwelling.'*

Floor Space Ratio

- *'The proposed additional floor area resulting in a variation is located entirely within the attic level and does not result in an increased building footprint.*
- *The floor plate within the attic level allows for an additional bedroom and ensuite and is not an overdevelopment of the site.*
- *The site is zoned R1 General Residential, the proposal conforms to the bulk, scale and rhythm of buildings in the streetscape and therefore, it would not look out of place in the locality.*
- *The proposal does not result in undue impacts including acoustic and visual privacy, solar access, nor does it interrupt views.*
- *The site and the surrounding area can support the increased floor space rate, as the primary controls for setbacks are maintained, overshadowing does not adversely affect enjoyment of the private open space areas or the internal living rooms of the neighbouring properties. It should be noted that the site adjoins a double width driveway to its west and a driveway to the east which gives the additional floor area ample space to be absorbed into the setting without impact.'*

As mentioned in the Applicant's written request the development will not result in any unreasonable amenities impacts to neighboring properties in regards to building height. The development has been designed to ensure the visual integrity of the existing pattern of development and amenity through the use of articulation with dormer windows and recessed walls where possible. The proposed request argues that the increase in gross floor area is contained within the existing building footprint. As such there is no loss of landscape open space from the increased floor area. It is also noted by the applicant that the proposal is located within the R1 General Residential zone and that the size and scale of the attic addition are consistent with that development within the area, and as such there is no discernible or unreasonable visual impact upon the streetscape.

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 development is located within the R1 General Residential zone. The area has a mixture of development types and styles with single storey residential dwellings and three storey residential flat buildings within the immediate vicinity. The area does not have a prevailing building height, however, the MLEP requires buildings to be a maximum of 8.5m. The existing dwelling exceeds the 8.5m height control and the proposed addition will result in a slight increase to this. The proposal involves building bulk that is separated and buffered from the surrounding streets to ensure the development is in keeping with the character of the area. The proposed building height is reasonable given the fall of the land, design of the existing dwelling and the height of other development within the area. Given the inconsistent building height and the varied roof forms for surrounding development, the non-compliance with the building height development standard would not result in an undesirable outcome for the streetscape.

b) to control the bulk and scale of buildings,

Comment:

The proposed addition is contained within the existing building footprint, suitably articulated and has been stepped back at the front, rear and eastern elevation. As a result of the design of the addition the bulk and scale is minimised when viewed from the street and adjoining properties. It is considered that the bulk and scale of the development is suitable for 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:

Due to the site's location it is not anticipated that the proposal will give rise to any unreasonable or detrimental view loss from surrounding properties. Therefore, it is considered that views to and from public spaces will not be significantly compromised as a result of the proposed development.

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

Comment:

The subject site and adjacent properties are orientated with a north south aspect. As such, private open spaces and habitable rooms within the subject site and adjacent properties will maintain sufficient access to sunlight. As a result, the provisions for solar access will be maintained within these properties.

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

Comment:

The height of the building does not create unreasonable impacts over land in recreation or environmental protection zone, that might conflict with bush land and surrounding uses.

Objectives of development standard

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

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

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

Comment:

The bulk and scale of the proposal is deemed reasonable when viewed from the street. The proposed development is suitably articulated and has been stepped in from the front, rear and eastern side elevation to ensure the bulk and scale of dwelling is minimised.

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 will increase landscaping on the site, particularly at the front and along the eastern boundary. The proposal will not impact upon or obscure landscape and townscape features.

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

Comment:

The landscaped character of the site will be enhanced within increased vegetation and landscaping within the front and eastern side boundary setback. The proposed development will sit appropriately within the residential setting in a manner that is consistent with the character and landscape of the area.

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

Comment:

The development is not considered to result in unreasonable impacts upon the amenity, views, access to sunlight or privacy of the adjoining dwellings

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 proposed development maintains a residential use within the R1 General Residential zone.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

The underlying objectives of the R2 Low Density Residential zone:

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

Comment:

The proposed development retains the residential use of the site.

It is considered that the development satisfies this objective.

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

Comment:

The proposal will maintain the site as a dwelling house, which is considered to continue to provide a variety and alternate housing typology for the local area.

It is considered that the development satisfies this objective.

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

Comment:

The proposal maintains the residential land use.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

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

6.2 Earthworks

The proposal will see very limited excavation of the site. Following detailed assessment of the proposed development, Council can be satisfied of the following:

- The proposal is not likely to cause disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development as listed in clause 3(a);
- The proposal is not likely to effect of the development on the likely future use or redevelopment of the land as listed in clause 3(b);
- The proposal is not likely to cause disruption to the quality, source or destination of the fill or the soil to be excavated, or both as listed in clause 3(c) & (e);
- The proposal is not likely to effect of the development on the existing and likely amenity of adjoining properties as listed in clause 3(d);
- There are no relics on the site, therefore clause 3(f) is not applicable;
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(g); and
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(h).

As such, the proposal is considered to be consistent with the provisions and the matters prescribed by sub-clauses 1, 2 and 3 of Clause 6.2 Earthworks within the MLEP 2013.

6.4 Stormwater management

The proposal includes amendments to the stormwater management on the site. Following detailed assessment of the proposed development, Council can be satisfied of the following:

- The proposal is reasonably designed to maximise the use of water permeable surfaces on the land as listed in clause 3(a);
- The proposal includes on-site stormwater retention for use as listed in 3(b); and
- The proposal has been reasonably designed avoid adverse impacts on the matters listed in clause 3(c).

As such, the proposal is considered to be consistent with the matters prescribed by sub-clauses 1, 2 and 3 of Clause 6.4 Stormwater Management within Manly Local Environment Plan 2013.

A condition has been included in the consent requiring the stormwater drainage works to 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 final Occupation Certificate.

6.8 Landslide risk

The site is identified as being within the G4 area on the Landslip Hazard Map, and the objectives of this clause are applicable in relation to the proposal.

The proposal (as amended) continues to have limited excavation as a result of the proposed alterations and additions.

Following detailed assessment of the proposed development, Council can be satisfied of the following:

- The proposal design has taken into account the existing layout and access as listed in clause 3 (a);
- The proposal is not likely to effect unreasonably impact the site or the surrounding sites through the design of the proposal, and the construction methods satisfying the matters as listed in clause 3(b);
- The proposal is not likely to cause disruption to the quality, source or destination of the fill or the soil to be excavated, or both as listed in clause 3(c);
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(d);
- There proposal has reasonably addressed the existing geotechnical constraints of the site as listed in clause 3(e);
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(f); and
- The proposal has been designed, sited and will be managed, to avoid adverse impacts on the matters listed in clause 4(a)(b) & (c).

The proposal is considered to be consistent with the matters prescribed by sub-clauses 1, 2, 3 and 4 of Clause 6.8 Landslide Risk, within the Manly Local Environment Plan 2013.

Manly Development Control Plan

Built Form Controls

| Built Form Controls - Site Area: 235.5m ² | Requirement | Proposed | % Variation* | Complies |
|---|---|---|--------------|----------|
| 4.1.2.1 Wall Height | N: 6.5m | Existing - 8.8m | 35.3% | No |
| | S: 6.5m | Existing - 8.1m | 24.6% | No |
| | E: 6.5m | Existing - 5.2m | N/A | Yes |
| | W: 6.5m | 8.5m | 30.7% | No |
| 4.1.2.2 Number of Storeys | 2 | 2 | N/A | Yes |
| 4.1.2.3 Roof Height | Height: 2.5m | 4.12m | 64% | No |
| 4.1.4.1 Street Front Setbacks | Prevailing building line / 6m | Addition - 6.9m, consistent with prevailing setback | N/A | Yes |
| | | Swimming pool - 1m | 83.3% | No |
| 4.1.4.2 Side Setbacks and Secondary Street Frontages | E - 2.9m | 4.2m | N/A | Yes |
| | W - 3m | 0.7m | 76.67% | No |
| | Windows: 3m | W - 0.795m | 73.7% | No |
| 4.1.4.4 Rear Setbacks | 8m | 5.1m | 63.7% | No |
| 4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3 | Open space 55% (129.53m ²) of site area | 41.64% (98.06m ²) | 24.3% | No |
| 4.1.5.2 Landscaped Area | Landscaped area 35% (34.321m ²) of open space | 35.12% (34.44m ²) | N/A | Yes |
| | 1 native trees | 0 trees | N/A | No |
| 4.1.5.3 Private Open Space | 18m ² per dwelling | 25.2m ² | 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 | 2.8m | N/A | Yes |
| 4.1.9 Swimming Pools, Spas and Water Features | 1m height above ground | 0.4m | N/A | Yes |
| | 1m curtilage/1.5m water side/rear setback | W - 3.4m E - 4.1m N - 16.8m | N/A | Yes |
| Schedule 3 Parking and Access | Dwelling 2 spaces | 1 spaces | N/A | No |

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| 3.1.1 Streetscape (Residential areas) | Yes | Yes |
| 3.3.1 Landscaping Design | Yes | Yes |
| 3.3.2 Preservation of Trees or Bushland Vegetation | Yes | Yes |
| 3.4.1 Sunlight Access and Overshadowing | Yes | Yes |
| 3.4.2 Privacy and Security | Yes | Yes |
| 3.4.3 Maintenance of Views | Yes | Yes |
| 3.5.1 Solar Access | Yes | Yes |
| 3.5.3 Ventilation | Yes | Yes |
| 3.5.5 Landscaping | Yes | Yes |
| 3.5.7 Building Construction and Design | Yes | Yes |
| 3.5.8 Water Sensitive Urban Design | Yes | Yes |
| 3.7 Stormwater Management | Yes | Yes |
| 3.8 Waste Management | Yes | Yes |
| 3.10 Safety and Security | 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) | Yes | 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 |
| 4.1.10 Fencing | Yes | Yes |
| 4.4.1 Demolition | Yes | Yes |
| 4.4.2 Alterations and Additions | Yes | Yes |
| 4.4.5 Earthworks (Excavation and Filling) | Yes | Yes |

Detailed Assessment

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

Description of non-compliance

Clause 4.1.2.1 of the Manly Development Control Plan 2013 (MDCP 2013) stipulates that the maximum wall height permitted on each elevation is as follows:

North elevation 6.5m,
South elevation 6.5m,
Eastern elevation 6.5 and
Western elevation 6.5m.

The application proposes the following walls heights:

North elevation - no change,
South elevation - no change,
Eastern elevation 6.5m; and
Western elevation 8.9m;

As a consequence, the proposed development fails to comply with the requirements of this Control for the western elevation.

Clause 4.1.2.3 Roof Height requires a max roof height of 2.5m. The proposal has a height of 4.1m. The existing dwelling has a roof height of 3.9m.

Merit Assessment

With regard to the consideration for a variation, the proposed development is considered against the underlying objectives of the Control. This control relies upon the objectives specified within Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP 2013). Accordingly, the proposal is considered against the following objectives:

- (1) (a) To provide for building heights and roof forms that are consistent with the topographic landscape, prevailing height and desired future streetscape character of the locality.

Comment:

The proposed development is located with R1 General Residential zone. The area has a mixture of development types and styles with single storey residential dwellings and three storey residential flat buildings within the immediate vicinity. The area does not have a prevailing building height, however, the MLEP requires buildings to be a maximum of 8.5m. The existing dwelling exceeds the 8.5m height control and the proposed addition will result in a slight increase to this. The proposal involves building bulk that is separated and buffered from the surrounding streets to ensure the development is in keeping with the character of the area. Given the inconsistent building height and the varied roof forms for surrounding development, the non-compliance with the building height development standard would not result in a undesirable outcome for the streetscape.

- (1) (b) *To control the bulk and scale of buildings.*

Comment:

The proposed addition is contained within the existing building footprint and has been stepped back at the front, rear and eastern elevation. As a result of the steps backs the bulk and scale is

minimised when viewed from the street and adjoining properties. It is considered that the bulk and scale of the development is suitable for the locality.

- 1(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 harbour and foreshores).

Comment:

Due to the site's location it is not anticipated that the proposal will give rise to any unreasonable or detrimental view loss from surrounding properties. Therefore, it is considered that views to and from public spaces will not be significantly compromised as a result of the proposed development.

- (1) (d) To provide solar access to public and private open space and maintain adequate sunlight access to private open spaces and to habitable rooms of adjoining dwellings.

Comment:

The subject site and adjacent properties are orientated with a north south aspect. As such, private open spaces and habitable rooms within the subject site and adjacent properties will maintain sufficient access to sunlight. As a result, the provisions for solar access will be maintained within these properties.

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

Comment:

The subject site is not located within a recreation or environmental protection zone. Furthermore, the proposed development will not result in the removal of any vegetation or trees. Therefore, the proposed development will not be detrimental to existing flora or fauna on both the subject site and surrounding properties.

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

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

Description of non-compliance

Clause 4.1.4 of the MDCP 2013 requires buildings to be setback:

- One third of the proposed wall height from side boundaries;
- Windows to be setback at least 3m from side boundaries; and
- Development to be setback 8m from rear boundary.

The application proposes the following non-compliant setbacks on the southern elevation:
Western elevation - 0.7m for external wall, which fails to comply with the 3m requirement (one third wall height);

The application also proposes one (1) window on the western elevation located 0.7m from the western side boundary, which fails to comply with the 3m requirement.

The Attic addition is setback 5.1m from the rear boundary which does not comply with the 8m requirement.

Merit consideration:

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

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

Comment:

The proposed addition is located within the existing building footprint of the dwelling and has been stepped in from the front, rear and eastern side elevation. The western elevation of the proposal maintains the existing side setback established on the site but has been articulated to lessen the visual impact when viewed from the street. As a result of the topography of the site, landscaping and proposed front fence, the proposed swimming pool within the front setback will not be visible from the street and will maintain and enhance the streetscape.

- *Objective 2) To ensure and enhance local amenity by:*
 - *providing privacy;*
 - *providing equitable access to light, sunshine and air movement; and*
 - *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
 - *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
 - *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The proposal will ensure that adequate provisions for access to light, sunshine and air movement within the subject site and adjoining properties are maintained. The proposal is maintaining the existing setbacks established on the site and therefore will not alter the existing spatial pattern of development within the locality. The proposal will not impact road visibility or traffic conditions within the locality. Due to the height and location of the site it is unlikely the proposal will unreasonably impact on views from surrounding properties. The proposed development allows for adequate visual privacy to be retained between the subject site and neighbouring properties. The proposed windows will not unreasonably increase the potential for direct overlooking to neighboring properties.

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

Comment:

The proposed setbacks are considered to be reasonable in promoting siting flexibility due to the

constrained nature of the site.

- *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 addition is within the existing building footprint and will maintain the existing setbacks established on the site. The proposed swimming pool within the front setback and associated landscaping will increase the overall landscaping on the site

- *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% of the site area be total open space. The proposed total open space 41.64%, non-compliant with the numeric control.

Merit consideration:

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

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

Comment:

The proposed development does not require the removal of any significant vegetation and demonstrates compliance with the landscaped area requirement. The development therefore adequately retains the landscape features of the site.

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

Comment:

The existing site provides minimal, non-compliant landscaped areas. The proposed

development achieves compliance with the landscaped area requirements and increases the landscaped areas and vegetation on the site.

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

Comment:

The proposed development will not unreasonably impact upon the amenity of the site, the streetscape and surrounding properties.

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

Comment:

The proposed development achieves compliance with the minimum landscaped area requirements, and as such water infiltration to the water table and the minimisation of stormwater runoff is achieved as a result of the proposed development.

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

Comment:

The proposed landscaping is unlikely to result in the spread of weeds and the degradation of private and 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.

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

The proposed swimming pool is located within the front setback of the site.

Clause 4.1.9.2 Location and Setbacks control states that swimming pools and spas must not be located within the front setback. Consideration of any exception to the required location must demonstrate that any swimming pools and/or spa and their curtilage and/or concourse:

- i) does not detract from the amenity or character of the neighbourhood; and
- ii) is a minimum distance from the front boundary equivalent to at least twice the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level.

The proposed swimming pool meets both the allowable exceptions under the control.

Merit Consideration:

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

- 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 proposed swimming pool has been located within the front setback due to site circumstances, being a front subdivided property with a battleaxe site at the rear and access along the western boundary. The location of the swimming pool sits much lower than the street frontage and with the proposed fence and landscaping will maintain privacy between the neighbouring properties.

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

Comment:

The location and design of the swimming pool within the front setback will not be visual from the street. The front setback of the site sits approximately 1m lower than the council reserve. The proposed location, landscaping and design maintain the established character of the locality.

- *Objective 3) To integrate landscaping.*

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:

The subject land is not classified as bush fire prone land, therefore, this objective is not applicable.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$3,500 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$350,000.

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

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 and Clause 4.4 Floor Space Ratio 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

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

- Building height and floor space ratio, the proposed development breaches the control with a height of 9.5m and FSR of 0.7:1.
- Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height), the proposal does not comply with the wall height requirement along the western elevation and has a roof height greater than 2.5m.
- Setbacks (front, side and rear) and Building Separation, the proposed swimming pool is located within the front setback area and the attic addition does not comply with the western side boundary and rear boundary setback requirements.
- Total open space requirement, the proposal does not meet the 55% total open space requirement with a open space of 41.64%.
- The swimming pool is located within the front boundary setback area.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building and 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and 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 DA2019/1092 for Alterations and additions to a dwelling house including swimming pool on land at Lot B DP 104229, 64 Fairlight Street, 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 |
| DA02 - Issue D - Area Calculations | 08.01.2020 | MM+J Architects |
| DA03 - Issue C - Site Plan | 08.01.2020 | MM+J Architects |
| DA04 - Issue B - Excavation / Erosion & Sediment Control Plan | 08.01.2020 | MM+J Architects |
| DA05 - Issue B - Demolition Plan | 08.01.2020 | MM+J Architects |
| DA06 - Issue C - Ground Floor Plan | 08.01.2020 | MM+J Architects |

| | | |
|--------------------------------------|------------|-----------------|
| DA07 - Issue C - First Floor Plan | 08.01.2020 | MM+J Architects |
| DA08 - Issue D - Second Floor Plan | 08.01.2020 | MM+J Architects |
| DA09 - Issue C - Sections | 08.01.2020 | MM+J Architects |
| DA10 - Issue D - Elevations | 08.01.2020 | MM+J Architects |
| DA11 - Issue B - Swimming Pool Plans | 08.01.2020 | MM+J Architects |

| Reports / Documentation – All recommendations and requirements contained within: | | |
|--|----------------|-----------------|
| Report No. / Page No. / Section No. | Dated | Prepared By |
| BASIX Certificate Certificate number: A353081_02 | 9 January 2020 | MM+J Architects |

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

| Landscape Plans | | |
|-----------------------------------|----------|--------------|
| Drawing No. | Dated | Prepared By |
| L.SK.01 - Landscape Sketch Plan | 17.09.19 | Scape Design |
| L.SK.02 - Landscape Planting Plan | 17.09.19 | Scape Design |

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

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

2. Prescribed Conditions

- (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 \$3,500.00 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 \$350,000.00.

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 \$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. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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 and in a manner anticipated by the development consent.

7. **Waste Management Plan**

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

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

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

8. **Compliance with Standards**

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

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

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

9. **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.

10. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11. **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.

12. **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.

13. **Waste Management During Development**

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

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

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

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

14. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

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

Note: The following Standards and Codes applied at the time of determination:

- (a) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003 - Plumbing and drainage - Stormwater drainage
- (b) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003/Amdt 1 - 2006 - Plumbing and drainage - Stormwater drainage
- (c) National Plumbing and Drainage Code.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)

15. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

(g) Swimming pools and spas must be registered with the *Division of Local Government*.

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

Reason: To protect human life (DACPLF09)

16. **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 final Occupation Certificate.

Note: The following Standards and Codes applied at the time of determination:

- (a) Australian/New Zealand Standard AS/NZS 3500.3 - 2003 - Plumbing and drainage - Stormwater drainage
- (b) Australian/New Zealand Standard AS/NZS 3500.3 - 2003/Amdt 1 - 2006 - Plumbing and drainage - Stormwater drainage
- (c) National Plumbing and Drainage Code.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)

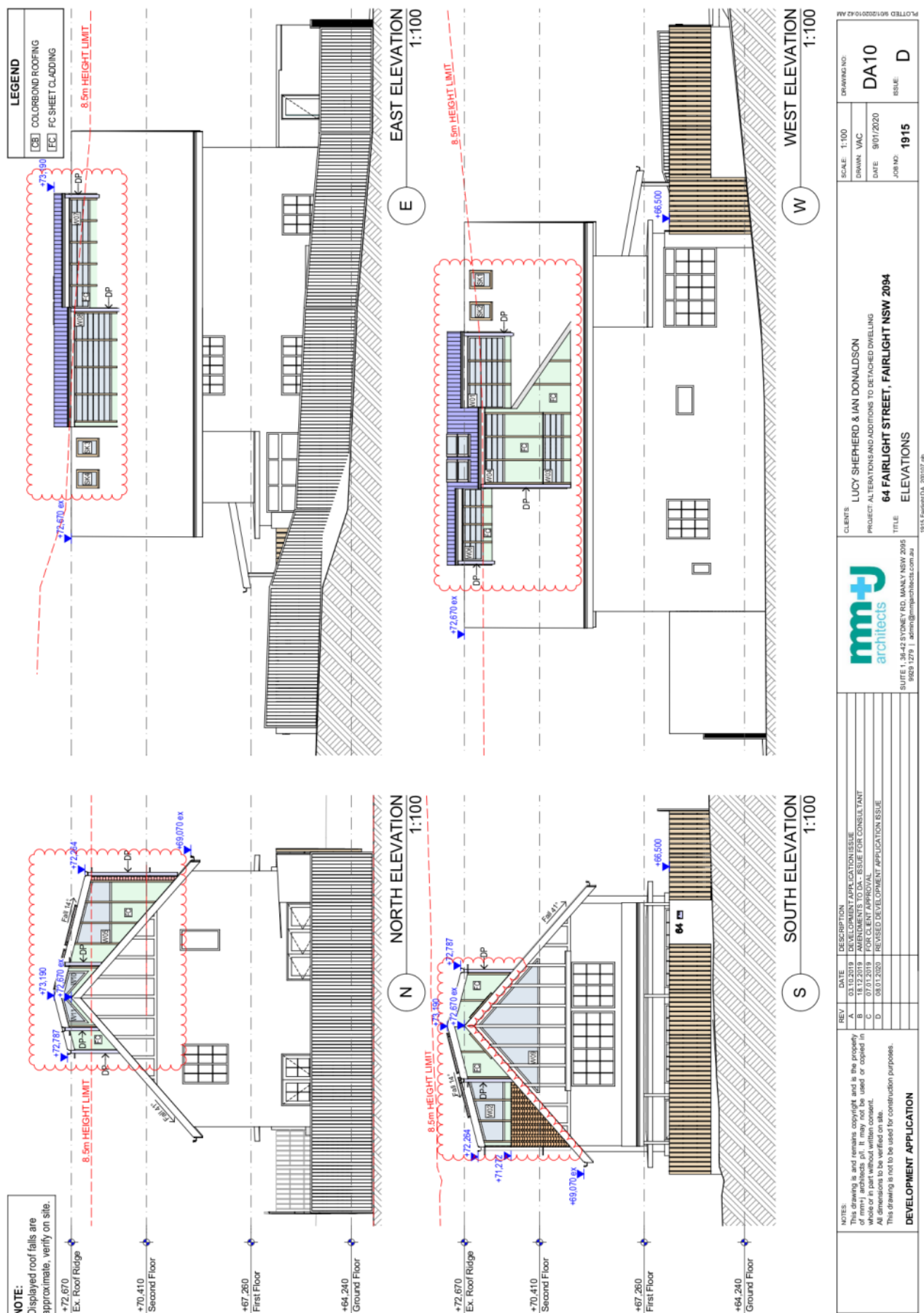
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

17. **Swimming Pool Equipment**

The swimming pool equipment that is capable of generation noise such as the swimming pool pump, is to be located within an acoustic box and shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure the proposal complies with the Protection of the Environment Operations Act 1997.





SECTION P2
1.50

© 1995 Fairlight DA 200107.ssh



| | | | | | |
|---|--|---|--|---|------------------------------------|
| <p>NOTE: This drawing is and remains copyright and is the property of mm+ architects. It may not be used or copied in whole or in part without written permission. All dimensions to be verified on site. This drawing is not to be used for construction purposes.</p> <p>DEVELOPMENT APPLICATION</p> | | <p>REV</p> <p>DATE</p> <p>DESCRIPTION</p> <p>A 03.12.2019 DEVELOPMENT APPLICATION ISSUE</p> <p>B 07.01.2020 FOR CLIENT APPROVAL</p> <p>C 07.01.2020 FOR CLIENT APPROVAL</p> <p>D 08.01.2020 REVISED DEVELOPMENT APPLICATION ISSUE</p> | <p>CLIENTS</p> <p>LUCY SHEPHERD & IAN DONALDSON</p> <p>PROJECT ALTERNATIONS AND ADDITIONS TO DETACHED DWELLING</p> <p>64 FAIRLIGHT STREET, FAIRLIGHT NSW 2094</p> <p>TITLE</p> <p>3D EXTERNAL VIEWS 01</p> | <p>SCALE</p> <p>DRAWN VAC</p> <p>DATE 9/01/2020</p> <p>JOB NO 1915</p> <p>ISSUE D</p> | <p>DRAWING NO</p> <p>DA12</p> |
| <p>mm+ architects</p> <p>SUITE 1, 38-42 SYDNEY RD, MANLY NSW 2095</p> <p>02 939 1279 admin@mm+architects.com.au</p> | | <p>1915 FairlightDA_201907.dwg</p> | | | <p>PLOTTED 06/01/2020 10:42 AM</p> |

Planik*

5/09/2019

General Manager
Northern Beaches Council

Via Email

Dear Sir/Madam

Nicole Lennon (btp) Principal

Planik Pty Ltd
ABN 74 164 697 036
PO Box 577, Gympie NSW 2227

Mobile: 0402 407 841
Email: nik@planik.com.au
planik.com.au

Clause 4.6 Request to vary the Maximum Height Control Clause 4.3 of Manly LEP 2013 – Alterations and Additions to existing dwelling at 64 Fairlight Street, Fairlight

Introduction

This 4.6 variation is to be read in conjunction with the Statement of Environmental Effects for the proposed alterations and additions to the existing dwelling at 64 Fairlight Street, Fairlight.

In particular, the proposal seeks to provide an attic roof level containing a master bedroom and ensuite. Due to the fall of the land from the front boundary to the rear of the site, the proposed additions will not have a significant height above street level. The proposed attic level design incorporates the following:

- Contemporary dormer structures at the rear of the side roof planes recessed from the walls of the floor below to be contained within the existing roof form.
- Attic additions have been designed to appear below the existing roof ridge when viewed from the street and surrounding properties.
- Sufficient floor to ceiling heights and skylights to maximise light into the attic level.

The proposed works have been designed to present as a contemporary attic level addition to an existing 2 storey dwelling. Nevertheless, as a result of the fall of the site and the existing building height the upper portions of the attic additions result in a maximum height of 9.135m and is above the maximum permitted for the site – 8.5m as set out on the Manly LEP 2013 mapping.

This 4.6 variation seeks to vary the height provision applicable to this site.

This submission forms a request to grant an exception to the development standard Height in clause 4.3 of the MLEP 2013 under clause 4.6 "Exceptions to development standards" of the LEP. This application breaks down the considerations, justifications and demonstrations required by clause 4.6 in the following sections.

