



northern
beaches
council

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a Meeting of the Development Determination Panel will be held on

WEDNESDAY 8 APRIL 2020

Ashleigh Sherry
Manager Business Systems and Administration

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 8 April 2020

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 25 MARCH 2020

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 25 March 2020 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1 MOD2019/0623 - 34 BEATTY STREET, BALGOWAH HEIGHTS -
MODIFICATION OF DEVELOPMENT CONSENT DA2019/0080
GRANTED FOR ALTERATIONS AND ADDITIONS TO A
DWELLING HOUSE INCLUDING SWIMMING POOL

REPORTING MANAGER Steve Findlay

TRIM FILE REF 2020/187868

ATTACHMENTS
1 Assessment Report
2 Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Mod2019/0623 for Modification of Development Consent DA2019/0080 granted for alterations and additions to a dwelling house including swimming pool on land at Lot 21A DP 350345, 34 Beatty Street, Balgowlah Heights, subject to the conditions outlined in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0623
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Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 21A DP 350345, 34 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Modification of Development Consent DA2019/0080 granted for Alterations and additions to a dwelling house including swimming pool
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:	Luke Anthony Randell Carol Ann Randell
Applicant:	Chrofi

Application Lodged:	09/12/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	24/12/2019 to 28/01/2020
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

The proposal is for modification of a Development Consent No. DA2019/0080, which was granted for alterations and additions to a dwelling house including a swimming pool.

In particular, the proposal relates to a number of changes to the design of the built form, however the proposed presentation and footprint of the development is substantially the same as what was approved.

The proposal particularity involves the extension of a balcony to the rear of the garage, the addition of

some floor space at ground floor level, redesign of screening and openings on the northern elevation, and the introduction of a flat roof in the south-east part of the site.

A submission has been received from the neighbouring property to the north. The submission raised concerns in relation to privacy, impacts to neighbouring properties and introduction of additional open space.

The application was assessed against the planning controls of the MDCP 2013 and development standards under the Manly LEP 2013, and whilst there are still variations to the setback controls and FSR standard, these have been found to be consistent with the objectives and requirements of the controls and standard (subject to conditions). In this regard, the built form will provide appropriate separation and design to minimise privacy impact, other amenity impacts, and will provide an appropriate visual presentation.

A condition has been imposed to ensure the proposed screening will mitigate potential privacy impacts to the northern neighbour.

The assessment concludes that the proposed design is appropriate for the site and would not have any unreasonable impacts on privacy, views or any other unreasonable amenity or visual impact.

Therefore, it is recommended that the application be approved, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is to modify DA2019/0080 in which consent was granted for "alterations and additions to a dwelling house including a swimming pool." In detail, the proposal involves the following:

Ground Floor Level

- Demolishing the rear portion of existing roof
- Relocating lift and corridor
- A new window adjacent to the pool deck
- Increased area for pool deck
- Removal of change room
- Removal wall and add privacy screen
- A full height glazed wall
- Relocation of plant room
- Relocation of laundry
- Reduce floor level

First Floor Level

- A new window and privacy screen to western elevation
- Removal of a screen
- Relocation of a bathroom and addition of a study
- Revised bathroom layout
- Revised full height door and windows

Second Floor Level

- Extension of a wall to stairs at southern elevation
- 1500mm high privacy screen to north side of terrace

- New operable window behind privacy screen to northern elevation
- Add skylight
- New flat pebble roof
- 1500mm high privacy screen to south side of terrace

Studio/Garage

- Extension of balcony with screen
- New roof over existing walkway

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 - 4.4 Floor space ratio

Manly Development Control Plan - 3.4.2 Privacy and Security

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

SITE DESCRIPTION

Property Description:	Lot 21A DP 350345 , 34 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	<p>The subject site consists of one allotment located on the eastern side of Beatty Street.</p> <p>The site is irregular in shape with a frontage of 12.725m along Beatty Street and a depth of 52.2m (northern boundary) and 51.36m (southern boundary).</p>

The site has a surveyed area of 789m².

