

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 26 FEBRUARY 2020



Ashleigh Sherry
Manager Business Systems and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 26 February 2020
in the Walamai Room, Civic Centre, Dee Why**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 19 FEBRUARY 2020

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 19 February 2020 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2019/0916 - 32 BOWER STREET, MANLY - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOLS
REPORTING MANAGER	Anna Williams
TRIM FILE REF	2020/100309
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/0916 for demolition works and construction of a dwelling house including swimming pools on land at Lot 28 DP 8075, 32 Bower Street, Manly, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0916
Responsible Officer:	Tony Collier
Land to be developed (Address):	Lot 28 DP 8075, 32 Bower Street MANLY NSW 2095
Proposed Development:	Demolition works and construction of a dwelling house including swimming pools
Zoning:	Manly LEP2013 - Land zoned E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Trustees Roman Catholic Church Archdiocese Sydney Andrew Warren Swan
Applicant:	Campbell Architecture
Application Lodged:	26/08/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	27/09/2019 to 11/10/2019
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 9.2, 10.6, 28.1%
Recommendation:	Approval
Estimated Cost of Works:	\$ 6,583,016.00

EXECUTIVE SUMMARY

The proposal involves the demolition of existing structures on the site and the construction of a new detached dwelling with associated swimming pool and landscape works. (including the removal of trees).

The assessment has found that the proposed development is satisfactory in relation to built form, character and streetscape, and internal and external residential amenity.

The applicant has lodged a request under Clause 4.6 of the WLEP 2011 for a variation to the development standard for building height. The height variation is up to a maximum of 2.39m above the

allowable height of 8.5m, representing a maximum variation of 28.1%. The variation is considered acceptable largely due to the compatibility of the built form to its surrounds and the constraining topography of the site. The variation is not considered to result in excessive bulk and scale and does not result in adverse shadow, views or amenity impacts on surrounding properties.

As the variation to the development standard is greater than 10%, the application is referred to the DDP for determination.

The public exhibition of the application resulted in one individual submission being received which raised concerns with the proposed development. The issues raised included:

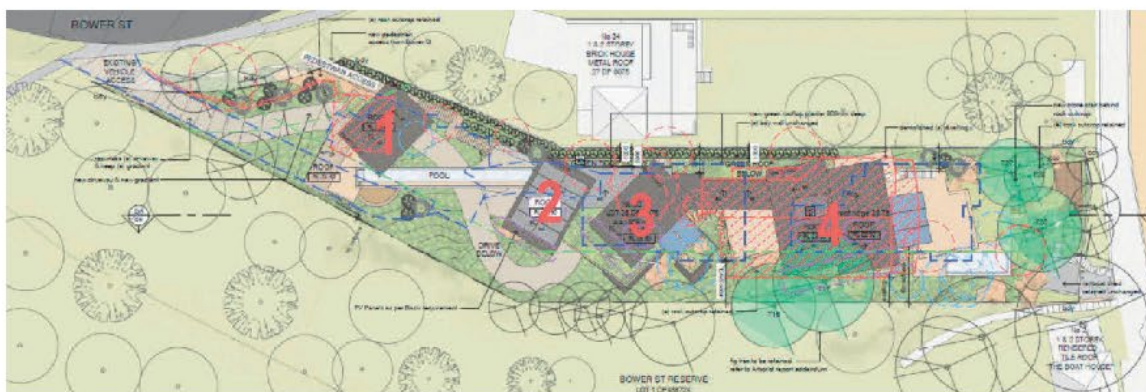
- Loss of biodiversity.
- Waste produced by demolition works.
- Use of water in the construction of the new dwelling.
- Sediment run off and impact on Shelley Beach to the south and the adjacent Shelley Beach Reserve to the east.
- Impact on views.
- Reduction to property values in the local area.
- Proximity of the proposed swimming pool to Shelley Beach.

The issues raised in the submission have been addressed in the “Public Notification” section of this report and in summary they do not warrant refusal or re-design of the proposal. Suitable conditions have been imposed where required.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks consent to demolish existing structures on the site and construct a new detached dwelling with associated swimming pool and landscape works. (including the removal of trees).



As detailed in the figure above, the dwelling is divided into 4 buildings (or pavilions) to respond to the shape and topography of the site. Each building is detailed as follows:

Building 1

Ground Floor (RL 21.00)

- Guest Bedroom;
- Ensuite and walk-in robe;
- Stairs to upper floor; and
- Outdoor terrace.

First Floor (RL 25.50)

- Gym and steam room;
- Terrace and courtyard;
- Stairs from ground floor.

A walkway adjacent to a lap pool connects Building 1 to Building 2 at the upper floor level.

Building 2

Basement (RL 16.50)

- Plant room.

Ground Floor (RL 19.68)

- Study;
- Pool equipment and storeroom; and
- Entry from a sunken terrace below the lap pool.

First Floor (RL 23.48)

- Bedroom 2;
- Ensuite; and
- Landing from the walkway adjacent to the lap pool.

Buildings 2 and 3 are connected by an entry corridor at the ground level and a walk-in robe at the upper level.

Building 3

Ground Floor (RL 16.00)

- Bedrooms 4 and 5;
- Media room;
- Bathrooms 4 and 5; and
- Laundry.

First Floor (RL 19.68)

- Media room;
- Heating equipment room; and
- Terrace.

Second Floor (RL 23.48)

- Bedroom 1;
- Bathroom 1; and
- Walk-in robe.

Building 3 and 4 are connected by a gallery walkway.

Building 4

Ground Floor (RL 1250)

- Rumpus room;
- Cellar;
- Steam room and change room; and
- Terrace, lawn area and swimming pool.

First Floor (RL 16.00)

- Bedroom 3;
- Staff room;
- Laundry and bathroom; and
- Courtyard.

Second Floor (RL 19.00)

- Kitchen;
- Family room;
- Butler room; and
- 2 x terraces.

Car parking

Car parking is located at the ground level (below Buildings 3 and 4 at RL 16.00) and accommodates parking for 2 vehicles. The car park is accessed via a curved ramp from Bower Street and from a lift in Building 4. The driveway crossover is located at the southern end of the site frontage.

Because of the sloping topography of the site, the driveway is sited below Building 1, the connecting lap pool/walkway and accesses the car park beneath Building 3.

Pedestrian entry

The site is accessed via a combination of steps and landings from Bower Street. The pedestrian pathway is located at the northern end of the site frontage.

Landscaping

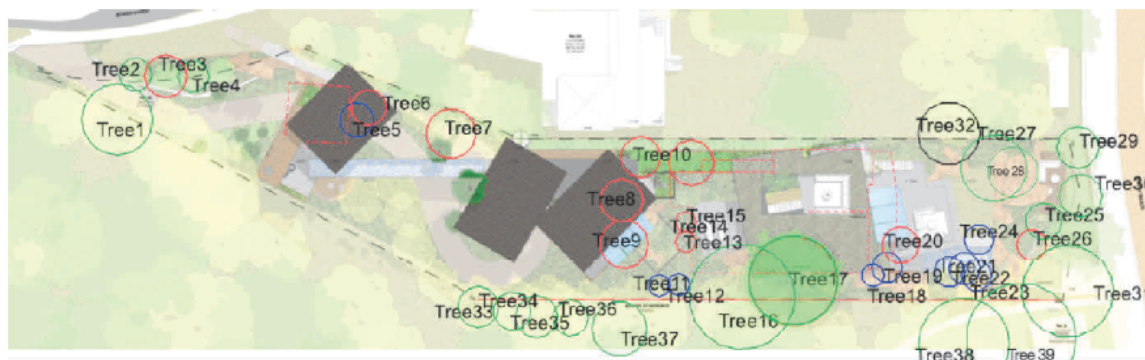
The submitted *Construction Impact Assessment and Management Plan* (Botanics Tree Wise People Pty Ltd dated January 2019) assesses 39 trees (being 27 within the property and 12 located on adjoining land). Thirteen trees are proposed to be removed, however only 2 of these are prescribed - T7 *Melaleuca quinquenervia* and T10 *Glochidion ferdinandii*.

Of the 39 trees surveyed, the following 13 (i.e. 33.3%) are recommended for removal:

Tree	Tree
T3 - <i>Cupressus torulosa</i> (Himalayan cypress)	T14 - <i>Cordyline australis</i> (Cabbage tree)
T6 - <i>Pittosporum undulatum</i> (Sweet pittosporum)	T15 - <i>Dracaena marginata</i> (Dragon tree)
T7 - <i>Melaleuca quinquenervia</i> (Paperbark)	T17 - <i>Ficus rubiginosa</i> (Port Jackson fig)
T8 - <i>Syagrus romanzoffiana</i> (Cocos palm)	T20 - <i>Livistona chinensis</i> (Chinese cabbage palm)
T9 - <i>Syagrus romanzoffiana</i> (Cocos palm)	T26 - Macadamia tree
T10 - <i>Glochidion ferdinadi</i> (Cheese tree)	T32 - <i>Ficus rubiginosa</i> (Port Jackson fig)
T13 - <i>Cordyline australis</i> (Cabbage tree)	

Note: Tree 17 is now scheduled for retention due to its contribution to the character of the area.

The figure below details the location of trees surveyed.



As can be seen in the above figure, Trees 3 and 32 are located on neighbouring land and cannot be removed.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant

- Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

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

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

SITE DESCRIPTION

Property Description:	Lot 28 DP 8075 , 32 Bower Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern (and low) side of Bower Street.</p> <p>The site is dogleg in shape with a curved frontage of 30.645m along Bower Street, a rear boundary of 18.58m facing Shelley Beach and a surveyed area of 1,859m². The site has an approximate width of between 17m and 18m at the locations of the proposed buildings.</p> <p>The site is located within the E3 Environmental Management zone pursuant to the Manly Local Environmental Plan 2013 and accommodates a part single/part double storey dwelling house, 3 x detached garages and a gazebo.</p> <p>The dwelling and a detached garage are located within the northern (and lower) half of the site adjacent to Shelley Beach while two remaining garages are located at the front of the site to afford access from Bower Street. It is noted that the garage within the northern half of the site is accessed via a crossover onto the Shelley Beach promenade (Marine Parade).</p> <p>The site slopes downward from the front boundary to the rear boundary by an average of 22.62m. The site also has a crossfall which slopes downward from the western boundary to the eastern boundary by an average of 4.38m. Because of the topography, the site contains numerous retaining walls to provide terracing.</p> <p>The site is underlain by Hawkesbury Sandstone bedrock below a combination of variable depth topsoil/fill and residual/colluvium soil.</p>

The site is densely vegetated with a total of 39 trees being assessed as containing a mix of native and exotic species.

Adjoining and surrounding development is characterised by dwellings of varying age and architectural style with a predominant two storey scale. Bower Reserve abuts the site to the east and extends down from Bower Street to Marine Parade.

As noted above, Marine Parade is situated immediately to the north of the site and extends to the east and west to form a pedestrian promenade. The 'Boathouse Shelley Beach' cafe is located immediately to the east of the site and operates between 7.00am and 4.00pm daily.

Map:



SITE HISTORY

The site is the subject of the following application:

DA0142/2016

This application was lodged with Council on 1 June 2016 and sought consent for the demolition of existing structures, the creation of a three lot Torrens title subdivision and the construction of a two storey dwelling house with garages on each lot including a swimming pool to house 2 and house 3 and the removal of trees and landscaping.

The application was approved by the Northern Beaches Independent Assessment panel (NBIHAP) on 16 March 2017.

The figure below details the approved development.



APPLICATION HISTORY

The subject application was lodged with Council on 26 August 2019.

Following a preliminary assessment of the proposal, a letter was sent to the applicant on 14 November 2019 advising of issues that prevented Council supporting the application. The issues identified were:

- Building height;
- Side setbacks;
- Floor space ratio; and
- Insufficient information.

Following a meeting with Council on 19 November 2019 amended plans and documentation were submitted on 6 December 2019 (these being the plans and documentation assessed in this report).

The amended plans were not required to be renotified as the amendments did not fundamentally change the proposal as originally notified and resulted in a general improvement to the design.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the	<u>Division 8A</u> of the EP&A Regulation 2000 requires the

Section 4.15 Matters for Consideration'	Comments
Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</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>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 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 Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the

specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS have been included as part of the recommended conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Lou Sand	29 Worcester Street COLLAROY NSW 2097

One submission was received in response to the public exhibition of the proposal and raised the following issues:

- ***Loss of biodiversity.***

The submission raises concern that the development will result in a loss to biodiversity on the site.

Comment

The effect of the development upon the biodiversity of the site and the neighbouring Reserve has been assessed by the Bushland and Biodiversity section of Council's Natural Environment Unit. In their assessment, the *Arborist Report* (prepared by Botanics Tree Wise People and dated January 2019), the *Terrestrial Biodiversity Report* (prepared by GIS Environmental Consultants and dated March 2019) and the *Landscape Plans* (prepared by Secret Gardens and dated 28 March 2019) were reviewed and considered.

No objection was raised by the Unit subject to conditions which relate to Long-nosed Bandicoot habitat at North Head and the engagement of a Project Ecologist for the duration of demolition and construction works.

This issue does not warrant the refusal of the application.

- ***Waste produced by demolition works.***

The submission raises concern that the demolition works will produce waste which will contribute towards landfill.

Comment

The Waste management Plan submitted with the application indicates that materials used in the existing building and landscaped area will be reused in the proposed building(s). Materials not re-used are to be recycled at a recycling outlet. The Plan also specifies that material disposal at a landfill site is

not an option and that all "*materials must be re-used or separated on or off the site and sent for recycling*".

This issue does not warrant the refusal of the application.

- ***Use of water in the construction of the new dwelling.***

The submission raises concern that the construction works will use a large amount of water.

Comment

The control of water usage is regulated by Sydney Water who issue conditional Water Restriction Permits to tradespeople (including builders). As such, the builder commissioned to construct the development is bound by such conditions and Permit restrictions.

This issue does not warrant the refusal of the application.

- ***Sediment run off and impact on Shelley Beach to the south and the adjacent Shelley Beach Reserve to the east.***

Concern is raised in the submission that the development would result in increased stormwater runoff into Shelley Beach and Shelley Beach Reserve because of the increased site coverage and roof forms.

Comment

Stormwater has been assessed by Council's Development Engineer who raise no objection to the proposal subject to conditions which require the developer to demonstrate, how stormwater from the new development within this consent is prior to the issuing of a Construction Certificate, disposed of to an existing approved system or in accordance with Northern Beaches Council's 'Manly Specification for On-Site Stormwater Management 2003'. Furthermore, a condition is imposed which requires the installation of a scour and erosion control device to protect the adjoining bush land, walkway and properties.

This issue does not warrant the refusal of the application.

- ***Impact on views.***

Concern is raised that the development will have an adverse impact in neighbouring views.

Comment

As discussed elsewhere in this report (see Clause 4.6) the development maintains views across the site and to the north towards Shelley Beach from No. 34 Bower Street.

This issue does not warrant the refusal of the application.

- ***Reduction to property values in the local area.***

Concern is raised that the development would have an adverse impact on property value in the local area.

Comment

The issue of property value is not one which can be considered under the provisions of Section 4.15(1) of the Environmental planning and Assessment Act 1979.

This issue does not warrant the refusal of the application.

- ***Proximity of the proposed swimming pool to Shelley Beach.***

Concern is raised in the submission with respect to the proximity of the swimming pool to the rear boundary (adjacent to Marine Parade).

Comment

The swimming pool is setback at least 8.0m from the rear boundary and is elevated above the level of Marine Parade to respond to the sloping topography and existing terracing on the site. The proposed setback complies with the setback requirements of the Manly Development Control Plan 2013.

Visually, the northern face of the pool is finished in stone to respond to the natural rock outcrops which form the terracing in this part of the site. Furthermore, the northern setback area includes additional plantings to soften the visual interface between private and public land.

This issue does not warrant the refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application was referred to Council's Landscape Officer for review. The following comments have been provided:</p> <p><i>"The landscape component of the proposal is acceptable subject to the protection of nominated existing trees and vegetation, and the completion of landscaping.</i></p> <p><i>Amended Landscape Plans are required to change minor aspects of the landscape proposal.</i></p> <p><i>Council's Landscape section have assessed the application against the landscape controls of Manly DCP 2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types."</i></p> <p>The conditions imposed by Council's Landscape Officer are included in the draft consent.</p>
NECC (Bushland and Biodiversity)	<p>The application was referred to the Bushland and Biodiversity section of Council's Natural Environment Unit for review. The following comments have been provided:</p> <p><i>"Council's Natural Environment - Biodiversity Section raises no objections to the proposed development, subject to conditions.</i></p> <p><i>This application was assessed against MLEP Clause 6.5 Terrestrial Biodiversity, MDCP Section 5.4.2, 3.3.1.a)iv) and Schedule 1 Map D,</i></p>

Internal Referral Body	Comments
	<p>as well as the NSW Biodiversity Conservation Act 2016 (BC Act). The subject site is known habitat for the endangered population of Long-nosed Bandicoots at North Head, as listed under Schedule 1 of the BC Act.</p> <p>The proposal is for the demolition of existing structures and the construction of a new dwelling including new swimming pools, landscaping and removal of trees.</p> <p>The submitted Arborist Report (Botanics Tree Wise People, January 2019) assesses 39 trees, 27 within the property and 12 located on adjoining land. Thirteen trees are proposed to be removed, however only 2 of these are prescribed - T7 <i>Melaleuca quinquenervia</i> and T10 <i>Glochidion ferdinandii</i>.</p> <p>The submitted Terrestrial Biodiversity Report (GIS Environmental Consultants, March 2019) assesses the impacts of the proposal on the endangered population of Long-nosed Bandicoot in accordance with local and state requirements. The site currently contains 1071m² of good quality bandicoot foraging habitat and good access to this habitat via habitat on adjoining land (mostly within the Council-managed Bower Street reserve to the east). The proposal will result in a permanent net loss of 352m² of foraging habitat. Access to the remaining 718m² of foraging habitat on the site will not be changed by the proposal. The Test of Significance (ToS) for Long-nosed Bandicoots concludes that "it is not likely that the proposal will have a significant impact on the Endangered Long-nosed Bandicoot population at North Head. Entry into the Biodiversity Offset Scheme (BOS) and further assessment in the form of a Biodiversity Development Assessment Report (BDAR) is not considered necessary for this population". The report also provides Tests of Significance for the Grey-headed Flying-fox due to removal of 2 food trees (T17 and T32), and for threatened microbats due to removal of potential roosting habitat in the existing building. Both tests conclude that there are no likely significant impacts as a result of the proposal. The report assesses the proposal against MLEP Clause 6.5 and concludes that the proposal is consistent with the objectives of this clause.</p> <p>The proposal plans and accompanying ecological assessment indicate that the proposed development will result in a lower net loss of soft open space and bandicoot habitat than the previously approved DA. The proposal is acceptable subject to conditions including implementation of Section 6 Ameliorative Conditions and Section 7 Management Recommendations detailed within the Terrestrial Biodiversity Report (GIS Environmental Consultants March 2019).</p> <p>The Landscape Plans (Secret Gardens 28/03/2019) include a plant schedule with at least 16 native trees to be planted to replace tree proposed for removal. Tuckeroo (<i>Cupaniopsis anacardioides</i>) is considered to be a invasive native and is to be replaced with another suitable non-invasive species as per recommended Landscape</p>