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.

* Planning and Development

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

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

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

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

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

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

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

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

(ca) clause 6.15,

(cb) a development standard on land to which clause 6.19 applies.

Court Principles and Guidance around Application of 4.6 Exceptions

A number of court cases have assisted to guide expectations and facilitate appropriate application for and justification of the variations sought. Significant cases are cited below and will be drawn upon to assist with this application:

- I. In 2007, in the case *Wehbe v Pittwater Council* (CJ Preston) five (5) ways of establishing that compliance was unreasonable or unnecessary was discussed.
 1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).*
 2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).*
 3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).*
 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 (Fourth Method).*
 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 (Fifth Method).*
- II. In 2015, in the case *Four2Five Pty Ltd v Ashfield Council* (C Pearson) and later 2016 *Moskovitch v Waverley Council* (Tuor) it was established that written requests made under clause were required to demonstrate that:
 - a. that compliance was unreasonable or unnecessary in the circumstances of the case to be consistent with the objectives of the development standard (cl4.6 (3)(a), and
 - b. "sufficient environmental planning grounds (4.6(3)(b)) exist to support the variation.

In 2018, in the case *Initial Action Pty Ltd v Woollahra Municipal Council* (CJ Preston) it was established that Commissioner Smithson had misinterpreted and misapplied cl 4.6 of the Woollahra LEP 2014. In this case, the commissioner herself considered whether compliance was unreasonable or unnecessary rather than determining whether the written request had adequately addressed the matter. In summary, the court found that:

The applicant bears the onus to demonstrate that the matters in cl 4.6(3)(a) and (b) have been adequately addressed in the applicant's written request in order to enable the consent authority, or the Court on appeal, to form the requisite opinion of satisfaction.

Further, the Commissioner had required that to be considered unreasonable or unnecessary, the non compliance with the standard needed to have a neutral or beneficial effect relative to a development that complied with the standard. CJ Preston said:

'Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.... Compliance

with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion.

With reference to sufficient environmental planning grounds CJ Preston further held:

Clause 4.6 does not directly or indirectly establish this test. The requirement ...is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.'

Development Standard to be Varied – Maximum Height

This clause 4.6 variation request relates to a departure from a numerical standard set out under clause 4.3 of the MLEP 2013 Height of 8.5 m that applies to the site.

This development standard relates to the maximum permitted height of the development, clause 4.3 of the MLEP 2013 falls within a scope of a "development standard" as defined under section 4 of the Environmental Planning and Assessment Act 1979 (NSW) (EP&A Act).

Clause 4.3 of the MLEP 2013 contains objectives (bolded where applicable to this site) for buildings proposed in the local government area.

4.3 Height of buildings

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

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

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

(c) to minimise disruption to the following:

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

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

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

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

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

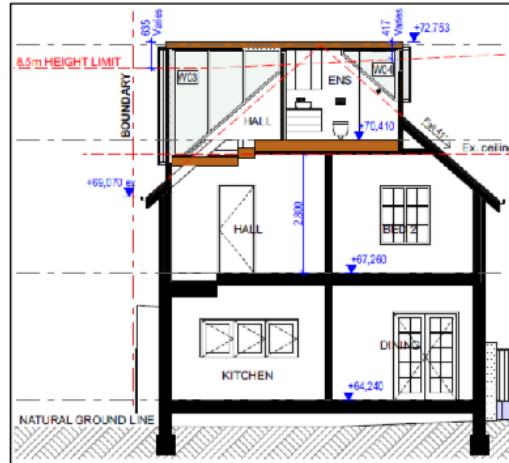
(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

Height Statistics

Under clause 4.3 the site has a prescribed maximum height of **8.5 m**.

- The proposed maximum height is 9.135m (0.635m variation)
 - NB existing ridge height is 9.02 m
- This represents a 7.4% variation to the height standard.

- It should be noted that this over height component is located at the new attic additions to the dwelling.
- The over height component of the building only comprises the upper part of the attic level above the master bedroom central to the subject dwelling, noting the remaining attic level complies with the height control.



- The total floor area of the foyer is 22.05m². The over height component does not contain any floor area.

Refer to Figure 1 below for Height Map noting I is 8.5m.



Figure 1 Manly LEP 2013 Height Map

Assessment of the Provisions of Clause 4.6 Exceptions to development standards

Clause 4.6 of the MLEP 2013 allows for flexibility to be applied to development standards where objectives can be obtained notwithstanding the variation. The mechanics of the clause, the objectives of

the height of buildings standard and a response are all outlined below; however, the main opportunities and justifications for the building height variation are presented here:

- The proposed additional bedroom within the attic level requires additional height to accommodate a BCA compliant ceiling. The additional height is not highly perceptible from the public domain or the street and would not impact upon the streetscape presentation of the dwelling.
- The proposal conforms to the bulk, scale and rhythm of buildings in the locality and has been designed to be read as a contemporary attic addition.
- The proposal generally sits comfortably within the existing roof form and is adequately recessed from the walls of the floor below.
- The proposal does not result in unacceptable solar impacts nor does it interrupt views.
- The site is flanked by a double driveway to the west and a driveway to the east. The additional space around the building creates space for the height to be accepted without impact.

The proposed contemporary attic addition allows for the interpretation of the original roof form and does not dominate the existing dwelling. The over height element does not contain any windows and will not introduce any opportunities for overlooking.

The site and the surrounding locality can support the increased height, as the primary controls for setbacks are generally maintained, and the proposal would not unreasonably overshadow or present a bulk and scale impact upon adjoining properties as surrounding dwellings are either located well above or well away from the proposed dwelling.

Clause 4.6.3 (a)(b) - Unreasonable or Unnecessary / Environmental Planning Grounds

Commentary provided below to address the requirements of this clause.

Table 1 Request to vary development standard 4.3 Maximum Building Height

| Objective | Comment |
|--|--|
| (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and | <p>The proposal will result in a two storey + attic form when viewed from the street level.</p> <p>The maximum height of the building is set at RL73.028.</p> <p>It is noted that the vast majority of the building is well under the maximum height limit. For example, the larger floor plate of the attic component of the proposed building is set below the existing ceiling.</p> <p>It is considered that a reduced height would not allow for adequate amenity/ceiling height at the upper level.</p> <p>The current proposal will produce a bulk and scale that will be consistent with other dwellings along within the locality noting there are examples of residential flat buildings within the R1 zone nearby. It is therefore considered unreasonable to meet the height standard under these circumstances.</p> <p>The proposal is consistent with the objectives of</p> |

| Objective | Comment |
|--|---|
| | <p>the R1 General Residential zone. In that:</p> <ul style="list-style-type: none"> To provide for the housing needs of the community. To provide for a variety of housing types and densities. <p>The proposed additions will result in a modest dwelling in size and will meet the key objective of the R1 zone as they have been designed in an attic form that sits within the existing roof form and recessed from the walls of the floor below and is consistent with the varied housing types and densities within the street. Further, the works would provide for the housing needs of the residents of the subject site through the provision of an additional bedroom and ensuite.</p> |
| (b) that there are sufficient environmental planning grounds to justify contravening the development standard. | <p>There are no significant adverse impacts created by this proposal and in particular a compliant development would provide a similar if not same presentation to the street and public domain.</p> <p>The proposed alterations and additions are not excessive and are generally contained within the existing roof form. The subject site is located below the street level and so the additional bulk at the attic would not have a significant visual impact upon the street or adjoining properties.</p> <p>On balance it is considered that the proposal meets the objectives of the zone and meeting the height requirement is unnecessary in this instance.</p> |

4.6.4 (i) (ii) - Achieving Consistency with the Objectives of the Standards

4.6 Exceptions to development standards

(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.

In terms of Clause 4.6 (4)(a)(i) this submission is the written request that address the matters contained required to be considered in subclause (3).

Table 2 Clause 4.6(4) ii assessment

| Objectives for Consideration | Comment |
|------------------------------|---------|
|------------------------------|---------|

| Objectives for Consideration | Comment |
|---|---|
| <p>The relevant R1 zone objectives include:</p> <ul style="list-style-type: none"> To provide for the housing needs of the community. To provide for a variety of housing types and densities. | <p>The proposed additions meet the key objective of the R1 zone as they have been designed in an attic form that sits within the existing roof form and recessed from the walls of the floor below and is consistent with the varied housing types and densities within the street. The majority of the proposed works sit within the 8.5m height control. Further, the works would provide for the housing needs of the residents of the subject site through the provision of an additional bedroom and ensuite.</p> |
| <p>The relevant objectives of the height standard include:</p> <p>(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,</p> <p>(b) to control the bulk and scale of buildings,</p> <p>(c) to minimise disruption to the following:</p> <ul style="list-style-type: none"> (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), <p>(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,</p> | <p>The scale of the dwelling is consistent with other development within the street and has been designed with a contemporary scale and form that complements the topographic landscape and will not be inconsistent with the prevailing building height in the street.</p> <p>The proposal will not have an unreasonable bulk and scale impact upon adjoining buildings.</p> <p>The proposal will not result in view loss, overlooking or overshadowing beyond that expected within the R1 General Residential zone. The visual impact of the proposal is minimised through the siting of the attic additions towards the rear of the side roof plane.</p> |

Clause 4.6(5) Considerations

4.6 Exceptions to development standards

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

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

The matters for consideration in clause 4.6(5) have been addressed in Table 2

Table 2 Clause 4.5(5) assessment

| Matters of Consideration | Comment |
|---|--|
| (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and | The contravention does not raise any matters of state or regional significance. |
| (b) the public benefit of maintaining the development standard, and | There is no public benefit in maintaining the standard. The proposal maintains amenity including privacy, overshadowing and views, which the additional height does not impact. |
| (c) any other matters required to be taken into consideration by the Secretary before granting concurrence. | N/A |

Conclusion

The proposed application remains consistent with the objects of Part 1.3 and requirements of Part 4 of The Act. The proposed use is permissible with consent and uses the subject site to its full potential. The proposal will create a development that:

- For its vast majority of built form is compliant with the height standard.
- Does not significantly impact upon the existing streetscape
- Does not unduly impact the natural environment with no changes to the existing building footprint.
- Does not significantly impact views or privacy.
- Supports the needs of the residents of the subject site.
- Promotes the orderly and economic use and development of the land.
- Promotes good design and amenity of the built environment.

The proposal responds to the character and nature of the street and it is noted that the additions have been sensitively designed to minimise impacts upon adjoining properties noting the site is surrounded by battle-axe allotments. The proposed non-compliance with the height requirement would not result in any significant adverse impacts.

Yours Faithfully,



Nicole Lennon
Director
Planik Pty Ltd



5/09/2019

General Manager
Northern Beaches Council

Via Email

Dear Sir/ Madam

Nicole Lennon (btp) Principal

Planik Pty Ltd
ABN 74 164 697 036
PO Box 577, Gympie NSW 2227Mobile: 0402 407 841
Email: nik@planik.com.au
planik.com.au

Clause 4.6 Request to vary the Floor Space Ratio Clause 4.4 of Manly LEP 2013 – Alterations and Additions to existing dwelling at 64 Fairlight Street, Fairlight

Introduction

This 4.6 variation is to be read in conjunction with the Statement of Environmental Effects for the proposed alterations and additions to the existing dwelling at 64 Fairlight Street, Fairlight.

In particular, the proposal seeks to provide an attic roof level containing a master bedroom and ensuite. Due to the fall of the land from the front boundary to the rear of the site, the proposed additions will not have a significant visual impact above street level. The proposed attic level design incorporates the following:

- Contemporary dormer structures at the rear of the side roof planes recessed from the walls of the floor below to be contained within the existing roof form.
- Attic additions have been designed to appear below the existing roof ridge when viewed from the street and surrounding properties.
- Sufficient floor to ceiling heights and skylights to maximise light into the attic level.

The resulting floor space is slightly above the maximum permitted for this zone, noting the lot is undersized.

Across the building the proposed Gross Floor Area (GFA) is 173.2m². The Floor Space Ratio (FSR) is 0.69:1 when calculated in accordance with Clause 4.1.3.1 of the MDCP 2013 which allows FSR to be calculated against the minimum lot size of the site – 250m². The subject site has an area of 235.4m² being an FSR of 0.735:1 when calculated normally.

This 4.6 variation seeks to vary the density provisions contained within the Manly Local Environmental Plan 2013 (MLEP 2013).

The site is located in the R1 General Residential zone. The density provision includes a floor space ratio standard of 0.6:1 as set out on the Manly FSR map sheet _003.

This submission forms a request to grant an exception to the development standard Floor Space Ratio in clause 4.4 of the MLEP 2013 under clause 4.6 "Exceptions to development standards" of the MLEP 2013. This application breaks down the considerations, justifications and demonstrations required by clause 4.6 in the following sections.

4.6 Exceptions to development standards

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

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

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

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

(6) Not Applicable

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

(a) a development standard for complying development,

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

(c) clause 5.4.

(ca) clause 6.15,

(cb) a development standard on land to which clause 6.19 applies.

Court Principles and Guidance around Application of 4.6 Exceptions

A number of court cases have assisted to guide expectations and facilitate appropriate application for and justification of the variations sought. Significant cases are cited below and will be drawn upon to assist with this application:

1. In 2007, in the case *Wehbe v Pittwater Council* (CJ Preston) five (5) ways of establishing that compliance was unreasonable or unnecessary was discussed.
 1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).*
 2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).*
 3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).*
 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 (Fourth Method).*
 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 (Fifth Method).*
2. In 2015, in the case *Four2Five Pty Ltd v Ashfield Council* (C Pearson) and later 2016 *Moskovitch v Waverley Council* (Tuor) it was established that written requests made under clause were required to demonstrate that:
 - a. that compliance was unreasonable or unnecessary in the circumstances of the case to be consistent with the objectives of the development standard (cl4.6 (3)(a)), and
 - b. "sufficient environmental planning grounds (4.6(3)(b)) exist to support the variation.

In 2018, in the case *Initial Action Pty Ltd v Woollahra Municipal Council* (CJ Preston) it was established that Commissioner Smithson had misinterpreted and misapplied cl 4.6 of the Woollahra LEP 2014. In this case, the commissioner herself considered whether compliance was unreasonable or unnecessary rather than determining whether the written request had adequately addressed the matter. In summary the court found that:

The applicant bears the onus to demonstrate that the matters in cl 4.6(3)(a) and (b) have been adequately addressed in the applicant's written request in order to enable the consent authority, or the Court on appeal, to form the requisite opinion of satisfaction.

Further, the Commissioner had required that to be considered unreasonable or unnecessary, the non compliance with the standard needed to have a neutral or beneficial effect relative to a development that complied with the standard. CJ Preston said:

'Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.... Compliance

with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion.

With reference to sufficient environmental planning grounds CJ Preston further held:

Clause 4.6 does not directly or indirectly establish this test. The requirement ...is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.'

Development Standard to be Varied – Floor Space Ratio

This clause 4.6 variation request relates to a departure from a numerical standard set out under clause 4.4 of the MLEP 2013 Floor Space Ratio Map in relation to the specified floor space ratio of 0.6:1.

This development standard relates to the density of the development, clause 4.4 of the MLEP 2013 falls within a scope of a "development standard" as defined under section 4 of the Environmental Planning and Assessment Act 1979 (NSW) (EP&A Act).

Clause 4.4 of the MLEP 2013 contains objectives for buildings proposed in the local government area.

4.4 Floor space ratio

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

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
 - (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
 - (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
 - (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
 - (e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*
- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).*

Floor Space Statistics

Under clause 4.4 the site has a prescribed maximum floor space ratio of **0.6:1**.

When calculated in accordance with Clause 4.1.3.1 of the MDCP 2013, the site has a maximum floor space ratio of 0.69:1.

- The maximum floor space permitted is 141.3m²
- The proposed floor space ratio is 0.735:1 – 173.2m².
- The total floor area proposed is thus 31.9m² over the floor space ratio standard.
- The floor area results in a floor space ratio of 0.69:1 when measured against the minimum lot size of 250m² in accordance with Clause 4.1.3.1 of the MDCP 2013 which identifies the subject site as an undersized lot.

- This represents a 22.5% variation to the floor space ratio standard (0.09:1 variation when measured as an undersized lot).

Refer to Figure 1 below for Floor Space Map noting F is 0.6:1.

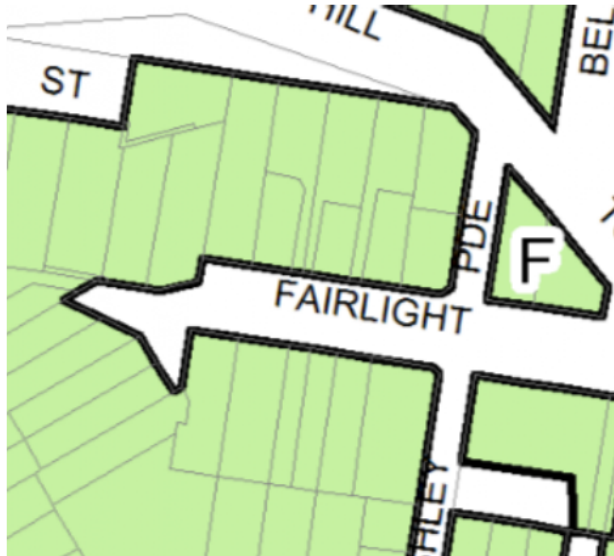


Figure 1 Manly LEP 2013 Floor Space Ratio Map

Assessment of the Provisions of Clause 4.6 Exceptions to development standards

Clause 4.6 of the MLEP 2013 allows for flexibility to be applied to development standards where objectives can be obtained notwithstanding the variation. The mechanics of the clause, the objectives of the floor space ratio standard and a response are all outlined below; however, the main opportunities and justifications for the floor space ratio variation are presented here:

- The proposed additional floor area resulting in a variation is located entirely within the attic level and does not result in an increased building footprint.
- The floor plate within the attic level allows for an additional bedroom and ensuite and is not an overdevelopment of the site.
- The site is zoned R1 General Residential, the proposal conforms to the bulk, scale and rhythm of buildings in the streetscape and therefore, it would not look out of place in the locality.
- The proposal does not result in undue impacts including acoustic and visual privacy, solar access, nor does it interrupt views.

It is noted that the site is identified as an undersized lot pursuant to Clause 4.1.3.1 of the Manly DCP 2013 and when calculated in relation to the minimum lot size of 250m² which applies to the site, results only in a variation of 0.09:1. The increase to floor space to this site does not significantly increase the volume of the building.

The site and the surrounding area can support the increased floor space rate, as the primary controls for setbacks are maintained, overshadowing does not adversely affect enjoyment of the private open space areas or the internal living rooms of the neighbouring properties. It should be noted that the site adjoins a double width driveway to its west and a driveway to the east which gives the additional floor area ample space to be absorbed into the setting without impact.

Clause 4.6.3 (a)(b) - Unreasonable or Unnecessary / Environmental Planning Grounds

Commentary provided below to address the requirements of this clause.

Table 1 Request to vary development standard 4.4 Floor Space Ratio

| Objective | Comment |
|--|--|
| (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and | <p>The proposal will result in a two storey + attic development as viewed from the street, noting the additional bulk at the attic level will not have a significant impact upon the street being located towards the side roof planes.</p> <p>The volume of the attic level including the minor variation to floor space will produce a bulk and scale that will not offend the rhythm of the streetscape.</p> <p>The proposal is consistent with the objectives of the R1 General Residential zone. In that:</p> <ul style="list-style-type: none"> • To provide for the housing needs of the community. • To provide for a variety of housing types and densities. <p>The proposed additions meet the key objective of the R1 zone as they have been designed in an attic form that sits within the existing roof form and recessed from the walls of the floor below and is consistent with the varied housing types and densities within the street.</p> <p>Further, the works would provide for the housing needs of the residents of the subject site through the provision of an additional bedroom and ensuite.</p> <p>The overall size of the proposed dwelling is considered modest and not greedy.</p> |
| (b) that there are sufficient environmental planning grounds to justify contravening the development standard. | <p>There are no significant adverse impacts created by this proposal and in particular the additional 23.4m² of floor space at the attic level, which further supports the application of flexibility in this instance.</p> <p>The room sizes, corridor spaces and utility areas are not excessive and setbacks to the existing building are maintained which preserves the amenity of adjoining properties.</p> <p>The proposal represents utilisation of the full volume of a building stepping down the topography of the site to provide an additional bedroom at the attic level to service the residents of the subject site.</p> |

4.6.4 (i) (ii) - Achieving Consistency with the Objectives of the Standards

4.6 Exceptions to development standards

(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.

In terms of Clause 4.6 (4)(a)(i) this submission is the written request that address the matters contained required to be considered in subclause (3).

Table 2 Clause 4.6(4) ii assessment

| Objectives for Consideration | Comment |
|--|---|
| <p>The relevant R1 zone objectives include:</p> <ul style="list-style-type: none"> To provide for the housing needs of the community. To provide for a variety of housing types and densities. | <p>The proposed additions meet the key objective of the R1 zone as they have been designed in an attic form that sits within the existing roof form and recessed from the walls of the floor below and is consistent with the varied housing types and densities within the street. The majority of the proposed works sit within the 8.5m height control.</p> <p>Further, the works would provide for the housing needs of the residents of the subject site through the provision of an additional bedroom and ensuite.</p> |
| <p>The relevant objectives of the floor space standard include:</p> <p>(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,</p> <p>(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,</p> <p>(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,</p> <p>(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,</p> | <p>The proposed attic addition is consistent with the character of the street which contains a variety of different dwelling typologies including residential flat buildings.</p> <p>The proposal will not increase the existing building footprint and is generally contained within the existing roof form and is therefore not an overdevelopment of the site that would obscure important landscape and townscape features.</p> <p>The proposal maintains an appropriate visual relationship noting the side boundaries adjoin driveways/access handles.</p> <p>Finally, the variation will not adversely impact upon the use or enjoyment of adjoining land in terms of overshadowing and privacy.</p> |

Clause 4.6(5) Considerations

4.6 Exceptions to development standards

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

The matters for consideration in clause 4.6(5) have been addressed in Table 2

Table 2 Clause 4.5(5) assessment

| Matters of Consideration | Comment |
|---|--|
| (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and | The contravention does not raise any matters of state or regional significance. |
| (b) the public benefit of maintaining the development standard, and | There is no public benefit in maintaining the standard. The proposal maintains amenity including privacy, overshadowing and views, which the additional floor space does not impact. The relaxation of this standard to the same extent has occurred a number of times in the immediate locality and demonstrates that relaxing the standard is appropriate in the same / similar circumstances presented by this application. |
| (c) any other matters required to be taken into consideration by the Secretary before granting concurrence. | N/A |

Conclusion

The proposed application remains consistent with the objects of Part 1.3 and requirements of Part 4 of The Act. The proposed use is permissible with consent and uses the subject site to its full potential. The proposal will create a development that

- Conforms with the existing streetscape
- Does not impact the natural environment
- Does not impact views or privacy
- Supports the needs of the residents by providing an additional bedroom and ensuite.
- Promotes the orderly and economic use and development of the land.
- Promotes good design and amenity of the built environment.

The proposal responds to the character and nature of the streetscape and the proposed non-compliance with the density requirement would not result in any significant adverse impacts, as the additional floor space will not impact neighbouring amenity or privacy. Therefore, strict compliance with the floor space ratio standard is considered unreasonable and unnecessary in this case.

Yours Faithfully,



Nicole Lennon
Director
Planik Pty Ltd

ITEM 3.2**MOD2019/0535 - 3 MOORE STREET, CLONTARF - MODIFICATION
OF DEVELOPMENT CONSENT DA115/2016 FOR ALTERATIONS
AND ADDITIONS TO EXISTING DWELLING HOUSE****REPORTING MANAGER****Matthew Edmonds****TRIM FILE REF****2020/052126****ATTACHMENTS**

- 1 DDP Assessment Report**
- 2 Site and Elevation Plan**
- 3 Clause 4.6 Report**

PURPOSE

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

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant Development Consent to Modification Application No. Mod2019/0535 for Modification of Development Consent DA115/2016 granted for alterations and additions to an existing dwelling house on land at Lot B DP 418578, 3 Moore Street, CLONTARF subject to the conditions outlined in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

| | |
|---|--|
| Application Number: | Mod2019/0535 |
| Responsible Officer: | Jordan Davies |
| Land to be developed (Address): | Lot B DP 418578, 3 Moore Street CLONTARF NSW 2093 |
| Proposed Development: | Modification of Development Consent DA115/2016 granted for alterations and additions to an existing 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: | Stephan Bjarne Dahl Jacqueline Renata Dahl |
| Applicant: | Jon Bianchino |
| Application Lodged: | 04/11/2019 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Residential - Alterations and additions |
| Notified: | 19/11/2019 to 03/12/2019 |
| Advertised: | Not Advertised |
| Submissions Received: | 0 |
| Clause 4.6 Variation: | 4.4 Floor space ratio: 15% |
| Recommendation: | Approval |

Executive Summary

This Section 4.55 (1A) modification seeks consent for amendments to DA2016/155 for alterations and additions to an existing dwelling house. The proposal seeks to enclose a section of a sub-floor beneath the dwelling to form a rumpus room, resulting in an additional 25.8sqm of floor area. The additional floor area results in a 15% variation to the floor space ratio development standard. The proposal is referred for determination to the Development Determination Panel as the variation to the floor space ratio development standard exceeds 10%.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development consists of amendments to consent number DA2016/115 for alterations and additions to a dwelling house.

Specifically, the amendments via this Section 4.55(1A) consists of:

- Deletion of a swimming pool and replacement with an area of a terrace and spa off the ground floor;
- Extension of balcony off the first floor;
- Enclosure of a portion of lower ground sub-floor area to create a rumpus room.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.8 Landslide risk
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Local Environmental Plan 2013 - 6.12 Essential services
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

| | |
|-----------------------------------|--|
| Property Description: | Lot B DP 418578 , 3 Moore Street CLONTARF NSW 2093 |
| Detailed Site Description: | <p>The subject site consists of one (1) allotment located on the southern side of Moore Street.</p> <p>The site is regular in shape with a frontage of 15.9m along More Street and a depth of 31m. The site has a surveyed</p> |

area of 494.3m².

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

The site has a moderate slope from front to rear, and is situated on the lower side of Moore Road. The slope of the site and existing dwelling creates a void area under the dwelling to the rear of the site. The site is burdened by an easement to maintain car parking at the rear, to the benefit of 5 Moore Street.

The site is void of any significant vegetation, with low lying shrubs and grasses to the rear of the site and medium height vegetation along the boundary.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by single storey and two storey detached dwelling houses.

Map:



SITE HISTORY

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

- Development Application **10.2016.115.1** for Alterations and additions to an existing dwelling house including demolition of an existing carport and the roof of the existing dwelling, new double garage, new flat roof, new external stairs, courtyard, above-ground swimming pool with deck, new first floor rear balcony and landscaping was approved by the Development Assessment Unit on 29/06/2016.