The site is located within the E3 Environmental Management zone and accommodates a two storey dwelling house of brick construction with a metal roof, located toward the eastern (harbour) end of the allotment. There is a two storey garage/studio structure at the street frontage. An inclinator runs along the southern boundary from street level to the rear of the dwelling. There are also stairs from street level to the garden area below.

The site slopes steeply from Beatty Street down to Forty Baskets Reserve, with the majority of the change in level occurring on the western portion of the site whilst the eastern portion, containing the existing dwelling house, is relatively flat. The total fall is approximately 15.8m.

The site is heavily vegetated between the garage and the dwelling house, primarily with exotic tree species.

The property has an easement for services and a drainage easement running along the southern boundary. There is also a sewer pipe traversing the site.

Detailed Description of Adjoining/Surrounding Development

Adjoining the site to the east is Forty Baskets Reserve, beach and swimming baths.

The surrounding area is characterised by large multi-level dwellings in landscaped settings. Sydney Harbour National Park is situated 200m to the south of the site and Welling Reserve is situated 120m to the north of the site, with both areas of public open space containing bushland.

Map:



SITE HISTORY

Pre-lodgement Meeting (PLM2018/0224)

On 15 November 2018, the proposed development was the subject of a Pre-lodgement meeting. Issues discussed included; non-compliant FSR, inadequate side setbacks, flooding and the stormwater easement traversing the site. It was advised that the proposal presented was not acceptable in the form presented and required some redesign prior to submission, particularly in relation to including a greater side setback to the north, as well as further analysis of potential amenity impact and response to this if required.

Relevant Previous Applications/Approvals:

On 24 July 2011, Development Application No. 10.2011.189.1 was approved for alterations and additions to an existing dwelling including ground and first floor extension, front second floor addition, swimming pool, cabana and landscaping.

On 15 March 2016, Modification Application No. 10.2011.189.2 was approved to modify approved development (changes to windows and doors, new first floor side terrace, pool level, terrace size, roof pitch, inclusion of rear detached outbuilding and modification to roof).

DA10.2011.189.1 (as modified) has been activated.

A Construction Certificate (CC) was issued for demolition and a shed has been demolished in accordance with the Consent and CC.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2019/0080, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/0080 for the following reasons:</p> <p>The proposal is for a minor addition of floor space and a number of other changes to the dwelling. These changes do not result in an increase to the overall building height and does not involve any new level, use or ancillary use. As such, the dwelling is substantially the same as the dwelling approved.</p>
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2019/0080 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local

Section 4.55 (2) - Other Modifications	Comments
(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	Environmental Plan 2013 and Manly Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by BPAD Bushfire Planning & Design, dated 9 October 2018) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report 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:
Lockrey Planning And Development Solutions Pty Ltd	Address Unknown
Symons Goodyer Pty Ltd	PO Box 673 BALGOWLAH NSW 2093

The matters raised within the submissions are addressed as follows:

- **Inaccurate notification plans**

Comment:

It is recognised that the north and south elevation on the notification plan were labelled incorrectly. However, the main set of plans are all labelled correctly and this enables a proper understanding and assessment of the application. Furthermore, the neighbour at 36 Beatty Street identified the mistake and made a submission in this regard and contact has also been made with the southern neighbour (32 Beatty Street) to notify them of the error. As such, the error has been addressed and has ultimately not resulted in any misunderstanding of the application by residents or Council.

- **No nexus for widening the studio deck given the open space already available; potential for overlooking from this area to southern boundary accessway at 36 Beatty Street**

Comment:

The proposed modification complies with the control for total open space above ground. There has also been an assessment under Clause 3.4.2 of the Manly DCP in this report which finds the outcome for privacy is reasonable, subject to conditions. As such, the proposed open space and privacy outcome is reasonable for the site and adjoining properties.

- **Request for new privacy screen at northern side of terrace with height of 1600mm, rather than 1500mm**

Comment:

The terrace complies with the controls for side setbacks and there is no neighbouring open space at the same level as this terrace. As such, the proposed lowering of the screen would still reduce opportunity for downward overlooking. This is a reasonable outcome for privacy mitigation.