Internal Referral Body	Comments
	<p><i>conditions. The species list specified in Manly DCP Section 3.3.1.a)iv) (Landscaping Design - Bandicoot Habitat) has been included within bandicoot habitat areas."</i></p> <p>The conditions imposed by the Bushland and Biodiversity section of Council's Natural Environment Unit are included in the draft consent.</p>
NECC (Coast and Catchments)	<p>The application was referred to the Coast and Catchments section of Council's Natural Environment Unit for review. The following comments have been provided:</p> <p><i>"The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Manly LEP 2013 and Manly DCP.</i></p> <p><u>Coastal Management Act 2016</u> <i>The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development.</i></p> <p><i>The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</i></p> <p><u>State Environmental Planning Policy (Coastal Management) 2018</u> <i>As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.</i></p> <p><i>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</i></p> <p><i>On internal assessment, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP.</i></p> <p><i>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</i></p> <p><u>Manly LEP 2013 and Manly DCP</u></p> <p><i>The subject site is also shown to be as "Manly Foreshores Scenic Protection Area" on Council's Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site.</i></p> <p><u>Foreshores Scenic Protection Area Management</u></p>

Internal Referral Body	Comments
	<p><i>As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by GSA Planning dated May 2019 and Council accepts the assessment, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</i></p> <p><i>As such, it is considered that the application does comply with the requirements of the Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</i></p> <p><u>Referral Body Recommendation</u></p> <p><i>Recommended for approval, subject to conditions".</i></p> <p><u>Comment</u></p> <p>It is noted that the site is not located within an area identified in the Sydney Harbour Catchment Regional Environment Plan 2005. Therefore, the above comments relating to the SREP do not apply.</p> <p>The conditions imposed by the Coast and Catchments section of Council's Natural Environment Unit are included in the draft consent.</p>
NECC (Development Engineering)	<p>The application was referred to Council's Development Engineer for review. The following comments have been provided:</p> <p><i>"Development Engineer assessed the application in accordance with the section 3.7 and 4.1.6 of Council's Manly DCP 2013.</i></p> <p><i>Development Engineer has no objection to the application subject to the following condition of consent."</i></p> <p>The conditions imposed by Council's Development Engineer are included in the draft consent.</p>
Parks, reserves, beaches, foreshore	<p>The application was referred to Council's Parks, Reserves, Beaches and Foreshores Department for review. The following comments have been provided:</p> <p><i>"Due to the significant earthworks involved in this proposal, erosion control will need to be implemented across the site to prevent loss of material.</i></p> <p><i>No other issues with the proposal."</i></p> <p>The conditions imposed by Council's Parks, Reserves, Beaches and Foreshores Department are included in the draft consent.</p>
Strategic and Place Planning (Heritage Officer)	<p>The application was referred to Council's Heritage Officer for review. The following comments have been provided:</p>

Internal Referral Body	Comments
	<p>"Discussion of reason for referral"</p> <p><i>This application has been referred to Heritage, as it adjoins heritage items, being:</i></p> <ul style="list-style-type: none"> • <i>Item I222 "The Kiosk at Shelly Beach, Manly",</i> • <i>Item I168 "Ocean foreshores, Manly municipal area, boundary adjacent to the ocean"</i> • <i>Item I91 "2 Moreton Bay Fig trees (Ficus macrophylla), Unnamed reserve off Bower Street",</i> <p>Details of heritage items affected</p> <p><i>Details of the items as contained with in the Manly heritage inventory are:</i></p> <p>Item I222 "The Kiosk at Shelly Beach, Manly"</p> <p><u>Statement of significance</u> <i>Shelly Beach Kiosk is of significance for historic, aesthetic and associative reasons, and as a rare example of its type and style. The Kiosk created in 1927, has been in ongoing use as cafe - restaurant and a function centre and is appreciated in the wider community. The Kiosk is the older example of its type of building in the local area, and the only one from the 1920's with high integrity and interesting craftwork elements.</i></p> <p><u>Physical description</u> <i>The Kiosk consists of two components, the original single storey heritage item and the modern two-storey cafe which was refurbished in early 2010's.</i></p> <p><i>The original single storey heritage item was built in 1923 in the Federation Bungalow style and consists of a half-hipped roof with wall hung shingles and wide eaves with timber boarded soffit. The walls are constructed of a sandstone plinth with piers and timber painted shingles. The north façade consists of bi-fold doors and timber framed windows and double door with stone steps leading from the beach. A paved seating area is located to the west of the building and is covered with a fabric canopy.</i></p> <p><i>The modern two storey addition to the east of the original tea room is set back from the building line of the adjacent property. The building features sandstone piers with rendered masonry walls germane in style to the original building adjacent. The ground floor features a timber pergola over a decked seating area. The second floor features a timber pergola over the balcony. The roof is pitched with the gables facing east and west and is covered in a similar tile as that of the original tearoom adjacent.</i></p>

Internal Referral Body	Comments
	<p>Item I168 "Ocean foreshores, Manly municipal area, boundary adjacent to the ocean"</p> <p><u>Statement of significance</u> Natural landscape. Part of coastal zone east coast of Australia. Part entrance to Sydney Harbour. Listed due to its aesthetic, historic, and scientific significance to the area.</p> <p><u>Physical description</u> Ocean foreshores, mostly rocky edge and cliff or beach sand system. Natural environment. High scenic quality.</p> <p>Item I91 "2 Moreton Bay Fig trees (<i>Ficus macrophylla</i>), Unnamed reserve off Bower Street",</p> <p><u>Statement of significance</u> Good example of specimen trees. Shade. Listed for its aesthetic importance.</p> <p><u>Physical description</u> Two Moreton Bay Fig Trees (<i>Ficus Macrophylla</i>) planted in Reserve.</p> <p>Consideration of Application</p> <p>The proposal seeks consent for demolition of the existing dwelling and construction of a new single dwelling of three connected pavilions with new swimming pools and landscaping at No. 32 Bower Street, Manly. Directly to the rear of the subject site is Shelly Beach and the Marine Parade walkway. The site has a steep fall of 19.5m from the front boundary to the rear boundary. There is a large public reserve to the east and the south east of the property, consisting of a lawn area and 2 Moreton Bay Fig trees at street level, with a pathway, stairs and densely vegetated reserve falling towards Marine Parade.</p> <p>In accordance with Manly DCP - 3.2.1.1 Development in the vicinity of heritage items, or conservation areas:</p> <p>b) Proposed development in the vicinity of a heritage item or conservation area must ensure that:</p> <ul style="list-style-type: none"> i) it does not detract or significantly alter the heritage significance of any heritage items, conservation area or place; ii) the heritage values or character of the locality are retained or enhanced; and iii) any contemporary response may not necessarily seek to replicate heritage details or character of heritage buildings in the vicinity, but must preserve heritage significance and integrity with complementary and respectful building form, proportions, scale, style, materials, colours and finishes and building/street alignments.

Internal Referral Body	Comments
	<p><i>c) The impact on the setting of a heritage item or conservation area is to be minimised by:</i></p> <ul style="list-style-type: none"> <i>i) providing an adequate area around the building to allow interpretation of the heritage item;</i> <i>ii) retaining original or significant landscaping (including plantings with direct links or association with the heritage item);</i> <i>iii) protecting (where possible) and allowing the interpretation of any archaeological features; and</i> <i>iv) retaining and respecting significant views to and from the heritage item</i> <p><i>Due to the topography, the elevation view from Shelly Beach, Marine Parade walkway and the Kiosk, is overwhelming and will impact the views upon and from the heritage items. It is believed that integrating the original landscaping including the rocks, to the proposed decking area will allow to maintain the separation between the heritage items and the proposal and this will provide an adequate visual break.</i></p> <p><i>Therefore Heritage raises no objections subject to a condition of retaining the original landscaping."</i></p> <p>The condition imposed by Council's Heritage Officer is included in the draft consent.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
NSW Rural Fire Service – local branch (s79BA EPAA)	<p>The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions.</p> <p>The recommendations of the Bush Fire Report , along with the conditions from the NSW RFS have been included as part of the recommended conditions of consent.</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 19 - Bushland in Urban Areas

Clause 9 of the SEPP applies to land which adjoins bushland zoned or reserved for public open space purposes.

The site is located adjacent to the Shelley Beach Reserve which is zoned RE1 Public Recreation. Therefore, the provisions of Clause 9 apply to the effect that:

(2) *Where a public authority proposes to grant approval or development consent in relation to development on land to which this clause, the public authority shall not grant the approval or development consent unless it has taken into account:*

- (c) *the need to retain any bushland on the site.*
- (d) *the effect of the proposed development on bushland zoned or reserved for public open space purposes.*
- (e) *any other matters which, in the opinion of the approving or consent authority, are relevant.*

In their assessment, the *Arborist Report* (prepared by Botanics Tree Wise People and dated January 2019), the *Terrestrial Biodiversity Report* (prepared by GIS Environmental Consultants and dated March 2019) and the *Landscape Plans* (prepared by Secret Gardens and dated 28 March 2019) were reviewed and considered.

No objection was raised by the Unit subject to conditions which relate to Long-nosed Bandicoot habitat at North Head and the engagement of a Project Ecologist for the duration of demolition and construction works.

Given the above considerations, the development satisfies the applicable provisions of the SEPP.

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 proposed residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 999238S-03 dated 19 December 2019).

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

Commitment	Required Target	Proposed
Water	40	44

Thermal Comfort	Pass	Pass
Energy	50	52

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

SEPP (Infrastructure) 2007

The proposal was referred to Ausgrid in accordance with clause 45 of this policy. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

10 Development on certain land within coastal wetlands and littoral rainforests area

- (1) *The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*
 - (a) *the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
 - (b) *the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
 - (c) *the carrying out of any of the following:*
 - (i) *earthworks (including the depositing of material on land),*
 - (ii) *constructing a levee,*
 - (iii) *draining the land,*
 - (iv) *environmental protection works,*
 - (d) *any other development.*

Comment

The development is not located on land located within a coastal wetland or littoral rainforest area.

Clause 10 is not applicable.

11 Development on land in proximity to coastal wetlands or littoral rainforest

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
 - (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
 - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment

The development is not located on land located within proximity to a coastal wetland or littoral rainforest area.

The nearest littoral rainforest proximity area is located approximately 500m to the south-east adjacent to Collins Beach on the opposite side of the Manly Peninsula.

Clause 11 is not applicable.

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) *if the proposed development comprises the erection of a building or works - the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) *the proposed development:*
 - (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
 - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
 - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.*

Comment

The NSW Department of Planning, Industry and Environment website refers to a Coastal Vulnerability Area as one that is subject to coastal hazards such as coastal erosion and tidal inundation. However, Clause 12 is preceded by a note which states "*at the commencement of this Policy, no Coastal Vulnerability Area Map was adopted and therefore no coastal vulnerability area has been identified*".

Therefore, Clause 12 is not applicable at this time.

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment

The north-western corner of the rear of the site is located within the Coastal Environment Area.

No development is proposed within the Coastal Environment Area, therefore no impact will occur which adversely affect the matters raised in Points (a) to (g).

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in sub-clause (1), or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised - the development will be managed to mitigate that impact.*

Comment

Council is satisfied that the development is designed, sited and will be managed (subject to condition) to avoid an adverse impact referred to in sub-clause (1).

The development satisfies Clause 13(1) and (2).

14 Development on land within the coastal use area

- (1)
- (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*

- (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
- (iv) Aboriginal cultural heritage, practices and places,
- (v) cultural and built environment heritage, and
- (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised - the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment

The development has been designed to ensure that no adverse impact will be caused to the matters raised in Point (a)(i) to (v).

Therefore, Council is satisfied that the development has been designed, sited and will be managed (subject to condition) to avoid any adverse impact referred to in Point (a).

This assessment has considered the development against the applicable standards and controls to take into account the bulk, scale and size of the development within the surrounding coastal and built environment.

The development satisfies Clause 14(1).

As such, it is considered that the application complies with the requirements of the *State Environmental Planning Policy (Coastal Management) 2018*.

15 Development in coastal zone generally- development not to increase risk of coastal hazards

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

Comment

The development is for a dwelling house which, although larger than the existing dwelling house, has been designed to respond to the topography of the site and provide appropriate waste and drainage management systems to avoid any increased risk of coastal hazard.

The development satisfies Clause 15.

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	Permitted	Proposed	% Variation	Complies
4.3 - Height of Buildings	8.5m	Building 1: 7.0m Building 2: 9.28m Building 3: 10.89m Building 4: 9.4m	N/A 9.2% (0.78m) 28.1% (2.39m) 10.6% (0.9m)	Yes No No No
4.4 - Floor Space Ratio	0.45:1 (836.55m ²)	0.435:1 (808m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

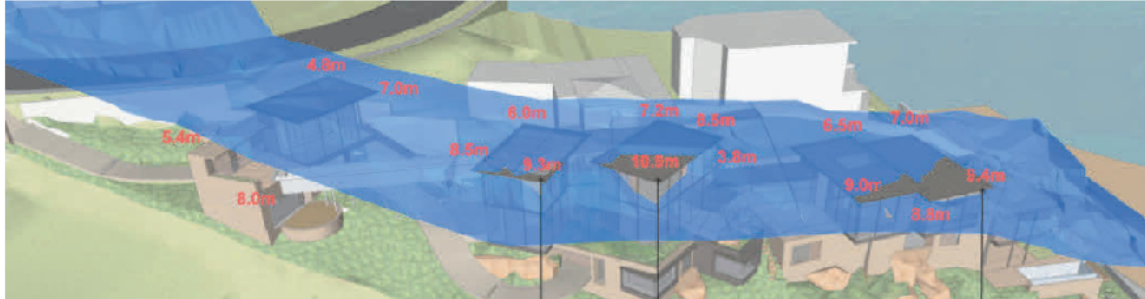
Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance

Development standard:	Clause 4.3 - Height of Buildings
Permitted:	8.5m
Proposed:	Building 1: 7.0m Building 2: 9.28m Building 3: 10.89m Building 4: 9.4m
Percentage variation to requirement:	Building 1: N/A Building 2: 9.2% (0.7m) Building 3: 28.1% (2.39m) Building 4: 10.6% (0.9m)

The figure below details the areas of non-compliance. As can be seen, the areas of non-compliance are reflected against the 8.5m height plane (in blue) and occur at the eastern corners of the upper storeys to Buildings 2, 3 and 4.



Assessment of request to vary a development standard

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *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 4.3 – Height of Buildings development standard is not expressly excluded from the operation of this clause.

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

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

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

- (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by sub-clause (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.'

Section 1.3 of the EPA Act reads as follows:

"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 location of additional height is the result of the internal layout and design of the proposed dwelling; maintaining appropriate floor-to-ceiling heights; providing level floors; and the dwelling being stepped down the site due to the challenging topography in two directions.*
- *The areas of contravention are unlikely to be visible from Bower Street or discernible as additional height from the reserve.*
- *The roof form is compatible with dwellings on the northern side of Bower Street and the additional height will not interfere with the tree canopy. Therefore, the height will not affect streetscape amenity or existing characteristics of the precinct.*
- *The additional height is unlikely to result in adverse amenity impacts in terms of overshadowing, privacy or view loss."*

In this respect, the author of the request concludes:

"Strict compliance with the development standard would not result in a better outcome for development. It would unnecessarily complicate orderly and economic development of the land in accordance with the intentions of the zoning and the objectives of the Environmental Planning and Assessment Act 1979. This is particularly the case when the proposal is otherwise compliant with building height, FSR, lot size and landscaping. It is noted that the proposal is a contemporary and intricately designed response to the unique and sensitive location by a renowned architectural firm. As outlined in our SEE (separately submitted), the location has a number of constraints which have been met in this dwelling's thoughtful design.

Accordingly, in our opinion, the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning ground to justify the variation to the development standard, as required in Clause 4.6(3)(b)."

The above argument is concurred with in that the development will (with exception to Objective (d) which does not apply in this instance) satisfactorily respond to the objects of the Act, the Objectives of the Development Standard, the zone as established in the Manly Local Environmental Plan 2013 and the relevant numerical requirements and/or objectives of the Manly Development Control Plan 2013.

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – '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

In responding to Objective (a) the author of the request states:

"The proposed dwelling's building height is generally compliant with the LEP development standard, with the exception of three portions of the dwelling's roof and small areas of the upper levels. The proposal responds to the sloping site topography, presenting a multi-level stepped design that utilises its cross fall. Dwellings on the northern side of Bower Street generally comprise flat roofs to maintain views for dwellings on the southern side. Accordingly, the proposed flat roof form is consistent with the surrounding dwelling."

The above statement is concurred with in that the development has been designed in pavilions to better respond to the topographical constraints of the site. The prevailing building heights and flat roof forms respect the desired future streetscape character of the locality.

b) to control the bulk and scale of buildings,

Comment

In responding to Objective (b) the author of the request states:

"By breaking up the form into a series of linked pavilions, bulk and scale are minimised when viewed from the street. Accordingly, although portions of proposal are greater than the height control, neighbour and local amenity will be maintained as the proposal is well-designed and sited. Additionally, the proposal provides a substantial reduction in height, bulk and scale when compared to the previous approval (as illustrated below)."





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

In responding to Objective (d) the author of the request states:

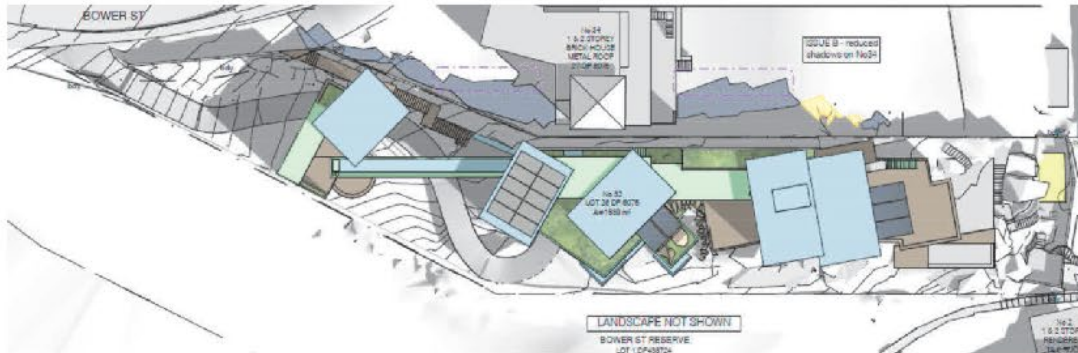
"The proposal provides generous sunlight access to neighbouring private open spaces and habitable rooms at No. 34 Bower Street and maintains existing levels of solar access to public spaces. Shadow diagrams have been prepared for 9:00am, 12:00pm and 3:00pm on 21 June.

The shadow diagrams demonstrate that as the areas of non-compliance are on the western side of the site, they will not result in additional shadow over No. 34 Bower Street, with minor reductions likely.