- Section 96(1A) Application **10.2016.115.2** to modify approved alterations and additions to an existing dwelling house involving changes to the windows and doors, modification of approved first floor balcony and internal modifications – Part 2 was approved under delegated authority on 28/09/2016.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA 115/2016 in full, with amendments detailed and assessed as follows:

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

| Section 4.55(1A) - Other Modifications | Comments |
|---|---|
| A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if: | |
| (a) it is satisfied that the proposed modification is of minimal environmental impact, and | Yes The modification, as proposed in this application, is considered to be of minimal environmental impact. |
| (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and | The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA 115/2016 and Section 96 Modification 115/16-S96(1A) P2. |
| (c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent | The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan 2011 and Manly Development Control Plan. |

| Section 4.55(1A) - Other Modifications | Comments |
|--|---|
| authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and | |
| (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be. | No submissions were received in relation to this application. |

Section 4.15 Assessment

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

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

| Section 4.15 'Matters for Consideration' | Comments |
|---|---|
| Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument | See discussion on “Environmental Planning Instruments” in this report. |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument | None applicable. |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan | Manly Development Control Plan applies to this proposal. |
| Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement | None applicable. |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000) | <p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to landslip and bushfire. This information was subsequently provided.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> |

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

An addendum letter to the original Bush Fire Report submitted for the development application was submitted with this Section 4.55 application, including certification that the development, as amended, conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The letter stated that the proposal is capable of complying with the original recommendation of BAL 12.5.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

REFERRALS

| Internal Referral Body | Comments |
|--------------------------------|---|
| NECC (Development Engineering) | Development Engineering has no objection to the application. No additional condition is needed. |

| 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 modification application (see Certificate No. A247432_02).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

| Standard | Requirement | Approved | Proposed | % Variation | Complies |
|----------------------|-------------|----------|---|-------------|------------------------------|
| Height of Buildings: | 8.5m | 10.7m | Maximum height of building unchanged. Proposed additional balcony area maximum 7.8m. | N/A | Yes - Proposed works comply. |
| | | | | | |

| | | | | | |
|-------------------|------------|---|---------------------------|-----|----|
| Floor Space Ratio | FSR: 0.4:1 | FSR: 0.41:1 (203sqm) (2.5% variation) | FSR: 0.46:1 (228.8sqm) | 15% | No |
|-------------------|------------|---|---------------------------|-----|----|

Compliance Assessment

| Clause | Compliance with Requirements |
|--|------------------------------|
| 4.3 Height of buildings | Yes |
| 4.4 Floor space ratio | No |
| 4.5 Calculation of floor space ratio and site area | Yes |
| 4.6 Exceptions to development standards | Yes |
| 6.2 Earthworks | Yes |
| 6.4 Stormwater management | Yes |
| 6.8 Landslide risk | N/A |
| 6.9 Foreshore scenic protection area | Yes |
| 6.12 Essential services | Yes |

Detailed Assessment

4.6 Exceptions to development standards

Whilst the modification application will result in a floor space ratio that exceeds the maximum permitted by Clause 4.4 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6. This application has been made under Section 4.55 of the Environmental Planning and Assessment Act 197, which is a free-standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as substantially the same test and consideration of all relevant 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application. Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. In accordance with this, the Applicant is not required to submit a written request to vary the floor space ratio development standard. Nevertheless, an assessment of the variation is as follows:

Description of non-compliance:

| | |
|--------------------------------------|-------------------|
| Development standard: | Floor space ratio |
| Requirement: | 0.4:1 |
| Proposed: | 0.46:1 |
| Percentage variation to requirement: | 15% |

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, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH 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 4.4 - 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). As stated previously, a written request is not required under Clause 4.6 of the MLEP 2013 in the circumstance where the application is considered under the provisions of a 4.15 modification. Notwithstanding, 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:

Although not strictly requires, 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 addition area is located at the rear of the dwelling at the lower ground floor below the existing rear deck area. The additional room proposed due to it's concealed location will have no impact on adjoining rear neighbours and does not impact on view, privacy or sunlight access to neighbours. Additionally the proposed new room does not provide additional bulk, height or scale as it is located below the existing deck and is not visible from the street; so there for not impacting on the streetscape.

The proposal produces an appropriate development outcome. The variation to the floor area is a direct result of the reduced allotment size. The DCP specifically indicates that variation to the FSR Development Standard can be sought where the allotment size is below the minimum required by the LEP, as is the case in this instance. This noncompliance will not result in any detrimental impact to the surrounding properties or the character of the locality. Furthermore, the overall design is of good architectural quality and the development satisfies the zone objectives and the objectives of the development standard. The proposal is not visible from the street and provides for a bulk and scale that is compatible with the existing surrounding development. As there is no material impact on adjoining properties or the public domain arising from the variation to the floor area development standard and the objectives of the control are satisfied, it is considered that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case. Therefore, we request that council support the variation on the basis that there are sufficient environmental planning grounds to justify a variance to the development standard.

Council's assessment officer has reviewed the points raised by the applicant and generally agree with the assertions made above, including that the site is of a small size which makes full compliance difficult in this circumstance. Further, the additional floor area which results from the ground floor rumpus room is within an existing undercroft area of the building which will have no unreasonable impacts upon the surrounding properties.

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 R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposed additional ground floor rumpus room will not have a detrimental impact upon the bulk, scale or character of the building given the location below the existing structure. The ground floor rumpus room will not be visible from the street.

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 additional floor area will not obscure important landscape features or require the removal of important landscape features.

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

Comment:

The ground floor rumpus room will not be visually apparent from the surrounding properties, with the southern boundary being adjoined by a garage and being set within the slope of the land. No tree removal is required or impact to unique landscape features.

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

Comment:

The ground floor rumpus room area does not present any overlooking, overshadowing or view loss impacts upon adjoining properties.

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

Comment:

Not applicable to this development.

Zone objectives

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

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

Comment: The proposed additional floor area is within an existing dwelling which will provide additional amenity and function for the residents whilst in keeping with a low density environment.

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

Comment: Not applicable, the site is used for residential purposes.

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, and in accordance with correspondence from the Deputy Secretary on 24 May 2019, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Floor space ratio Development Standard associated with a single dwelling house (Class 1 building).

6.2 Earthworks

A minor amount of cut is required to facilitate the proposed rumpus room beneath the existing dwelling footprint. Council have considered the matters (a) - (h) with regard to the likely impacts of the proposed earthworks and are satisfied the proposed earthworks will not have a detrimental impact on the site or locality. The application is accompanied by a geotechnical report which identifies there is an acceptable level of risk with regards to soil and site stability. Further, Council's development engineers are satisfied the proposal will not have a detrimental impact upon the drainage patterns of the locality.

6.4 Stormwater management

The works proposed as part of the Section 4.55 application will not result in additional hard surfaces for the site which would require additional consideration of stormwater management. Notwithstanding, Council's development engineers have reviewed the proposal and are satisfied that the site can adequately manage stormwater resulting from the development.

6.8 Landslide risk

The site is not mapped as a 'Landslide Risk' area under the MLEP.

6.9 Foreshore scenic protection area

The proposed works consist of a new rumpus room on the lower ground floor, which would not be visible from the foreshore area due to the low level of the works and the existing building to the south of the site. The amendments to the deck and removal of the pool are not considered to have an adverse impact in regards to the visual amenity of the harbour or foreshore area. Overall, the proposal is considered to meet the requirements of the clause and not cause an unacceptable impact upon the Foreshore Scenic Protection area.

6.12 Essential services

The site has existing services to the dwelling that can be augmented as necessary for the proposed works. Council is therefore satisfied the proposal meets the requirements of the clause.

Manly Development Control Plan

Built Form Controls

| Built Form Controls - Site Area: 493.5sqm | Requirement | Approved | Proposed | Complies |
|---|---|----------------|----------------|--------------------------------|
| 4.1.2.1 Wall Height | E: 6m (Based on flat gradient adjacent to rumpus room) | N/A | 4.7m | Yes |
| 4.1.2.2 Number of Storeys | 2 | 2 | 2 | Yes |
| 4.1.2.3 Roof Height | Height: 2.5m | 0.8m | Unchanged | Yes |
| 4.1.4.1 Street Front Setbacks | Prevailing building line or 6m | 0m - Garage | Unchanged | No - Unchanged |
| 4.1.4.2 Side Setbacks and Secondary Street Frontages | 1.56m (based on wall height rumpus room) | N/A | 2.13m | Yes |
| 4.1.4.4 Rear Setbacks | 8m | 5.7m | 6.4m | No - However setback increased |
| 4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4 | Open space 60% of site area (296.1sqm) | 48.2% (238sqm) | 49.5% (244sqm) | No - However area increased |
| | Open space above ground 25% of total open space (61sqm) | 80sqm | 86sqm | No - See Comments |
| 4.1.5.2 Landscaped Area | Landscaped area 40% of open space | 52% (154sqm) | Unchanged | No - Unchanged |
| 4.1.5.3 Private Open Space | 18sqm per dwelling | 205sqm | 226.5sqm | Yes |
| 4.1.9 Swimming Pools, Spas and Water Features | 1m curtilage/1.5m water side/rear setback | 1.5m | 1.5m | Yes |
| Schedule 3 Parking and Access | Dwelling 2 spaces | 2 spaces | 2 spaces | Yes |

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|---------------------------------|------------------------------|-----------------------------|
| 3.1 Streetscapes and Townscapes | Yes | Yes |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| 3.1.1 Streetscape (Residential areas) | Yes | Yes |
| 3.3.1 Landscaping Design | Yes | Yes |
| 3.3.2 Preservation of Trees or Bushland Vegetation | Yes | Yes |
| 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise) | Yes | Yes |
| 3.4.1 Sunlight Access and Overshadowing | Yes | Yes |
| 3.4.2 Privacy and Security | Yes | Yes |
| 3.4.3 Maintenance of Views | Yes | Yes |
| 3.4.4 Other Nuisance (Odour, Fumes etc.) | Yes | Yes |
| 3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design) | Yes | Yes |
| 3.5.1 Solar Access | Yes | Yes |
| 3.5.3 Ventilation | Yes | Yes |
| 3.5.5 Landscaping | 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) | Yes | Yes |
| 4.1.3 Floor Space Ratio (FSR) | Yes | Yes |
| 4.1.4 Setbacks (front, side and rear) and Building Separation | No | Yes |
| 4.1.5 Open Space and Landscaping | No | Yes |
| 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) | Yes | Yes |
| 4.1.7 First Floor and Roof Additions | Yes | Yes |
| 4.1.8 Development on Sloping Sites | Yes | 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 |
| Schedule 1 – Maps accompanying the DCP | Yes | Yes |

Detailed Assessment

4.1.3 Floor Space Ratio (FSR)

The subject site has an area of 493.5sqm. The minimum lot size for the subject site identified on the LEP lot size map is 1150sqm. Therefore, for the purpose of the control, the lot is considered to be an

'undersized lot' and the clause may apply.

In accordance with Table 30, the clause allows a floor space ratio variation to be considered where the development involves up to a maximum of 300sqm of floor area. The proposed modifications result in a floor space of 228.8sqm and well below the maximum area for consideration under the variation clause.

Further, the proposal is considered to meet the objectives of the particular control in that:

- 1) The additional floor area will not result in an increase to the visible scale of the development, as the additional floor area is within an existing subfloor.
- 2) The additional floor area will not result in a view impact for nearby properties.
- 3) The additional floor area will not result in additional overshadowing for nearby properties.

Therefore, the proposal is considered to be consistent with the outcomes of the control and the variation clause may be applied in this circumstance. A detailed assessment of the variation to Clause 4.4 of the LEP is detailed earlier in this report.

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

The terrace as approved under the original application was non-compliant with the minimum 8m rear setback as required by the Manly DCP, with the pool being setback 5.7m from the rear boundary and terrace at 6.4m.

This modification increases the setback to the rear boundary as a result of the deletion of the pool and the replacement terrace area aligning with the approved terrace setback at 6.4m. The proposal modification reduces the level of non-compliance and overall impact upon the rear boundary of the site. Therefore, given increased separation to the rear boundary results from the proposed changes, the non-compliance is supported and the development is considered to be substantially the same as what was originally approved.

4.1.5 Open Space and Landscaping

The site consists of an existing non-compliance with regard to open space. However, the proposed modifications do not further result in a loss of open space and landscaping for the site. The modifications are within the existing building footprint and extend the opportunity for outdoor open space via the unenclosed terrace area. The new rumpus room area is within the existing building footprint beneath the terrace and does not further reduce open space or landscaping.

Although the site is numerically non-compliant with the control, the result of the proposed modifications do not further reduce open space or result in a lesser outcome for the site with regard to open space and landscaping.

The proposed modifications results in an increase of 6sqm in open space above ground. This increase is a result of the amended first floor balcony adjacent to the upper floor bedrooms (see Figure 1 below). The area is only accessible via bedrooms and are not considered to present an unreasonable overlooking impact due to the use of the rooms (bedrooms). The infill of the balcony is considered a reasonable amendment to the proposal which does not result in direct overlooking of the western boundary which consists of a driveway. A site inspection revealed that existing vegetation in the south-west corner of the site inhibits overlooking. Therefore, the minor non-compliance to the control is supported in this circumstance.

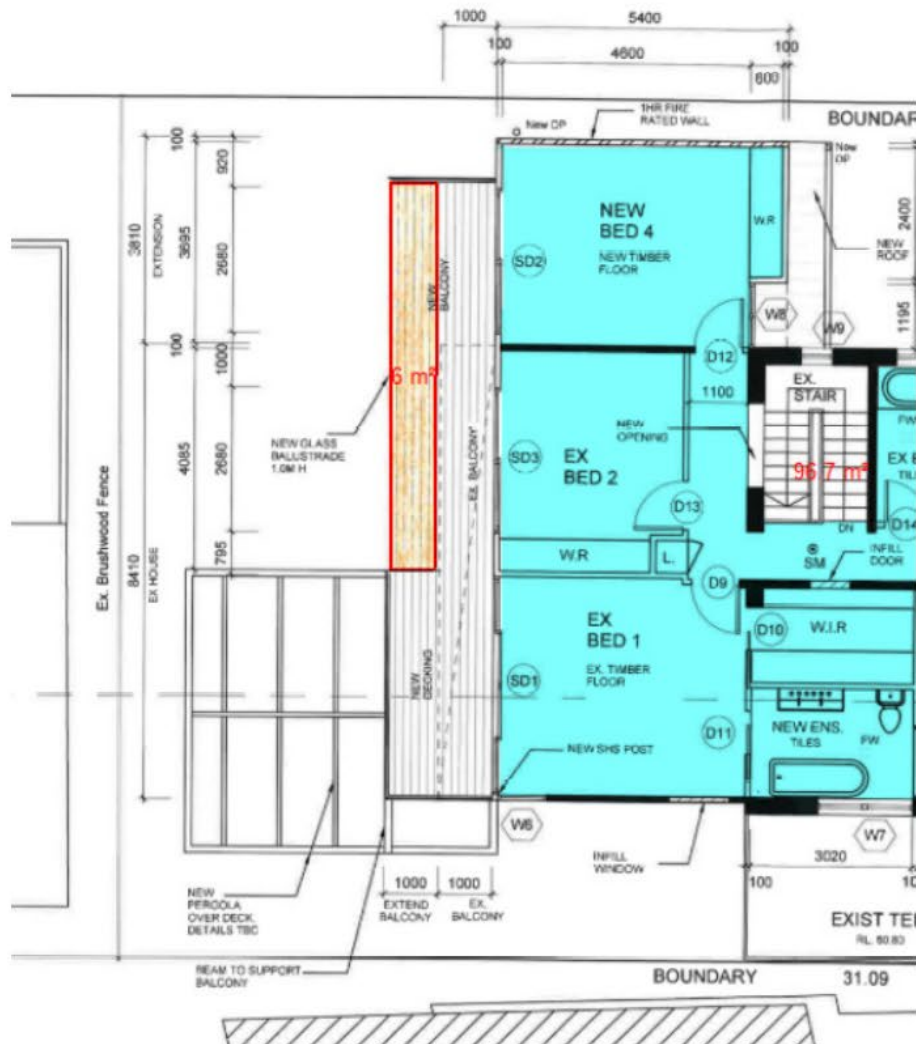


Figure 1 - Additional balcony area.



Figure 2 - Existing first floor balcony looking south-west.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects,

all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

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

- Variation to the Floor Space Ratio development standard.

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2019/0535 for Modification of Development Consent DA115/2016 granted for alterations and additions to an existing dwelling house on land at Lot B DP 418578,3 Moore Street, CLONTARF, subject to the conditions printed below:

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

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

a) Modification Approved Plans

| Architectural Plans - Endorsed with Council's stamp | | |
|--|-----------------|---------------|
| Drawing No. | Dated | Prepared By |
| DA-02 Existing Ground Floor Plan & Demolition Plan, Issue A | 5 May 2016 | Jon Bianchino |
| DA-03 Existing First Floor Plan and Demolition Plan, Issue A | 5 May 2016 | Jon Bianchino |
| DA-04 Proposed Ground Floor Plan, Issue C | 30 October 2019 | Jon Bianchino |
| DA-05 Proposed First Floor Plan, Issue C | 30 October 2019 | Jon Bianchino |
| DA-06 Proposed Roof Plan, Issue A | 5 May 2016 | Jon Bianchino |
| DA-07 East Elevation, Issue C | 30 October 2019 | Jon Bianchino |

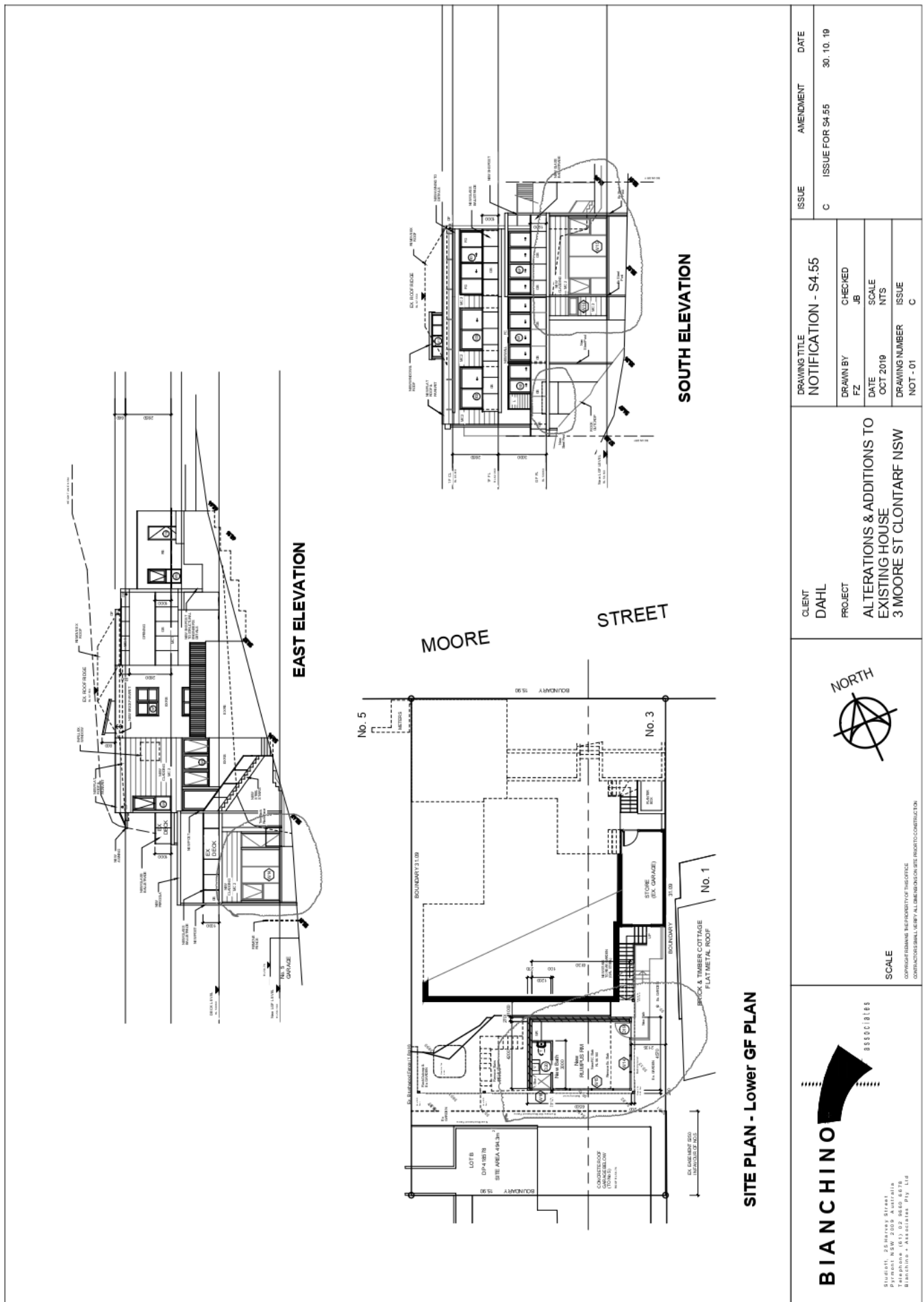
| | | |
|---|-----------------|---------------|
| DA-08 West Elevation, Issue C | 30 October 2019 | Jon Bianchino |
| DA-09 South & North Elevations, Issue C | 30 October 2019 | Jon Bianchino |
| DA-10 Section 1-1 & 2-2, Issue C | 30 October 2019 | Jon Bianchino |
| LPDA 16 443/1 - Landscape Plan, Issue C | 6 May 2016 | Conzept |
| LPDA 16 - 443/2 - Landscape Plan | 6 May 2016 | Conzept |

| Reports / Documentation – All recommendations and requirements contained within: | | |
|---|------------------|----------------------------------|
| Report No. / Page No. / Section No. | Dated | Prepared By |
| Addendum Letter to Bushfire Report | 20 December 2019 | Craig Burley |
| Preliminary Landslip Assessment Report, 2019-230 | 20 December 2019 | Crozier Geotechnical Consultants |
| BASIX Certificate No.A247432_02 | 31 October 2019 | Fang Zhou |

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

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

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



30 OCTOBER 2019

CLAUSE 4.6 VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM FLOOR AREA REQUIRED BY CLAUSE 4.4 OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013.

**PROJECT: ALTERATIONS AND ADDITIONS TO EXISTING DWELLING, 3 MOORE ST. CLONTARF NSW.
PROPOSED S4.55 Modification to Approved DA.**

Development Application Approval Number:- DA 115/2016; approved on the 29 June 2016.

Introduction.

This Clause 4.6 variation is a written request to vary a development standard to support a development application for construction of additions and alterations to the existing house at the above address. The specified maximum floor area of development on the subject site under Clause 4.4 of the Manly Local Environmental Plan 2013 (the LEP) is 0.4:1. The development proposes a minor departure from this numerical standard and proposes a maximum floor area of 228.5m² or 0.46:1. The proposed addition area is located at the rear of the dwelling at the lower ground floor below the existing rear deck area. The additional room proposed due to its concealed location will have no impact on adjoining rear neighbours and does not impact on view, privacy or sunlight access to neighbours. Additionally the proposed new room does not provide additional bulk, height or scale as it is located below the existing deck and is not visible from the street; so there for not impacting on the streetscape. This floor area requirement is identified as a development standard which requires a variation under Clause 4.6 of the Manly Local Environmental Plan 2013 (the LEP) to enable the granting of consent to the development application.

What is the name of the environmental planning instrument that applies to the land.

Manly LEP 2013 & MANLY DCP 2013.

What is the zoning of the land.

R2 Low Density Residential.

What are the objectives of the zone.

Low density development consistent with the character and scale of the locality.

What is the development standard being varied?

The development standard being varied is the maximum FSR permitted under Manly DCP 2013, Clause 4.1.3, Clause 4.4. The proposed additional FSR requested is a minor variation and increase in floor area. Clause 4.4 restricts the maximum floor space ratio within this area of the Clontarf locality and refers to the maximum floor space ratio noted within the "Floor Space Ratio Map." The relevant floor space ratio for this locality is 0.4:1 and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act. The proposal provides for floor space ratio of 0.46:1. The proposal is considered acceptable and there are sufficient environmental planning grounds to justify contravening the development standard.

Under what clause is the development standard listed in the environmental planning instrument?

Clause 4.1.3.1 & Clause 4.4.

What are the 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 proposal seeks to permit flexibility in this instance, given the unusual circumstances of the site. The subject site is well below street level and is not visible from the public domain. The resultant development does not result in any undue bulk/scale or amenity impacts.

What is the numeric value of the development standard in the environmental planning instrument?

FSR – 0.4:1

What is the numeric value of the development standard in the development application?

FSR – 0.46:1. Representing a minor increase of approximately 6%.

What is the percentage variation of the proposal?

The proposal represents approx. 6% increase.

How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The variation to FSR is minor and given that the site is an undersized allotment the development standard is unreasonable in this case.

How is strict compliance hinder the attainment of the objectives specified in the Act?

As the proposed variation is small it would not adversely hinder the attainment of the objectives.

Is the development standard a performance based control?

The standard is a performance based control and can be varied by Council; it is not a statutory requirement.

Would strict compliance with the standard be unreasonable or unnecessary in this case?

Compliance is unreasonable given the variation is minor and the site is an undersized allotment. Note; all over development standards have been met.

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

There are sufficient grounds to seek a variation; given the site is an undersized allotment and the variation sought is only 6%.

CONCLUSION.

The development proposes a departure from the maximum floor area development standard. The proposal produces an appropriate development outcome. The variation to the floor area is a direct result of the reduced allotment size. The DCP specifically indicates that variation to the FSR Development Standard can be sought where the allotment size is below the minimum required by the LEP, as is the case in this instance. This non-compliance will not result in any detrimental impact to the surrounding properties or the character of the locality. Furthermore, the overall design is of good architectural quality and the development satisfies the zone objectives and the objectives of the development standard. The proposal is not visible from the street and provides for a bulk and scale that is compatible with the existing surrounding development. As there is no material impact on adjoining properties or the public domain arising from the variation to the floor area development standard and the objectives of the control are satisfied, it is considered that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case. Therefore, we request that council support the variation on the basis that there are sufficient environmental planning grounds to justify a variance to the development standard.

Prepared by:-

Jon Bianchino
Architect

29 October 2019

| | |
|--------------------------|--|
| ITEM 3.3 | MOD2019/0199 - 33 TRUMAN AVENUE, CROMER - MODIFICATION OF DEVELOPMENT CONSENT DA2005/0168 GRANTED FOR ERECTION OF NEW THREE STOREY MIXED USE BUILDING TO CONTAIN 9 RESIDENTIAL UNITS AND 3 COMMERCIAL UNITS WITH BASEMENT PARKING |
| REPORTING MANAGER | MANAGER, DEVELOPMENT ASSESSMENTS |
| TRIM FILE REF | 2020/052150 |
| ATTACHMENTS | 1 Assessment Report 2 Site and Elevation Plans |

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 grant Development Consent to Modification Application No. Mod2019/0199 for Modification of Development Consent DA2005/0168 granted for erection of New Three Storey Mixed Use Building to contain 9 Residential Units and 3 Commercial units with Basement Parking on land at Lot 35 DP 240298, 33 Truman Avenue, CROMER subject to the conditions outlined in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

| | |
|---|---|
| Application Number: | Mod2019/0199 |
| Responsible Officer: | Nick England |
| Land to be developed (Address): | Lot 35 DP 240298, 33 Truman Avenue CROMER NSW 2099 |
| Proposed Development: | Modification of Development Consent DA2005/0168 granted for erection of New Three Storey Mixed Use Building to contain 9 Residential Units and 3 Commercial Units With Basement Parking |
| Zoning: | Warringah LEP2011 - Land zoned B1 Neighbourhood Centre |
| Development Permissible: | Yes |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Delegation Level: | NBLPP |
| Land and Environment Court Action: | No |
| Owner: | Anthony Cirillo Badajoz Property Pty Ltd |
| Applicant: | Wayne Ellis Architect |
| Application Lodged: | 07/05/2019 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Mixed |
| Notified: | 18/05/2019 to 01/06/2019 |
| Advertised: | 18/05/2019 |
| Submissions Received: | 6 |
| Clause 4.6 Variation: | Nil |
| Recommendation: | Approval |

EXECUTIVE SUMMARY

This subject application proposes to modify the existing development consent for a mixed use building by: the deletion of one (1) residential unit; providing an additional four (4) car spaces; minor internal layout changes and minor external changes to lower the roof, and to increase private open space and landscaped area.