- **Privacy issues from second floor to 36 Beatty Street (from new openings)**

Comment:

The proposed operable window at the second floor has a full length privacy screen and is well separated from neighbouring living areas. As such, it will not result in any unreasonable privacy impact. Furthermore, a condition is provided to ensure the design of the privacy screen is appropriate (including minimum width of openings).

- **Removal of wall and replacement with privacy screen results in visual and aural privacy concern; this conflicts with the original approval**

Comment:

Subject to a condition to provide an appropriate design for the privacy screen, the alternative barrier will provide sufficient mitigation of both aural and visual privacy impact.

- **Height, bulk, scale and setback of lift; presentation of lift in Beatty Street**

Comment:

The proposed lift matches the roof level of the existing garage, is to the rear of the existing garage, and is well separated from the neighbouring dwellings. The lift also has a side setback of 3.0m from the southern boundary and this complies with the control of 2.83m. As a result, the proposed lift structure would not have a height, bulk or scale that would cause any unreasonable visual or amenity impact.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The proposed modification is considered acceptable in relation to landscape issues. Existing conditions are still relevant to the modified consent if approval is granted.
NECC (Bushland and Biodiversity)	The proposed modification has been assessed against Manly LEP Clause 6.5 (Terrestrial Biodiversity). The subject site is previously modified with limited remnant native vegetation and wildlife habitat, and the proposed modifications will not significantly increase the potential impacts to biodiversity values. It is considered that, subject to the existing conditions of consent, the proposal is consistent with the objectives of the clause.
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018, Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p>The application has also been assessed using Northern Beaches SREP assessment template.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</p> <p>State Environmental Planning Policy (Coastal Management) 2018 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.</p> <p>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). Clauses 13</p>

Internal Referral Body	Comments
	<p>(coastal environment area) and 14 (coastal use area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment, the proposed modification satisfy requirements under Clause 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005</p> <p>The subject site is located within/adjacent to the W2 (Environmental Protection) Zones.</p> <p>On internal assessment, it is determined that the objectives and assessment criteria of the zone have been met.</p> <p>Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005</p> <p>Landscape character Assessment</p> <p>The subject site is located within the Landscape Character Type 6.</p> <p>On internal assessment, it is determined that the proposed modifications within the landscape satisfy the relevant criteria.</p> <p>Manly LEP 2013 and Manly DCP</p> <p>No issues identified.</p> <p><u>Assessing officer comment</u></p> <p>The recommended condition which restricts works on the public beach was placed on the original consent and remains.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	The application proposes modifications to DA2019/0080. The modifications comply with Council's Flood Prone Land Controls. There are no recommended changes to flood-related conditions placed on original DA.
Parks, reserves, beaches, foreshore	No issues with the proposed modifications.
Property Management and Commercial	The proposal is for the modification of a previously approved development consent on the subject site. Property has no objections to the proposal as submitted.

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. A336749_02).

A condition from the original consent remains, requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

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

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 proposal will not result in adverse impacts on the issues identified in (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 subclause (1), or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

There are not adverse impacts that would preclude consent.

14 Development on land within the coastal use area

- (1)
- (a) *has considered whether the proposed development is likely to cause an adverse*

impact on the following:

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

Comment:

The proposal will not have an unreasonable impact on the coastal use area.

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

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 proposal is unlikely to cause increased risk of coastal hazards. The application has been referred to Council's Coastal Officer who raises no objections to the proposal.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.14m	9.14m (dwelling) 8.5m (lift)	N/A	No (but as approved) Yes.
Floor Space Ratio	FSR: 0.4:1	FSR: 0.53:1	FSR: 0.55:1	38.1%	No (see comments)

	(315.6m ²)	(418m ²)	(436m ²)		
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Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	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
6.12 Essential services	Yes

Detailed Assessment

4.4 Floor space ratio

Whilst the modification application will result in a Floor Space Ratio that further exceeds the maximum permitted by Clause 4.4 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6. This application has been made under Section 4.55 of the Environmental Planning and Assessment (EP&A) Act 1979, which is a free-standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as substantially the same test and consideration of all relevant s.79C matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application. Clause 4.6 regulates whether development consent may be granted to a development application, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. Nevertheless, an assessment in relation to the related objectives of the variation is made as follows:

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

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

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

Comment:

The proposal maintains side setbacks as well as appropriate modulation of building bulk through separated building form across the site. The additional floor space relates to a plant room and laundry at the ground floor level, down slope from the street. As such, the proposal maintains an appropriate bulk and scale within the street.