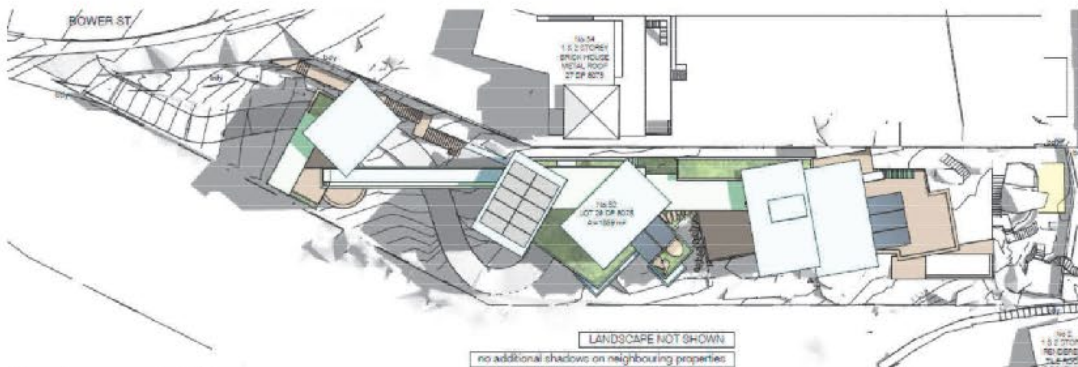
On the eastern side, shadows are already cast over the public domain, specifically the leafy Reserve to the east. Accordingly, the areas of non-compliance will not cast any additional shadow to the east on neighbouring sites or the public domain."

The above statement is concurred with in that the development benefits from its north-south orientation, sloping topography and the absence of a neighbour to the east (which forms the Shelley Beach Reserve). This, in conjunction with the pavilion design ensures that the development provides adequate solar access to public and private land.

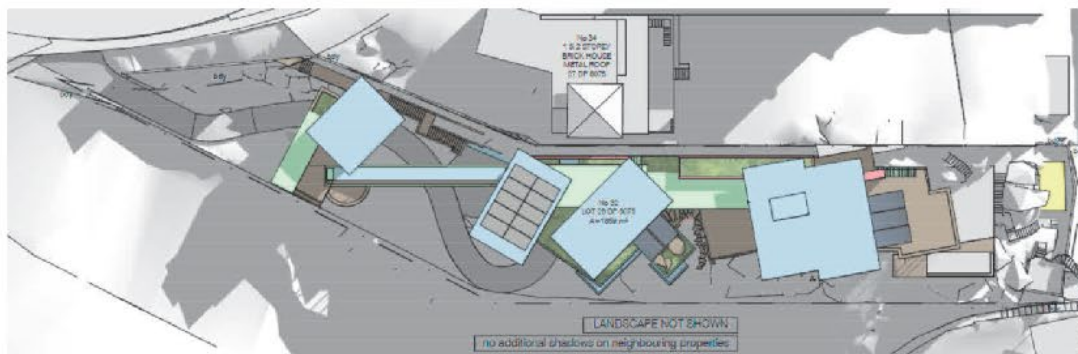
The diagrams below show the shadows cast by the development at 9.00am, Noon and 3.00pm on 21 June.



Shadows cast at 9.00am.



Shadows cast at Noon.



Shadows cast at 3.00pm.

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

In responding to Objective (e) the author of the request states:

"The existing vegetation and topography of the site and its surrounds has been taken into consideration in the proposal, which retains trees where possible and provides generous soft landscaped areas whilst preserving prominent features and setting the pavilions into the topography of the site."

In our opinion, the proposal meets the objectives of the LEP Clause 4.3 Height of Buildings by ensuring consistency with the landscape and streetscape; controlling the building's bulk and scale; maintaining views and solar access; ensuring appropriate vegetation is provided, including additional canopy trees; and the topography of the site is maintained.

The landscape proposal has been revised to provide a substantial tree canopy and offers screening from the neighbouring reserve. The concept of pavilions among the trees will filter views of the dwelling from the adjacent reserve."

The above statement is concurred with in that the development satisfactorily responds to the topography of the site thereby retaining its unique form when viewed from the neighbouring reserve and Shelley Beach. Similarly, because of the pavilion format, the development retains 66.7% of trees on the site.

Zone objectives

The underlying objectives of the E3 Environmental Management zone are:

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

Comment

In responding to this objective the author of the request states:

"The positioning of additional height minimises any likely effect on the ecological, scientific or cultural values of the locality; and enhances the aesthetic value of the site."

The above statement is concurred with in that the development manages the ecological, cultural and aesthetic values of the site through its preservation of the unique topography and vegetation currently evident on the site. Furthermore, the pavilion design enables an effective transition from residential land and the public reserve through the provision of dense landscaping throughout the eastern side of the site.

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

Comment

In responding to this objective the author of the request states:

"The proposed new dwelling and landscaping works is a typical form of development in the locality and the additional height will maintain the area's ecological and aesthetic values."

The above statement is concurred with in that the development will maintain the ecological and aesthetic values of the local area.

- ***To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.***

Comment

In responding to this objective the author of the request states:

"The proposed additional height will not impact on the appearance of nearby environments or dominate the natural scenic qualities of the foreshore. Significant trees will be retained where possible or replaced with new trees and plantings."

The above statement is concurred with in that the development is sited to maintain significant vegetation within the eastern side of the site and within the terraced area adjacent to Marine Parade.

The additional heights, which are located at the eastern corners of Buildings 2, 3 and 4 will not adversely affect the tree canopy nor dominate the natural scenic quality of the Shelley Beach foreshore.

- ***To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.***

Comment

In responding to this objective the author of the request states:

"The additional height will not impact on the nearby foreshore and is a result of maintaining the topography of the site by minimising cut and fill."

The above statement is concurred with in that the development is designed to retain significant vegetation adjacent to Marine Parade and the Shelley Beach Reserve.

Because of the responsive design, the development will not negatively impact on the Shelley Beach foreshore, significant geological features and bushland within the Shelley Beach Reserve.

- ***To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.***

Comment

In responding to this objective the author of the request states:

"Stormwater runoff will be managed in accordance with the Stormwater Management Plan, prepared by Campbell Architecture; is not impacted by the additional height; and will not affect the ecological characteristics of the locality."

The above statement is concurred with in that the extent of continuous hard surface areas is minimised thereby permitting deep soil landscaping (and stormwater infiltration) to occur throughout the site.

Furthermore, an appropriate condition is imposed by Council's Development Engineer requiring, prior to the issue of a Construction Certificate, details demonstrating the disposal of stormwater in accordance with the Northern Beaches 'Manly Specification for On-Site Stormwater Management 2003' including the provision of a scour and erosion control device to protect the Shelley Beach Reserve, Marine Parade and adjacent properties.

- **To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.**

Comment

In responding to this objective the author of the request states:

"Areas of additional height are a result of the built form and site's challenging topography, with pavilions located to maintain existing substantial trees and site features. The limited locations will not detract from the amenity of surrounding development and respond to the site's challenging topography."

The above statement is concurred with in that the pavilion form of the development enables the built form to satisfactorily respond to the existing vegetation, topography and surrounding land uses.

Conclusion

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, 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 Height of Building Development Standard associated with a single dwelling house (Class 1 building).

Mainly Development Control Plan

Built Form Controls

Control	Permitted	Proposed	Variation	Compliance
Density and Dwelling Size	500m ² per dwelling 90m ² min dwelling size	1,853m ² 834m ²	N/A N/A	Yes Yes
Wall Height (West)	Building 1: 7.5m Building 2: 7.1m Building 3: 7.1m Building 4: 7.8m	Building 1: 4.8m to 7.0m Building 2: 6.0m to 6.5m Building 3: 6.5m to 7.1m Building 4: 3.8m to 7.0m	N/A N/A N/A N/A	Yes Yes Yes Yes
Wall Height (East)	Building 1: 8.0m Building 2: 7.2m Building 3: 7.2m	Building 1: 5.0m to 5.6m Building 2: 8.9m	N/A 23.6% (1.7m) 47.2% (3.4m)	Yes No No

	Building 4: 7.4m	Building 3: 4.2m to 10.6m Building 4: 6.5m to 9.1m	22.9% (1.7m)	No
Number of Storeys	2	Building 1: 2 Building 2: 2 Building 3: 3 (part) Building 4: 3 (part)	N/A N/A 25% (part 1 storey) 25% (part 1 Storey)	Yes Yes No No
Roof Height	0.6m (flat roof parapet) (i.e. 8.6m)	Flat Roof (No parapets proposed)	N/A	N/A
Front Setback (South)	6.0m	Building 1: 4.0m to 12.8m	33.3% (2.0m)	No
Side Setback (West) (Based on wall height)	Building 1: 1.6m to 2.3m Building 2: 2.0m to 2.2m Building 3: 2.2m to 2.4m Building 4: 1.3m to 2.3m	Building 1: 8.0m to 8.8m Building 2: 1.3m to 4.0m Building 3: 1.3m to 6.5m Building 4: 1.3m to 2.9m	N/A 35% to 41% (0.7m to 0.9m) 41% to 46% (0.9m to 1.1m) N/A	Yes No No Yes
Rear Setback (North)	8.0m	Building 4: 13m to 17m	N/A	Yes
Setback to RE1 Zone (East)	6.0m	Building 1: 0.7m to 7.5m Building 2: 7.9m Building 3: 3.0m to 4.9m Building 4: 3.9m to 5.8m	88.3% (5.3m) N/A 18.3% to 50% (1.1m to 3.0m) 3.3% to 35% (0.2m to 2.1m)	No Yes No No
Total Open Space (OS3)	Minimum 55% (1,022.4m ²)	1,176m ²	N/A	Yes
Landscaped Area	Minimum 35% (357.8m ²)	910m ²	N/A	Yes
Private Open Space	18m ²	Exceeds 18m ²	N/A	Yes
Car Parking Design	50% of frontage (15.3m)	No garage faces the street	N/A	Yes
Swimming Pools	1.0m to concourse	8.5m to 9.0m	N/A	Yes
Schedule 3 - Car Parking	2 spaces	2 spaces	N/A	Yes

Compliance Assessment

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.1.10 Fencing	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

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

Applicable Clauses

- Clause 4.1.2.1 - Wall Height.
- Clause 4.1.2.2 - Number of Storeys.

Description of non-compliance

Clause 4.1.2.1 - Wall Height

The development does not comply with the requirements of Clause 4.1.2.1 - 'Wall Height' which, given the uneven slope of the site, permits the following maximum variable maximum wall heights:

Building	East	West
Building 1	8.0m	7.5m
Building 2	7.2m	7.1m
Building 3	7.2m	7.1m
Building 4	7.4m	7.8m

The development proposes the following wall heights at the eastern corners of Buildings 2, 3 and 4:

- Building 2: 8.9m (variation = 23.6% (1.7m).
- Building 3: 10.6m (variation = 47.2% (3.4m).
- Building 4: 9.1m (variation = 22.9% (1.7m).

Clause 4.1.2.2 - Number of Storeys

Clause 4.1.2.2 permits a maximum of 2 storeys.

Buildings 3 and 4 include 3 storeys which are partial due to the cross slope of the site (the additional storeys are therefore evident at the eastern elevations of both buildings).

The figure below shows the wall height variations (indicated in orange) and the storey non-compliances (indicated in red).



Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying

Objectives of Clause 4.3 - Height of Buildings as contained under the MLEP 2013, as follows:

- ***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 variable wall heights and number of storeys are a result of an attempt to respond to the topographical and geological constraints of the site which includes numerous rock shelving and which slopes downward to the north from Bower Street and downward (cross slope) to the eastern boundary.

The non-compliances are identified as occurring at the eastern corners of Buildings 2, 3 and 4 which present as flat roofed pavilion format. As each pavilion recedes into the site and towards the west, the non-compliances diminish to achieve compliance at the western elevation.

Despite the non-compliances, the pavilion format enables the development to satisfactorily respond to the topographic landscape, the prevailing building height and the desired future streetscape character in the locality.

The development satisfies this objective.

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

Comment

As noted above, the non-compliances are situated at the eastern corners of Buildings 2, 3 and 4 which form individual pavilions. Because each pavilion is angled to present only a respective corner to the boundary, the bulk and scale is visually diminished (as opposed to a built form which presents a continuous flat surface to the boundary).

The development satisfies this objective.

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

Comment

The non-compliances occur at the eastern side of the site and therefore away from the nearest residential property (which is located to the west at No. 34 Bower Street). The Shelley Beach Reserve is situated immediately to the east of the site and the rear boundaries of residential properties further along Bower Street are located to the east of the Reserve (approximately 25m from the eastern boundary of the site).

Because of this context, the variable topography and densely vegetated Shelley Beach Reserve, the non-compliances would not disrupt views to nearby residential development from public spaces, views from nearby residential development to public spaces or views between public spaces.

The development satisfies this objective.

- ***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

As detailed elsewhere in this report, the certified shadow diagrams submitted with the application indicate that the pavilion design ensures that the development provides adequate solar access to public and private land.

As the non-compliances are located on the eastern side of the site, no impact would occur to private land, and because of the north-south orientation of the site, the impact to the Shelley Beach Reserve would only occur from 2.00pm onwards thereby ensuring solar access to the Reserve for the remainder of the day.

The development satisfies this objective.

- ***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 development satisfactorily responds to the topography of the site thereby retaining its unique form when viewed from the neighbouring reserve and Shelley Beach. Similarly, because of the pavilion format, the development retains 66.7% of trees on the site.

The development satisfies this objective.

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

Applicable Clauses

- Clause 4.1.4.1 - Street Front Setbacks.
- Clause 4.1.4.2 - Side Setbacks and Secondary Street Frontages.
- Clause 4.1.4.6 - Setback for Development Adjacent to LEP Zones RE1, RE2, E1 and E2.

Description of non-compliance

Clause 4.1.4.1 - Street Front Setbacks

Clause 4.1.4.1 requires development to provide a front setback of 6.0m.

The development provides a front setback of between 4.0m to 12.8m to Bower Street which represents a variation of 33.3%.

Clause 4.1.4.2 - Side Setbacks and Secondary Street Frontages

Clause 4.1.4.2 requires development to provide variable side setbacks based on the proposed wall height. In this respect, the development provides the following side setbacks to the west (the eastern side setback is regulated by Clause 4.1.4.6 below):

Building	Required Setback	Provided Setback
Building 1	1.6m to 2.3m	8.0m to 8.8m
Building 2	2.0m to 2.2m	1.3m to 4.0m (variation = 35%)
Building 3	2.2m to 2.4m	1.3m to 6.5m (variation = 40.9%)
Building 4	1.3m to 2.3m	1.3m to 2.9m

Clause 4.1.4.6 - Setback for Development Adjacent to LEP Zones RE1, RE2, E1 and E2

Clause 4.1.4.6 requires development to provide a setback of 6.0m to the adjacent Shelley Beach Reserve (which is zoned RE1).

Building	Required Setback	Provided Setback
Building 1	6.0m	0.7m to 7.5m (variation = 88.3%)
Building 2	6.0m	7.9m
Building 3	6.0m	3.0m to 4.9m (variation = 18.3% to 50%)
Building 4	6.0m	3.9m to 5.8m (variation = 3.3% to 35%)

Merit consideration

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

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

Comment

The front setback non-compliance occurs at the south-western corner of the existing garage structure which is sited approximately 5.7m below the street level of Bower Street.

The redevelopment of this feature will result in a building (being building 1) which will have a height of 7.52m and a roof RL of 29.80. Given that the street level is at RL 28.00, only the top 1.8m of Building 1 will be directly visible from the street. The offsetting of Building 1 to the front boundary (together with its variable building heights) results in a built form which responds to the spatial proportions of the street

The landscape plans submitted with the application indicate that the front setback area between Building 1 and the front boundary will be densely landscaped such that the landscape character of the street will be preserved.

Similarly, the pavilion format of the remainder of the development with respect to the side boundary

setbacks (and the setback to the Shelley Beach Reserve) provides desired spatial proportions to respond to the landscape character of the reserve.

The development satisfies this objective.

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

Comment

The separation of the built forms enable the development to satisfactorily respond to this objective because:

- Each proposed building is offset from the property boundary such that direct overlooking is avoided thereby providing privacy.
- The pavilion format enables the development to provide equitable access to light, sunshine and air movement through the site and through the neighbouring private and public properties.
- The stepping down the site and the separation of the buildings facilitates view sharing and limit impacts on views and vistas from private and public spaces.
- The unique terraced format of the development (which steps down the site from Bower Street), together with the offset contemporary design adds to the character of the streetscape and creates a rhythm of spaces when viewed from the neighbouring private and public properties.
- The development uses the existing driveway which allows for satisfactory sightlines along Bower Street.

The development satisfies this objective.

- **To promote flexibility in the siting of buildings.**

Comment

The proposed setbacks are reflective of the pavilion format of the development and its attempt to respond to the topographical constraints of the site. In this way, the development adopts a high level of flexibility in the siting of the buildings to preserve the natural features of the site and its relationship to its surrounds.

The development satisfies this objective.

- **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 pavilion format enables the development to satisfactorily respond to this objective because:

- The separation between the buildings enables the retention and provision of consolidated deep soil zones which accommodate appropriate plantings including native vegetation and native trees.
 - The spatial arrangement of the development enables plantings to be provided which ensures that a satisfactory landscape transition is provided at the interface with the Shelley Beach Reserve.
 - Subject to conditions imposed by the Bushland and Biodiversity section of Council's Natural Environment Unit, the development satisfies the provisions of State Environmental Planning Policy No 19 - Urban Bushland.
-
- ***To assist in appropriate bush fire asset protection zones.***

Comment

The site is not identified as bush fire prone land and therefore does not require the establishment of bush fire asset protection zones.

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 MLEP 2013 and MDCP 2013 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 \$65,830 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$6,583,016.

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

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building 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.

Submissions

As a result of the public exhibition process, the notification of the application resulted in one individual submission. The main issues raised in the submission were:

- Loss of biodiversity.
- Waste produced by demolition works.
- Use of water in the construction of the new dwelling.
- Sediment run off and impact on Shelley Beach to the south and the adjacent Shelley Beach Reserve to the east.
- Impact on views.
- Reduction to property values in the local area.
- Proximity of the proposed swimming pool to Shelley Beach.

All issues have been addressed in this report (see 'Public Exhibition') and were found to not warrant the refusal or further redesign of the application.

Referrals

All external and internal referral departments have raised no objection to the development.

Environmental Planning Instruments

The development has been found to be generally consistent with the Matters for Consideration under s.4.15 of the Environmental Planning & Assessment Act, 1979.

The development has been found to be generally consistent with the various provisions of the following Environmental Planning Instruments:

- State Environmental Planning Policy No. 19 - Bushland in Urban Areas;
- State Environmental Planning Policy No. 55 – Remediation of Land;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- State Environmental Planning Policy (Infrastructure) 2007; and
- State Environmental Planning Policy (Coastal Management) 2018.

Manly Local Environmental Plan 2013

The development has been found to be consistent with the Aims of the Plan and consistent with the Objectives of Clause 4.6 - Exceptions to Development Standards with regards to a variation to the building height under the Height of Buildings Development Standard.

Manly Development Control Plan 2013

The development has been found to be consistent with the Objectives of the Plan.

Variations to the following Controls were considered to be acceptable due to their consistency with the Objectives of the relevant Clause:

- Clause 4.1.2.1 - Wall Height.
- Clause 4.1.2.2 - Number of Storeys.
- Clause 4.1.4.1 - Street Front Setbacks.
- Clause 4.1.4.2 - Side Setbacks and Secondary Street Frontages.
- Clause 4.1.4.6 - Setback for Development Adjacent to LEP Zones RE1, RE2, E1 and E2.

As a direct result of the application and the consideration of the matters detailed within this report it is recommended that approval be granted to the Development Application subject to the conditions detailed within the "Recommendation" section of this report.