The application is being referred to the Northern Beaches Local Planning Panel as the original application was determined (refused) by the then Warringah Council Independent Hearing &

Assessment Panel. The application was subsequently approved upon appeal to the NSW Land and Environment Court.

Based on a detailed assessment of the proposal (as amended) against the applicable planning controls, it is considered that the proposal is suitable and appropriate development for the subject site and remains substantially the same development as that approved. Amendments made during the assessment process have satisfied the concerns of Council's Development Engineers and addressed the objectors issues of: traffic generation; parking and privacy impacts. The overall impact of the proposed modification is considered to be less than the original development based on the deletion of one (1) residential dwelling, reduced building bulk and increased car spaces on the site.

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 application has been made pursuant to Section 4.56 of the Environmental Planning & Assessment Act 1979 and seeks to modify a development consent made by the NSW Land & Environment Court on 20 April 2007.

The original consent relates to a mixed use development, which at the time of consent consisted of three (3) ground floor commercial premises, ten (10) residential premises and basement level parking for 22 vehicles.

Plans originally submitted for this application presented significant issues in respect to:

- Height of Buildings development standard of WLEP 2011;
- Car parking requirements of WDCP 2011;
- Adverse impact on the acoustic and visual privacy of adjoining residences; and
- Inadequate stormwater management.

Through the assessment process, amended plans have:

- Lowered the roof to comply with the Height of Buildings standard and be lower (0.4m) than the approved building;
- provide adequate car parking for the commercial component of the development;
- delete the proposed roof terraces; and
- provide sufficient access to the on-site detention stormwater system on the site.

The proposed modification (as amended) consists of the following:

- deletion of one (1) residential unit, which was approved as a dwelling ancillary to "Business Premises 3" on the ground floor;
- conversion of Business Premises 3 to a sole unit dedicated for business purposes;
- minor alterations to ground floor and 1st floor layout to relocate access stairs and service rooms;
- conversion of Unit 1 from 3 bedroom to 2 bedrooms;
- conversion of Unit 2 from 1 bedroom to 2 bedrooms;
- increase in private open space on ground floor for Units 1 and 2;
- minor internal layout changes to the ground floor units 3 to 9;
- minor increase in terrace for Unit 7 on south elevation;
- additional awnings on west elevation;
- additional landscaped plantings on east elevation;
- re-arranged basement parking, with 4 additional car spaces;
- relocated stormwater tank;
- raising of basement level by approximately 0.6m;
- raising ground floor between 0.3 to 0.8m;
- lowering the 1st floor by 0.2m; and
- new roof lowered by 0.2 - 0.4m from the originally approved height.

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

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S79C Assessment
Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

| | |
|-----------------------------------|--|
| Property Description: | Lot 35 DP 240298 , 33 Truman Avenue CROMER NSW 2099 |
| Detailed Site Description: | <p>The subject site consists of one (1) allotment located on the western side of Truman Avenue. The site also has secondary frontages to Maybrook Avenue (south boundary) and Belmore Lane (west boundary).</p> <p>The site is irregular in shape with a surveyed area of 931.6m².</p> <p>The site is located within the B1 Neighbourhood Centre zone and is partly vacant, accommodating excavation for a mixed-use development.</p> <p>The site has a southerly aspect, with no significant vegetation.</p> <p>Adjoining and surrounding development is characterised by a range of land uses. The site is located at the southern end of a neighbourhood business zone and adjoins a number of single storey shop and office buildings. Low density residential zones and dwelling houses adjoin the site to the east, south and west.</p> |

Map:



SITE HISTORY

The land was historically used for commercial purposes (service station) for an extended period of time.

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

DA2005/0168: Development consent granted for the "demolition of existing buildings and the

construction and use of a two storey plus basement building for mixed residential and commercial purposes" in the NSW Land and Environment Court (No.10963 of 2006) on 20 April 2007. The application was considered by the then Warringah Council Independent Hearing and Assessment Panel (IHAP) on 9 August 2006 where the Panel resolved to refuse the application based on: inconsistency with streetscape; building scale and density; and insufficient solar access and cross ventilation.

Construction Certificate No.110242: Issued by Private Certifiers Australia for "Partial Demolition of Stage 1 and Stage 2 - ONLY" on 19 March 2012. A Notice of Commencement of works was also issued on this date. Demolition works have since commenced on the site, hence the development consent has physically commenced, despite the approved works not being complete.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2005/0168 as issued No.10963 of 2006 by NSW Land and Environment Court, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

| Section 4.56- Other Modifications | Comments |
|---|---|
| (1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if: | |
| (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and | The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2005/0168. |
| (b) it has notified the application in accordance with: | The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, |
| (i) the regulations, if the regulations so require, | |

| Section 4.56- Other Modifications | Comments |
|---|--|
| or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and | Warringah Local Environment Plan 2011 and Warringah Development Control Plan 2011. |
| (c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and | Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA2005/0168. |
| (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be. | See discussion on "Notification & Submissions Received" in this report. |

Section 4.15 Assessment

In accordance with Section 4.56 of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

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

| Section 79C 'Matters for Consideration' | Comments |
|---|--|
| Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument | See discussion on "Environmental Planning Instruments" in this report. |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument | None applicable. |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan | Warringah Development Control Plan 2011 applies to this proposal. |
| Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement | None applicable. |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000) | <p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p>Clause 50(1A) of the EP&A Regulation 2000 requires the</p> |

| Section 79C 'Matters for Consideration' | Comments |
|--|--|
| | <p>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. Whilst correspondence was forwarded to the applicant on 4 September 2019, however no additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter was not addressed in the original conditions of consent. However, this does not diminish the statutory obligations of the applicant in the construction of the residences on-site.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p> |
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) 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 79C '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

An existing condition of development consent (No.108) is adequate to ensure that any bushfire risk is mitigated.

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 6 submission/s from:

| Name: | Address: |
|--|------------------------------------|
| Mr Sergey Eremenko | 2 Rawson Place CROMER NSW 2099 |
| Mr John Charles Allen Frances Ann O'Brien | 39 Maybrook Avenue CROMER NSW 2099 |
| Withheld Mr Geoffrey John Goldsworthy | CROMER NSW 2099 |
| Withheld Mr Geoffrey John Goldsworthy | 12 Rawson Place CROMER NSW 2099 |
| Mrs Samantha Jade Davey | 34 Maybrook Avenue CROMER NSW 2099 |
| Mr Shane Edward Davey | 34 Maybrook Avenue CROMER NSW 2099 |
| Mrs Julie Anne Keeble | 41 Maybrook Avenue CROMER NSW 2099 |

During the notification period, an effective total of five (5) submissions were received. The submitters were sent the amended plans provided after notification, with 1 resident withdrawing their objection to the proposed modification, taking the effective number of submissions to four (4).

The following issues were raised in these submissions have been summarised and are addressed below:

- *The proposed modification will result in an unreasonable level of traffic in surrounding streets.*

Comment: The subject application relates to a modification to an existing consent, which is now in legal effect on the land. This matter was therefore considered and adequately satisfied in the original consent. With respect to the proposed modification, there will be in effect one (1) less dwelling on the site. Hence, the overall intensity of the development will be less than the original approval and no increase in traffic generation can be reasonably identified. This is therefore not

a valid reason to refuse the application.

- *The amount of parking provided for the approved development and the proposed modification is inadequate.*

Comment: The originally approved development complied with the minimum Council requirements for car parking that applied at the time of consent. The proposed modification will comply with the parking standards that now apply and in effect, provides a surplus of parking above the minimum requirements. The application is therefore considered to have adequate parking and this is not considered a valid reason to refuse the proposed development.

- *There will be an increased number of cars parked on surrounding streets.*

Comment: As stated above, the the overall intensity of the development will be less than the original approval and no increase in traffic generation is likely. The proposed modifications to the basement parking area will result in both a surplus (of 5 spaces) to Council's parking requirements and result in 4 extra car spaces being located in the basement, in contrast to the original approval. Hence it cannot be reasonably established that there will be an increase in the demand for on-street parking, in comparison with the approved development.

- *The tandem or stacked arrangement for parking will result in these spaces not being used for parking and instead for storage.*

Comment: Council's Traffic Engineer raised no objection to the proposed modification, included the stacked parking arrangements. In the event of the application being approved, these parking spaces will remain in perpetuity for this use and not for storage. In the event that Council becomes aware that the parking spaces are being used for storage, enforcement action can be undertaken.

- *The development is inconsistent with the character of the surrounding area.*

Comment: The existing consent remains in effect and the proposed modification will result in lower building heights and more landscape planting features than from the original consent, resulting in a lesser impact on the character of the surrounding area.

- *The proposal will have an adverse impact on the acoustic and visual privacy of adjoining residences.*

Comment: The amended plans have deleted the previously proposed roof terraces. The approved areas of private open space for approved dwellings will be substantially the same. Hence, there will be no further adverse impact on the acoustic and visual privacy of adjoining residences.

- *The revised basement level will not allow the building and the local area to be safely evacuated during an emergency.*

Comment: The application was referred to Council's Building Assessment (Fire and Disability

upgrades) Officer for comment, who advised that the proposed modification was capable of meeting the relevant fire safety standards. No specific policy for evacuation or emergency would apply to either the originally approved development or the proposed modification and this would not be a valid reason to refuse the development.

- *There is an unspecified area on the amended roof top which the plans do not properly demonstrate.*

Comment: This area is a part of the roof that is punctuated by louvres above the common access foyer on the 1st floor. In the original approved plan, this part of the roof was completely open and the louvres will provide greater enclosure to the roof that was originally approved.

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> |
| Environmental Health (Food Premises, Skin Pen.) | <p>General Comments</p> <p>reviewed</p> <p>no further conditions for Environmental Health</p> <p>Recommendation</p> <p>APPROVAL - no conditions</p> |
| Landscape Officer | <p>No objections are raised with regard to the amended landscape plans in this modification, however it is recommended that the nominated street trees in Maybrook Ave be amended to be <i>Eucalyptus haemastoma</i> as a more reliable local species.</p> <p>Recommended conditions have been included as below.</p> |
| NECC (Development Engineering) | <p>The finalised comments from the Development Engineer are as follows:</p> <p>"Review of amended drainage plans 18/12/19 <i>The amended stormwater drainage plans submitted by David Johnson consulting engineers have been reviewed and are satisfactory subject to additional conditions."</i></p> <p>Previous commentary from the Development Engineers are provided</p> |

| Internal Referral Body | Comments |
|------------------------|---|
| | <p>below:</p> <p><i>"Review of drainage plans 6/12/19</i> <i>Stormwater:</i> <i>The proposed Stormwater Concept Plan prepared by DRJ Consulting engineers dated FEB 2019 are still unsatisfactory.</i></p> <p><i>1) The HGL analysis provided to Council indicates the the orifice outlet in the 1 in 100 year event will be submerged . However review of the DRAINS model indicated the post developed flows are less than predeveloped flows. Also the location of the tank being under part of the commercial floor is satisfactory as the applicant proposes an intermediate slab to create a void area below the floor level.</i></p> <p><i>2) Additionally the minimum information required to be submitted is detailed in Section 3.3, has not been provided to demonstrate compliance with Council's OSD Technical Specification. The minimum information required to be submitted is detailed in Section 3.3 should include but not limited to the following:</i> <i>- All service locations are to be detailed in relation to any outlet pipe.</i> <i>- Finished floor levels and finished landscape levels are to be detailed on the plan.</i> <i>-Street names are to be detailed on the stormwater layout on all frontages to the development.</i></p> <p><i>Reference is made to Development Engineering Referral Response dated 16/5/19 and additional information provided by the Applicant.</i></p> <p><u><i>Stormwater:</i></u></p> <p><i>The proposed Stormwater Concept Plan is unsatisfactory. The provision of any Onsite Stormwater Detention (OSD) system shall be in accordance with Council's Warringah OSD Technical Specification. In particular, Council will not approve detention systems directly under habitable floors, and in this regard the proposed OSD location is not supported. Unobstructed external access to the OSD system must be provided at all times, and a safe overflow route from the OSD system must be provided.</i></p> <p><i>In addition, insufficient information has been provided to demonstrate compliance with Council's OSD Technical Specification. The minimum information required to be submitted is detailed in Section 3.3, including the provision of DRAINS model. The longsection indicating connection to Council's road drainage system shall be supported by a HGL analysis.</i></p> <p><u><i>Note to Planner:</i></u></p> <p><i>A new site survey plan has not been submitted for assessment.</i></p> <p><i>It is noted that these matters have been previously raised by Development Engineering.</i></p> |

| Internal Referral Body | Comments |
|---|---|
| | <p><i>The proposed modification cannot be supported by Development Engineering due to lack of information to address:</i></p> <ul style="list-style-type: none"> <i>Stormwater drainage for the development in accordance with clause C4 Stormwater."</i> <p><u>Planner's Comment:</u> The Engineer has requested that the existing conditions of development consent, No.18 (footpath) and No.91 (on-site detention) be replaced with new conditions. These are included in the recommended conditions of consent in this report, in addition to new Condition No.84A Section 68 Stormwater Drainage Approval. These additional conditions have been added as they relate to the proposed amendments. The other requested conditions relating to public liability insurance and maintenance of the road reserve have not been added, as there are existing conditions that relate to these in the original consent (Nos.17, 50 and 66).</p> |
| Strategic and Place Planning (Urban Design) | <p>The proposal should resolve the following issues:</p> <ol style="list-style-type: none"> 1. The proposed amendments substantially affect the whole building and as such should be a new DA. 2. The proposed roof access via the spiral stairs will exceed the 8.5m building height. 3. The roof terraces could be a source of noise nuisance and create privacy issues to surrounding neighbours and adjacent units. If allowed, they should be limited to 25 sqm to minimise amenity issues. Current DCP definition of private open space does not support roof terraces. 4. The proposed retail shops has floor to floor height of 3m. It should be 3.7m minimum to provide flexibility of use. (Reference: Apartment Design Guide page 87) 5. Retail shop front should be the same level as the public footpath and be accessible. 6. Majority of the car parking will be in tandem which will not be as convenient. <p><u>Planner's comment:</u> Issues 1, 2 and 3 have been adequately addressed through the amended plans, which have: reduced the extent of the modification; ensured compliance with the building height control; and addressed the matters of privacy through the deletion of the roof terraces. In respect to Issues 4 and 5, whilst a small decrease in the floor to ceiling height is proposed (between 300 to 600mm), this is substantially the same as the original proposal. The Apartment Design Guide does not strictly apply in the context: of the existing consent; and the fact that the building is not more than 2 storeys above the existing ground level. In regard to Issue 6, Council's Traffic Engineer has raised not issue with the tandem or "stacked" parking arrangement for the 2 car spaces provided for each unit. Hence, these reasons are not considered reasonable reasons to refuse the application.</p> |
| Traffic Engineer | No objection is raised on the proposal subject to the allocated |

| Internal Referral Body | Comments |
|------------------------|---|
| | planning officer to ensure that the proposed modification provides adequate parking spaces in accordance with the DCP. |
| Waste Officer | <p>Commercial and residential waste appears to be stored in the one room. There must be two separate rooms provided.</p> <p>As there are two doors accessing the waste storage room, construction of an appropriately located wall to provide two rooms would be acceptable to Council.</p> <p>Access to the waste rooms is from Belmore Lane. "No Parking" restrictions will need to be placed along the full length of Belmore Lane from 6.00am to 10.00am on the day of collection (Wednesday).</p> <p><u>Planners Note:</u> Two new conditions (100A - Waste Rooms and 100B - Signage) are recommended to address these issues.</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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.1013909M dated 20 June 2019).

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

| Commitment | Required Target | Proposed |
|-----------------|-----------------|----------|
| Water | 40 | 40 |
| Thermal Comfort | Pass | Pass |
| Energy | 45 | 45 |

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

| Development Standard | Requirement | Approved | Proposed | % Variation | Complies |
|----------------------|-------------|----------|----------|-------------|----------|
| Height of Buildings: | 8.5m | 8.4m | 7.7m | N/A | Yes |

Compliance Assessment

| Clause | Compliance with Requirements |
|---------------------------------|------------------------------|
| 4.3 Height of buildings | Yes |
| 6.4 Development on sloping land | Yes |

Detailed Assessment

6.4 Development on sloping land

Clause 6.4 (3) Development on sloping land requires that:

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and
- (b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and
- (c) the development will not impact on or affect the existing subsurface flow conditions.

Comment: The subject application is a modification to an existing consent, which is now in operative effect, with the excavation works already completed. The original consent was considered under the previous Warringah Local Environmental Plan 2000, which applied to the land. Under this Plan, geotechnical risks were considered under the General Principles of Development Control, Clause 57 "Development on sloping land". A geo-technical report was provided by the applicant to demonstrate that no adverse risk from the proposed development was likely. In the context of the application being a modification to existing consent and sufficient geotechnical information provided prior to this consent being granted, the provisions of Clause 6.4 have been satisfied.

Warringah Development Control Plan

Built Form Controls

| Standard | Requirement | Approved* | Proposed | Complies |
|----------------------------|------------------|-----------|-----------|----------|
| B5 Side Boundary Setbacks | Merit assessment | Nil | No change | Yes |
| B7 Front Boundary Setbacks | Nil | Nil | No change | Yes |
| B9 Rear Boundary Setbacks | Merit assessment | Nil | No change | Yes |

* The original consent was approved subject to the provisions of the previous Warringah Local Environmental Plan 2000

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| A.5 Objectives | Yes | Yes |
| B6 Merit Assessment of Side Boundary Setbacks | Yes | Yes |
| B7 Front Boundary Setbacks | Yes | Yes |
| B10 Merit assessment of rear boundary setbacks | Yes | Yes |
| C2 Traffic, Access and Safety | Yes | Yes |
| C3 Parking Facilities | Yes | Yes |
| C4 Stormwater | Yes | Yes |
| C6 Building over or adjacent to Constructed Council Drainage Easements | 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 |
| | | |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|------------------------------------|------------------------------|-----------------------------|
| D10 Building Colours and Materials | Yes | Yes |
| D11 Roofs | Yes | Yes |
| D18 Accessibility and Adaptability | Yes | Yes |
| D20 Safety and Security | Yes | Yes |
| E10 Landslip Risk | Yes | Yes |
| F1 Local and Neighbourhood Centres | Yes | Yes |

Detailed Assessment

C3 Parking Facilities

The proposed modification provides parking at the following on-site car parking:

| Use | Appendix 1 Calculation | Required | Provided | Difference (+/-) |
|-------------------|---|-------------------|----------|------------------|
| Business premises | 299m ² @ 1 space per 40m ² | 7.4 (8) spaces | 8 | N/A |
| Residential | 8 x 2 bedroom @ 1.2 spaces per dwelling 1 x 1 bedroom @ 1 space per dwelling | 9.6 (10) 1 | 17 | N/A |
| Visitor Spaces | 9 dwellings @ 1 space per 5 dwellings | 1.8 (2) | 3 | N/A |
| Total | | 21 | 28 | N/A |

As the table demonstrates above, the proposed modification will satisfy the minimum requirements for parking in WDCP 2011. In fact, a surplus of seven (7) car spaces will be provided. The proposed modification will also provide an additional six (6) car spaces on-site, above the car spaces provided in the approved development (22).

A new condition (No.96A) is recommended to ensure adequate allocation of carparking spaces in the modified development.

D8 Privacy

The modification application as originally proposed incorporated six (6) roof terraces of additional private open space, for Units 3, 4, 5, 7, 8 and 9. A number of submissions were received from adjoining properties in respect to the potential loss of acoustic and visual privacy.

Initial assessment of the proposal was that this would result in an adverse impact on adjoining properties and the applicant was advised that Council did not support the application.

The application has been subsequently amended to delete these roof terraces. Upon further

assessment of the amended application, no adverse privacy impact on adjoining residences is likely as a result of the proposed modification.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

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

- Impact on the visual and acoustic privacy of adjoining dwellings;
- Height of Buildings development standard
- Car parking requirements;
- Character of the adjoining built form;
- Stormwater management.

The application has been amended since lodgement to address the aforementioned issues.

Based on these amendments, the proposed modification is considered to adequately meet the principle tests of Section 4.56 of the Act, principally being:

- substantially the same development;

- being consistent with relevant matters of Section 4.15; and
- not resulting in an unreasonable impact on the adjoining area.

The issues raised in the submissions on the original form of the application are no longer considered relevant in light of the amendments made and are not valid reasons to refuse the development.

Therefore it is recommended that the application 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 Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2019/0199 for Modification of Development Consent DA2005/0168 granted for erection of New Three Storey Mixed Use Building to contain 9 Residential Units and 3 Commercial Units With Basement Parking on land at Lot 35 DP 240298,33 Truman Avenue, CROMER, subject to the conditions printed below:

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

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

a) Modification Approved Plans

| Architectural Plans - Endorsed with Council's stamp | | |
|---|--------------|-----------------------|
| Drawing No. | Dated | Prepared By |
| A01 Issue A | 4 April 2019 | Wayne Ellis Architect |
| A02 Issue A | 4 April 2019 | Wayne Ellis Architect |
| A03 Issue A | 4 April 2019 | Wayne Ellis Architect |
| A04 Issue A | 4 April 2019 | Wayne Ellis Architect |
| A05 Issue A | 4 April 2019 | Wayne Ellis Architect |

| Engineering Plans | | |
|-------------------|----------|------------------|
| Drawing No. | Dated | Prepared By |
| 2019-10 Sheet C01 | Feb 2019 | David R. Johnson |
| 2019-10 Sheet C02 | Feb 2019 | David R. Johnson |
| 2019-10 Sheet C03 | Feb 2019 | David R. Johnson |
| 2019-10 Sheet C04 | Feb 2019 | David R. Johnson |

| Reports / Documentation – All recommendations and requirements contained within: | | |
|--|-------|-------------|
| Report Title / No. | Dated | Prepared By |
| | | |

| | | |
|-------------------------------|--------------|---------------------------|
| BASIX Certificate No.1013909M | 20 June 2019 | Concept Designs Australia |
|-------------------------------|--------------|---------------------------|

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

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

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

| Landscape Plans | | |
|-----------------|--------------|-----------------------|
| Drawing No. | Dated | Prepared By |
| A07 | 4 April 2019 | Wayne Ellis Architect |
| A08 | 4 April 2019 | Wayne Ellis Architect |
| A09 | 4 April 2019 | Wayne Ellis Architect |

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

B. Add Condition No.18A Footpath Reconstruction or Construction to read as follows:

The applicant shall construct at 1.5m wide footpath along the Truman and Maybrook Avenue frontages. The works shall be in accordance with the following: (a) All footpath works are to be constructed in accordance with Council's Specification
(b) Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Council's specification for footpath. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure compliance of footpath works with Council's specification for engineering works.

C. Add Condition No.84A Section 68 Stormwater Drainage Approval to read as follows:

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 four (4) copies of Civil Engineering plans for the design of the 375mm RCP outlet pipe to be connected to Councils road drainage Pit in Trueman ave. The plans 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 form can be found on Council's website using the following link:

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/stormwater-drainage-approval/4022-stormwater-drainage-approval.pdf>

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.

D. Add Condition No.91A On-Site Stormwater Detention Compliance Certification to read as follows:

An On-site Stormwater Detention system must be designed and constructed in accordance with Northern Beaches Council's current WARRINGAH WATER MANAGEMENT POLICY PL850, and generally in accordance with the concept drainage plans prepared by David R Johnson consulting engineers, drawing numbers 2019-10 (C01,C02 and C03) dated 7/12/19.

Detailed drainage plans are to be prepared by a qualified experienced practicing Civil Engineer, with Corporate membership of the Institute of Engineers Australia (M.I.E.) or who is eligible to become a Corporate member.

The drainage plans must address the following:

- i) Compliance with all the details/information required by Clause 3.3 of the Warringah council On site Stormwater detention Technical specification.
- ii) Potholing is to be undertaken by a qualified service locating contractor to determine the exact locations of all footpath services in relation to the proposed 375mm concrete outlet pipe that connects to Councils existing road stormwater pit. The RLs of all services are to detailed the HGL pipe longsection.

Detailed drainage plans, including engineering certification confirming the above requirements have been satisfied and complying with Council's requirements, are to be submitted to the Principal Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of storm water and storm water management arising from the development.

E. Add Condition No.96A Car Parking Spaces to read as follows:

28 car parking spaces provided shall be provided, made accessible and maintained at all times. The spaces shall be allocated as follows:

- 17 - Residential
- 2 - Residential - Visitors
- 8 - Commercial / Retail
- 1 - Spaces for persons with a disability

Car-parking provided shall be used solely in conjunction with the uses contained within the development. Each car parking space allocated to a particular unit / tenancy shall be line marked and numbered or signposted to indicate the unit / tenancy to which it is allocated.

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 that adequate parking facilities to service the development are provided on site. (DACPLG01)

F. Add Condition No.100A - Waste Storage Area to read as follows:

The waste storage area on the ground floor is to be divided into two (2) rooms, to separate commercial and residential waste.

Reason: To ensure the proper allocation of waste generated by the development for its efficient collection.

G. Add Condition No.100B - Signage on Belmore Lane to read as follows:

Signage is to be installed on Belmore Lane to ensure no parking during the allocated period of collection, between the hours of 6.00am to 10.00am, weekdays.

Reason: To ensure both efficient collection of waste from the development and the proper function of the local road network.