The development satisfies this objective.

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

Comment:

The proposal involves additional floor space at ground level and predominantly within the existing building footprint. This does not involve an increase in bulk or density that could lead to obscuring landscape or townscape features.

The development satisfies this objective.

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

Comment:

The proposal maintains a similar presentation of building bulk and complies with the controls for open space and landscaping. As such, the proposal will maintain an appropriate visual relationship between new development and the existing character and landscape of the area.

The development satisfies this objective.

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

Comment:

The proposal involves the addition of floor space at ground level and does not involve any associated openings. As a result the proposed areas would not result in any unreasonable impact in terms of the environment or amenity.

The development satisfies this objective.

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

Comment:

Not applicable

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R1 General Residential zone.

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Comment:

The proposed development is for a residential use and is consistent with the objectives above.

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

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

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

Comment:

In this circumstance, providing flexibility to the Floor Space Ratio development standard is appropriate as the non-compliance does not lead to any unreasonable amenity impact and would be appropriate in the street context.

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

Comment:

It is appropriate to allow flexibility in this circumstance as an addition in Floor Space Ratio can be made to the dwelling without having any unreasonable impact on amenity and the proposed development would be visually appropriate given the context of the site and topographical nature of the surroundings.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 789m²	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	North: 7.2m	7.5m	7.5m	No (but as approved)
	South: 7.5m	6.1m	6.1m	No (but as approved)
4.1.2.2 Number of Storeys	2	2-3	2-3	No (but as approved)
4.1.2.3 Roof Height	Height: 2.5m	0.7m	0.7m	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6.0m	Nil (existing garage)	Nil (existing garage)	N/A
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 1.7m - 2.5m	1m-2.2m	1m (privacy screen)	No (see comments)
	South: 1.1m - 2.0m	1.525m-3.22m	1.525m (new flat roof)	No (see comments)
	Lift shaft: 2.4m (south)	1.5m	3m	Yes
4.1.4.4 Rear Setbacks	8.0m	4.5m - 5.3m	4.5m-5.3m	No (but as approved)
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space	Open space 60% of site area	73.4% (578sqm)	74% (583sqm)	Yes

Area: OS4				
4.1.5.1 Total Open Space Above Ground	25% (145.75sqm)	13.5% (78sqm)	15.5% (90sqm)	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	40%	40%	Yes
4.1.5.3 Private Open Space	18sqm	>18sqm	>18sqm	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	Ground level	Ground Level	Yes
	1m curtilage/1.5m water side/rear setback	1.0m (north side)	1.0m (north side)	No (but as approved)
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	2 spaces	Yes

Compliance Assessment

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

Detailed Assessment

3.4.2 Privacy and Security

Merit consideration:

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

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

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

Comment:

The proposal maintains appropriate screening (subject to conditions) and appropriate physical separation from neighbouring living spaces to sufficiently minimise loss of privacy. In particular, the new areas of open space are well separated from neighbouring living spaces and new openings are appropriately separated or screened.

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

Comment:

In order to ensure the proposed privacy screens at the northern elevation provide an appropriate balance between providing appropriate levels of privacy (as well as access to light and air), a condition is recommended which restricts the total openings of the screens at the northern elevation. The condition recommended is as follows:

The proposed privacy screens at the northern elevation (5, 17 and 20) are to meet the following:

- have no individual opening more than 30 millimetres wide; and
- have a total area of all openings that is no more than 30 per cent of the surface area of the screen or barrier

Details are to be provided prior to the issue of a Construction Certificate.

Reason: To ensure the proposed privacy screens do not have openings that would give rise to unreasonable opportunity for overlooking and aural privacy impact.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal maintains windows and entry areas which sufficiently contribute to potential for awareness of neighbourhood security.

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

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

Description of non-compliance

The proposal involves replacement of the approved wall adjacent to the pool with a privacy screen. This screen is located 1.0m from the boundary which is the same as the existing wall but which does not comply with the control of 2m at this part of the building.