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

RECOMMENDATION

Accordingly Council as the consent authority grant Development Consent to DA2019/0916 for Demolition works and construction of a dwelling house including swimming pools on land at Lot 28 DP 8075, 32 Bower Street, 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
DA 01 (Revision B) - Site Plan and Roof plan	26 November 2019	Campbell Architecture Pty Ltd
DA 04 (Revision B) - Level 4 Plan	26 November 2019	Campbell Architecture Pty Ltd
DA 05 (Revision B) - Level 3 Plan	26 November 2019	Campbell Architecture Pty Ltd
DA 06 (Revision B) - Level 2 Plan	26 November 2019	Campbell Architecture Pty Ltd
DA 07 (Revision B) - Level 1 Plan	26 November 2019	Campbell Architecture Pty Ltd
DA 08 (Revision B) - North, South & East Elevations	26 November 2019	Campbell Architecture Pty Ltd
DA 09 (Revision B) - West Elevation and Section A	26 November 2019	Campbell Architecture Pty Ltd
DA 10 (Revision A) - Materials Palette	19 February 2019	Campbell Architecture Pty Ltd
DA 16 (Revision A) - Pools Plan	19 February 2019	Campbell Architecture Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Report of Geotechnical Site Investigation (2015-241.1)	17 January 2019	Crozier Geotechnical Consultants
Terrestrial Biodiversity Report	29 March 2019	GIS Environmental Consultants
Construction Impact Assessment and Management Plan	November 2019	Botanics, The Tree People Pty Ltd
Bushfire Assessment Report (160013B)	22 February 2019	Building Code & Bushfire Hazard Solutions Pty Ltd

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
DA-01 (Revision B) - Landscape Level 4	27 November 2019	Secret Gardens Pty Ltd
DA-02 (Revision B) - Landscape Level 3	27 November	Secret Gardens Pty

	2019	Ltd
DA-03 (Revision B) - Landscape Level 2	27 November 2019	Secret Gardens Pty Ltd
DA-04 (Revision B) - Landscape Level 1	27 November 2019	Secret Gardens Pty Ltd

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	22 July 2019	Campbell Architecture Pty Ltd

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. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
NSW Rural Fire Service	Referral Response - NSW RFS	2 December 2019

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. Telecommunications in New Developments

Prior to the issue of the Construction Certificate in connection with the development, the developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Certifying Authority that arrangements have been made for:

(i) the installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose.

and

(ii) the provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.

Reason: To ensure that telecommunications infrastructure is considered early in the planning process.

4. 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.

5. 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

6. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$65,830.16 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 \$6,583,016.00.

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

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

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

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

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

7. Security Bond

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

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

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

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

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

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION
CERTIFICATE****8. On slab landscape planting and associated works**

- a) Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided,
- b) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule,
- c) The following soil depths are required to support landscaping as proposed:
 - o 300mm for lawn
 - o 600mm for shrubs
 - o 1m for small trees
- d) Design certification shall be submitted to the Certifying Authority by a structural engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

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

9. Stormwater Disposal

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003. A scour and erosion control device must be provided to protect the adjoining bush land, walkway and properties.

Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

10. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site.

11. Tree Protection Plan

In order to protect and enhance onsite vegetation and trees the following applies to the development site:

a) A Tree Protection Plan prepared by a AQF Level 5 Arborist with qualifications in arboriculture/horticulture shall be provided, in accordance with AS4970-2009 Protection of trees on development sites and the recommendations of the Construction Impact Assessment and Management Plan dated January 2019 prepared by Botanics Tree Wise People P/L demonstrating, as a minimum, the following:

- Layout of the approved development.
- Location of trees identified for retention.
- Extent of canopy spread.
- Location of tree protection fencing / barriers.
- General tree protection measures.
- Project Arborist inspection hold points.

b) The Tree Protection Plan is to be submitted to the Certifying Authority for approval prior to issue of a Construction Certificate.

c) Tree protection measures identified on the plan are to be in place prior to commencement of works.

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

12. **Amended Landscape Plan**

Amended Landscape Plans, based on drawing numbers DA-01, DA-02, DA-03, and DA-04 as prepared by Secret Gardens, shall be issued to the Certifying Authority at Construction Certificate stage demonstrating the following changes to the Landscape Plans:

- Cupaniopsis anacardioides (establishing within the LGA as a self-seeding species) shall be deleted from the plans and replaced with tree planting in accordance with Manly DCP, Schedule 4, Part B - Native Tree Selection, with the inclusion of the following trees: Acmena smithii, Ceratopetalum apetulum, Glochidion ferdinandi and Syzygium oleasum,
- at least one Ficus rubiginosa of minimum pot size 200 litre is to be planted in a suitable location on the eastern side of the site,
- all tree planting shall be approximately 5 metres from buildings,
- all existing plants nominated for transplanting shall be documented by location, with notation that any failed transplanting shall be replaced by native tree planting,
- selection of only native trees as canopy amenity is advised,
- species selection of exempt species is to be limited to avoid potential future removal of the species,
- documentation shall be in accordance with the DA Lodgement Requirements for Landscape Plans.

Reason: provide landscape amenity to soften the built form

13. **Pool Exclusion Fencing – Bandicoot Habitat**

Long-nosed Bandicoots are to be excluded from swimming pools and spas while maintaining access to any surrounding soft landscaping. Pool fencing must have no gaps large enough to allow bandicoots access.

Plans are to be amended and provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To prevent Long-nosed Bandicoots from drowning in swimming pools and spas.

14. **Height of Walls/Steps – Bandicoot Habitat**

The height of any new retaining walls or steps of new external stairways must not exceed 200mm (or lower in accordance with BCA standards). Where this cannot be achieved, a slope is to be provided in association with the retaining walls and/or stairs to permit Long-nosed Bandicoot access.

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

Reason: To maintain bandicoot access to existing and proposed habitat within and surrounding the site.

15. **No Bright Lighting – Bandicoot Habitat**

No bright lighting or motion detectors are to be installed to illuminate the lawn or garden areas. A modest amount of low lighting may be used for safety purposes only.

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

Reason: Bright lighting disturbs Long-nosed Bandicoots and disrupts normal Bandicoot foraging, sheltering and nesting activity.

16. **Access to Undercroft Areas – Bandicoot Habitat**

Where concealing material is required for any undercroft areas (e.g. under the house, stairs or balcony), gaps are to be established to allow Long-nosed Bandicoot access. Gaps are to be at least 150mm high and 300mm wide.

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

Reason: To maintain bandicoot access to existing and proposed habitat within and surrounding the site.

17. **Engage a Project Ecologist**

A Project Ecologist is to be employed for the duration of the approved works to ensure all biodiversity protection measures (including all bandicoot habitat conditions) are carried out in accordance with these conditions of consent and the approved Terrestrial Biodiversity Report (GIS Environmental Consultants March 2019).

The project ecologist must have one of the following memberships / accreditation:

- Practising member of the NSW Ecological Consultants Association (<https://www.ecansw.org.au/find-a-consultant/>) OR
- Biodiversity Assessment Method Accredited Assessor under the NSW *Biodiversity Conservation Act 2016* (<https://customer.lmhc.nsw.gov.au/assessment/AccreditedAssessor>)

Evidence of engagement of the Project Ecologist is to be provided to the Principal Certifying Authority Prior to issue of Construction Certificate.

Reason: To protect native vegetation and wildlife in accordance with relevant Natural Environment LEP/DCP controls.

18. Access Spaces – Bandicoot Habitat

Any new gates or fences are to be designed to include gaps appropriate to maintain bandicoot access through and within the site, or alternatively, a raised design which provides access underneath the length of the fence (150mm high). Gaps are to be at least 150mm high and 300mm wide, and at minimum intervals of 2 metres. This condition does not apply to pool fencing.

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

Reason: To maintain bandicoot access to existing and proposed habitat within and surrounding the site.

19. Design Impact on Coastal Processes and Public/Private Amenity

All development and/or activities must be designed and constructed so that they will not adversely impact on surrounding properties, coastal processes or the amenity of public foreshore lands.

Reason: To ensure the development does not impact the coastal process and public/private

20. 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.

21. Sydney Water "Tap In"

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

22. Pre-Construction Dilapidation Report

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

- 34 Bower Street, Manly.

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

23. **Tree removal within the property**

The following trees within the property are approved for removal based on the recommendations of the Construction Impact Assessment and Management Plan prepared by Botanics Tree Wise People Pty Ltd:

- Tree 6: Pittosporum under 5m
- Tree 7: Paperbark impacted by development with no alternative design potential (removal is subject to tree replacement within the development site)
- Tree 8 and 9: Cocus Palms (exempt species)
- Tree 10: Cheese Tree
- Tree 13 and 14: Cordyline
- Tree 15: Dragon Tree
- Tree 20: Chinese Cabbage Tree Palm (exempt species)
- Tree 26: Macadamia impacted by development with no alternative design potential (removal is subject to tree replacement within the development site)
- Tree 32: dead Ficus tree stump

24. **Tree removal within the road reserve**

The following tree is approved for removal within the public reserve based on the recommendations of the Construction Impact Assessment and Management Plan prepared by Botanics Tree Wise People Pty Ltd:

- Tree 3: Cupressus torulosa (exempt species), located within the Bower Street road verge, and as located and identified in the Construction Impact Assessment and Management Plan.

Removal of these trees within public land shall only be undertaken by a Council approved Tree Contractor.

Details of currently approved Tree Contractors can be obtained from Northern Beaches Council's Tree Services section prior to removal.

Reason: Public liability

25. **Compliance with Ecologist's Recommendations – Pre-construction**

All pre-construction biodiversity-related measures specified in the approved Terrestrial Biodiversity Report (GIS Environmental Consultants March 2019) and these conditions of consent are to be implemented at the appropriate stage of the development. Compliance with pre-construction measures is to be certified by the Project Ecologist prior to issue of the Construction Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls.

26. **Site Induction Required – Bandicoot Habitat**

All workers, including site inspectors and sub-contractors, are to be made aware of the potential presence of relevant threatened species through a site induction prior to commencement of works. The site induction is to include information about their conservation significance, potential activities on-site, means of identification and the measures to be implemented for their protection. A confirmation of induction is to be signed by every worker and the site manager.

Evidence of the site induction is to be documented, certified by the Project Ecologist and provided to the Principal Certifying Authority.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

27. **Fauna Protection Fencing – Bandicoot Habitat**

Temporary chain wire fencing is to be installed around all work areas (including demolition, storage and construction areas) prior to the commencement of works. The fencing is to be designed to minimise the possibility of ground-dwelling native fauna (including relevant threatened species) accessing the work areas. Fencing is to be maintained for the duration of works.

Reason: To prevent impacts to ground-dwelling native fauna, including relevant threatened species.

28. **Ecologist to Induct Site Manager – Bandicoot Habitat**

Prior to commencement of construction works, the project ecologist is to meet with the site manager to:

- a) advise of conditions to be implemented for protection of relevant threatened species;
- b) ensure that all workers are appropriately briefed on required protective measures; and
- c) inspect protective measures to confirm their adequacy and advise the proponent and site manager of the inspection results and their implications.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

29. **Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained

in a safe condition at all times during the course of the work.

Reason: Public Safety.

30. **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)];
- 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; and
- 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.

31. **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.

32. **Survey Certificate**

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

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

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

33. Traffic Control During Works

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

Reason: Public Safety.

34. Original landscaping is to be retained and enhanced

The original landscaping, including the rocks around the decking area, is to be retained and enhanced.

Reason: To allow interpretation of the heritage items and retain the heritage values and character of the locality. (DACHEEDW1)

35. Project Arborist

- a) A Project Arborist with a minimum AQF Level 5 qualification in arboriculture/horticulture is to be appointed prior to commencement of works,
- b) The Project Arborist is to oversee all tree protection measures, removals and works adjacent to protected trees as outlined in the approved Tree Protection Plan, the Construction Impact Assessment and Management Plan prepared by Botanics Tree Wise People Pty Ltd and AS 4970-2009 Protection of trees on development sites,
- c) The Project Arborist is to ensure compliance as relevant with any other environmental requirements conditioned under this consent.

The Project Arborist is to recommend tree protection measures such as tree fencing, trunk protection and ground protection, and supervise all excavation and construction works near all trees, including recommending the construction methods near the existing trees to protect tree roots, trunks, branches and canopy.

Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Reason: to ensure the protection of the existing landscape amenity.

36. Tree and vegetation protection

- a) Existing trees and vegetation shall be retained and protected in accordance with the approved Tree Protection Plan, the Construction Impact Assessment and Management Plan prepared by Botanics Tree Wise People Pty Ltd, and AS 4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures, and as follows:
 - i) all trees and vegetation, including T4, T25, T27, T28, T30, and T31 within the site not approved for removal, excluding exempt vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining properties, including T1, T16, T33 to T37 inclusive, T38, and T39,

iii) all road reserve trees and vegetation, including T2 (Bower Street), and T29, T30, and T31 (Marine Parade).

b) Tree protection shall be generally undertaken as follows:

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

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

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

37. **Protection of rock and sites of significance**

- a) All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.
- b) Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: preservation of significant environmental features.

38. **Compliance with Ecologist's Recommendations – During Construction**

All biodiversity-related measures are to be implemented during construction in accordance with the approved Terrestrial Biodiversity Report (GIS Environmental Consultants March 2019) and these conditions of consent.

The Project Ecologist must undertake direct supervision of the following at a minimum:

- tree and vegetation removal
- demolition of the existing structures which have been identified as being potential microbat roosting habitat
- Site inductions

Compliance with these measures is to be certified by the Project Ecologist in writing, including photographic evidence, to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls.

39. **Daily Inspections Required – Bandicoot Habitat**

An inspection register log-book must be kept on site recording daily inspections of all holes, machinery and construction material stockpiles, checking for Long-nosed Bandicoots. Inspections are to be undertaken each work day before the commencement of works and works may only proceed once any bandicoot has safely vacated any holes, machinery or stockpiles. The log-book is to be made available to Principal Certifying Authority.

Reason: To avoid injury or death of Long-nosed Bandicoots which may be utilising stockpiles of vegetation, materials or debris.

40. **Report Dead or Injured Bandicoots – Bandicoot Habitat**

Any injured or dead Long-nosed Bandicoots found within the worksite must be reported to the National Parks & Wildlife Service (9457 9577) or Northern Beaches Council (1300 434 434).

Reason: To prevent impacts to Long-nosed Bandicoots in accordance with the Biodiversity Conservation Act 2016.

41. **Protect Grassed Foraging Areas – Bandicoot Habitat**

There is to be no off-loading or storage of construction materials or debris on the grassed lawn or grassed road verge adjacent to the property. The integrity of the grass must be preserved at all times.

Reason: To prevent direct physical injury to Long-nosed Bandicoots and allow for foraging activity. This area is likely to be used by bandicoots for foraging.

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

42. **Landscape works**

Landscaping is to be implemented in accordance with the approved Amended Landscape Plans.

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

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

43. **Condition of retained vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with AQZ Level 5 qualifications in arboriculture/horticulture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

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

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

44. **Stormwater Disposal**

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

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

45. **Compliance with Ecologist's Recommendations – Post Construction**

All biodiversity-related measures are to be implemented at the appropriate stage of development in accordance with the approved Terrestrial Biodiversity Report (GIS Environmental Consultants March 2019) and these conditions of consent.

The Project Ecologist must certify that all new fencing and artificial lighting are installed in accordance with these conditions of consent and the approved Terrestrial Biodiversity Report (GIS Environmental Consultants March 2019).

Satisfactory establishment/initiation of post-construction measures is to be certified by the Project Ecologist prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls.

46. **Protection of Habitat Features – Certified by Ecologist**

All natural landscape features, including rock outcrops, native vegetation, soil and watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans. Written details demonstrating compliance are to be certified by the Project Ecologist and provided to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To protect wildlife habitat in accordance with relevant Natural Environment LEP/DCP controls.

47. **House / Building Number**

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

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

Reason: Proper identification of buildings.

48. **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)

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

49. **Landscape maintenance**

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

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

Reason: to maintain local environmental amenity and ensure landscaping continues to soften

the built form.

50. Environmental and priority weed control

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

Reason: preservation of environmental amenity.

51. Control of Weeds

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

Reason: Weed management.

52. No Planting Environmental Weeds

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

Reason: Weed management.

53. Works to cease if item found

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

Reason: To protect Aboriginal Heritage.

54. Maintain Fauna Access and Landscaping Provisions – Manly LEP Clause 6.5

All fauna access/movement and landscaping provisions specified in these conditions of consent are to be implemented and maintained for the life of the development.

Reason: To maintain fauna access to existing and proposed habitat within and surrounding the site.

55. Dead or Injured Wildlife

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

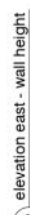
Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

56. Domestic Animals Exclusion

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

Reason: Wildlife protection.





	date	description
A	19.02.19	DA submission
B	26.11.19	Revisions

gsa planning

MANLY LEP 2013

Clause 4.6 Exceptions to Development Standards – Building Height (Amended)

Demolition of Existing Dwelling and Construction of a New
Dwelling with New Swimming Pools and Landscaping at

No. 32 Bower Street Manly

Prepared for:

No 32 Bower Street Property
c/- I've Got Time Group
PO Box 1685
Neutral Bay NSW 2089

Prepared by:

GSA PLANNING
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JOB NO. 18230
November 2019

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**MANLY LOCAL ENVIRONMENTAL PLAN (LEP) 2013
CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS**

APPLICANT'S NAME: No. 32 Bower St Property
SITE ADDRESS: No. 32 Bower Street, Manly
PROPOSAL: Demolition of existing dwelling and construction of a new dwelling with new swimming pools and landscaping

1. (i) **Name of the applicable planning instrument which specifies the development standard:**

Manly Local Environmental Plan (LEP) 2013

- (ii) **The land is zoned:**

E3 Environmental Management Zone

- (iii) **The number of the relevant clause therein:**

Clause 4.3 – Height of Buildings

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning.

2. **Specify the nature of Development Standard sought to be varied and details of variation:**

The development standard to which this request for variation relates is Clause 4.3 of the LEP – Height of Buildings. This Clause operates in conjunction with the Height Map which indicates a maximum building height of 8.5m applies to the subject site.

The proposal generally complies with the building height control, with the exception of small portions of the roof and upper levels at the middle and rear pavilions of the dwelling, with the non-compliant area the on east where the land slopes down. Figure 1 illustrates this significant cross-fall from west to east within the site.