SECTION 96 APPLICATION ISSUE
SECTION 4.55(8) MODIFICATION OF CONSENT GRANTED
BY COURT
DA Approved No 10963 of 2006

PROJECT: TWO STOREY COMMERCIAL AND RESIDENTIAL BUILDING
DA APPROVAL No. 10963 OF 2006

ADDRESS 33 TRUMAN AVENUE, CROMER HEIGHTS NSW 2009

**ISSUE SECTION 96 - SECTION 4.55(8)
CONSTRUCTION AND SUB DIVISION OF 3 BUSINESS PREMISES AND 9
RESIDENTIAL UNITS**

DRAWING SCHEDULE

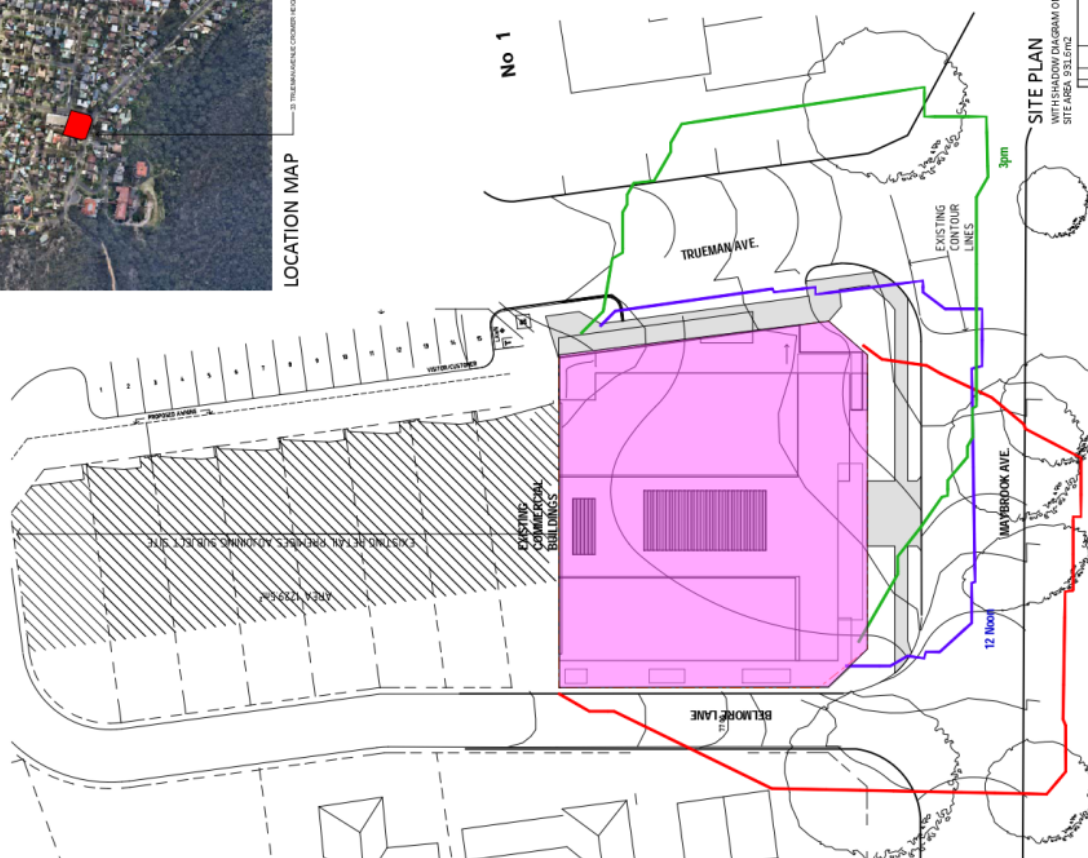
ARCHITECTURAL

SITE PLAN, SHADOW DIAGRAM PLAN
GROUND FLOOR PLAN, SCHEDULES

SECTIONS 1-1 & 2-2, FIRST FLOOR PLAN AND ELEVATIONS
BASEMENT AND ROOF PLANS, ELEVATION AND SECTION
ELEVATION, SECTION AND DRIVEWAY DETAILS
PERSPECTIVES - INFORMATION ONLY

LANDSCAPE PLAN -GROUND
LANDSCAPE PLAN -FIRST FLOOR
LANDSCAPE DETAIL AND SPECIFICATION

| SITE | DATA ENTRY (including lift and entry ramp) | CAR PARKING SCHEDULE | TRUCKS 8 or greater | TRUCKS 4 or greater | TRUCKS 1 or greater | TRUCKS 1 ton direct (average) | 96.6m ² 71.6m ² TOTAL SPIN | INTERNAL COURT | INTERNAL | TERRACE | COMMON AREAS | EXTERNAL 42.7m ² | INTERNAL GROUND FLOOR |
|--------------|--|----------------------|------------------------|------------------------|------------------------|----------------------------------|--|----------------|----------|---------|--------------|-----------------------------|--------------------------|
| COMMERCIAL 1 | | | | | | | | | 124 | 20 | | | |
| COMMERCIAL 2 | | | | | | | | | 94 | 30 | | | |
| COMMERCIAL 3 | | | | | | | | | 91.2 | 13.7 | | | |
| COMMERCIAL 4 | | | | | | | | | 91.2 | 13.7 | | | |
| COMMERCIAL 5 | | | | | | | | | 84.4 | 22 | | | |
| COMMERCIAL 6 | | | | | | | | | 84.4 | 22 | | | |
| COMMERCIAL 7 | | | | | | | | | 86 | 11.3 | | | |
| COMMERCIAL 8 | | | | | | | | | 87 | 11.4 | | 6.6 | |
| COMMERCIAL 9 | | | | | | | | | 75.2 | 10 | | 7.8 | |



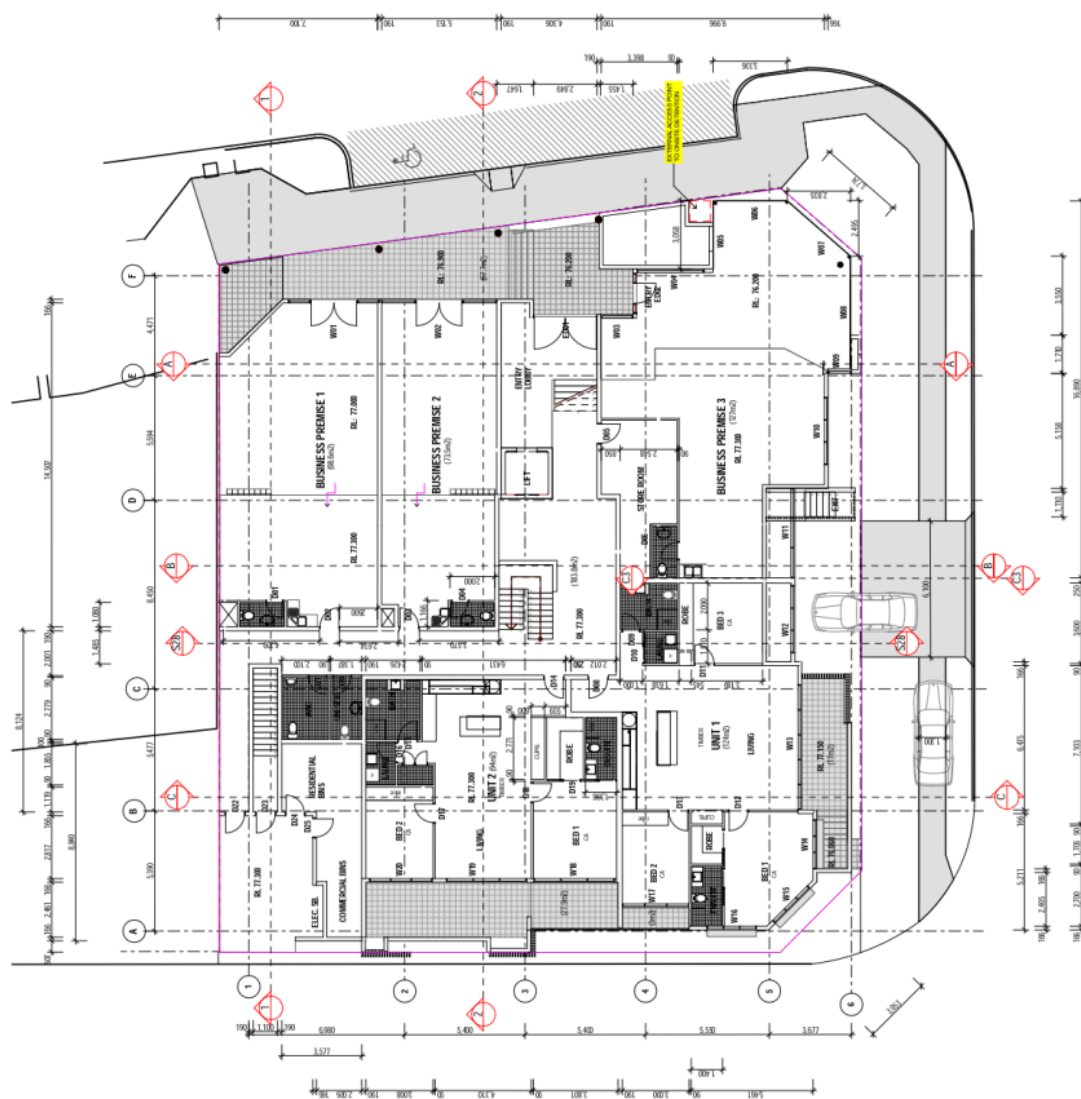
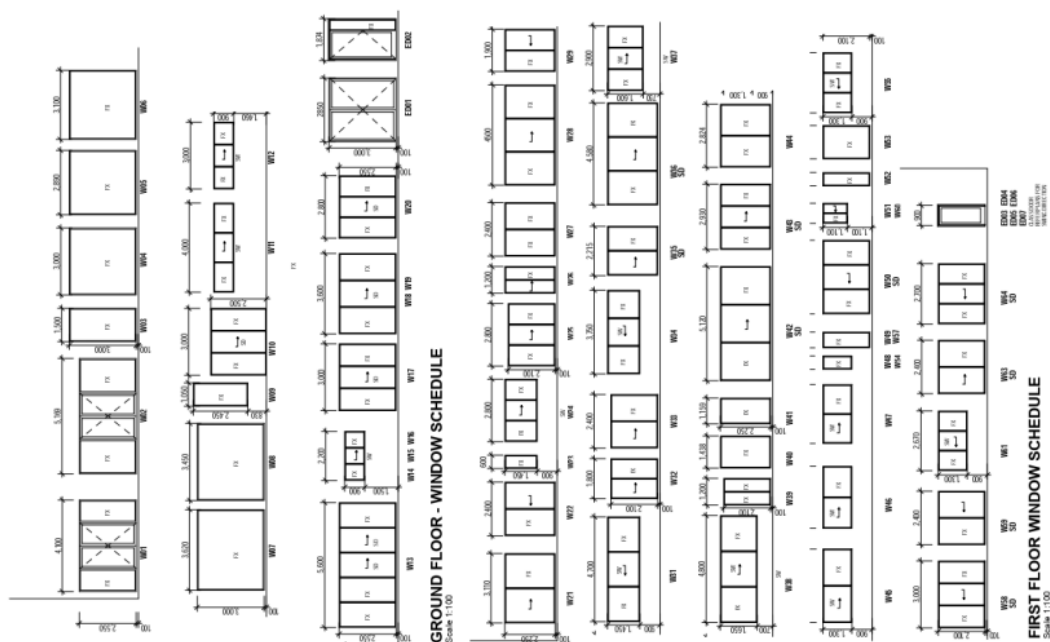
SITE PLAN

SECTION 96

19/09/2019

19/09/2019

[illegible]



4. Ground

SECTION 96

19/09/2019

[illegible]

Part: SWAGING DEVELOPMENTS

Client: SWADLOW DEVELOPMENTS
Project: Commercial & Residential Building

Project: Commercial & Residential Building
33 Truman Ave. Cromer Heights, NSW

Drawing: **GROUND FLOOR PLAN, SCHEDULE!**

GROUND FLOOR PLAN, SCHEDULE

Text: RESEARCHING DEVELOPMENTS

Client: SWADLOW DEVELOPMENTS
Project: Commercial & Residential Building

Project: Commercial & Residential Building
33 Truman Ave. Cromer Heights, NSW 2099

Drawing: GROUND FLOOR PLAN, SCHEDULES

architectural firm: GROUND FLOOR PLAN, SCHEDULES

L

© 2005 Blackwell Publishing Ltd *Journal of Internal Medicine* 257: 103–110

BLANCH, R. J. A. NEWBURY 161-4023
P.O. Box 1082 Perth, Western Australia 2033

P.O. Box 10002, Prince Philip Mall, MSN 10002
 101 000 Sandcastle 200 William St.
 Port Kaituma, MSN 10000

For samples see MSN 2008
or visit www.msn.com
Call 866-477-36

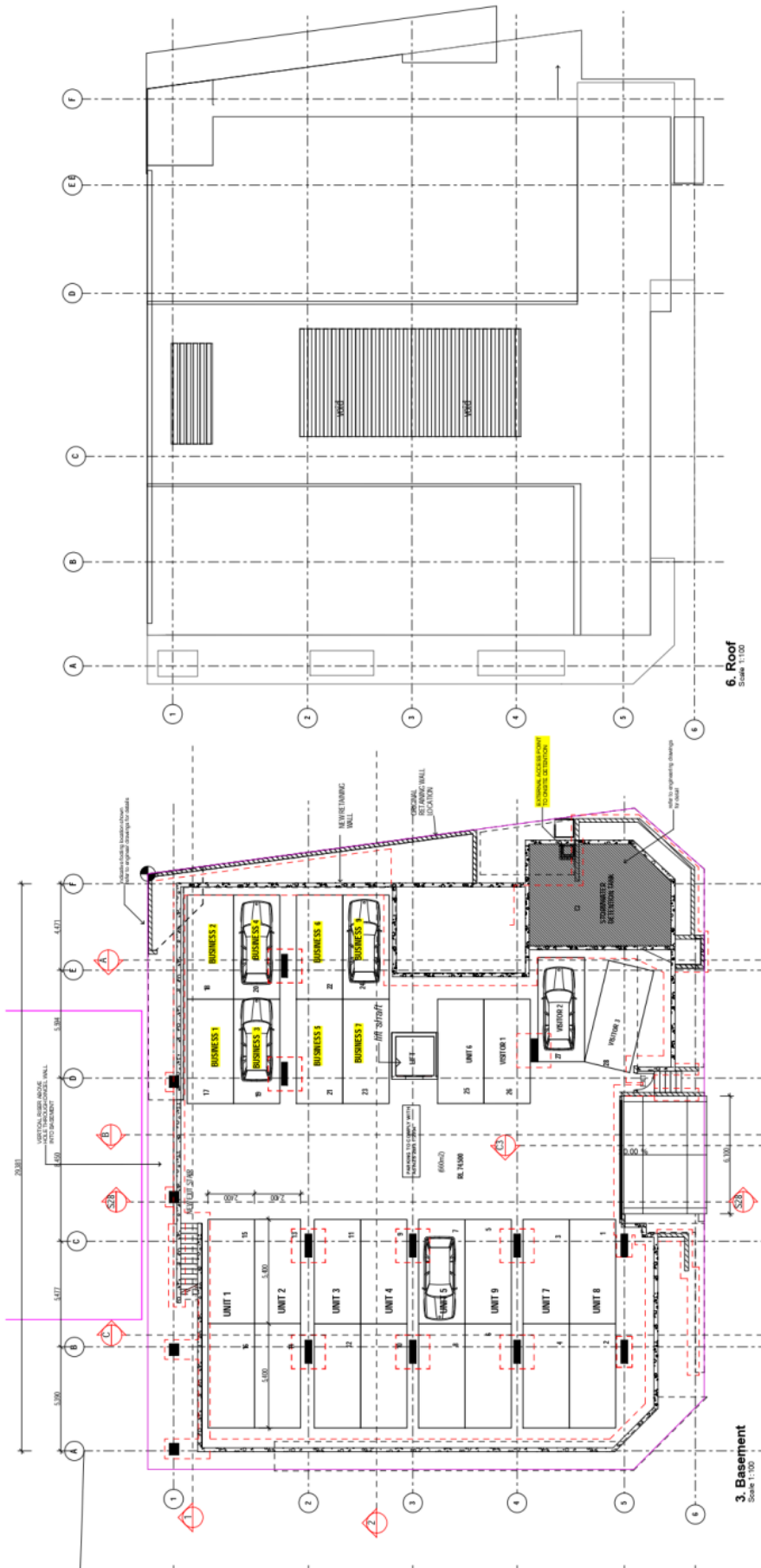
1940 1941 1942

Fig. No. 1819 Desig. No. A02/

WCAO Technician Full Name
1:100 @ A1

Scale 1:100 @ A1
Comp. Rat. 10:1 SELECT 1/8" REPRODUCIBLE



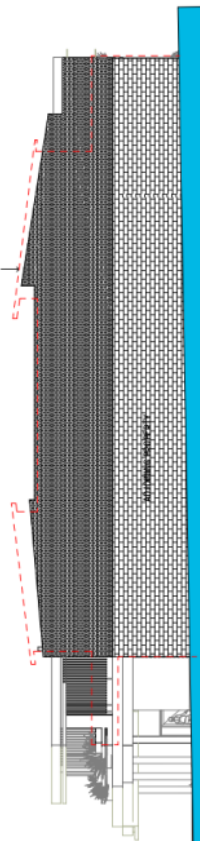


6. Roof
Scale 1:100

DA APPROVED 1983 SHS BUILDING PROFILE
ON CUT LINE



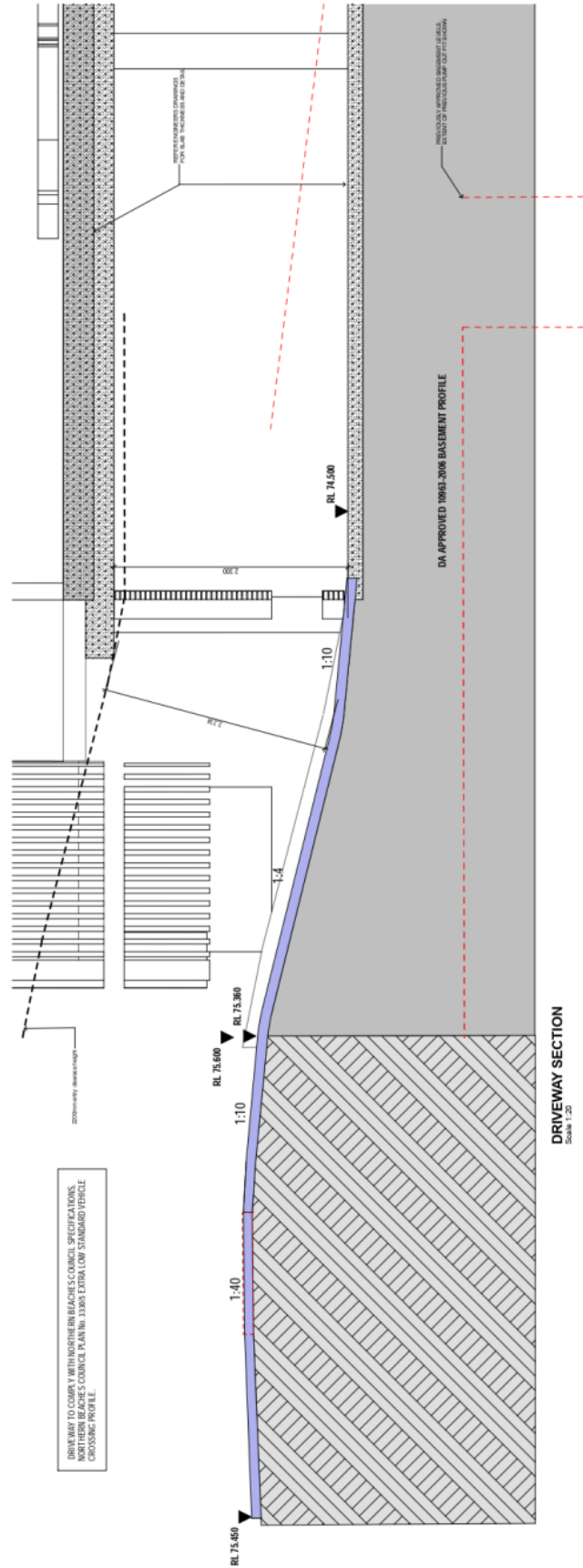
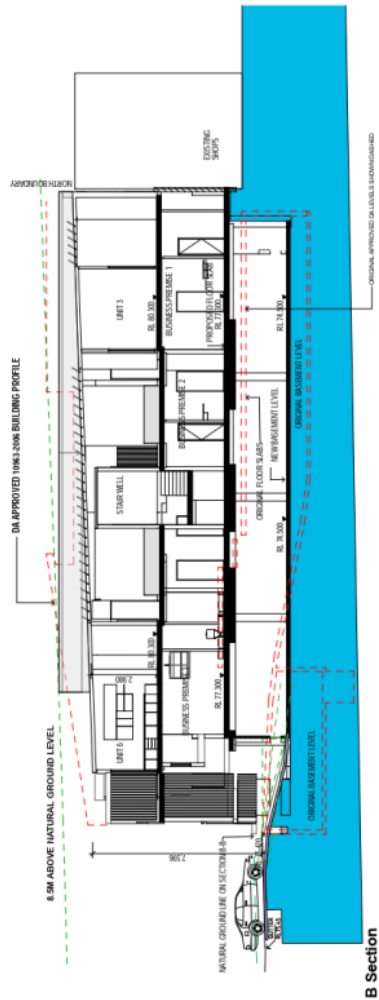
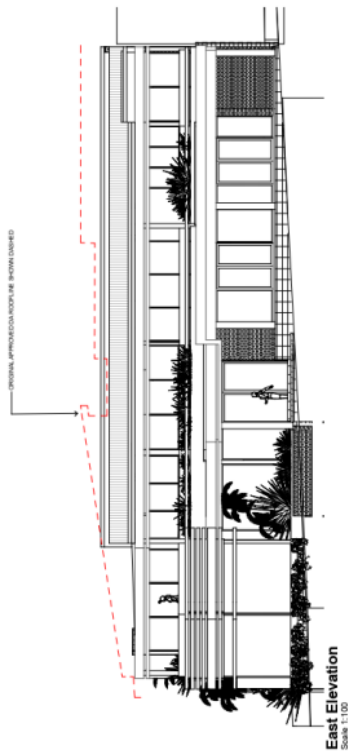
DA APPROVED 1983 SHS BUILDING PROFILE



| | | | | | | | |
|--|--|----------|--|----------|------------|---------|------------|
| DA Approved Hc 1983 of 2006 | | Client | SWANLING DEVELOPMENTS | Draw No. | 1819 | Rev No. | A04/ |
| Notes | | Project | Commercial & Residential Building | Drawn | 1:100 @ A1 | Check | 1:100 @ A1 |
| 1. All dimensions are in millimetres unless otherwise stated. | | Location | 23 Farnham Ave, Cronin Heights, NSW 2099 | Scale | 1:100 @ A1 | Rev | 1:100 @ A1 |
| 2. All dimensions are in millimetres unless otherwise stated. | | Drawn | WAYNE ellis architect | Scale | 1:100 @ A1 | Rev | 1:100 @ A1 |
| 3. All dimensions are in millimetres unless otherwise stated. | | Location | 23 Farnham Ave, Cronin Heights, NSW 2099 | Scale | 1:100 @ A1 | Rev | 1:100 @ A1 |
| 4. All dimensions are in millimetres unless otherwise stated. | | Drawn | WAYNE ellis architect | Scale | 1:100 @ A1 | Rev | 1:100 @ A1 |
| 5. All dimensions are in millimetres unless otherwise stated. | | Location | 23 Farnham Ave, Cronin Heights, NSW 2099 | Scale | 1:100 @ A1 | Rev | 1:100 @ A1 |
| 6. All dimensions are in millimetres unless otherwise stated. | | Drawn | WAYNE ellis architect | Scale | 1:100 @ A1 | Rev | 1:100 @ A1 |
| 7. All dimensions are in millimetres unless otherwise stated. | | Location | 23 Farnham Ave, Cronin Heights, NSW 2099 | Scale | 1:100 @ A1 | Rev | 1:100 @ A1 |
| 8. All dimensions are in millimetres unless otherwise stated. | | Drawn | WAYNE ellis architect | Scale | 1:100 @ A1 | Rev | 1:100 @ A1 |
| 9. All dimensions are in millimetres unless otherwise stated. | | Location | 23 Farnham Ave, Cronin Heights, NSW 2099 | Scale | 1:100 @ A1 | Rev | 1:100 @ A1 |
| 10. All dimensions are in millimetres unless otherwise stated. | | Drawn | WAYNE ellis architect | Scale | 1:100 @ A1 | Rev | 1:100 @ A1 |

19/09/2019

SECTION 96



| | | | | | | | |
|---|--|--|--|--|--|------------------|--|
| DA Approved Hc 1983 of 2006 | | SWANLING DEVELOPMENTS | | Wayne ellis architect | | A05/ | |
| Notes | | Client | | Project | | Drawn | |
| 1. All elevations and sections are to be drawn to the same scale as the plan. | | 23 Farnham Ave, Cronulla Heights, NSW 2230 | | 23 Farnham Ave, Cronulla Heights, NSW 2230 | | 1:100, 1:20 @ A1 | |
| 2. All elevations and sections are to be drawn to the same scale as the plan. | | ELEVATIONS AND SECTIONS | | ELEVATIONS AND SECTIONS | | 1:100, 1:20 @ A1 | |
| 3. All elevations and sections are to be drawn to the same scale as the plan. | | Wayne ellis architect | | Wayne ellis architect | | 1:100, 1:20 @ A1 | |
| 4. All elevations and sections are to be drawn to the same scale as the plan. | | Wayne ellis architect | | Wayne ellis architect | | 1:100, 1:20 @ A1 | |

19/09/2019

SECTION 96



CORNER TRUEMAN AND MAYBROOK
AVENUES



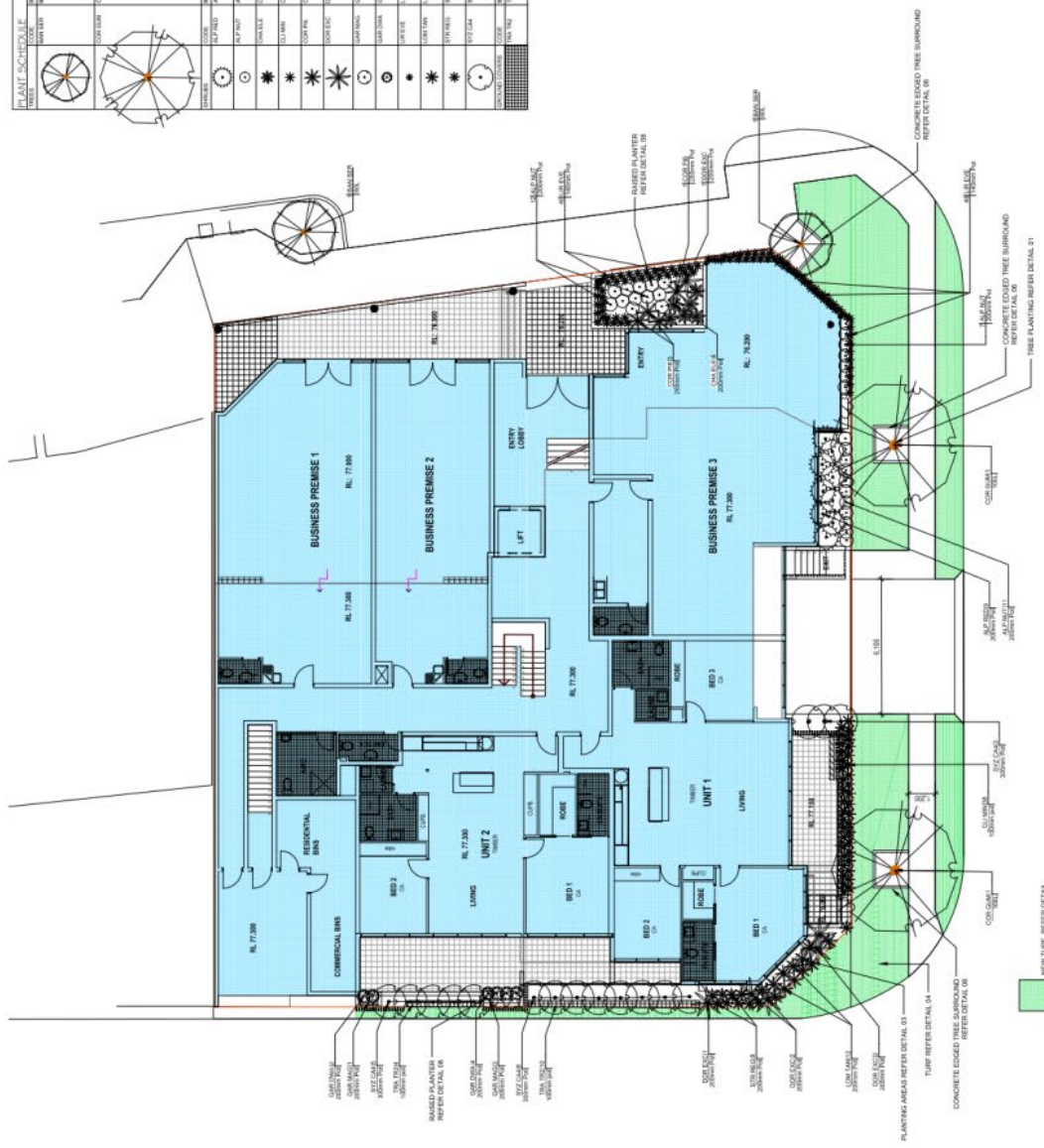
CORNER TRUEMAN AVENUE AND
BELMORE LANE
SECTION 96

19/09/2019

| | | | | | | | | | | | | | |
|------------------------------|--|---|--|--|--|---|--|--|--|--|--|--|--|
| DA Approved Hc 19863 of 2006 | | Client: SWANLING DEVELOPMENTS | | Project: Commercial & Residential Building | | 23 Trueman Ave, Cronulla Heights, NSW 2230 | | Drawing: PERSPECTIVE - INFORMATION | | Wayne ellis architect | | Arch. No. 1819 Reg. No. A06/ | |
| Notes: | | 1. This drawing is a perspective rendering of the proposed development and is not to be used for construction purposes. | | 2. The drawing is for information only and does not constitute an offer or a contract. | | 3. The drawing is the property of Wayne ellis architect and shall not be reproduced without written permission. | | 4. The drawing is to be used in conjunction with the DA Approved Hc 19863 of 2006. | | 5. The drawing is to be used in conjunction with the DA Approved Hc 19863 of 2006. | | 6. The drawing is to be used in conjunction with the DA Approved Hc 19863 of 2006. | |
| DA Approved Hc 19863 of 2006 | | Client: SWANLING DEVELOPMENTS | | Project: Commercial & Residential Building | | 23 Trueman Ave, Cronulla Heights, NSW 2230 | | Drawing: PERSPECTIVE - INFORMATION | | Wayne ellis architect | | Arch. No. 1819 Reg. No. A06/ | |
| Notes: | | 1. This drawing is a perspective rendering of the proposed development and is not to be used for construction purposes. | | 2. The drawing is for information only and does not constitute an offer or a contract. | | 3. The drawing is the property of Wayne ellis architect and shall not be reproduced without written permission. | | 4. The drawing is to be used in conjunction with the DA Approved Hc 19863 of 2006. | | 5. The drawing is to be used in conjunction with the DA Approved Hc 19863 of 2006. | | 6. The drawing is to be used in conjunction with the DA Approved Hc 19863 of 2006. | |



| PLANT SCHEDULE | SYMBOL | SYMBOL NAME | COMMON NAME | HEIGHT | SPACING | NOTES |
|----------------|--------|-------------|-------------|--------|---------|-------|
| 1 | | 1 | 1 | 1 | 1 | 1 |
| 2 | | 2 | 2 | 2 | 2 | 2 |
| 3 | | 3 | 3 | 3 | 3 | 3 |
| 4 | | 4 | 4 | 4 | 4 | 4 |
| 5 | | 5 | 5 | 5 | 5 | 5 |
| 6 | | 6 | 6 | 6 | 6 | 6 |
| 7 | | 7 | 7 | 7 | 7 | 7 |
| 8 | | 8 | 8 | 8 | 8 | 8 |
| 9 | | 9 | 9 | 9 | 9 | 9 |
| 10 | | 10 | 10 | 10 | 10 | 10 |
| 11 | | 11 | 11 | 11 | 11 | 11 |
| 12 | | 12 | 12 | 12 | 12 | 12 |
| 13 | | 13 | 13 | 13 | 13 | 13 |
| 14 | | 14 | 14 | 14 | 14 | 14 |
| 15 | | 15 | 15 | 15 | 15 | 15 |
| 16 | | 16 | 16 | 16 | 16 | 16 |
| 17 | | 17 | 17 | 17 | 17 | 17 |
| 18 | | 18 | 18 | 18 | 18 | 18 |
| 19 | | 19 | 19 | 19 | 19 | 19 |
| 20 | | 20 | 20 | 20 | 20 | 20 |
| 21 | | 21 | 21 | 21 | 21 | 21 |
| 22 | | 22 | 22 | 22 | 22 | 22 |
| 23 | | 23 | 23 | 23 | 23 | 23 |
| 24 | | 24 | 24 | 24 | 24 | 24 |
| 25 | | 25 | 25 | 25 | 25 | 25 |
| 26 | | 26 | 26 | 26 | 26 | 26 |
| 27 | | 27 | 27 | 27 | 27 | 27 |
| 28 | | 28 | 28 | 28 | 28 | 28 |
| 29 | | 29 | 29 | 29 | 29 | 29 |
| 30 | | 30 | 30 | 30 | 30 | 30 |
| 31 | | 31 | 31 | 31 | 31 | 31 |
| 32 | | 32 | 32 | 32 | 32 | 32 |
| 33 | | 33 | 33 | 33 | 33 | 33 |
| 34 | | 34 | 34 | 34 | 34 | 34 |
| 35 | | 35 | 35 | 35 | 35 | 35 |
| 36 | | 36 | 36 | 36 | 36 | 36 |
| 37 | | 37 | 37 | 37 | 37 | 37 |
| 38 | | 38 | 38 | 38 | 38 | 38 |
| 39 | | 39 | 39 | 39 | 39 | 39 |
| 40 | | 40 | 40 | 40 | 40 | 40 |
| 41 | | 41 | 41 | 41 | 41 | 41 |
| 42 | | 42 | 42 | 42 | 42 | 42 |
| 43 | | 43 | 43 | 43 | 43 | 43 |
| 44 | | 44 | 44 | 44 | 44 | 44 |
| 45 | | 45 | 45 | 45 | 45 | 45 |
| 46 | | 46 | 46 | 46 | 46 | 46 |
| 47 | | 47 | 47 | 47 | 47 | 47 |
| 48 | | 48 | 48 | 48 | 48 | 48 |
| 49 | | 49 | 49 | 49 | 49 | 49 |
| 50 | | 50 | 50 | 50 | 50 | 50 |
| 51 | | 51 | 51 | 51 | 51 | 51 |
| 52 | | 52 | 52 | 52 | 52 | 52 |
| 53 | | 53 | 53 | 53 | 53 | 53 |
| 54 | | 54 | 54 | 54 | 54 | 54 |
| 55 | | 55 | 55 | 55 | 55 | 55 |
| 56 | | 56 | 56 | 56 | 56 | 56 |
| 57 | | 57 | 57 | 57 | 57 | 57 |
| 58 | | 58 | 58 | 58 | 58 | 58 |
| 59 | | 59 | 59 | 59 | 59 | 59 |
| 60 | | 60 | 60 | 60 | 60 | 60 |
| 61 | | 61 | 61 | 61 | 61 | 61 |
| 62 | | 62 | 62 | 62 | 62 | 62 |
| 63 | | 63 | 63 | 63 | 63 | 63 |
| 64 | | 64 | 64 | 64 | 64 | 64 |
| 65 | | 65 | 65 | 65 | 65 | 65 |
| 66 | | 66 | 66 | 66 | 66 | 66 |
| 67 | | 67 | 67 | 67 | 67 | 67 |
| 68 | | 68 | 68 | 68 | 68 | 68 |
| 69 | | 69 | 69 | 69 | 69 | 69 |
| 70 | | 70 | 70 | 70 | 70 | 70 |
| 71 | | 71 | 71 | 71 | 71 | 71 |
| 72 | | 72 | 72 | 72 | 72 | 72 |
| 73 | | 73 | 73 | 73 | 73 | 73 |
| 74 | | 74 | 74 | 74 | 74 | 74 |
| 75 | | 75 | 75 | 75 | 75 | 75 |
| 76 | | 76 | 76 | 76 | 76 | 76 |
| 77 | | 77 | 77 | 77 | 77 | 77 |
| 78 | | 78 | 78 | 78 | 78 | 78 |
| 79 | | 79 | 79 | 79 | 79 | 79 |
| 80 | | 80 | 80 | 80 | 80 | 80 |
| 81 | | 81 | 81 | 81 | 81 | 81 |
| 82 | | 82 | 82 | 82 | 82 | 82 |
| 83 | | 83 | 83 | 83 | 83 | 83 |
| 84 | | 84 | 84 | 84 | 84 | 84 |
| 85 | | 85 | 85 | 85 | 85 | 85 |
| 86 | | 86 | 86 | 86 | 86 | 86 |
| 87 | | 87 | 87 | 87 | 87 | 87 |
| 88 | | 88 | 88 | 88 | 88 | 88 |
| 89 | | 89 | 89 | 89 | 89 | 89 |
| 90 | | 90 | 90 | 90 | 90 | 90 |
| 91 | | 91 | 91 | 91 | 91 | 91 |
| 92 | | 92 | 92 | 92 | 92 | 92 |
| 93 | | 93 | 93 | 93 | 93 | 93 |
| 94 | | 94 | 94 | 94 | 94 | 94 |
| 95 | | 95 | 95 | 95 | 95 | 95 |
| 96 | | 96 | 96 | 96 | 96 | 96 |
| 97 | | 97 | 97 | 97 | 97 | 97 |
| 98 | | 98 | 98 | 98 | 98 | 98 |
| 99 | | 99 | 99 | 99 | 99 | 99 |
| 100 | | 100 | 100 | 100 | 100 | 100 |



DA Approved No. 1863 of 2016

Wayne ellis architect

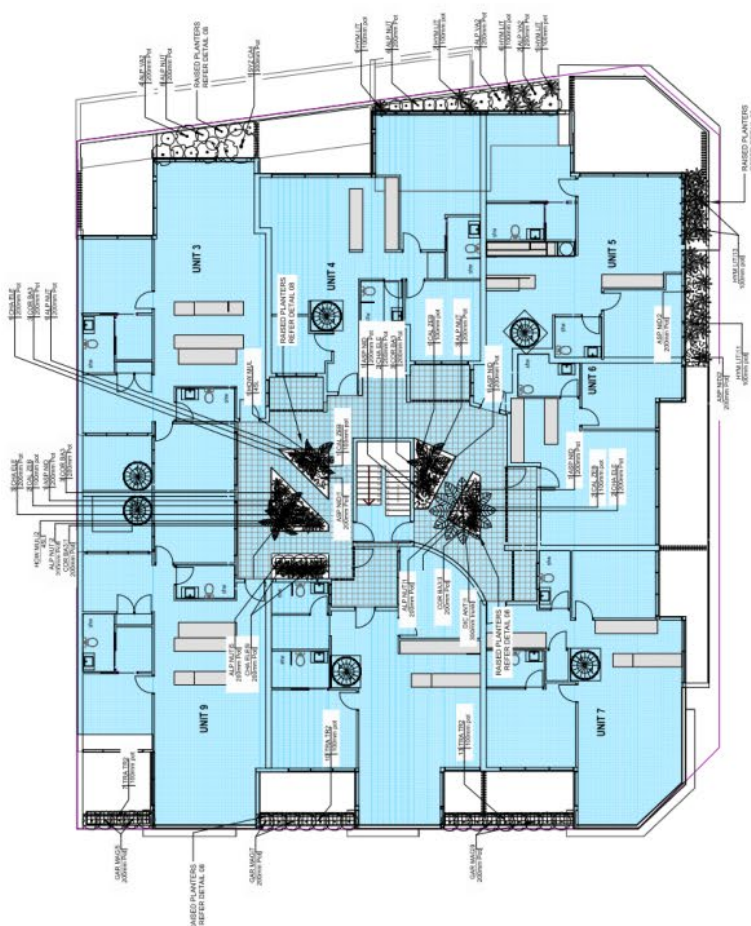
Client: SWANLEY DEVELOPMENTS
Project: Commercial & Residential Building
Address: 23 Turren Ave, Cronulla Heights, NSW 2209
Building: LANDSCAPE PLAN - GROUND

File No: 1819
Rev No: A07/
Drawn: P.O.D. Technician Full Time
Scale: 1:100 @ A1
Printed: 19/09/2019

Author: J.A.A. with Rev. No. 1819
Drawn: P.O.D. Technician Full Time
Scale: 1:100 @ A1
Printed: 19/09/2019

19/09/2019

SECTION 96



PLANT SCHEDULE - FIRST FLOOR

[illegible]

19/09/2019

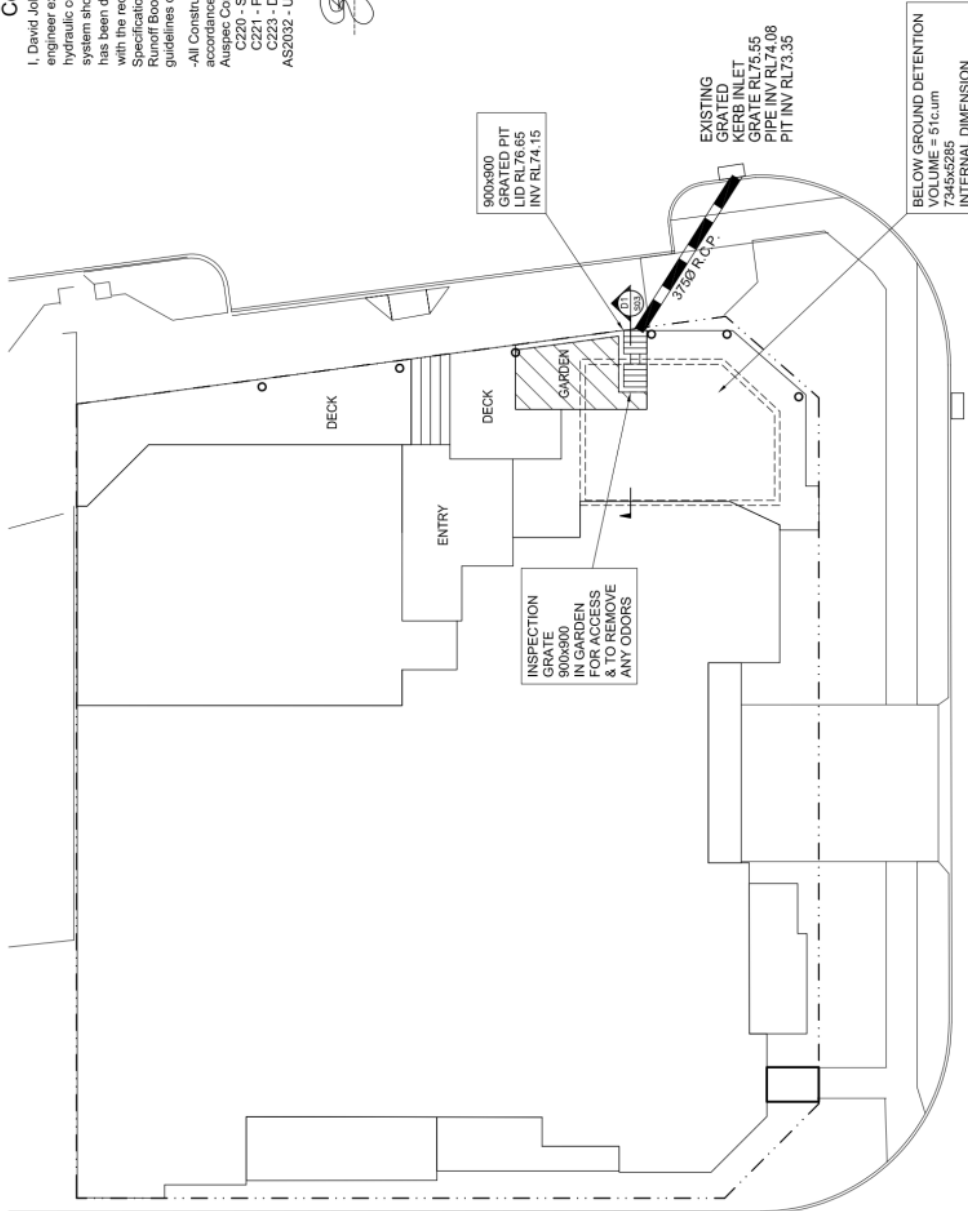
SECTION 96

Stormwater Certification

I, David Johnson being a practicing Civil engineer experienced in hydrology and hydraulic certify that the stormwater disposal system shown on 2019-10 Sheet C02, has been designed in accordance with the requirements of Auspec Design Specification D5, D7 & Australian Rainfall & Runoff Book 8, Sec 1, and complying with guidelines documented by Northern Beaches Council.

-All Construction is to be carried out in accordance with the requirements of Auspec Construction Specifications
C220 - Stormwater Drainage
C221 - Pipe Drainage
C223 - Drainage Structures
AS2032 - UPVC Pipe Bedding & Cover

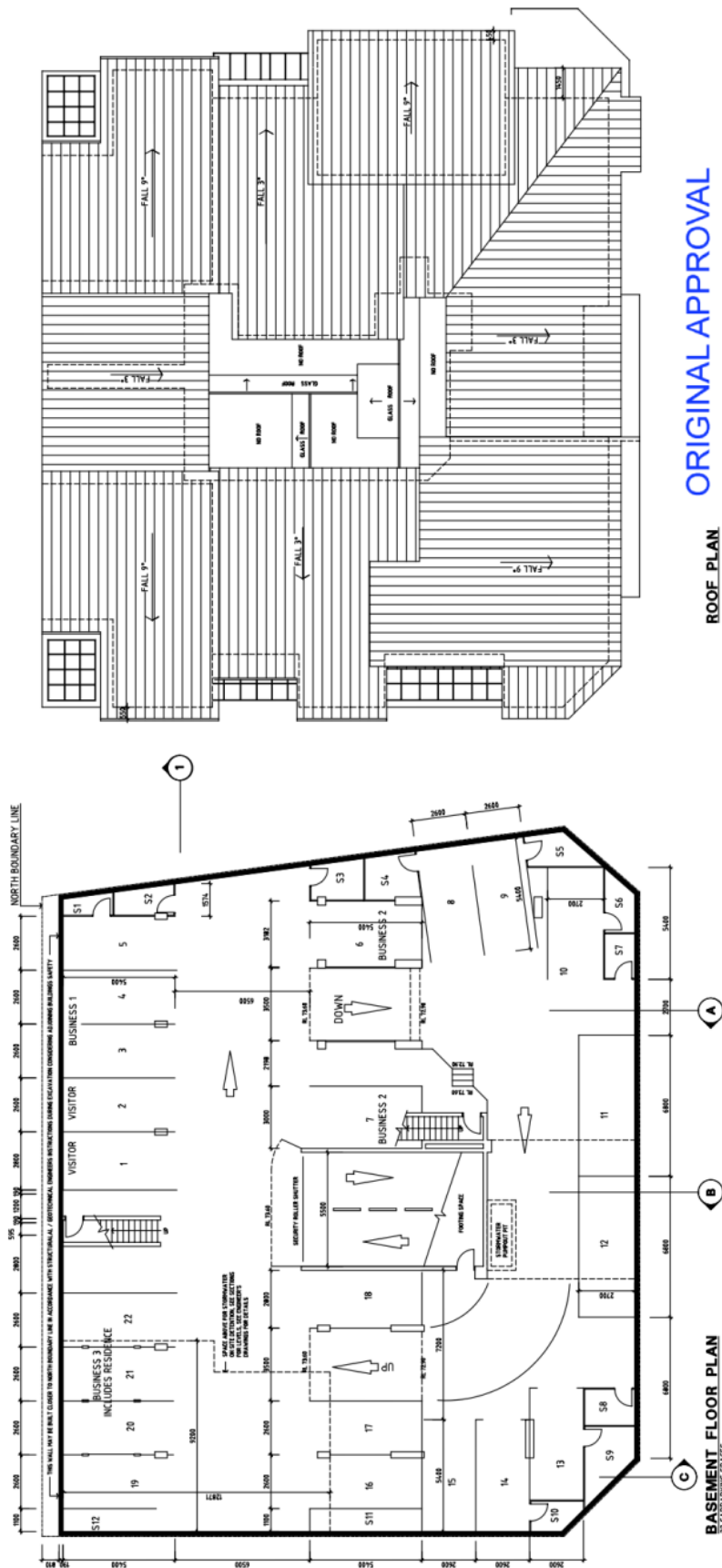
David Johnson
David Johnson
NPER CIVIL



STORMWATER LAYOUT

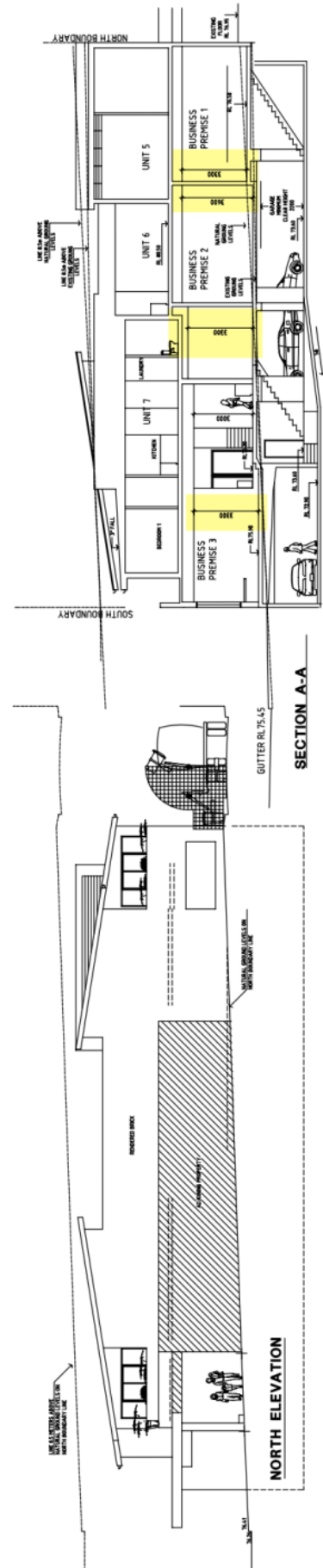
Scale 1:125 @ A2

| client | | CROMER | | title | |
|---------|--|--------|----------|---|---------|
| project | Proposed Multi-Level Residences On Malabar & Tyne Streets, Crows Nest | sheet | C02 | drawing no. | 2019-10 |
| drawn | D.R.J. | date | FEB 2019 | scale | |
| | | | | STORMWATER LAYOUT  | |
| | | | | DAVID R. JOHNSON Consulting Engineer Pty Ltd Telephone 02 955 511 198 Fax 02 955 515 757 Mobile 0488600008 Email drj@drjohnson.com.au 5/29 Acacia Avenue P.O. Box 315 NSW 2044 | |



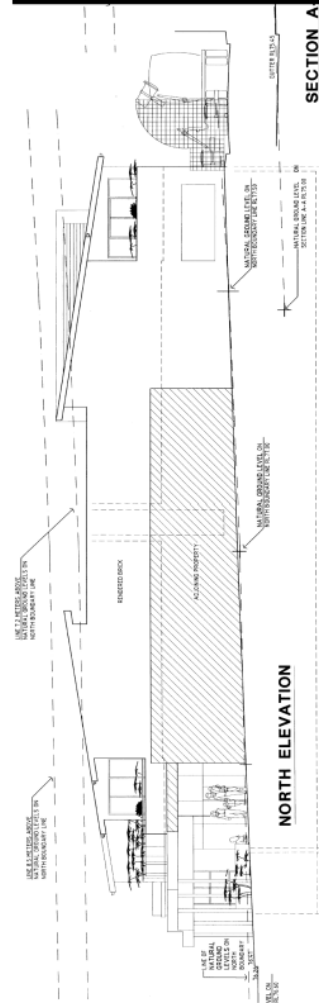
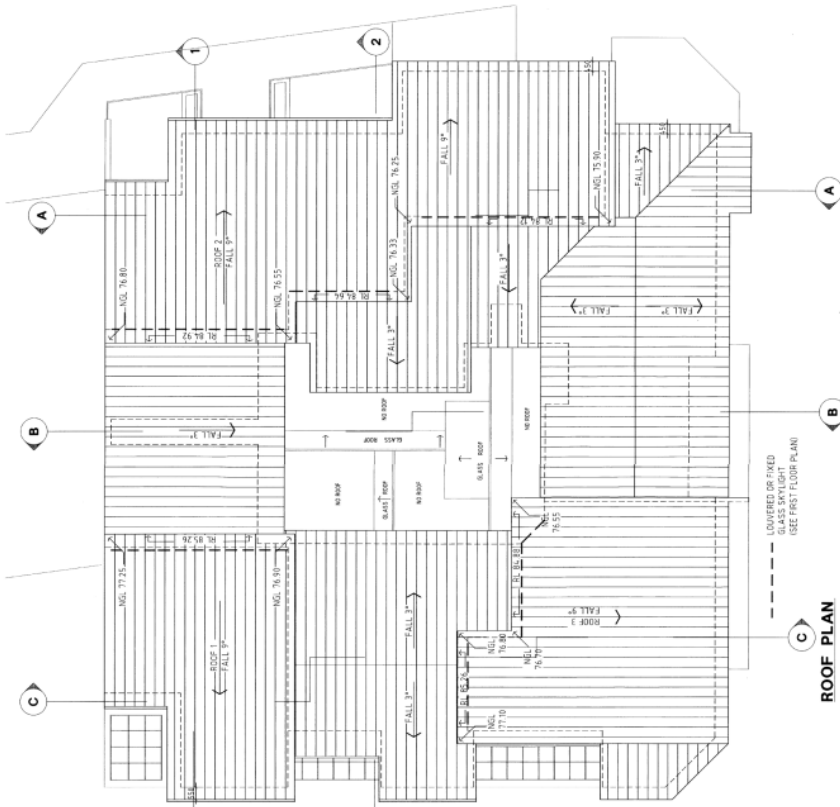
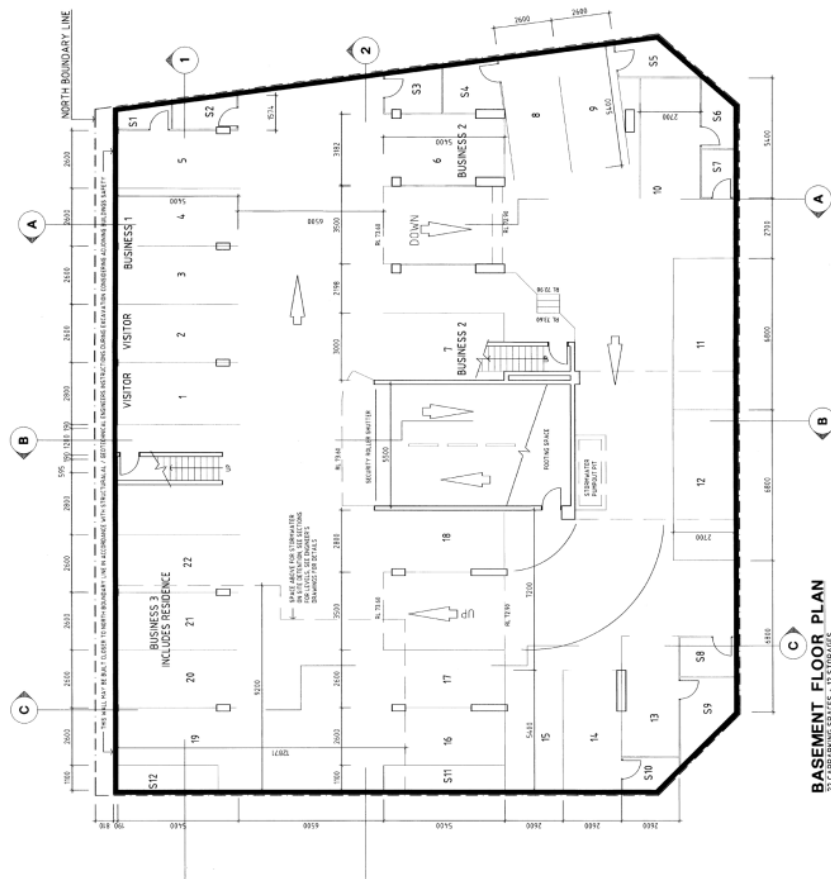
ORIGINAL APPROVAL