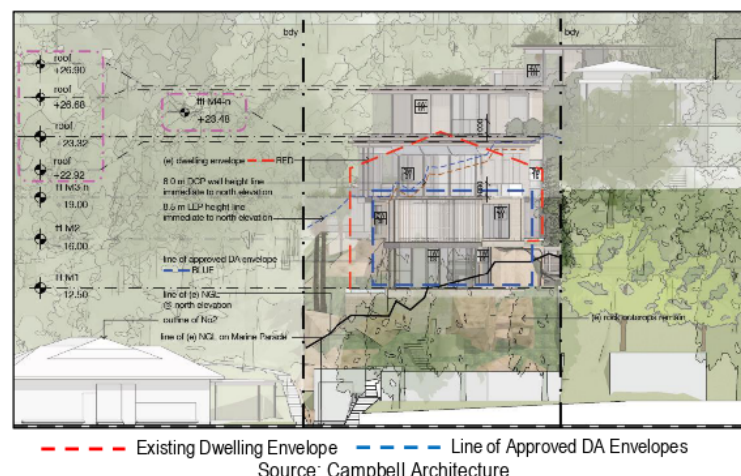
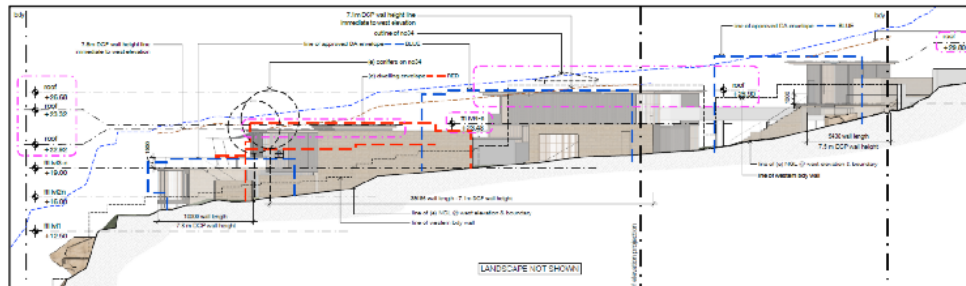


Figure 1: North Elevation Showing Cross-fall

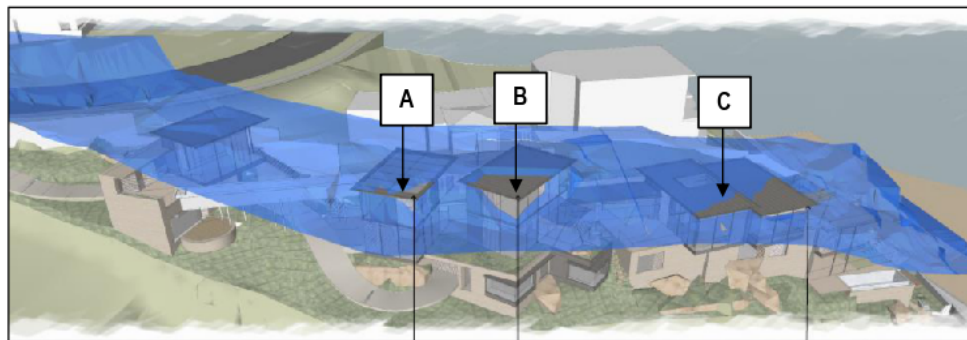
Figure 2 shows the amended proposal is fully compliant with the height limits on the western side, adjacent to No. 34 Bower Street



Source: Campbell Architecture

Figure 2: Amended Western Elevation

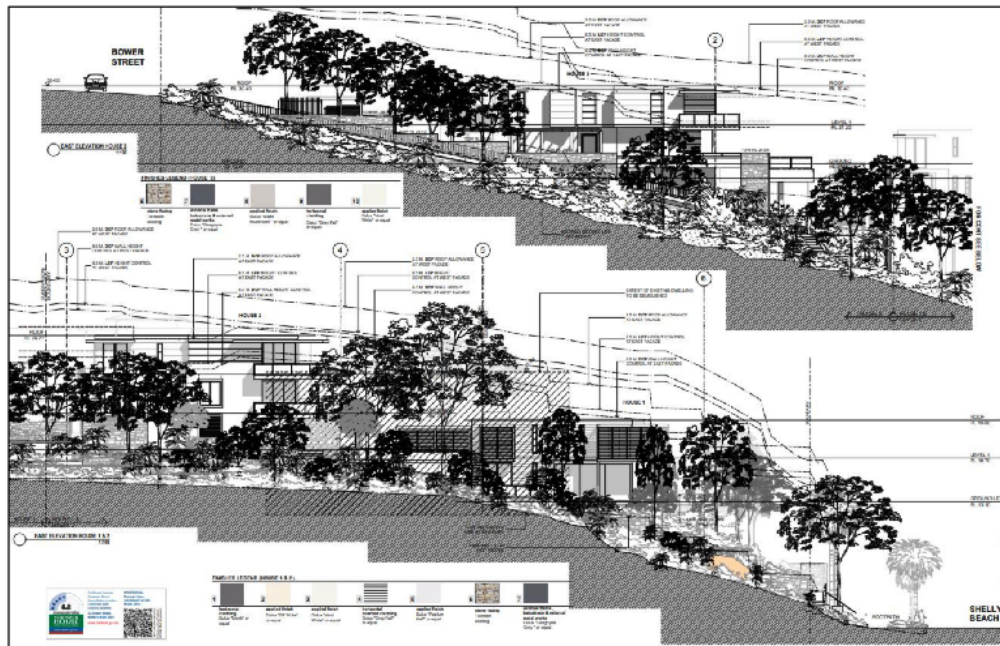
The variation is most clearly shown in Figure 3, which illustrates the areas of the dwelling which are greater than the height limit. These vary from 0.78m (A); 2.39m (B); and 0.96m (C) across the site (9.18% - 28.11%) (see Figure 3).



Source: Campbell Architecture

Figure 3: Height Blanket Diagram, as viewed from the East

No area of additional height is readily visible from the street, and the proposed dwelling is consistent with both existing and approved height non-compliances. The proposal is predominantly within the existing approved building envelope (see Figure 4 on the following page). The proposal also has building heights which are comparable with the consent for three dwellings and subdivision (DA 142/2016) approved on **16 March 2017** (see Figure 4 on the following page).



Source: Wolski Coppin Architecture

Figure 4: Previously Approved Proposal – Eastern Elevation (Three Dwellings)

The new proposal is for an architect-designed part one, two and three storey dwelling, however when viewed from Bower Street the proposal will present as an elevated one-storey built form, with the additional storeys concealed from the streetscape, following the site slope. The proposal has a compatible building height alignment with nearby developments. The non-compliances are considered technical, resulting from the steep cross-fall and sloping topography from the front to rear boundary of the subject site.

3. Consistency with Objectives of Clause 4.6

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. In the Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (*Initial Action*), Preston CJ notes at [87] and [90]:

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...In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.

However, it is still useful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

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

The proposal seeks flexibility in the application of the building height development standard to the development in the circumstance of this particular case. The proposal's height, bulk and scale has been carefully considered and designed to maintain the streetscape and reserve amenity and respect the scenic significance of the foreshore and ocean to the rear. The proposal contributes to the existing and emerging character of the locality and minimises issues regarding view impacts, privacy and overshadowing.

The assessment relates to portions of the building at the middle and rear sections of the proposed dwelling. The technical non-compliances are attributed to the challenging topography of the site and a significant fall in the existing ground line both from the front of the site to the rear, and across site. The proposal complies with the major built form controls including FSR and minimum lot size. On this basis, the height is considered to be consistent with the objectives of Clause 4.6.

Flexibility in this circumstance will provide a better outcome for and from development. This includes the additional height on the eastern side having no effect on the amenity of Bower Street residents to the east. The additional height also minimises level changes within the building, which is stepped down the site to replicate the existing landform. To refuse this application would unnecessarily complicate the design of the built form whilst reducing the floor-to-ceiling heights at the rear section of the dwelling.

4. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause is stated, *inter alia*:

- (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.*

In *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2019] NSWCA 130 ('Rebel'), Preston CJ states at [51]:

... in order for a consent authority to be satisfied that an applicant's request has "adequately addressed" the matters required to be demonstrated by cl 4.6(3), the consent authority needs to be satisfied that those matters have in fact been demonstrated. It is not sufficient for the request merely to seek to demonstrate the matters in subcl (3) (which is the process required by cl 4.6(3)), the request must in fact demonstrate the matters in subcl (3) (which is the outcome required by cl 4.6(3) and (4)(a)(i)).

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in these circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

4.1 Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [22]:

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

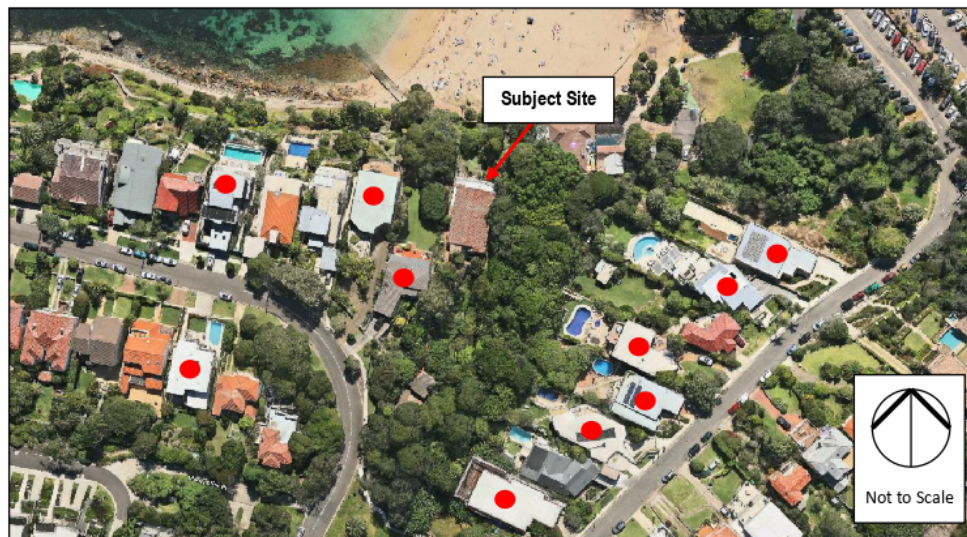
It is our opinion that the proposal satisfies a number of the five tests established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant tests will be considered below.

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

It is noted that under Clause 4.6(4)(a)ii, 'achieved' has been replaced by the lesser test of 'consistent'. Despite the non-compliance, the proposal is consistent with the desired density character of the area. The proposal provides a height, bulk and scale that is generally consistent with that envisaged by Council's controls. Consistency with the objectives of the height standard will now be discussed.

Objective (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

The proposed dwelling's building height is generally compliant with the LEP development standard, with the exception of three portions of the dwelling's roof and small areas of the upper levels. The proposal responds to the sloping site topography, presenting a multi-level stepped design that utilises its cross fall. Dwellings on the northern side of Bower Street generally comprise flat roofs to maintain views for dwellings on the southern side (see figure 5). Accordingly, the proposed flat roof form is consistent with the surrounding dwelling.



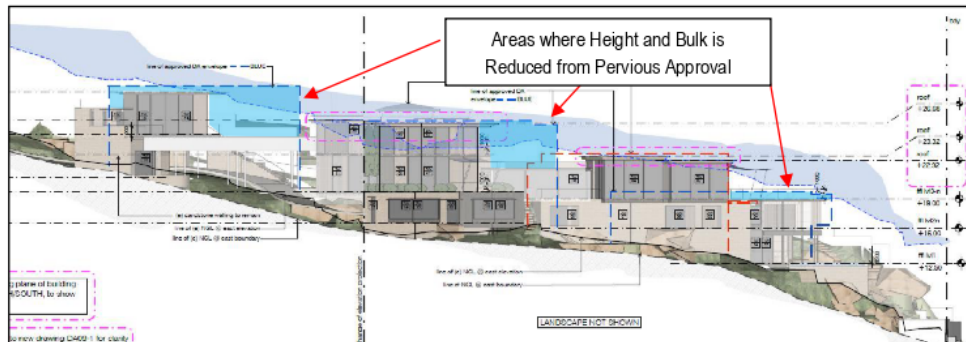
Source: Apple Maps

● Surrounding Dwellings with Flat Roofs

Figure 5: Areal View Shower Flat Roofs of Surrounding Dwellings

Objective (b): to control the bulk and scale of buildings

By breaking up the form into a series of linked pavilions, bulk and scale are minimised when viewed from the street. Accordingly, although portions of proposal are greater than the height control, neighbour and local amenity will be maintained as the proposal is well-designed and sited. Additionally, the proposal provides a substantial reduction in height, bulk and scale when compared to the previous approval (see Figure 6).



Source: Campbell Architecture

Figure 6: Eastern Elevation Showing Previously Approved and Proposals Height

Objective (c): to minimise disruption to the following:

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

The proposal and areas of its additional height have been designed to maximise potential views across the site from habitable rooms of neighbouring and nearby properties. To maximise views from No. 34 Bower Street, the areas of additional height have been carefully positioned across the site; are stepped in height; and incorporate a flat roof form. This provides reduced view impacts compared to the previously approved heights and maintains ocean views currently enjoyed by No. 34 Bower Street (see Figure 7)



View from No. 34 Bower Street – Approved Dwelling No. 2

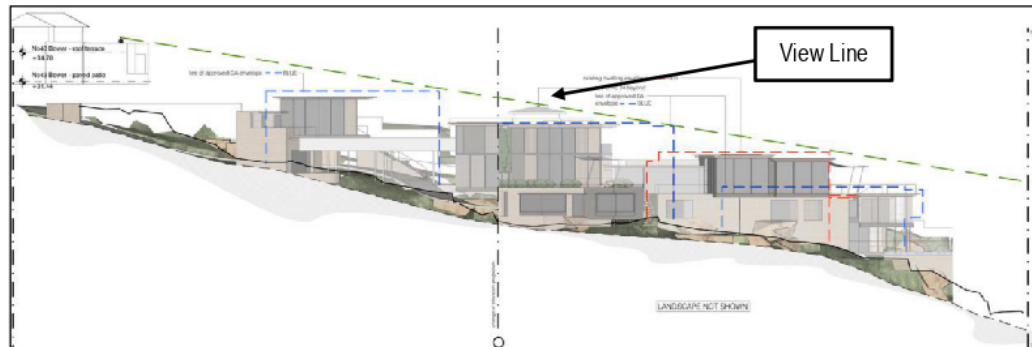


View from No. 34 Bower Street – Amended New Dwelling

Source: Campbell Architecture

Figure 7: Approved and Amended Proposal, as viewed from No. 34 Bower Street

Views exist across the subject site from the roof terrace of No. 43 Bower Street towards the ocean. Potential impacts of the proposed dwelling have been similarly minimised through the siting of the additional height; incorporation of flat roofs; and the stepped nature of the design to respond to the sloping site (see Figure 8).



Source: Campbell Architecture

View-line from the Roof Terrace of No. 43 Bower Street Over Proposed New Dwelling

Figure 8: Proposed View Impact Diagram – No. 43 Bower Street

There are currently limited public views across the site from street level due to the dense vegetation, however a small area of ocean views enjoyed from the street will be maintained despite the additional height due to viewing angles.

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

The proposal provides generous sunlight access to neighbouring private open spaces and habitable rooms at No. 34 Bower Street and maintains existing levels of solar access to public spaces. Shadow diagrams have been prepared for 9:00am, 12:00pm and 3:00pm on 21 June (separately submitted).

The shadow diagrams demonstrate that as the areas of non-compliance are on the western side of the site, they will not result in additional shadow over No. 34 Bower Street, with minor reductions likely.

On the eastern side, shadows are already cast over the public domain, specifically the leafy Reserve to the east. Accordingly, the areas of non-compliance will not cast any additional shadow to the east on neighbouring its or the public domain.

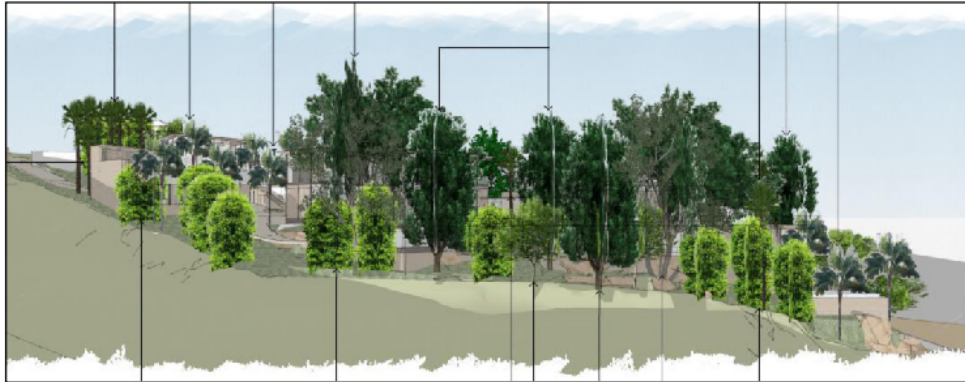
Objective (e): to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

The existing vegetation and topography of the site and its surrounds has been taken into consideration in the proposal, which retains trees where possible and provides generous soft landscaped areas whilst preserving prominent features and setting the pavilions into the topography of the site.

In our opinion, the proposal meets the objectives of the LEP Clause 4.3 Height of Buildings by ensuring consistency with the landscape and streetscape; controlling the building's bulk and scale; maintaining views and solar access; ensuring appropriate vegetation is provided, including additional canopy trees; and the topography of the site is maintained.

The landscape proposal has been revised to provide a substantial tree canopy and offers screening

from the neighbouring reserve (see Figure 9). The concept of pavilions among the trees will filter views of the dwelling from the adjacent reserve.



Source: Campbell Architecture

Figure 9: Proposed Landscape View

Test 3 - The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

The development standard's underlying purpose is to minimise the impacts of building heights on the topographic landscape, streetscape locality, bulk and scale, views, overshadowing, and bushland and surrounding land uses. This report demonstrates that despite the additional height, the proposal will maintain these objectives; being designed in consideration of the character of the locality and potential impacts on nearby properties.

Strict compliance with the development standard would further complicate the already articulated and stepped built form design. The way the pavilions have been designed, is to combine compatible uses in a logical manner, and limit changes of levels within those compatible uses. The small areas of additional building height ensure that level floor areas are provided throughout the dwelling. The reductions in height and increases in setback have reduced any effects from the additional height, and retained the concept of the various pavilions.

The contemporary dwelling complements the existing and future character and scenic amenity of the area. We understand views from adjacent and opposite neighbours will be maintained and only minimal additional overshadowing of the already shady reserve will occur. The height of the pavilion-style designed proposal also allows the building to blend with the dominant tree canopy of the reserve.

Accordingly, in our opinion, the requirement to comply with the maximum Height of Building control for the new dwelling is unreasonable as the area of additional height is not readily discernible from the street; the built form will improve the scenic amenity of the harbour and foreshore; resident amenity will be preserved for the future occupants; and the proposal's form will maintain amenity to neighbouring properties.

Test 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;

While the standard has not been virtually abandoned or destroyed, it is important to note that Council have, on previous occasions, consented to proposals in the locality with a Building Height that exceeded the development standard, as evidenced in the Development Variation Registers published on Council's website. Recent examples of these in Manly are outlined in Table 1:

Table 1: Approved DAs with a non-compliant building height				
ADDRESS	DA NUMBER	LEP CONTROL	BUILDING HEIGHT APPROVED	ADDITIONAL HEIGHT
14 Bower Street, Manly	0079/2017	8.5m	9.35m	10%
82-84 Bower Street, Manly	0168/2017	8.5m	11.2m	31.8%
7-9 Marine Parade, Manly	0224/2017	8.5m	9.6m	12.9%
9 Addison Road, Manly	0270/2017	8.5m	8.9m	0.5%
61 Bower Street, Manly	0243/2017	8.5m	9.9m	16.5%
57 Addison Road, Manly	0540/2018	8.5m	10.8m	27%
32 Bower Street, Manly	0142/2016	8.5m	11m	29.4%

There are numerous examples of developments in the Northern Beaches LGA and in this immediate area which have been approved with non-compliances of the maximum Height of Building development standard. This also includes the previous DA approved for the subject site. While each DA is assessed on its own merits and each site has different characteristics, Council has accepted variations to the maximum building height standard in the past.