NOT FOR CONSTRUCTION

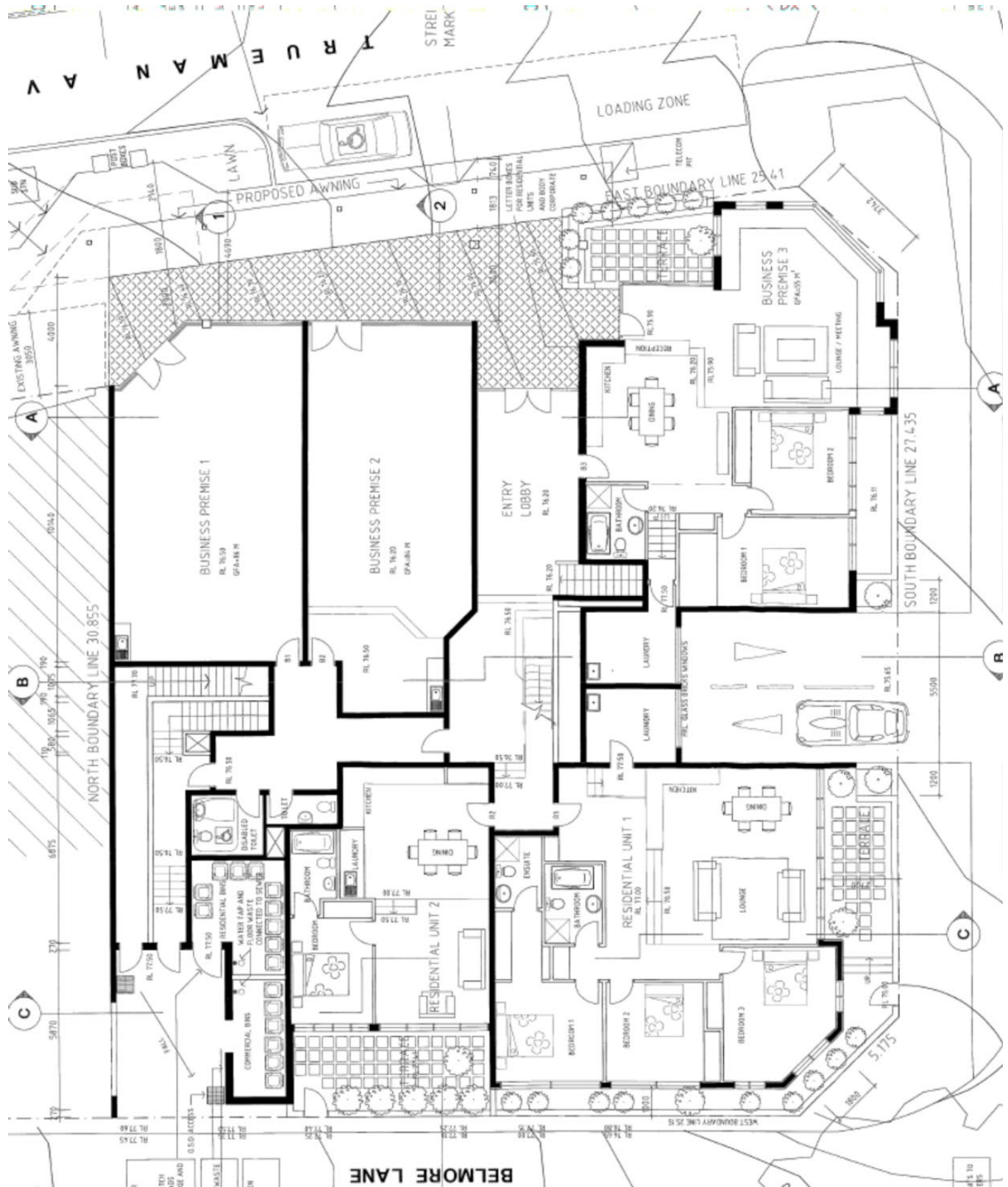


| | | | | | | | | |
|--|--|---|--|--|--|--|--|---|
| <p>DATE: 19/08/17 PROJECT: CM-DA04</p> | <p>CLIENT: CROMER MOTORS 32 NEWBORN AVENUE, CROMER HEIGHTS</p> | <p>DESIGNER: SAS MALIK ARCHITECTS PTY LTD. 1/111 NEWBORN AVENUE, CROMER HEIGHTS</p> | <p>ARCHITECT: SAS MALIK ARCHITECTS PTY LTD. 1/111 NEWBORN AVENUE, CROMER HEIGHTS</p> | <p>ENGINEER: THE ENGINEER AND THE ARCHITECT 1/111 NEWBORN AVENUE, CROMER HEIGHTS</p> | <p>CONTRACTOR: THE CONTRACTOR AND THE ARCHITECT 1/111 NEWBORN AVENUE, CROMER HEIGHTS</p> | <p>DATE: 19/08/17 PROJECT: CM-DA04</p> | <p>CLIENT: CROMER MOTORS 32 NEWBORN AVENUE, CROMER HEIGHTS</p> | <p>DESIGNER: SAS MALIK ARCHITECTS PTY LTD. 1/111 NEWBORN AVENUE, CROMER HEIGHTS</p> |
|--|--|---|--|--|--|--|--|---|

APPROVED PLANS



| | | | | | |
|---|---|---|--|--|---|
| <p>DATE: 18 APR 2020 DRAWN BY: CM-DAO4 CHECKED BY: CM-DAO4 APPROVED BY: CM-DAO4</p> | <p>PROJECT: 18 APR 07 SHEET: 1/100 SCALE: 1/100</p> | <p>DEVELOPMENT APPLICATION NOT FOR CONSTRUCTION</p> | <p>SECTION A-A NORTH ELEVATION</p> | <p>SECOND FLOOR PLAN ROOF PLAN</p> | <p>PROJECT: 18 APR 07 SHEET: 1/100 SCALE: 1/100</p> |
|---|---|---|--|--|---|





| | |
|--------------------------|--|
| ITEM 3.4 | DA2019/1084 - 31 THE CORSO MANLY - ALTERATIONS AND ADDITIONS TO THE EXISTING BUILDING AND SIGNAGE |
| REPORTING MANAGER | ACTING EXECUTIVE MANAGER ENVIRONMENTAL COMPLIANCE |
| TRIM FILE REF | 2020/052186 |
| ATTACHMENTS | 1 Assessment Report 2 Site and Elevation Plan |

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 grant Development Consent to DA2019/1084 for Alterations and Additions to the existing building and signage on land at Lot 910 DP 875567, 31 The Corso, MANLY, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

| | |
|---|--|
| Application Number: | DA2019/1084 |
| Responsible Officer: | Claire Ryan |
| Land to be developed (Address): | Lot 910 DP 875567, 31 The Corso MANLY NSW 2095 |
| Proposed Development: | Alterations and Additions to the existing building and signage. |
| Zoning: | Manly LEP2013 - Land zoned B2 Local Centre |
| Development Permissible: | Yes |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Delegation Level: | DDP |
| Land and Environment Court Action: | No |
| Owner: | S & C Roth Family Foundation Pty Ltd London Fashions Pty Ltd The Yarranabbe Foundation Pty Ltd |
| Applicant: | Woolworths |
| Application Lodged: | 01/10/2019 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Commercial/Retail/Office |
| Notified: | 03/12/2019 to 17/12/2019 |
| Advertised: | Not Advertised |
| Submissions Received: | 9 |
| Clause 4.6 Variation: | Nil |
| Recommendation: | Approval |
| Estimated Cost of Works: | \$ 452,308.00 |

Northern Beaches Council is in receipt of Development Application DA2019/1084 for alterations and Additions to the existing building and signage at 31 The Corso, Manly.

The proposed development is compliant with the development standards under the *Manly Local Environmental Plan 2013* (MLEP 2013) and is acceptable on merit in relation to the built form controls under the *Manly Development Control Plan 2013* (MDCP 2013). The proposed development received nine submissions objecting to the development in relation to delivery and loading management, sustainability and waste generation, laneway activation and amenity, conflict with nearby businesses, noise, and character. The application is referred to the Development Determination Panel under the discretion of the Executive Manager, Development Assessments, due to the number of submissions received.

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 proposed development seeks consent for alterations to the existing premises as follows:

- Facade changes;
- Signage on both The Corso and Market Place frontages;
- Use of Whistler Street loading zone and Market Place for deliveries between 5:00am-8:00am daily; and
- Hours of operation as follows:
 - Monday to Thursday:
 - Access: 5:00am to midnight
 - Trading: 6:00am to 11:00pm
 - Friday to Saturday:
 - Access: 5:00am to 1am following day
 - Trading: 6:00am to midnight
 - Sunday:
 - Access: 6:00am to midnight
 - Trading: 7:00am to 11:00pm
 - New Year's Eve and New Year's Day:
 - Access: 5:00am to 4:00am following day
 - Trading: 6:00am to 3:00am following day

The application originally also proposed the use of the site for a supermarket and cafe, and internal fit-out works, though these elements were removed from the application after being approved via a Complying Development Certificate.

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 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Local Environmental Plan 2013 - 6.12 Essential services
 Manly Local Environmental Plan 2013 - 6.13 Design excellence
 Manly Local Environmental Plan 2013 - 6.16 Gross floor area in Zone B2
 Manly Development Control Plan - 4.2.5.6 Late Night Venues
 Manly Development Control Plan - 4.4.3 Signage

SITE DESCRIPTION

| | |
|-----------------------------------|--|
| Property Description: | Lot 910 DP 875567 , 31 The Corso MANLY NSW 2095 |
| Detailed Site Description: | <p>The subject site consists of part of one allotment located on the north-western side of The Corso, Manly.</p> <p>The site is regular in shape with a frontage of 23.54m along The Corso and Market Place frontages and a depth of 29.26m. The site has a total area of approximately 688.78m².</p> <p>The site is located within the B2 Local zone and accommodates a two-storey (plus basement) commercial development. The subject site forms part of the heritage-listed Item 108 Group of Commercial Buildings and is located within the Town Centre Conservation Area.</p> <p>The site is level and does not contain any vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by two-, three- and four-storey commercial and mixed use developments.</p> |

Map:



SITE HISTORY

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

- DA0045/2017 for Alterations and additions to an existing commercial premises – Commonwealth Bank was approved on 12 May 2017 under staff delegation.
- DA2019/0211 for Alterations and Additions to a Hotel, including new signage was approved on 11 June 2019 under staff delegation.
- DA2019/0407 for Alterations and Additions to the existing building was approved on 06 June 2019 under staff delegation.
- CDC2019/0748 for Change of use from Business premises to a Woolworths food and drink premises (19000566/1) was approved on 27 September 2019 by Modern Building Certifiers.
- Mod2019/0588 Modification of CDC2019/0748 for Change of use from Business premises to a Woolworth Shop including food and drink premises (19000566/2) was approved on 20 November 2019 by Modern Building Certifiers.

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 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 this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p> |
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental</p> |

| Section 4.15 Matters for Consideration' | Comments |
|--|--|
| | social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use. |
| Section 4.15 (1) (c) – the suitability of the site for the development | The site is considered suitable for the proposed development. |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs | See discussion on “Notification & Submissions Received” in this report. |
| Section 4.15 (1) (e) – the public interest | No matters have arisen in this assessment that would justify the refusal of the application in the public interest. |

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 9 submission/s from:

| Name: | Address: |
|--|---|
| Joshua Michael Porteous T/A Bare Naked Bowls | Rear, 41 The Corso MANLY NSW 2095 |
| Manly Business Chamber | Level 2 6 The Corso MANLY NSW 2095 |
| Infinity Bakery | 15 A The Corso MANLY NSW 2095 |
| C2 Design | Level 2 37-39 The Corso MANLY NSW 2095 |
| Ms Leith Schmidt | 8 Patrick Street BEACON HILL NSW 2100 |
| Ms Gioia Helen Viney | 4 / 46 Griffiths Street FAIRLIGHT NSW 2094 |
| Mr Damien Lee Dellala | 174 Pittwater Road MANLY NSW 2095 |
| Withheld Withheld | MANLY NSW 2095 |
| Peanutbutterlove Jason Higson | 5 / 39 Lauderdale Avenue FAIRLIGHT NSW 2094 |

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

Loading Management

Concern was raised that the proposed loading management arrangements will result in unreasonable traffic congestion and noise, and that there is insufficient manoeuvring space in Market Place to support trucks without damaging infrastructure or assets. Concern was also raised that the proposed loading management arrangements will conflict with the peak business hours of the nearby bakery.

Comment:

The proposed loading management arrangements have been reviewed by Council's Traffic Engineer, who is satisfied that the arrangements will not result in unreasonable congestion, manoeuvring, noise or damage, subject to recommended conditions of consent. The Plan of Management details that businesses to the south-west of the subject site (including the bakery) will be momentarily impacted by delivery/waste trucks as they arrive. Deliveries and loading will be limited to 15 minutes if using the nearby loading zone, or will occur at the Market Place frontage of the site for longer delivery/loading periods, thereby only impacting on the site itself.

Waste and Sustainability

Concern was raised that the use of the site for a cafe and supermarket will result in excessive single-use waste and excessive waste generation.

Comment:

The use of the site for a cafe and supermarket was approved under the recent Complying Development Certificate. As such, this is not a matter for consideration under this assessment. However, the site is serviced by suitable waste management procedures, in accordance with the Northern Beaches Waste Management Guidelines.

Impacts on Market Place

Concern was raised that the proposal does not adequately activate the Market Place frontage, and in relation to the visual appearance of grills on the Market Place frontage.

Comment:

The configuration of the supermarket (being orientated to The Corso) and the grills on the Market Place frontage were approved under the recent Complying Development Certificate. As such, these are not matters for consideration under this assessment.

Noise

Concern was raised in relation to noise generated by the mechanical compressor in the plant room fronting Market Place.

Comment:

The plant room was approved under the recent Complying Development Certificate, and is, therefore, not a matter for consideration under this assessment. Notwithstanding this, this matter has been referred to Council's Environmental Health team for investigation.

Signage

Concern was raised that the proposed signage is inappropriate and unsympathetic to the locality.

Comment:

The proposed signage has been assessed as acceptable in relation to the relevant controls under the *State Environmental Planning Policy No. 64 - Advertising and Signage* and Clause 4.4.3 of the MDCP 2013. Detailed assessments of these matters are contained within the respective sections of this report. Further, the proposed signage has been reviewed by Council's Heritage Advisor, who is satisfied that the proposed signage is acceptable in relation to the heritage context of the site and surrounds.

REFERRALS

| Internal Referral Body | Comments |
|--------------------------------|--|
| NECC (Development Engineering) | Development Engineering has no objection to the change use of the building and internal fit out. |

| Internal Referral Body | Comments | | | | | |
|---|---|-------------------|-----------------------------------|---|------------------------------------|---|
| | <u>Assessing Officer's Comment:</u> The application has been amended and no longer includes change of use or fitout. These matters have been approved via the recent Complying Development Certificate. | | | | | |
| Property Management and Commercial | <p>The proposal is for a fitout, provision of signage, alteration of the facade and use of the premises as a Woolworths Metro store at 31 The Corso, Manly.</p> <p>Property has generally no objection to the proposal as submitted, however concern is raised that the protruding bifold windows on the elevation to The Corso could be hazardous to pedestrians and it is recommended that they be modified to open fully within the property boundaries, similar to other properties along The Corso.</p> <p>It should also be noted that while no outdoor dining is proposed in the application, current Northern Beaches Council policy is not to allow outdoor dining on The Corso, and a condition to this effect has been recommended.</p> <p><u>Assessing Officer's Comment:</u> The application has been amended and no longer includes change of use or fitout. These matters have been approved via the recent Complying Development Certificate.</p> | | | | | |
| Road Reserve | No impact on existing road assets. | | | | | |
| Strategic and Place Planning (Heritage Officer) | <table><tr><th>HERITAGE COMMENTS</th></tr><tr><th>Discussion of reason for referral</th></tr><tr><td><p>The application has been referred to Heritage as the site is a heritage item which is a part of <i>Group Commercial Buildings</i>; is located in the <i>Town Centre Heritage Conservation Area</i>; in the proximity of a heritage items <i>ST. Matthew's Church and Church Hall</i>, and in the proximity of <i>Street Trees</i>, all listed in Schedule 5 of the Manly LEP.</p><p>Item I106 - Group Commercial Buildings - All numbers, The Corso</p><p>Town Centre Heritage Conservation Area</p><p>Item I104 - Street Trees - The Corso (from Whistler Street to Sydney Road)</p><p>Item I113 - St. Matthew's Church and church hall - 44 The Corso (corner The Corso and Darley Road)</p></td></tr><tr><th>Details of heritage items affected</th></tr><tr><td><p>Details of the heritage items, as contained in the Manly Heritage inventory are:</p></td></tr></table> | HERITAGE COMMENTS | Discussion of reason for referral | <p>The application has been referred to Heritage as the site is a heritage item which is a part of <i>Group Commercial Buildings</i>; is located in the <i>Town Centre Heritage Conservation Area</i>; in the proximity of a heritage items <i>ST. Matthew's Church and Church Hall</i>, and in the proximity of <i>Street Trees</i>, all listed in Schedule 5 of the Manly LEP.</p> <p>Item I106 - Group Commercial Buildings - All numbers, The Corso</p> <p>Town Centre Heritage Conservation Area</p> <p>Item I104 - Street Trees - The Corso (from Whistler Street to Sydney Road)</p> <p>Item I113 - St. Matthew's Church and church hall - 44 The Corso (corner The Corso and Darley Road)</p> | Details of heritage items affected | <p>Details of the heritage items, as contained in the Manly Heritage inventory are:</p> |
| HERITAGE COMMENTS | | | | | | |
| Discussion of reason for referral | | | | | | |
| <p>The application has been referred to Heritage as the site is a heritage item which is a part of <i>Group Commercial Buildings</i>; is located in the <i>Town Centre Heritage Conservation Area</i>; in the proximity of a heritage items <i>ST. Matthew's Church and Church Hall</i>, and in the proximity of <i>Street Trees</i>, all listed in Schedule 5 of the Manly LEP.</p> <p>Item I106 - Group Commercial Buildings - All numbers, The Corso</p> <p>Town Centre Heritage Conservation Area</p> <p>Item I104 - Street Trees - The Corso (from Whistler Street to Sydney Road)</p> <p>Item I113 - St. Matthew's Church and church hall - 44 The Corso (corner The Corso and Darley Road)</p> | | | | | | |
| Details of heritage items affected | | | | | | |
| <p>Details of the heritage items, as contained in the Manly Heritage inventory are:</p> | | | | | | |

| Internal Referral Body | Comments |
|------------------------|--|
| | <p><i>"Item 1106 - Group Commercial Buildings"</i></p> <p><u>Statement of significance:</u> The streetscape and its special qualities are of major significance to the state. The Corso has important historical links to the development of tourism and recreation which is still present and likely to continue. It's role as the pedestrian link between harbour and ocean, city and sea - for the tourist, is fundamental to Manly's status as a resort.</p> <p><u>Physical description:</u> The Corso is the NE-SW link between Manly Beach and Manly Cove. It acts as a low scale horizontal corridor which steps down from the harbour to the ocean. The architecture is generally of the early twentieth century with a number of late 19th century buildings remaining as evidence of the former streetscape. The atmosphere of The Corso is of a 19th century place. Its special qualities include the contrasts of horizontal (low scale architecture) and vertical (planting) dimensions, and urban and natural elements. Of particular importance is the spatial continuity of the streetscape - including horizontal and vertical planes and negative space - from pedestrian level.</p> <p>It has a cohesive character resulting from generally low scale of development on its principle streets, Construction to the property boundaries, slightly higher and distinctive corner buildings and a good level of pedestrian protection and amenity generated by footpath awnings and through-block arcades has produced strongly defined and comfortable urban spaces. These spaces range from the tight enclosure of the arcades through to the openness of the Ocean Beach promenade and the esplanade.</p> <p>A formal street, 90' wide with a central avenue planting of mature Phoenix Palms and Moreton Bay Figs running from Manly Wharf to Manly Beach. As a space it is defined on each side by predominantly 2-3 storey commercial buildings, which create an excellent pedestrian scale enhanced by shop awnings, planting and the recent "mallings" of most of its length. St Matthew's Church, located on the intersection of Darley Rd, with its tower as a focal point, together with the oblique intersection of Sydney Rd, are important interruptions to the linear form of the Corso. At each end The Corso is open and merges into different spaces with good outward views to Shelley Beach, Queenscliff, Manly Cove and along Darley Road and Sydney Road. The gradual visual progression to the Pacific Ocean from Manly Cove with the surf revealed behind a screen of Norfolk Pines is the essence of Manly's unique quality.</p> <p><i>Town Centre Heritage Conservation Area</i></p> <p><u>Statement of significance:</u> The Manly Town Centre Conservation Area (TCCA) is of local heritage significance as a reflection of the early development of Manly as a peripheral harbor and beachside village in the fledgling colony of New South Wales. This significance is enhanced by its</p> |

| Internal Referral Body | Comments |
|------------------------|---|
| | <p>role as a day-trip and holiday destination during those early years, continuing up to the present time, and its association with H G Smith, the original designer and developer of the TCCA as it is today. The physical elements of the TCCA reflect this early development and its continued use for recreational purposes, most notably the intact promenade quality of The Corso and its turn of the century streetscape, as well as key built elements such as hotels, and remaining original commercial and small scale residential buildings.</p> <p>The beautiful natural setting of the TCCA has provided a solid foundation for its picturesque qualities. The cultural landscape, including plantings, monuments and open spaces, reflects the continued enhancement of the TCCA over time, in order to attract and sustain visitors to the area, which in turn has provided great support to the local economy. The many historic vistas which remain to this day enhance the visitor experience of the TCCA and assist with providing an interpretation of the TCCA as it has changed over time.</p> <p>The TCCA maintains a high level of social significance, as a popular destination for local, national and international tourists, as well as through its encapsulation of the Australian beach culture.</p> <p><u>Physical description:</u></p> <p>The boundary of the Manly Town Centre Conservation Area (TCCA) is defined by, and is inclusive of, the following:</p> <ul style="list-style-type: none"> • the properties on the northern side of Sydney Road, between Belgrave Street and North Steyne; (NB Current GIS mapping needs to be amended to include all of SP61679, and exclude the small part of SP61139 – property to the north) • the properties on North Steyne, including the Hotel Steyne, south to, and including 35 South Steyne; (NB Current GIS mapping needs to be amended to include all of Lot 2 DCP 861591 – 35 South Steyne) • the properties on the southern side of the Corso, west to, and including St Matthew's Church; • the properties on the north eastern side of Darley Street to Ashburner Street, including Manly Village Public School, and 14-20 Victoria Parade; (NB Current GIS mapping needs to be amended to exclude all of Lot 1 DCP 99913 – 10 Wentworth St, and Lot 1 DP999135); • the properties on the south west of Darley Street from Ashburner Street to The Corso, including 13 Ashburner Street and 9-13 Victoria Parade; (NB Current GIS mapping needs to be amended to include all of Lot B DCP 337685 – 10 Victoria Parade) • The properties on the southern side of The Corso from Darley Street to East Esplanade, including 46-53 East Esplanade; • The properties on the eastern side of Belgrave Street from East Esplanade to the northern side of Sydney Road, including the vacant area of 21 Belgrave Street. <p>The second zone of the Town Centre Conservation Area comprises The Corso, which is the iconic focus for the Manly Town</p> |

| Internal Referral Body | Comments |
|------------------------|--|
| | <p>Centre Conservation Area. Extending from Manly Wharf north-east to Ocean Beach, The Corso is a grand promenade, now primarily pedestrian, lined with predominantly low rise commercial buildings. The majority date to the late Nineteenth Century through to the 1930s, and are generally on narrow allotments. Most of the original ground floor shop fronts have been altered; however the first floors facades and parapets are generally intact, presenting a uniform streetscape and skyline. The street trees make a strong contribution to the character of The Corso, in particular the two mature Moreton Bay Fig Trees in the civic square at the south-western termination of The Corso, in front of the Council Chambers. The north-eastern end of The Corso is more sparsely planted, primarily with palms, though this provides for the striking open vista towards Ocean Beach, bound by the buildings on either side of the Corso. It is noted that a number of pedestals from one of the earlier lighting systems, possibly dating to around the turn of the Twentieth Century, remain in situ at the south western end of The Corso.</p> <p>"Item I104 - Street Trees" <u>Statement of significance:</u> Part of earliest planting on The Corso c.1850's by H.G. Smith. Historic and aesthetic importance to the streetscape.</p> <p><u>Physical description:</u> Centre planting of Ficus Macrophylla (Moreton Bay Fig) Remnant Palm planting (Phoenix Canariensis) of 1928.</p> <p>"Item I113 - St. Matthew's Church and church hall" <u>Statement of significance:</u> The church is a well consistently detailed but sombre example of Interwar Gothic style. The interior detailing and fittings are of a high quality of design, exhibiting a contrasting lightness to the exterior. As this building is seen in the round, the spatial effect on the north eastern side is of significance and it makes an important landmark and identifies the junction of the Corso with Darley Road. It makes a major contribution to the Corso.</p> <p><u>Physical description:</u> The building is Inter-War Gothic style with set back buttresses. The walls are dark purple/brown face brick on coursed rubble sandstone base. Window sills heads and tracery, door architraves, copings and parapets are in ashlar sandstone. The main windows are in figurative stained glass by John Radecki set in mullions of sandstone in bas tracery style. The smaller windows are in patterned coloured glass. The roofs are slate with copper rainwater heads and downpipes. The front garden beds flanking the sandstone entrance steps are bordered with brick and wrought iron ornate rail fences. These are thought to date from the 1864 church. The interior is pale brown/pink face brick with ashlar sandstone pointed arches, circular columns, capitals and bases. Window heads sills, mullions,</p> |

| Internal Referral Body | Comments | | |
|------------------------|---|----|--|
| | and string courses are also sandstone. The church comprises a nave, side aisles, attached bapistry, the choir and sanctuary are separated from the nave to a chancel arch. The roof is exposed with tongue and groove boarding lining on timber rafters and purlins and ornately worked tied hammer beam trusses. Besides the items relocated from the 1864 church there are numerous other items of fine design and quality, including the church organ and pipes, sandstone base to the pulpit, brass lectern, pair bishops chairs, altar rails to main altar and side altar, memorial plaques, carved marble font, tessellated mosaic floor to bapistry in Byzantine manner and church pews. | | |
| | Other relevant heritage listings | | |
| | Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 | No | |
| | Australian Heritage Register | No | |
| | NSW State Heritage Register | No | |
| | National Trust of Aust (NSW) Register | No | |
| | RAIA Register of 20th Century Buildings of Significance | No | |
| | Other | No | |
| | Consideration of Application | | |
| | <p>This application seeks consent involving change of use of the existing building from a bank to a commercial retail store, at 31 The Corso, Manly. The proposal is for internal changes for use, operation and fit out of a Woolworths Metro Store as well as external works including signage and changes to the existing facade.</p> <p>The plans have been reviewed along with the Statement of Heritage Impact, by Heritage 21, dated September 2019. The proposed works have also been assessed in relation to the heritage provisions contained within Manly DCP 2013 and the number of signage for the proposal exceeds the maximum number of signs outlined in the clause 4.4.3.1 Controls for all Development Types, but given the facade of the subject site is larger than the majority of the shops in The Corso it is considered that the impact upon the heritage site is negligible. Overall, it is considered that the proposed works will have a negligible impact upon the heritage significance of the group heritage item or the heritage items in the vicinity or upon the Town Centre Conservation Area.</p> <p>Therefore, no objection is raised to this application on heritage grounds.</p> | | |

| Internal Referral Body | Comments |
|------------------------|--|
| | <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</p> <p>Further Comments</p> <p>COMPLETED BY: Oya Guner, Heritage Advisor</p> <p>DATE: 04 December 2019</p> <p><u>Assessing Officer's Comment:</u> The application has been amended and no longer includes change of use or fitout. These matters have been approved via the recent Complying Development Certificate.</p> |
| Traffic Engineer | <p>The proposal is for a Woolworths Metro Store occupying the existing building at shop 2 29-33 The Corso. The DA is for the use, operation and fit out with external works including signage a facade upgrades. No offstreet parking or loading facilities are proposed, however as the site is located with frontages only to paved pedestrian malls it is infeasible for offstreet parking to be provided and reliance upon existing parking and loading zone facilities is anticipated in the adjacent Whistler St carpark and surrounds. The proposal is for 2-8 staff to be present on site at any one time. A plan of management has been submitted which outlines how deliveries to the site will be managed. There are no traffic engineering objections to the proposal subject to conditions</p> <p><u>Assessing Officer's Comment:</u> The application has been amended and no longer includes change of use or fitout. These matters have been approved via the recent Complying Development Certificate.</p> |
| External Referral Body | Comments |
| Ausgrid: (SEPP Infra.) | <p>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</p> |

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment,

many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP 55 - Remediation of Land

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

SEPP 64 - Advertising and Signage

Clauses 8 and 13 of SEPP 64 require Council to determine consistency with the objectives stipulated under Clause 3(1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 1. The objectives of the policy aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

The proposed development proposes several signs, on both The Corso and Market Place frontages. As confirmed by a site visit on 22 January 2020, a number of signs currently exist on site, including some that are proposed under this development application. Council is unable to retrospectively approve signage via development application. As such, any signage that exists without approval has been reported to Council's Building Control team for investigation. In accordance with SEPP 64, an assessment of all proposed signage is as follows. Notwithstanding this assessment, signage is approved only as per conditions of consent.

| Matters for Consideration | Comment | Complies |
|---|---|----------|
| 1. Character of the area | | |
| Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located? | The subject site is zoned B2 Local Centre. The proposed development is permissible in this area. The subject site is located in an area characterised by commercial and mixed use premises, including shops, cafes, offices, and pubs. As such, proposed signage is compatible with the existing and desired future character along The Corso and Market Place. | YES |
| Is the proposal consistent with a particular theme for outdoor advertising in the area or locality? | No particular theme for outdoor advertising exists along The Corso or Market Place. However, the proposed signage is complementary to the colours and finishes of existing development in the locality. | YES |
| 2. Special areas | | |
| | | |

| | | |
|---|--|-----|
| Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas? | The subject site forms part of a heritage item, and is within the vicinity of other heritage items. The subject site is also within the Manly Town Centre Conservation Area. The subject site is not located within an environmentally sensitive, natural, open space or rural area. The proposed signage does not detract from the amenity or visual quality of nearby open space areas, waterways, or residential areas. | YES |
| 3. Views and vistas | | |
| Does the proposal obscure or compromise important views? | The proposed signage does not obscure or compromise important views. | YES |
| Does the proposal dominate the skyline and reduce the quality of vistas? | The proposed signage does not project above the existing building, so does not dominate the skyline or reduce the quality of vistas. | YES |
| Does the proposal respect the viewing rights of other advertisers? | The proposed signage does not unreasonably obscure any other advertisements. | YES |
| 4. Streetscape, setting or landscape | | |
| Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape? | The scale, proportion and form of the proposed signage is consistent with other existing comparable uses within the streetscape, and within the zoning of the site. As such, the proposed signage is appropriate in the streetscape and setting of the site. | YES |
| Does the proposal contribute to the visual interest of the streetscape, setting or landscape? | The proposed development and associated signage have been designed in a clear and modern manner, and therefore create visual interest within the streetscape. | YES |
| Does the proposal reduce clutter by rationalising and simplifying existing advertising? | The proposed signage is located only at key points on the proposed building and, therefore, do not create visual clutter. | YES |
| Does the proposal screen unsightliness? | The proposed signage does not give rise to unsightliness. The proposed signage is neat and limited to key points on the proposed building. | YES |
| Does the proposal protrude above buildings, structures or tree canopies in the area or locality? | The proposed signage does not protrude beyond the proposed building. | YES |
| Does the proposal require ongoing vegetation management? | The proposed signage does not require vegetation management. | YES |
| 5. Site and building | | |
| Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located? | The proposed signage is of compatible scale and proportion to the proposed building and the existing buildings in the street. | YES |
| Does the proposal respect important features of the site or building, or both? | The proposed signage does not detract from important features of the site or proposed building. | YES |
| Does the proposal show innovation and | The proposed signage is located logically to | YES |

| | | |
|---|---|-----|
| imagination in its relationship to the site or building, or both? | achieve an adequate level of exposure, while remaining visually compatible with the proposed building and the streetscape. | |
| 6. Associated devices and logos with advertisements and advertising structures | | |
| Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed? | The proposed signage will not require safety devices, platforms or lighting devices, as any illuminated signage is lit internally. | YES |
| 7. Illumination | | |
| Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation? | Illumination of the proposed signage will not result in unreasonable or unacceptable glare. Illumination of the proposed signage will not impact upon safety for pedestrians, vehicles or aircraft. Illumination of the proposed signage will not impact upon nearby residences or other accommodation. | YES |
| Can the intensity of the illumination be adjusted, if necessary? | Illumination of the proposed signage can be adjusted by technicians, as required. | YES |
| Is the illumination subject to a curfew? | The proposed signage will be illuminated for the hours of operation of the proposed Woolworths store only. | YES |
| 8. Safety | | |
| Would the proposal reduce the safety for any public road, pedestrians or bicyclists? | The proposed signage will not reduce the safety of any public road, pedestrians or bicyclists. | YES |
| Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas? | The proposed signage does not obscure any sightlines, and will, therefore, not reduce pedestrian safety. | YES |

Accordingly, the proposed signage is considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be consistent with the provisions of the SEPP and its underlying objectives.

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: | 10m | Signage up to 8.7m | N/A | Yes |

Compliance Assessment

| Clause | Compliance with Requirements |
|--------------------------------------|------------------------------|
| 4.3 Height of buildings | Yes |
| 5.10 Heritage conservation | Yes |
| 6.4 Stormwater management | Yes |
| 6.9 Foreshore scenic protection area | Yes |
| 6.12 Essential services | Yes |
| 6.13 Design excellence | Yes |
| 6.16 Gross floor area in Zone B2 | Yes |

Detailed Assessment

6.4 Stormwater management

Under Clause 6.4, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

- (a) *is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*
- (b) *includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*
- (c) *avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

Comment:

Being for facade changes, signage, hours of operation, and delivery/waste management procedures, the proposed development does not impact upon the structure of the building, nor the stormwater management measures currently existing on site. As the building is currently functional, and the proposal has been reviewed by Council's Development Engineer, who raised no objection to the proposal, the consent authority can be satisfied that the proposal is in accordance with the above.

6.9 Foreshore scenic protection area

Under Clause 6.9, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) measures to protect and improve scenic qualities of the coastline,*
- (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
- (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Comment:

The proposed facade changes and signage are consistent with advertising content in the vicinity of the site, so will not unreasonably impact upon the visual amenity or scenic quality of the nearby foreshore area. Being minor in nature, the proposed works will not result in unreasonable overshadowing or loss of views to or from the nearby foreshore area. The proposed development relates to an existing commercial development, so is suitable in relation to its type, location and design. The proposed works (being signage and facade changes) will not result in conflict between land-based and water-based coastal activities.

6.12 Essential services

Under Clause 6.12, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,*
- (b) the supply of electricity,*
- (c) the disposal and management of sewage,*
- (d) stormwater drainage or on-site conservation,*
- (e) suitable vehicular access.*

Comment:

The proposed development is for facade changes, signage, hours of operation, and delivery/waste management procedures, so does not impact upon the existing arrangements for the above matters. As the building is currently functional, and the proposal has been reviewed by Council's Development Engineer, who raised no objection to the proposal, the consent authority can be satisfied that the proposal is in accordance with the above.

6.13 Design excellence

Under Clause 6.13, development consent must not be granted for development to which this clause applies unless the consent authority considers that the development exhibits design excellence. In considering whether development exhibits design excellence, the consent authority must give consideration to whether the development:

- (a) contains buildings that consist of a form, bulk, massing and modulation that are likely to overshadow public open spaces, and*
- (b) is likely to protect and enhance the streetscape and quality of the public realm, and*
- (c) clearly defines the edge of public places, streets, lanes and plazas through separation, setbacks, amenity, and boundary treatments, and*
- (d) minimises street clutter and provides ease of movement and circulation of pedestrian, cycle, vehicular and service access, and*
- (e) encourages casual surveillance and social activity in public places, streets, laneways and plazas, and*
- (f) is sympathetic to its setting, including neighbouring sites and existing or proposed buildings, and*
- (g) protects and enhances the natural topography and vegetation including trees, escarpments or other significant natural features, and*

- (h) promotes vistas from public places to prominent natural and built landmarks, and
(i) uses high standards of architectural design, materials and detailing appropriate to the building type and location, and
(j) responds to environmental factors such as wind, reflectivity and permeability of surfaces, and
(k) coordinates shared utility infrastructure to minimise disruption at street level in public spaces.

Comment:

Being for facade changes, signage, hours of operation, and delivery/waste management procedures, the proposed development does not impact upon the structure or overall design of the building. The proposed facade changes are consistent with the streetscape requirements of the MDCP 2013. The proposed signage is assessed as acceptable on merit for the reasons throughout this report. The proposal does not otherwise alter the design excellence of the existing building in relation to the matters above.

6.16 Gross floor area in Zone B2

Under Clause 6.16, development consent must not be granted to the erection of a building on land in Zone B2 Local Centre unless the consent authority is satisfied that at least 25% of the gross floor area of the building will be used as commercial premises. Further, Clause 6.16 stipulates that development consent must not be granted for development on land to which this clause applies if the gross floor area of any retail premises on the land would exceed 1,000 square metres.

Comment:

The subject site is zoned B2 Local Centre. The proposed development does not impact upon the existing gross floor area within the building. However, for the purposes of addressing this clause, the subject site is wholly comprised of commercial floor space, and the site does not contain any retail premises of greater than 1,000sqm.

Mainly Development Control Plan

Built Form Controls

| Built Form Controls - Site Area: 471sqm | Requirement | Proposed | % Variation* | Complies |
|---|--|--|-----------------------------|----------|
| 4.4.3 Signage | | | | |
| 4.4.3.1 (a) Maximum Number of Signs | Max. 2 signs per frontage | The Corso: 6 signs | 300% | No |
| | | Market Place: 2 | - | Yes |
| 4.4.3.3 (c) (d) Signs Above Awning Height (Proposed 'Zone 1' Signs) | Flush to wall | Flush to wall | - | Yes |
| | Proportionate to building | Proportionate | | |
| | In keeping with design of the building | Not inconsistent with the design of the building | | |
| | Compact | Compact | | |
| 4.4.3.3 (e) Under-Awning Signs (Proposed 'Zone 6' Signs) | Max. 2 signs, 4m apart | 2 signs (The Corso), 5.6m apart | 3.8% to height above ground | No |
| | Min. 3m from other under-awning signs | >3m from others | | |
| | Min. 2.6m above ground | 2.5m above ground | | |
| | Max. 2.5m length | 2.4m | | |
| | Not project beyond awning | Does not project beyond awning | | |

| | | | | |
|--|---|--------------------------------------|---------------------------|----|
| | Max. 400mm width | 120mm | | |
| | Max. 500mm depth | 300mm | | |
| | Right angle to awning | Right angle to awning | | |
| | Fixed with 50mm supports | 40mm | | |
| 4.4.3.3 (h) Flush Wall Signs (Proposed 'Zone 7' Sign) | Must not extend beyond wall | Does not extend beyond or above wall | 428% to maximum area | No |
| | Must not project above wall | | | |
| | Max. area 3 x height above ground (1.5sqm) | 7.92sqm | | |
| 4.4.3.3 (i) Fascia Signs (Proposed 'Zone 2' Sign) | Must not project above or below fascia | 40mm above and below fascia | 100% to fascia projection | No |
| | Must not extend more than 300mm from fascia end of awning | 40mm | | |
| | Must not extend within 600mm of kerb | No adjacent kerb | | |
| 4.4.3.3 (l) Projecting Wall Signs (Proposed 'Zone 3' Sign) | Min. 2.6m above ground | 2.1m above ground | 19.23% | No |
| | Max. 800mm projection from wall | 550mm projection | | |
| | Must not project above wall | Does not project above wall | | |
| | Must not extend within 600mm of kerb | No adjacent kerb | | |
| | Max. width of one third of max. projection (183mm) | 100mm | | |
| | Max. area 3 x height above ground (6.3sqm) | 400sqmm | | |
| Window signs (Proposed 'Zone 4' and 'Zone 5' Signs) | No controls | - | - | - |

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|---|------------------------------|-----------------------------|
| 3.1 Streetscapes and Townscapes | Yes | Yes |
| 3.1.3 Townscape (Local and Neighbourhood Centres) | Yes | Yes |
| 3.2 Heritage Considerations | Yes | Yes |
| 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise) | Yes | Yes |
| 3.4.1 Sunlight Access and Overshadowing | Yes | Yes |
| 3.4.3 Maintenance of Views | Yes | Yes |
| 3.8 Waste Management | Yes | Yes |
| 4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres) | Yes | Yes |
| | | |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| 4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2) | Yes | Yes |
| 4.2.5 Manly Town Centre and Surrounds | Yes | Yes |
| 4.2.5.1 Design for Townscape | Yes | Yes |
| 4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre | Yes | Yes |
| 4.2.5.6 Late Night Venues | No | Yes |
| 4.4.3 Signage | No | Yes |
| 5 Special Character Areas and Sites | Yes | Yes |
| 5.1.1 General Character | Yes | Yes |
| 5.1.2 The Corso | Yes | Yes |
| 5.4.1 Foreshore Scenic Protection Area | Yes | Yes |

Detailed Assessment

4.2.5.6 Late Night Venues

Objective 1) To achieve for Manly's entertainment precinct as a place of excellence in which all people can use and enjoy Manly's highly valued natural amenity qualities as a place:

- *for leisure and entertainment;*
- *in which late night venues can safely entertain and provide for the enjoyment of social and recreational pursuits;*
- *without disturbing the peace of the community in terms of safety and security.*

Comment:

The proposed development does not seek the use of the site, as this was approved under the recent Complying Development Certificate. The proposed development retains the use of the site for safe retail purposes, without disturbing the peace, as demonstrated through the submitted plan of management.

Objective 2) To regulate the activities and design of late night venues to minimize late night disturbances to the public and promote Manly as a safe place for all the community late at night such that:

- *frontages to public spaces must be designed to minimize conflict between customers within the establishments and public using the public spaces;*
- *the applicant demonstrate (see lodgement requirements at Council's Administrative Guidelines) that the premises will not detract from the safety and security of the Entertainment Precinct and as a place which is acceptable for families; and*
- *obligations of any current Accord are addressed in minimizing anti-social behaviour and adverse effects of excessive alcohol consumption.*

Comment:

The proposed development is supported by a plan of management, detailing the management of the site, including in relation to disturbances, conflicts, safety and security, and customer behaviour.

Intensity of Development

a) *In order to provide diversity, it is proposed to limit the number of patrons which attend late-night licensed venues within the Entertainment Precinct. Within the Entertainment Precinct the total number of patrons capable of being accommodated within Late Night Venues must not exceed 8000 persons. Exceptions to this will only be granted where Council is satisfied that the existing levels of adverse impact will not be added to nor detract from opportunities to provide a diverse range of alternative entertainment activities.*

Comment:

Not applicable. The proposed development does not relate to a licensed venue.

Hours of Operating (maximum)

b) *The maximum hours for hotels, nightclubs, restaurants & food outlets are as follows:*

i) *Hotels & Nightclubs: from 5am up to 2am (next day) and with a restricted entry policy for Nightclubs after 12.30am; and*

ii) *Restaurants & Food Outlets: from 5am up to 1am (next day).*

Comment:

The proposed development includes hours of operation consistent with the requirement above for a food outlet, with the exception of for New Year's Eve and New Year's Day. On these days, the proposed hours of operations extend until 3am, with staff access for packing down until 4am. Given the nature of these days and the context of the local area, these hours are considered acceptable.

Noise Control

c) *Requirement of this plan in relation to licenced premises at paragraph 3.4.2.4 d - g apply to licensed Late Night Venues under this paragraph.*

Comment:

Not applicable. The proposed development does not relate to a licensed premises.

Security

d) *Proprietors of Late Night Venues must enter into arrangements with Council for the provision of late night security of the premises and the adjacent public areas.*

Comment:

The proposed development is supported by a plan of management, detailing suitable security measures for the use.

Access to Public spaces

e) *Frontages to public spaces must be designed to minimise conflict between customers within the establishments and public using the public spaces.*

Comment:

Public access to the site is maintained via The Corso frontage. The entrance is clear and will not result in conflict between use of the building, and use of the public domain.

Decks, Balconies & Roof Top Area

f) *Balconies, verandahs, any roof top areas and any external access thereto must be closed to patrons between the hours of 10pm to 8am daily.*

Comment:

Not applicable. The development does not include balconies, decks, verandahs, or roof top areas.

Liquor Accord

g) *Proprietors of the licensed premises must be a financial member of any applicable Liquor Accord and conform to the obligations of that Accord in minimizing anti-social behaviour and adverse effects of excessive alcohol consumption.*

Comment:

Not applicable. The proposed development does not relate to a licensed venue, and is not subject to a Liquor Accord.

Design

h) Applications must demonstrate how the design and operation of licensed venues take into account best practice outlined in the document titled "Alcohol & Licensed Premises: Best Practice in Policing" S Doherty and A Roche 2003.

Comment:

Not applicable. The proposed development does not relate to a licensed venue.

4.4.3 Signage

The development includes multiple minor non-compliant elements in relation to the proposed signage, as detailed in the section of this report relating to Built Form Controls. The development is considered on merit in relation to the relevant objectives of the MDCP 2013 as follows:

Objective 1) To ensure that advertising does not detract from the scenic beauty and amenity of the Municipality; harmonises with its surroundings and the buildings to which they are attached.

Comment:

The proposed signage is designed and site in such a way that it is consistent with other advertising materials in the locality, and does not detract from the scenic beauty or amenity of the area or the building to which it is proposed to be attached.

Objective 2) To minimise the visual impact by encouraging fewer more effective signs that may otherwise degrade the existing and likely future quality of residential environments or result in excessive, unnecessary signage, visual clutter and confusion caused by a proliferation of signs in local and neighbourhood centres.

Comment:

The proposed development, while containing multiple signs on The Corso frontage, does not result in degradation of the area, and is not excessive in the context of the site. The signs are suitably located and varied so as not to cause clutter or confusion.

Objective 3) To permit building and business identification signs which communicate the facilities (including tourist facilities), amenities, goods and services in local and neighbourhood centres which do not interfere with the streetscape or amenity of residents.

Comment:

The proposed signage provides appropriate identification of the building and the services within the building, and does not interfere with streetscape or amenity.

Objective 4) Signs should enhance the distinctive urban character and scenic amenity of the Municipality and contribute to the atmosphere of the streets in local and neighbourhood centres and should be designed in sympathy with both the building to which it is attached and any adjoining buildings, taking into account the architectural styles and finishes of buildings in local and neighbourhood centres.

Comment:

The proposed signage is consistent with the design quality and style of existing signage along both frontages of the subject site. The proposed signage is designed in consideration of the existing building to which it is proposed to be attached, complementing its styles and finishes.

Objective 5) To prevent signage from impacting on the presentation of the heritage item or area to the general public on heritage items and conservation areas.

Comment:

The proposed signage has been reviewed by Council's Heritage Advisor, who is satisfied that the

signage does not unreasonable detract from or impact upon the heritage significance of the heritage-listed subject site, surrounding sites, and surrounding conservation area.

Objective 6) To ensure all signage is of high standards of graphic and textural content.

Comment:

The proposed signage has been designed by a suitably qualified person to be of a high standard of graphic and textural content.

Objective 7) To encourage co-ordinated advertising in the Industrial Zone by the use of appropriately sized street numbers and complex names, and the use of directory boards to identify multiple unit complexes, so as to reduce adverse impact on the streetscape and confusion to traffic.

Comment:

Not applicable. The site is zoned B2 Local Centre (Business Zone).

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 \$4,523 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$452,308.

CONCLUSION

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

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

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

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

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

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

- Proposed delivery loading and waste management procedures;
- Hours of operation;
- Non-compliance with signage requirements; and
- Matters raised in submissions.

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 DA2019/1084 for Alterations and Additions to the existing building and signage. on land at Lot 910 DP 875567, 31 The Corso, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

| Architectural Plans - Endorsed with Council's stamp | | |
|---|-----------------------------|-----------------------------|
| Drawing No. | Dated | Prepared By |
| WA209 External Signage for Development Application | 3 September 2019 issue B | The Retail Group Pty Ltd |

| Reports / Documentation – All recommendations and requirements contained within: | | |
|--|----------------|------------------|
| Report No. / Page No. / Section No. | Dated | Prepared By |
| Plan of Management | September 2019 | Woolworths Metro |
| Statement of Heritage Impacts | September 2019 | Heritage 21 |

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

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

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

approved plans.

2. Prescribed Conditions

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost

of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved

waste/recycling centres.

- (j) 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.

- (k) 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.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

- (m) 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 \$4,523.08 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 \$452,308.00.

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. 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.

7. Approval of Signage

Signage is approved as follows:

The Corso Frontage:

- 'Zone 1' Sign Above Awning: Use of signage approved only.
- 'Zone 2' Fascia Sign: Structure and use of sign approved.
- 'Zone 3' Under Awning Signs: Use of signage approved only.
- 'Zone 4' Window Sign: Structure and use of sign approved.
- 'Zone 5' Window Sign: Structure and use of sign approved.
- 'Zone 6' Projecting Wall Sign: Structure and use of sign approved

Market Place Frontage:

- 'Zone 1' Sign Above Awning: Structure and use of sign approved.
- 'Zone 7' Flush Wall Sign: Structure and use of sign approved.

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

Reason: To ensure consistency with the consent.

8. Bi-Fold Doors

The proposed bi-fold doors fronting The Corso are not to encroach over public land during opening, when fixed open, or when closed. Details demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Public safety.

9. Plan of Management Amendments

The Plan of Management is to be updated to reflect the following:

- Deliveries and waste collections may only occur via the Whisler Street loading zone if they are to be completed in 15 minutes or less. Deliveries that take longer than 15 minutes are to occur via Market Place between 5am-8am.
- Deliveries and waste collections by trucks larger than 6.4m in length are to occur only between 5am and 8am.

Reason: To minimise congestion and impacts from deliveries and collections.

10. **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. Due to heavy traffic congestion throughout the Manly town centre, construction truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movement size, timing and access routes must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

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 routes 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.
- 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.

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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11. 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’s traffic engineer 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 Construction Traffic Management Plan is implemented and able to be enforced (DACTREDW1)

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

12. Outdoor Dining

Any application for outdoor dining must be made separately using the form "Outdoor Dining Area Approval Application". Please note that Council does not currently accept outdoor dining applications for The Corso, Manly.

Reason: To ensure compliance with the requirements of the *Roads Act 1993* and Council policy regarding outdoor dining.

13. Hours of Operation

The hours of operation are to be restricted to:

- Monday to Thursday:
 - Access: 5:00am to midnight
 - Trading: 6:00am to 11:00pm
- Friday to Saturday:
 - Access: 5:00am to 1am following day
 - Trading: 6:00am to midnight
- Sunday:
 - Access: 6:00am to midnight
 - Trading: 7:00am to 11:00pm

- New Year's Eve and New Year's Day:
 - Access: 5:00am to 4:00am following day
 - Trading: 6:00am to 3:00am following day

Upon expiration of the permitted trading hours, all service shall immediately cease, no customers shall be permitted entry and all customers on the premises shall be required to leave.

Reason: To ensure that amenity of the surrounding locality is maintained.

14. **Signage Illumination**

The proposed signage is to be illuminated for the approved hours of operation only.

Reason: To prevent excessive illumination.

15. **Plan of Management**

The site is to operate in accordance with the approved Plan of Management.

Reason: To ensure appropriate land use management.

16. **Noise from Operations**

Business operations must not cause offensive noise as defined by the *Protection of the Environment Operations Act 1997*.

Reason: To protect the amenity of surrounding residents.

17. **Waste Collection**

Waste collection is not to occur after 8pm or before 5am on any day.

Reason: To protect the amenity of surrounding residents.

18. **Storage of Stock and Materials**

All stock and materials and waste associated with the operation of the premises must be stored within the property. No storage of any material on Market Place or The Corso is to occur at any time.

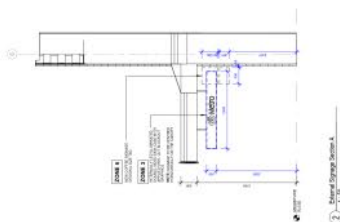
Reason: To ensure clear access for vehicles and pedestrians is maintained.

19. **Deliveries to Premises and Waste Collection**

Truck deliveries to the site are to take place overnight and in the early hours of the morning between the hours of 10pm and 8am. Delivery trucks and other servicing vehicles are to be no larger than 8.8m in length. Deliveries and waste collections by trucks larger than 6.4m in length are to occur only between 5am and 8am.

Reason: To minimise congestion and impacts on access.

NOTE:
ALL SIGNAGE IS INDICATIVE ONLY. SUBJECT TO CORRECTIONS.
ALL SIGNAGE GRAPHICS AND COLORS ARE INDICATIVE ONLY.
ALL SIGNAGE TO BE IN STRICT ACCORDANCE WITH THE "WM Memo External Signage Guidelines" subject

[illegible]