4.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

Environmental planning grounds is deliberately broad and could include contextual fit, social benefits and the absence of environmental impacts. This section must consider grounds that relate to the subject matter, and the objects of the EPA Act (Section 1.3): in particular (c) to promote the orderly and economic development of the land and (g) to promote good design and amenity of the built environment. Also consider whether the proposal achieves the objectives of the precinct (Woollahra). For interest sake *Four2Five v Ashfield Council* [2015] NSWLEC 90 discussed the matter at [26] as follows:

These phrases are of wide generality enabling a variety of circumstances or grounds to justify contravention of the particular development standard. The "sufficient ... grounds" must be "environmental planning grounds" by their nature. The word "environment" is defined in the EPA Act to mean "includes all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings".

The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15].

This report demonstrates the proposed new dwelling will be compatible with nearby and future development. The areas of contravention are unlikely to be visible from Bower Street or discernible as additional height from the reserve. The roof form is compatible with dwellings on the northern side of Bower Street and the additional height will not interfere with the tree canopy. Therefore, the height will not affect streetscape amenity or existing characteristics of the precinct in this sense. The location of additional height is the result of the internal layout and design of the proposed dwelling; maintaining appropriate floor-to-ceiling heights; providing level floors; and the dwelling being stepped down the site due to the challenging topography in two directions.

In addition, it is in our opinion that the additional height is unlikely to result in adverse amenity impacts in terms of overshadowing, privacy or view loss. Overshadowing and loss of privacy is minimised by presenting a compliant building height on the western side to No. 34 Bower Street. Indeed, the combination of the proposed flat roof, segmented layout and stepped down design will maintain views over the site from No. 43 Bower Street and improve ocean views from No. 34 Bower Street. As the areas of non-compliance are confined to the eastern side of the proposal, they will not result in additional overshadowing when compared to the existing situation. Similarly, as the eastern boundary adjoins a reserve, privacy of properties of the east are maintained. Therefore, we consider the elements contributing to the proposal's additional height as being appropriate in this circumstance.

As detailed, strict compliance with the development standard would not result in a better outcome for development. It would unnecessarily complicate orderly and economic development of the land in accordance with the intentions of the zoning and the objectives of the Environmental Planning and Assessment Act 1979. This is particularly the case when the proposal is otherwise compliant with building height, FSR, lot size and landscaping. It is noted that the proposal is a contemporary and intricately designed response to the unique and sensitive location by a renowned architectural firm. As outlined in our SEE (separately submitted), the location has a number of constraints which have been met in this dwelling's thoughtful design.

Accordingly, in our opinion, the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning ground to justify the variation to the development standard, as required in Clause 4.6(3)(b).

5. Clause 4.6(4)(a) Requirements

Clause 4.6(4)(a) guides the Consent Authority's consideration of this Clause 4.6 variation request. It provides that:

- (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*

The question of a request 'adequately' addressing the matters is explained in *Baron Corporation Pty Ltd v Council of the City of Sydney* [2019] NSWLEC 61 where Preston CJ states at [77]:

The requirement that the matters in cl 4.6(3) be demonstrated by the written request refers to an outcome, not a process. Although the written request "seeks" to justify the contravention of the developments standard, it must do this by "demonstrating" the matters in paragraphs (a) and (b) of cl 4.6(3). These matters are outcomes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are environmental planning grounds to justify contravening the development standard.

The applicant submits that the Consent Authority can and should be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this request, and having regard to the site and locality.

In our opinion the proposal achieves the objectives of the Development Standard, as already demonstrated; and the objectives for development within the E3 Environmental Management Zone, as discussed in Section 4.1.1 of the SEE. From this, we consider the proposal is in the public interest and should be supported. A detailed assessment of the proposal against the relevant zone objectives is undertaken below, inter alia:

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

Response: The positioning of additional height minimises any likely effect on the ecological, scientific or cultural values of the locality; and enhances the aesthetic value of the site.

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

Response: The proposed new dwelling and landscaping works is a typical form of development in the locality and the additional height will maintain the area's ecological and aesthetic values.

Objective: *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

Response: The proposed additional height will not impact on the appearance of nearby environments or dominate the natural scenic qualities of the foreshore. Significant trees will be retained where possible or replaced with new trees and plantings.

Objective: *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

Response: The additional height will not impact on the nearby foreshore and is a result of maintaining the topography of the site by minimising cut and fill.

Objective: *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutant in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Response: Stormwater runoff will be managed in accordance with the Stormwater Management Plan, prepared by Campbell Architecture; is not impacted by the additional height; and will not affect the ecological characteristics of the locality.

Objective: *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Response: Areas of additional height are a result of the built form and site's challenging topography, with pavilions located to maintain existing substantial trees and site features. The limited locations will not detract from the amenity of surrounding development and respond to the site's challenging topography.

For the reasons contained in this application, there are sufficient environmental planning grounds to justify varying the development standard as the proposal is consistent with the development standard objectives, the zone objectives, and the intent of Clause 4.6. From this, we consider the proposal is in the public interest and should be supported.

6. Clauses 4.6(4)(b) and 4.6(5) Requirements

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning and the Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. While the proposal exceeds the development standard by over 10%, the Planning Circular provides for the Local Planning Panel to assume concurrence.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

- (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 proposal is not considered to raise any matter of significance for State or regional environmental planning. The height non-compliance will enhance the amenity and functionality of the proposed residential flat building without significantly impacting neighbouring properties.

The additional height will enhance the amenity and functionality of the proposed dwelling without significantly impacting neighbouring properties. Careful consideration has been taken in the design of the proposed dwelling, which ensures appropriate setbacks and FSR provide an appropriate bulk and scale with nearby development, whilst maintaining solar access and privacy to adjoining properties.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the area and zone and is, in our opinion, in the public interest.

The proposal satisfies the objectives of the E3 Environmental Management Zone and Clause 4.3 of the LEP; is consistent with the intent of Clause 4.6; and should be supported.

7. Conclusion

This written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. This is summarised in the compliance matrix prepared in light of *Rebel* (see Table 1 on the following page).

We are of the opinion that the Consent Authority should be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the development objectives of the E3 Environmental Management Zone pursuant to the LEP. On that basis, the request to vary Clause 4.3 should be upheld.

Table 1: Compliance Matrix				
Para (Rebel)	Para	Para	Para	Para
19	Is it a development standard (s.1.4)	1	Yes	YES
18	What is the development standard	1	Height of Buildings	YES
18	What is the control	1 & 2	8.5m	YES
22 - 24	First Precondition to Enlivening the Power – The permissive power to grant consent is subject to the consent authority considering a written request in cl 4.6(3)(a) and (b); and being satisfied of both matters in cl 4.6(4)(a)(i) and (ii). Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES
21, 22	1st Positive Opinion – That the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement.	4	The Cl4.6 variation has adequately addressed both matters in Cl4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
22	First Aspect is Clause 4.6(3)(a): <i>that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.</i> Common ways are as set out in <i>Wehbe</i> .	4.1	The proposal is consistent with Tests 1, 3, and 4 of <i>Wehbe</i> : <ul style="list-style-type: none"> The objectives of the standard are achieved notwithstanding the non-compliance with the standard; The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable; and 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. 	YES
23-24, 50, 51	Second Aspect is Clause 4.6(3)(b) – <i>that there are sufficient environmental planning grounds to justify contravening the development standard</i> The written request must demonstrate the two aspects to enable the consent authority to be satisfied under Clause 4.6(4)(a)(i) and (ii) that the written request has adequately addressed the matters required to be demonstrated by subcl (3). The environmental planning grounds must be "sufficient" in two respects: a) The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus is on the aspect or element of the development that contravenes the development standard.	4.2	Sufficient environmental planning grounds include, inter alia: <ul style="list-style-type: none"> The proposed height facilitates a development consistent with the planning objectives of the environmental management zone; The proposed new dwelling will be compatible with nearby and future development, and has been carefully designed to maintain neighbours' views, solar access and privacy; and Strict compliance with the development standard would not result in a better outcome for development. 	YES

	not on the development as a whole, and why that contravention is justified on environmental planning grounds. b) The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.				
23	2nd Positive Opinion – That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out Second Precondition to Enlivening the Power – that the concurrence of the Secretary has been obtained [C14.6(4)(b)]. On appeal, the Court has the power to grant development consent, subject to being satisfied of the relevant matters under C14.6.	5	The proposed development is consistent with the objectives of the height standard as addressed under Test 1 of <i>Webb</i> . The proposal is also consistent with the objectives of E3 Environmental Management Zone, as addressed in the SEE.		YES
		6	As the relevant matters for consideration under C14.6 have been satisfied as outlined above, the Court can grant development consent		YES

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ITEM 3.2	DA2019/1139 - 19 MANLY ROAD, SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Anna Williams
TRIM FILE REF	2020/100433
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/1139 for alterations and additions to a dwelling house on land at Lot 1 DP 204401, 19 Manly Road, Seaforth, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1139
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 1 DP 204401, 19 Manly Road SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Gavin Ka-Wai Lau Fei Lin Shi
Applicant:	Uri T Design
Application Lodged:	17/10/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	29/10/2019 to 12/11/2019
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.4 Floor space ratio: 13.1%
Recommendation:	Approval
Estimated Cost of Works:	\$ 111,500.00

EXECUTIVE SUMMARY

The application proposes a variation to the Floor Space Ratio development standard of more than 10%. As such, the application is referred to the Development Determination Panel.

Council received one submission relating to view loss from the adjoining properties to the rear (No.3 Magarra Place, Seaforth). A second submission was received raising concerns in regards to amenity, bulk and scale and construction impacts.

Height poles were erected on site as part of the assessment for view loss. As noted in the view loss analysis in the report the impact of the proposal as amended is deemed to be satisfactory.

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 applicant seeks development consent for alterations and additions to a dwelling house. Specifically, the application proposes the following works:

Lower Ground Level

- Remove the column and two (2) roller doors on the existing garage to create one double garage with a single roller door.

Ground Floor

- Internal alterations
- New windows.

First Floor

First floor addition, incorporating:

- Two (2) bedrooms;
- A master bedroom with an attached ensuite;
- A bathroom;
- Two balconies on the northern elevation;
- A family room; and
- A rumpus room.

Other

- Demolition works.

The proposed first floor addition would impact an existing tree located within the south-western portion of the subject site. However, it is noted that the subject tree is less than 5m in height. Council's provisions stipulate that trees under 5m in height may be removed without approval, therefore no further assessment is required.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant

- Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 1 DP 204401 , 19 Manly Road SEAFORTH NSW 2092
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Manly Road, Seaforth.</p> <p>The site is irregular in shape with a frontage of 19.465m along Manly Road and a maximum depth of 41.465m along the western side boundary. The site has a surveyed area of 626sqm.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a single storey detached dwelling house with a swimming pool in the rear yard. An existing garage is located below the paved area within the south-eastern corner of the site.</p> <p>The site contains landscaped open space within the front and rear yards. Moreover, the site contains one (1) small tree within the front yard and one (1) small tree within in the rear yard.</p> <p>A number of retaining walls are located throughout the site.</p> <p>The site experiences a fall of approximately 4m that slopes towards the southern front boundary.</p> <p>The site is mapped as containing 'Acid Sulfate Soils - Class 5' under the provisions of the Manly Local Environmental Plan 2013 (MLEP 2013).</p> <p>A large portion of the site is mapped as being located within a 'Medium Risk' flood precinct, whilst a small area within</p>

the northern portion of the site is mapped as being located within a 'Low Risk' flood precinct.

Detailed Description of Adjoining and Surrounding Development

Adjoining development includes multi-storey residential dwelling houses.

Map:



SITE HISTORY

The site has been used for residential purposes for an extended period of time. A search of Council's records has revealed no recent applications relevant to this Development Application.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of

Section 4.15 Matters for Consideration'	Comments
Regulation 2000 (EP&A Regulation 2000)	<p>development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to design amendments and height pole survey confirmation.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
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	The site is considered suitable for the proposed

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Scott Jarvis, dated 10 October 2019) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Mrs Audrey May Fakes	3 Magarra Place SEAFORTH NSW 2092
Mr Mario Anthony Sanzari	17 A Manly Road SEAFORTH NSW 2092

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

- **View Loss**
- **Solar Access**
- **Privacy**
- **Side setback non-compliance**
- **Height of Building**
- **Floor Space Ratio**
- **Waste Management (Asbestos removal)**
- **Construction Hours**
- **Notification**

The matters raised within the submissions are addressed as follows:

- **View Loss**

Comment:

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

- **Solar Access**

Comment:

Concern was raised about resulting shadowing impacts to the adjoining property to the west. The proposal has been assessed against the Sunlight Access and Overshadowing provisions under Clause 3.4.1 of the Manly DCP in this report. In summary, the proposal complies with the relevant provisions and underlying objectives under Clause 3.4.1 of the Manly DCP.

- **Privacy**

Comment:

Concern was raised by neighbouring properties to the rear in regards to the potential overlooking between the subject site and adjoining properties.

The proposed first floor windows and balconies do not directly overlook living room windows or private open space of adjoining properties. The proposal is consistent with this clause.

- **Side setback non-compliance**

Comment:

Concern is raised in regards to the proposed side setback non-compliance and the resulting amenity impacts on neighbouring properties. As detailed assessment of the non-compliance has been undertaken under Clause 4.1.4 of the Manly DCP. In summary, the variation to the side setback control is supported.

- **Height of Building**

Comment:

Concern was raised in regards to the proposed dwelling house being non-compliant with the 8.5m Height of Building Development Standard Under Clause 4.3 of the Manly LEP.

A calculation of the building height having regard to the section plan(s) and survey plan indicates a compliant Building Height.

- **Floor Space Ratio**

Comment:

The matter of non-compliance with the Floor Space Ratio Development Standard is addressed in detail elsewhere in this report (refer to Clause 4.6 Exceptions to Development Standards under the MLEP 2013 section of this report). In summary, the assessment of this application has found that the development achieves consistency with the underlying objectives of Clause 4.4 and Clause 4.6 of the MLEP 2013 and that compliance with the standard is unreasonable and unnecessary and that there is sufficient environmental planning grounds to justify and support the variation in this instance.

- **Waste Management (Asbestos removal)**

Comment:

Concern is raised in regards to the potential of hazardous materials being exposed during demolition of the existing dwelling house. A suitable condition has been imposed as part of this recommendation to ensure the suitable management of hazardous removal in accordance with relevant Australia Standards. Evidence is to be provided to Council prior to construction certificate.

- **Construction**

Comment:

Concern is raised in regards to access and construction methods of the development.

A condition has been imposed as part of this recommendation for a construction traffic management plan to be provided to Council prior to commencement of any site works. The management plan will need to include information related to the following:

- Access to the site during stages of construction.
- Truck access to site.
- Deliveries of materials.

- **Notification**

Comment:

Concern was raised in regards to the extent of neighbouring properties receiving direct notification of the application.

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 Northern Beaches Council Community Participation Plan.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	Council's record indicate the subject property is burdened by a 525 mm diameter Council's stormwater pipeline which is located on the western side of the property. Council's Stormwater Asset team requires the applicant to demonstrate compliance with Council's Drainage Easements Policy - D100. Some conditions have been placed to address the issue. Development Engineering has no objection to the application subject to the following conditions of consent.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The development proposes alterations and additions to an existing dwelling. Based on the Manly to Seaforth Flood Study, the lot is affected by shallow overland flow flooding in a 1% AEP flood event. Subject to conditions, the proposal is compliant with Council's Flood Prone Land development controls.
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. A361110).

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	7.7m	-	Yes
Floor Space Ratio	FSR: 0.4:1 250.4m ²	FSR: 0.45:1 283.4m ²	13.1%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 (250.4m ²)
Proposed:	FSR: 0.45:1 (283.4m ²)
Percentage variation to requirement:	13.1%

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). 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).

In this regard, the Applicant's written request has not 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 overall height of the proposal remains compliant with clause 4.3(2) of the Manly LEP and

- fulfils all of the application objectives under clause 4.3(1);
- The additional non-compliant floor space is sited within the existing approved footprint and bulk of the dwelling which will have an acceptable impact upon adjoining properties and as viewed from adjoining properties and the public domain; and
 - The proposal fulfils the objectives of that standard and the zone objectives as previously described herein.
 - There is no public benefit in maintaining strict compliance with the development standard in this case given that there are no unreasonable impacts that will result from the variation to the floor space ratio standard and hence there are no public disadvantages.
 - The proposal maintains an overall finished built form which is appropriate for the site and accordingly the floor space breach is not associated with an excessive built form; and
 - Flexibility in this instance will allow for the site to be developed with no discernible impacts beyond a fully compliant scheme.

Planners comment:

It is agreed that there are varying types of development in the close vicinity of the subject site and that proposed development would be in keeping with the bulk and scale of the majority of development in the locality. It is also noted that the proposed dwelling house is of a consistent bulk and scale of that of neighbouring properties.

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

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor Space Ratio development standard and the objectives of the 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:

As viewed from the street, the building would present as consistent with that of adjoining properties.

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 subject site allows for a presentation of landscaping and vegetation that is complementary to the area. The proposal will not unreasonably impact upon the streetscape.

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

Comment:

The development overall is found to enhance the visual continuity of the existing character of the area and improve the aesthetics of the development on site. The proposal is suitable in design such that it maintains the character of the site and consistency with surrounding development.

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

Comment:

The proposal has also been assessed against the view loss provisions under Clause 3.4.3 of the Manly DCP and *Tenacity Consulting v Warringah* [2004] NSWLEC 140, with no unreasonable impact to neighbouring private open space or the public realm.

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

Comment:

The development is for residential use.

Zone objectives

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

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

Comment:

The proposed development retains the residential use of the site.

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:

Not applicable.

It is considered that the development satisfies this objective.

Conclusion:

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

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).

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 626sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	East: 7.1m (based on gradient 1:10)	6.0m- 6.1m	-	Yes
	West: 7.1m (based on gradient 1:10)	6.2m- 7.2m	-	No
4.1.2.2 Number of Storeys	2	2	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.3m	-	Yes
	Parapet Height: 0.6m	0.4m	-	Yes
	Pitch: maximum 35 degrees	10 degrees	-	Yes

4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	6.2m, consistent with prevailing setback 0m (Garage door)	100% (Garage)	Yes No
4.1.4.2 Side Setbacks and Secondary Street Frontages	2m (based on eastern wall height)	1.4m - 3.3m	30%	No
	2.4m (based on western wall height)	1.7m	29.2%	No
	Windows: 3m	1.7m	43%	No
4.1.4.4 Rear Setbacks	8m	13m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (375.5m ²) of site area	54% 338.6m ²	10%	No
	Open space above ground 25% 84.65m ² total open space	11.6% 39.5	-	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 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
4.1.7 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

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Merit consideration:

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

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

Comment:

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

Objective 2) To allow adequate sunlight to penetrate:

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

Comment:

The proposed first floor addition will increase overshadowing to living room windows and private open space of the western property.

Clause 3.4.1.1 a) of the Manly DCP requires new development to not eliminate more than one third of existing sunlight accessing the private open space of adjacent properties between 9am and 3pm throughout the winter solstice. Increased overshadowing to the private open space of No. 17A Manly Road, Seaforth occurs at 9am to 11am during the winter solstice (21 June). From 11am to 3pm, there is no further shadowing impact to the adjoining property to the west. The proposed works do not eliminate more than one third of the existing sunlight accessing the private open space of No. 17A Manly Road during the winter solstice.

Clause 3.4.1.2 a) of the Manly DCP requires at least 2 hours of solar access be retained to living room windows that presently enjoy solar sunlight between 9am and 3pm on the winter solstice. East facing living room windows will receive additional overshadowing during the morning of the winter solstice (9am-12pm). However, from 12pm onwards the adjoining will retain existing solar access, with no additional impact upon the property.

Clause 2.4.1.3 of the Manly DCP requires a minimum 6 hours of solar access be retained to solar collectors (solar panels) on neighbouring properties. No. 17A Manly Road, Seaforth currently had solar panels on the roof of the existing dwelling. As there is no additional shadowing at 12pm adequate sunlight access will be retained to the solar panels.

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

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

Comment:

The primary dwelling retains a compliant rear setback which ensures that high levels of sunlight still access the outdoor living area and landscaped area to the rear of the adjoining western property (No. 17A Manly Road, Seaforth).

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

3.4.3 Maintenance of Views

As a result of the public exhibition of the development application Council received one submission raising view loss as a concern. The submission was received from the adjoining property to the north (No. 3 Magarra Place, Seaforth). To assist Council in its assessment of the application, a request was made on 24 January 2020 for applicant to erect three (3) height poles reflecting the amended plans. Certification of the height and location of the poles provided by a Registered Surveyor on 6 February 2020. (Refer to plan prepared by ESA Surveys dated 4 February 2020).

The location of the height poles (amended) is shown below:

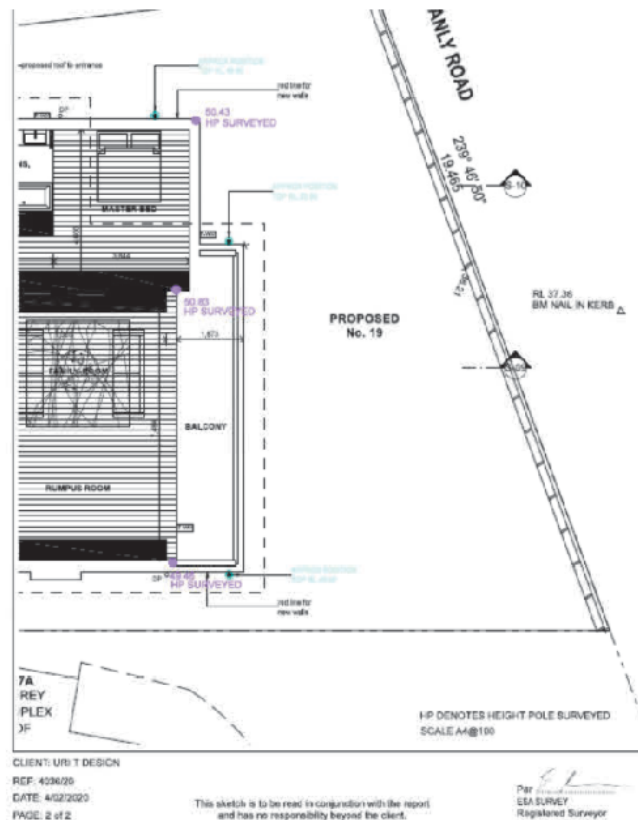


Image 1 - Survey Confirmation of the Height Poles

Merit consideration:

The development is considered against the Objectives of the Control:

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

Comment:

The proposed development will result in a minor to moderate loss of view from neighbouring properties to Sydney Harbour. The loss of view is not unreasonable and will maintain adequate view sharing between properties.

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

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

Comment:

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

1. Nature of the view affected

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

Comment to Principle 1:

No. 3 Magarra Place, Seaforth

The nature of the view affected from this property would be harbour (water) views to the south. The Views are filtered through existing residential development and vegetation. Views are currently taken from over the top of the subject site dwelling house.

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

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

Comment to Principle 2:

The views affected from this property are over the rear boundary. The views are over the top and to the side of the subject dwelling house. Views are obtained from a standing and sitting position from living rooms, kitchen and balcony at ground floor level.

3. Extent of Impact

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

Comment to Principle 3:

This property currently has substantial water views to the south and south west, the Spit bridge. Views are enjoyed from the kitchen and ground floor living room and adjoining balcony. Water views currently enjoyed from the ground floor living room and balcony would be impacted to a minor extent. Views of

the Spit bridge and the majority of water views would be retained. Views from the first floor master bedroom and balcony would be impacted to a moderate extent, with water views of Shell Cove mostly lost. However, water views beyond this the cove and Spit Bridge are retained.



Photo 1 - Kitchen (standing)



Photo 2 - Kitchen (sitting)



Photo 3 - Rear balcony off living room



Photo 4-Living Room

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

In considering the totality of impact it is noted that proposal is non-compliant with the Floor Space Ratio development standards under Manly LEP 2013. The development provides compliance with the front and rear setback controls, with a minor variation to the side boundary setback on the eastern and western side of the dwelling house. These variations have been considered and supported based upon the development achieving consistency with the underlying objectives of Clause 4.1.4.2 of the Manly DCP. As noted above, the loss of views from both No. 3 Margarra Place ranges from minor to moderate. The proposal ensures highly valued water views are retained from all affected properties.

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

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

Comment:

The proposed development will not allow for any unreasonable future view creep.

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

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

Description of non-compliance

Clause 4.1.5.2 of the Manly DCP requires the western wall of the property be no higher than 7.1m (based on the gradient 1:10).

The proposed western wall has maximum height of 7.2m, non-compliant with the numeric control. This represents a 1.4% variation to the numeric control.

This clause relies upon the objectives of Clause 4.3 under MLEP 2013. An assessment of the proposal against the objectives of Clause 4.3 has been provided below.

Merit consideration:

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 wall height is deemed appropriate is deemed to be reasonable given the significant fall of the land from the rear to the front of the property. The development responds appropriately to the constraints of the site.

b) to control the bulk and scale of buildings,

Comment:

The proposed bulk and scale of the building relates favourably to the topography of the site. The works will allow for an appropriate relationship and spatial separation with surrounding development. The visual bulk of the dwelling as viewed from the street is not adverse or unreasonable.

c) to minimise disruption to the following:

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

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

Description of non-compliance

Clause 4.1.4.2 of the Manly DCP requires development be setback at least 2m from the eastern boundary, 2.4m from the western boundary.

Further new windows facing side boundaries are to be setback at least 3m from the side boundary.

The development proposes the following:

Eastern side setback- 1.4m - 3.3m (30% variation to the numeric control).

Western side setback- 1.7m (29.2% variation to the numeric control).

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

Merit consideration:

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

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

Comment:

The proposed side setback are consistent with those of the neighbouring properties along the northern side of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed works maintains suitable levels of privacy and solar access for adjoining properties. In regards to views, the proposed will largely retain existing water views from the neighbouring property to the north.

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

Comment:

Flexibility is promoted in this circumstance as there are no unreasonable amenity impacts that will result on neighbouring properties.

Objective 4) To enhance and maintain natural features by:

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

Comment:

There is no change to landscaped open space proposed.

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

Comment:

The existing swimming pool may be used as a water source during a bushfire emergency.

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 60% (375.5m²) of site area be total open space. The development proposes 54% (338.6m²), non compliant with the numeric control. This represents a 10% variation to the numeric control.

Merit consideration:

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

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

Comment:

The proposed development does not decrease landscaped open space on the site. There are no important landscape features proposed for removal.

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 proposed development is consistent with the landscaped open space control. Existing vegetation is retained on 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 reduction of outdoor living area does not compromise the amenity of adjoining properties.

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

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 \$ 558 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 111,500.

CONCLUSION

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

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

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

conditions contained within the recommendation.

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio 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.

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 4.4 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 DA2019/1139 for Alterations and additions to a dwelling house on land at Lot 1 DP 204401, 19 Manly Road, SEAFORTH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp
--

Drawing No.	Dated	Prepared By
Roof and Site Analysis/ Revision B	23 January 2020	Uri T Design
Lower Ground Floor/ Revision A	23 January 2020	Uri T Design
Ground Floor Plan/ Revision B	23 January 2020	Uri T Design
First Floor Plan/ Revision B	23 January 2020	Uri T Design
Sediment and Erosion Plan/ Revision A	23 January 2020	Uri T Design
East Elevation/ Revision B	23 January 2020	Uri T Design
North Elevation/ Revision B	23 January 2020	Uri T Design
West Elevation/ Revision B	23 January 2020	Uri T Design
South Elevation/ Revision B	23 January 2020	Uri T Design
South Elevation Front/ Revision B	23 January 2020	Uri T Design
Section AA/ Revision B	23 January 2020	Uri T Design
Section BB/ Revision B	23 January 2020	Uri T Design
Section CC/ RevisionA	13 February 2020	Uri T Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Assessment	10 October 2019	Scott Jarvis
BASIX Certificate No. A361110	15 October 2019	Uri T Design

- b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.
- c) The development is to be undertaken generally in accordance with the following:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	15 October 2019	Uri Turgeman

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 \$557.50 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 \$111,500.00.

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

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

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

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

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

5. **Security Bond**

A bond (determined from cost of works) of \$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.

6. **Construction, Excavation and Associated Works Bond (Drainage)**

The applicant is to lodge a bond of \$ 80000 as security against any damage of stormwater drainage as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's Infrastructure.

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

7. **Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003.

Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with

the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

8. **Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

9. **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.

10. **Flooding**

In order to protect property and occupants from flood risk the following is required:

Building Components and Structural Soundness – C1

All new development shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

Building Components and Structural Soundness – C2

All new development must be designed and constructed to ensure structural integrity up to the Flood Planning Level of 44.3m AHD, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion. Structural certification shall be provided confirming the above.

Building Components and Structural Soundness – C3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 44.3 m AHD. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed cut electricity supply during flood events.

Flood Emergency Response – E2

Appropriate access to the first floor (to shelter in place during a flood) should be available from all areas of the new development.

Fencing – H1

New fencing (including pool fencing, boundary fencing, balcony balustrades and accessway balustrades) shall be open for passage of flood waters - All new fencing on the property must be design with a minimum of 50% open area between the 1% flood level and natural ground level, to allow flood waters to pass through.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

11. **Pre-Construction Stormwater Assets Dilapidation Report**

The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at: <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.1>

The pre-construction / demolition dilapidation report must be submitted to Council for approval and the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's Infrastructure.

12. **External Finishes to Roof**

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

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

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

13. **Subject Site**

All works including that of the proposed retaining walls are to be contained wholly within the subject site.

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

14. Construction Traffic Management Plan

A Construction Traffic Management Plan (CTMP) is to be provided to Council prior to commencing any site works. The CTMP is to ensure that the impact of the public domain, in particular with respect to the temporary interruption to vehicular and pedestrian traffic on the narrow street frontage with the existing. No Stopping restriction are considered by the proponent. The CTMP must ensure that public safety is maintained at all times and interruption to the use of public space is minimised.

The CTMP is to include but not be limited to the following:

- Access to site for different stages of construction.
- Deliveries of materials to be undertaken within the site during construction
- All construction activity to occur within the site with no provision of Works Zone from Council.
- Proposed truck routes and truck access to site.

Reason: To ensure public safety and minimisation of the interruption to the use of public.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**15. 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.

16. 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.

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE****17. Stormwater Disposal**

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

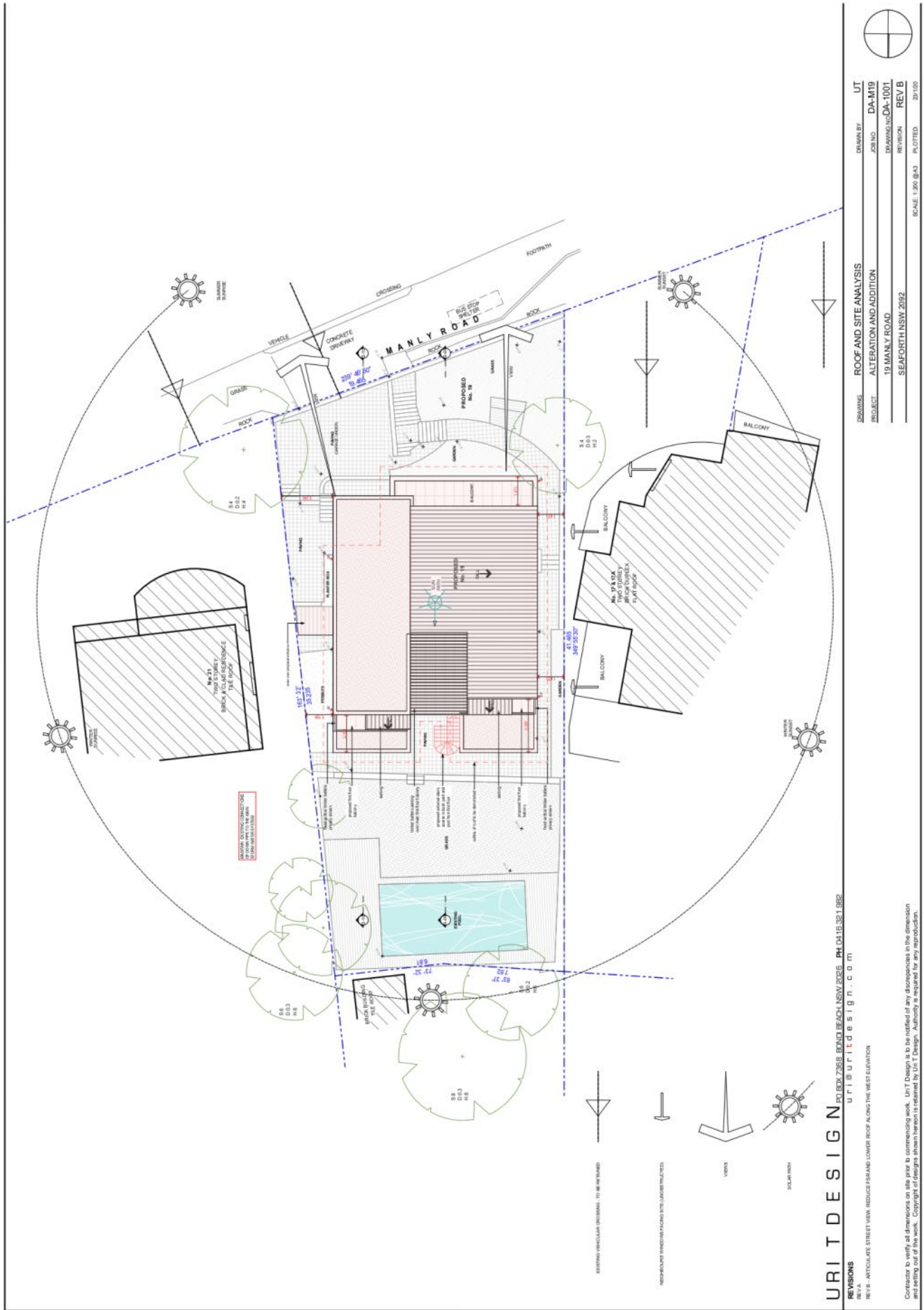
Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

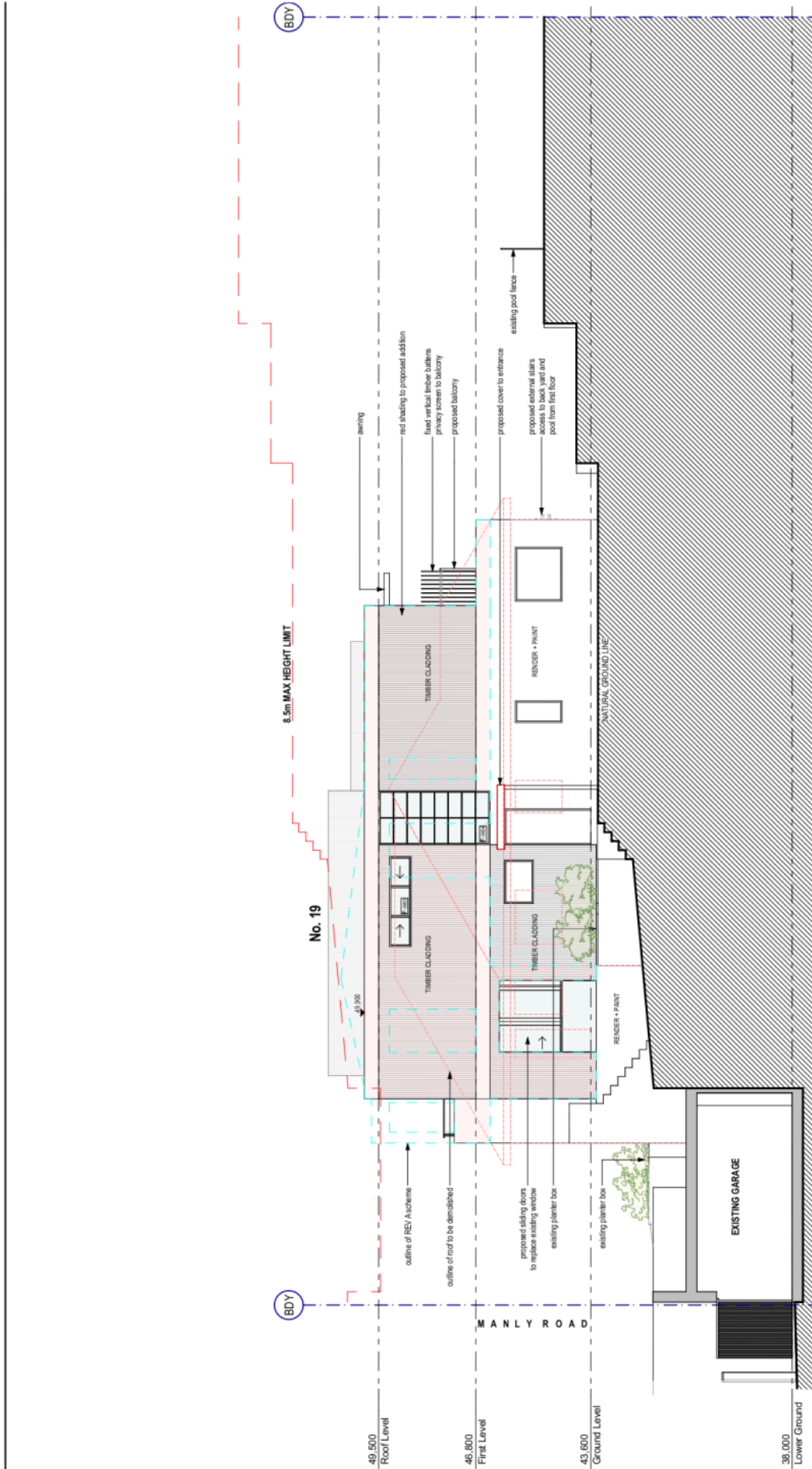
18. Post-Construction Stormwater Assets Dilapidation Report

The Applicant is to submit a post- construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at: <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.1>

The post-construction dilapidation report must be submitted to Council for approval and the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Council's Infrastructure.





URI T D E S I G N

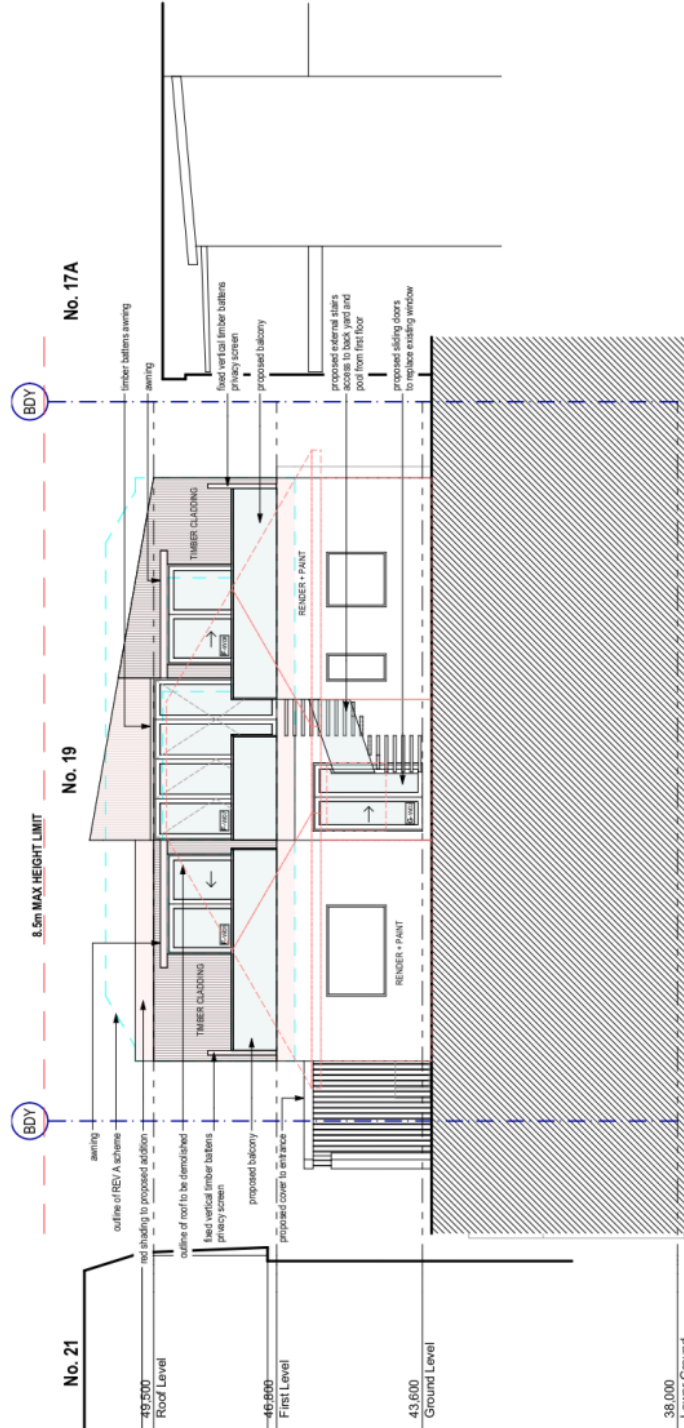
REV A - ARTICULATE STREET VIEW, REDUCE FSR AND LOWER ROOF ALONG THE WEST ELEVATION

URI T D E S I G N . C O M

PO BOX 7568, BEND BEACH NSW 2226 PH 04 16 32 1 982

DRAWING	EAST ELEVATION	DRAWN BY	UT
PROJECT	ALTERATION AND ADDITION	JOB NO	DA-M19
	19 MANLY ROAD	DRAWING NO	DA-2001
	SEAFORTH NSW 2092	REVISION	REV B
		SCALE	1:100 @ A3
		PLOTTED	20/10/20

Contractor to verify all dimensions on site prior to commencing work. Uri T Design is to be notified of any discrepancies in the dimension and setting out of this work. Copyright of designs shown herein is retained by Uri T Design. Authority is required for any reproduction.



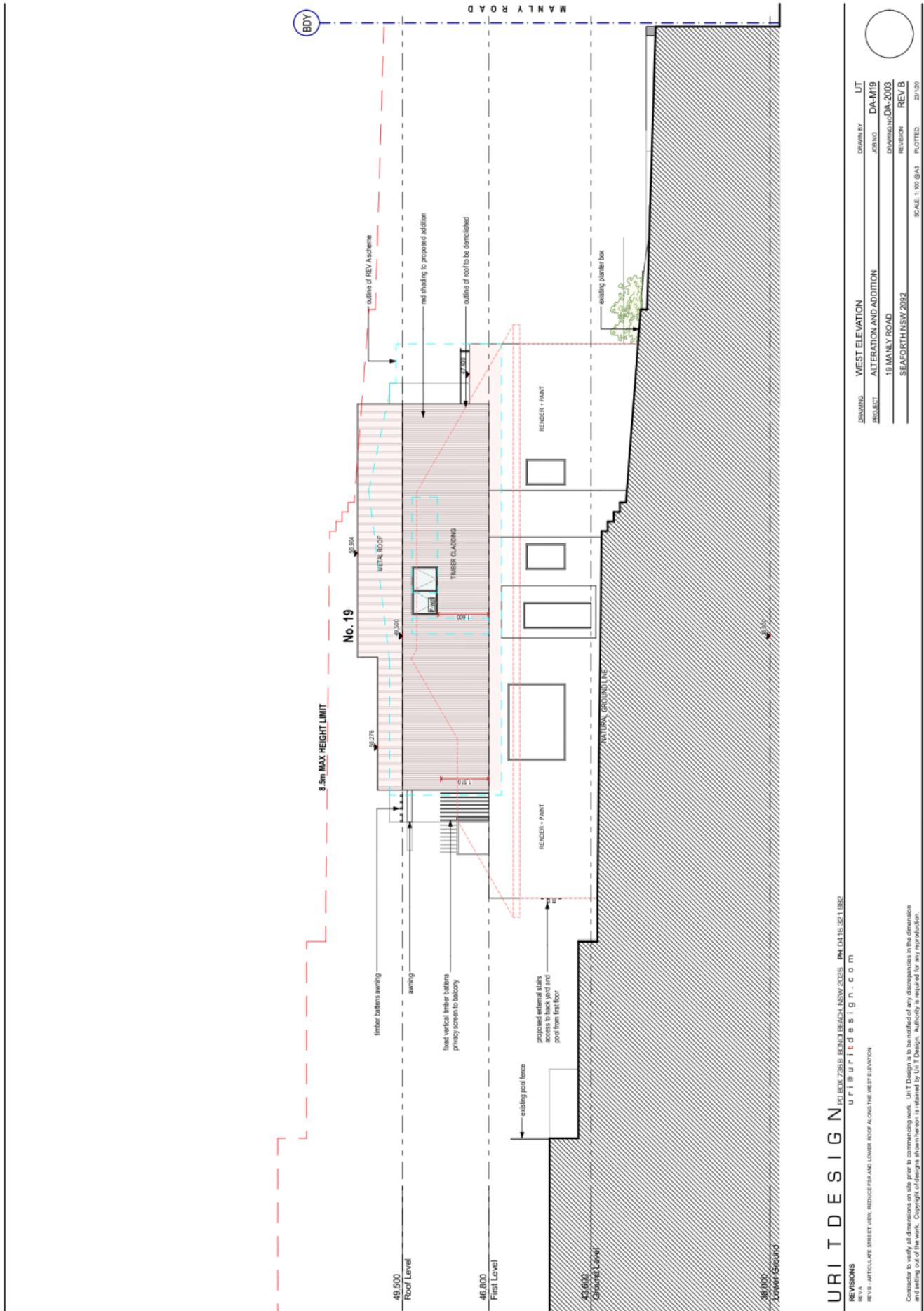
URI T D E S I G N
u r i t d e s i g n . c o m

REVISIONS
REV A - ANTICULATE STREET VIEW, REDUCE FSR AND LOWER ROOF ALONG THE WEST ELEVATION

REV B - ANTICULATE STREET VIEW, REDUCE FSR AND LOWER ROOF ALONG THE WEST ELEVATION

Contractor to verify all dimensions on site prior to commencing work. Uri T Design is to be notified of any discrepancies in the dimension and setting out of the work. Copyright of designs shown herein is retained by Uri T Design. Authority is required for any reproduction.

DRAWING	NORTH ELEVATION	DRAWN BY	UT
PROJECT	ALTERATION AND ADDITION	JOB NO	DA-M19
	19 MAINLY ROAD	DRAWING NO	DA-2002
	SEAFORTH NSW 2092	REVISION	REV B
		SCALE	1:100 @ A3
		PLOTTED	20/100





DRAWING	SOUTH ELEVATIONS		UT
PROJECT	ALTERATION AND ADDITION 19 MANLY ROAD	JOB NO	DA-M19
		DRAWING NO	DA-2004
	SEAFORTH NSW 2092	REVISION	REV B
		SCALE 1:100 @ A3	23/100

GPL Planning

Clause 4.6 variation request to the 'floor space ratio' development standard under Manly Local Environmental Plan 2013

19 Manly Road, Seaforth

Submitted to:
Northern Beaches Council

GPL Planning
p 0423 128 131
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1. INTRODUCTION

This statement relates to a development application to undertake alterations and first-floor additions to an existing single-storey dwelling house at No.19 Manly Road, Seaforth (the subject site) and seeks a variation to a development standard prescribed by the Manly Local Environmental Plan 2013.

A variation is sought pursuant to Clause 4.6 under the Manly LEP in relation to the “**floor space ratio**” development standard applicable to the subject development site, being 0.4:1, pursuant to Clause 4.4(2) under the Manly LEP.

This request has been prepared in accordance with the Department of Planning & Environment (DP&E) Guideline *Varying Development Standards: A Guide, August 2011* and has incorporated the relevant principles identified in the following judgements:

1. *Ex Gratia P/L v Dungog Council* (NSWLEC 148)
2. *Wehbe v Pittwater Council* [2007] NSWLEC 827
3. *Botany Bay City Council v Saab Corp* [2011] NSWCA 308
4. *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC
5. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (‘Four2Five No 1’)
6. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90
7. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 (‘Four2Five No 3’)

In this report, we have explained how flexibility is justified in this case in terms of the matters explicitly required by Clause 4.6.

This report also addresses additional matters that the consent authority is required to be satisfied of when exercising either the discretion afforded by Clause 4.6 and the assumed concurrence of the Secretary.

2. WHAT IS THE ENVIRONMENTAL PLANNING INSTRUMENT (EPI) THAT APPLIES TO THE LAND?

The Environmental Planning Instrument (EPI) to which this variation relates is the Manly Local Environmental Plan 2013.

3. WHAT IS THE ZONING OF THE LAND?

In accordance with Clause 2.2 of the WLEP the site is zoned R2 – Low Density Residential.

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4. WHAT ARE THE OBJECTIVES OF THE ZONE?

The land use table under the Manly LEP provides the following objectives for the R2 zone:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal meets the relevant objectives for development in the R2 zone, it will maintain the provision of low-density housing which meets the needs of the community in a residential environment and which comprises a consistent form of residential density.

5. WHAT IS THE DEVELOPMENT STANDARD BEING VARIED?

The development standard being varied is the "floor space ratio" standard.

6. UNDER WHAT CLAUSE IS THE DEVELOPMENT STANDARD LISTED IN THE EPI?

The development standard being varied is prescribed under Clause 4.4(2) of the Manly LEP. An extract is below:

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](#).

In accordance with Floor Space Ratio Map, the subject site falls within "Area B" which permits a maximum floor space ratio of 0.4:1 (or 250.4m²).

7. WHAT ARE THE OBJECTIVES OF THE DEVELOPMENT STANDARD?

The objectives of the development standard are set out below:

- (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*

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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.*

8. WHAT IS THE NUMERIC VALUE OF THE DEVELOPMENT STANDARD?

Clause 4.4(2) restricts the “floor space ratio” for a dwelling house to a maximum of 0.4:1m.

9. WHAT IS THE PROPOSED NUMERIC VALUE OF THE DEVELOPMENT STANDARD IN THE DA AND THE VARIATION SOUGHT?

As noted above, clause 4.4(2) restricts the “floor space ratio” for a dwelling house to a maximum of 0.4:1. The maximum floor space ratio of the building being sought under this DA is 0.48:1.

The maximum variation being sought is 51m² (or 20%).

10. MATTERS TO BE CONSIDERED UNDER CLAUSE 4.6.

The objectives and provisions of clause 4.6 are as follows:

“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.

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

Note. When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition or Zone R5 Large Lot Residential.
- (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.*

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The development standard in clause 4.4A(b) is not “expressly excluded” from the operation of clause 4.6.

Objective 1(a) of clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8).

This submission will address the requirements of subclauses 4.6(3) and (4) in order to demonstrate that the exception sought is consistent with the exercise of “*an appropriate degree of flexibility*” in applying the development standard, and, is therefore consistent with objective 1(a). In this regard, it is noted that the extent of the discretion afforded by subclause 4.6(2) is not numerically limited as compared with the development standards referred to in subclause 4.6(6).

The balance of this request will be divided into the following sections, each dealing with the nominated aspect of clause 4.6:

- compliance is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a));
- consistency with the development standard objectives and the zone objectives (clause 4.6(4)(a)(ii)); and
- sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)).

10.1 Compliance is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a))

In *Wehbe v Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

“ An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”

However, in *Four2Five v Ashfield Council* [2015] NSWLEC 90, the Land and Environment Court said that whether something was ‘unreasonable or unnecessary’ is now addressed specifically in clause 4.6(4)(a)(ii), with separate attention required to the question of whether compliance is unreasonable or unnecessary.

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Under *Micaul Holdings Pty Limited v Randwick City Council (2015)*, it was stated that the consent authority needs to be satisfied that the written request adequately demonstrates that the strict compliance with the standard is unreasonable or unnecessary in the circumstances of the case. The consent authority also needs to be satisfied that the development will be 'consistent' with the objectives of the zone and development standard.

Consequently, while the objectives of the standard are achieved despite its non-compliance, this request goes further, it seeks to demonstrate that requiring strict adherence to the standard would be 'unreasonable or unnecessary' for reasons that are additional to mere consistency with the development standard.

Preston CJ in the *Wehbe V Pittwater Council* judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Additionally, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308, the Court of Appeal said that a requirement may be unreasonable when 'the severity of the burden placed on the applicant is disproportionate to the consequences attributable to the proposed development' (at paragraph 15).

Having regard to all of the above, the five ways described in *Wehbe* are therefore appropriately considered in this context, as follows:

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10.1.1 The objectives of the standard are achieved notwithstanding non-compliance with the standard;

The objectives of the standard are set out in **Section 7** of this statement. A response to each of the objectives is provided below:

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

The areas of the building that exceeds the floor space standard have been setback from the rear elevation of the building and are sited within the maximum permissible height requirements of the LEP. Contextually, the proposed built element which exceeds the development standard does not contribute to an excessive bulk or scale and is entirely consistent with the existing and desired future character of this part of the Saforth which consists of enlarged two-three storey residential buildings. The proposed variation of the standard does not affect achievement or consistency with this objective.

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

The parts of the building that are above the FSR standard are suitably setback from the relevant property boundaries and are generally sited on top of the footprint of the existing building. Therefore, these elements do not contribute to perceivable bulk as viewed from the adjoining properties or the public domain and the proposal maintains a scale as anticipated for the area. The proposed variation of the standard does not affect achievement or consistency with this objective.

The height of buildings control together with the floor space ratio control are a development standard which are a numerical measure of development density.

While the proposal results in an exceedance of the "floor space ratio" only, the proposal remains otherwise entirely compliant with the maximum height of buildings control under cl.4.3(2) of the Manly LEP which is 8.5m.

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

As noted above,

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

The additional proposed floor space of approximately 7m² will not contribute towards an undesirable environmental amenity of neighbouring properties. The siting and location of the additional floor space will not result in an adverse impact upon the amenity of the broader locality.

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

N/A – the subject site is located within an existing residential zone.

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

We do not rely on this reason. The underlying objective or purpose of the standard is relevant to the development and is achieved.

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

We do not rely on this reason.

10.1.4 *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;*

We do not rely on this reason.

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

We do not rely on this reason.

10.2 Sufficient environmental planning grounds to justify the contravention (clause 4.6(3)(b))

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, as discussed above, it is considered that there is an absence of any significant adverse impacts of the proposed non-compliance upon the amenity currently enjoyed in neighbouring properties, or, upon the character of the area and upon the amenity therein.

In *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 Preston CJ stated in paragraph 34

".... establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary."

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On “planning grounds” and in order to satisfy that the proposal meets objective 1(b) of clause 4.6, in that allowing flexibility in the particular circumstances of this development will achieve “a better outcome for and from development”, as previously discussed:

- the development allows for the use of the site for low density housing;
- it will enhance the existing streetscape;
- it will maintain the amenity for future occupants of the site and minimise impacts upon adjoining properties;
- the proposal maintains an overall finished built form which is appropriate for the site and accordingly the floor space breach is not associated with an excessive built form; and
- flexibility in this instance will allow for the site to be developed with no discernible impacts beyond a fully compliant scheme.

Returning to Clause 4.6(3)(a), in *Wehbe V Pittwater Council (2007) NSW LEC 827* Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

“ An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”

The judgement goes on to state that:

“ The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”

Having regard to all of the above, it is our opinion that compliance with the “floor space” development standard is unnecessary in the circumstances of this case for the following reasons:

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- The overall height of the proposal remains compliant with clause 4.3(2) of the Manly LEP and fulfils all of the application objectives under clause 4.3(1);
- The additional non-compliant floor space is sited within the existing approved footprint and bulk of the dwelling which will have an acceptable impact upon adjoining properties and as viewed from adjoining properties and the public domain; and
- The proposal fulfils the objectives of that standard and the zone objectives as previously described herein.

Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of clause 4.6(3) are satisfied.

10.3 Is the variation in the public interest?

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless 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.

The objectives of the zones, as demonstrated above, as well as the objectives for the standard, have been adequately satisfied where relevant. Therefore, the variation to the floor space ratio standard is considered to be in the public interest.

10.4 Matters of state or regional significance (cl. 4.6(5)(a))

There is no prejudice to planning matters of State or Regional significance resulting from varying the development standard as proposed by this application.

10.5 The public benefit of maintaining the standard (cl. 4.6(5)(b))

Pursuant to *Ex Gratia P/L v Dungog Council (NSWLEC 148)*, the question that needs to be answered is "*whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development*".

There is no public benefit in maintaining strict compliance with the development standard in this case given that there are no unreasonable impacts that will result from the variation to the floor space ratio standard and hence there are no public disadvantages.

We therefore conclude that the benefits of the proposal outweigh any disadvantage and as such the proposal will have an overall public benefit.

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11. CONCLUSION

As demonstrated above, the development proposal will be in the public interest because it is consistent with the objectives of the floor space ratio standard and the objectives of the R2 zone.

In the context of other requirements of Clause 4.6, there are no matters of State or regional planning significance which are raised by the proposed development.

This written request for variation of the development standard has considered the sufficiency of environmental planning grounds to justify the variation on the basis that compliance with the standard would be unreasonable and unnecessary in the circumstances of this particular case.

Despite the proposal's non-compliance with the maximum floor space ratio, the proposed development meets the objectives of the standard and the objectives of the R2 zone. The proposed development will remain compatible with the surrounding low-density residential land uses and will remain consistent with the desired future character of the surrounding area.

Accordingly, for the reasons stated herein, a request is made that the consent authority approve the variation to the "floor space ratio" development standard as it currently applies to the site.

If you require any additional information or clarification of any matters raised in this response, please contact the Applicant in the first instance or George Lloyd at GPL Planning on 0423 128 131.



George Lloyd (BTP – UNSW)
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