The proposal also involves a new flat roof which extends the southern boundary to be 1.525m from the side boundary. This is a greater setback than the approved roof but still does not comply with the control of 2m.

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 screen and flat roof are located down slope and away from the street. As a result, the addition of these features will not have any unreasonable visual impact on the streetscape and the landscape character of the area will be suitably maintained.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed privacy screen is in the same location as the approved wall and will maintain a suitable level of privacy (subject to a condition which restricts the amount and width of openings). This location and design will also ensure appropriate opportunity for light, air and other amenity for the subject site and neighbouring property.

The proposed flat roof at the southern boundary is set further back than the approved pitched roof and is well separated from neighbouring living spaces. This ensures that appropriate access to amenity for the southern neighbour is maintained.

Objective 3) To promote flexibility in the siting of buildings

Comment:

The proposed privacy screen and new flat roof are in locations which are within the approved building envelope. This is a siting which maintains an appropriate presentation of bulk and scale, and does not give rise to any further unreasonable amenity impact.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal maintains landscaped area that complies with the control under the Manly DCP and the additions are predominantly within the existing footprint. As such, natural features will be appropriately maintained.

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

Comment:

A bush fire report has been provided and remains as reference documentation for the consent.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation

submitted by the applicant and the provisions of:

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

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

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

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

Conclusions on the Assessment of the Application

The proposed development does not comply with the 'Floor Space Ratio' Development Standard of 0.4:1 under the MLEP 2013, involving an additional breach (18.0m² additional gross floor area) of the development standard. However, the further breach does not give rise to any unreasonable amenity impact or visual impact, and is consistent with the objectives of the MLEP 2013 and the height standard.

In this case, the proposed dwelling provides a design that involves sufficient modulation and sufficient physical separation from neighbours. A condition is recommended to ensure a balanced outcome in design for privacy and access to other amenity. Furthermore, an assessment against the objectives of the development standards and DCP controls has found the proposal to be consistent with those provisions and reasonable.

On balance, the proposal should be approved as the design is reasonable for the site and locality by virtue of a presentation which is consistent with characteristics of the area and also provides sufficient spacing and modulation to reduce any unreasonable impact caused by building bulk.

Therefore, the application is recommended for approval.

It is considered that all processes and assessments have been satisfactorily addressed and that proposed development constitutes the proper and orderly planning for the site or the locality. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2019/0623

for Modification of Development Consent DA2019/0080 granted for Alterations and additions to a dwelling house including swimming pool on land at Lot 21A DP 350345,34 Beatty Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA-002- Site Plan	Issue C - 9/12/19	Chrofi
DA-004- Ground Floor Demolition Plan	Issue B - 9/12/19	Chrofi
DA-005- First Floor Demolition	Issue B - 9/12/19	Chrofi
DA-006- Roof Level Demolition Plan	Issue B - 9/12/19	Chrofi
DA-008- Cut and Fill Plan	Issue B - 9/12/19	Chrofi
DA-101- Ground Floor Plan	Issue B - 9/12/19	Chrofi
DA-102- First Floor Plan	Issue B - 9/12/19	Chrofi
DA-103- Second Floor Plan	Issue B - 9/12/19	Chrofi
DA-104- Existing Studio Plan	Issue B - 9/12/19	Chrofi
DA-105 -Existing Garage Plan	Issue B - 9/12/19	Chrofi
DA-106-Roof Plan	Issue C - 9/12/19	Chrofi
DA-201- Elevations	Issue C - 9/12/19	Chrofi
DA-202- Elevations	Issue C - 9/12/19	Chrofi
DA-301- Sections	Issue B - 9/12/19	Chrofi
DA-302- Sections	Issue B - 9/12/19	Chrofi

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.	Dated	Prepared By
DA-007 Waste Management Plan	9/12/19	Chrofi

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

B. Add Condition 13A - Design for Privacy Screens to read as follows:

The proposed privacy screens at the northern elevation (5, 17 and 20) are to meet the following:

- have no individual opening more than 30 millimetres wide; and
- have a total area of all openings that is no more than 30 per cent of the surface area of the screen or barrier

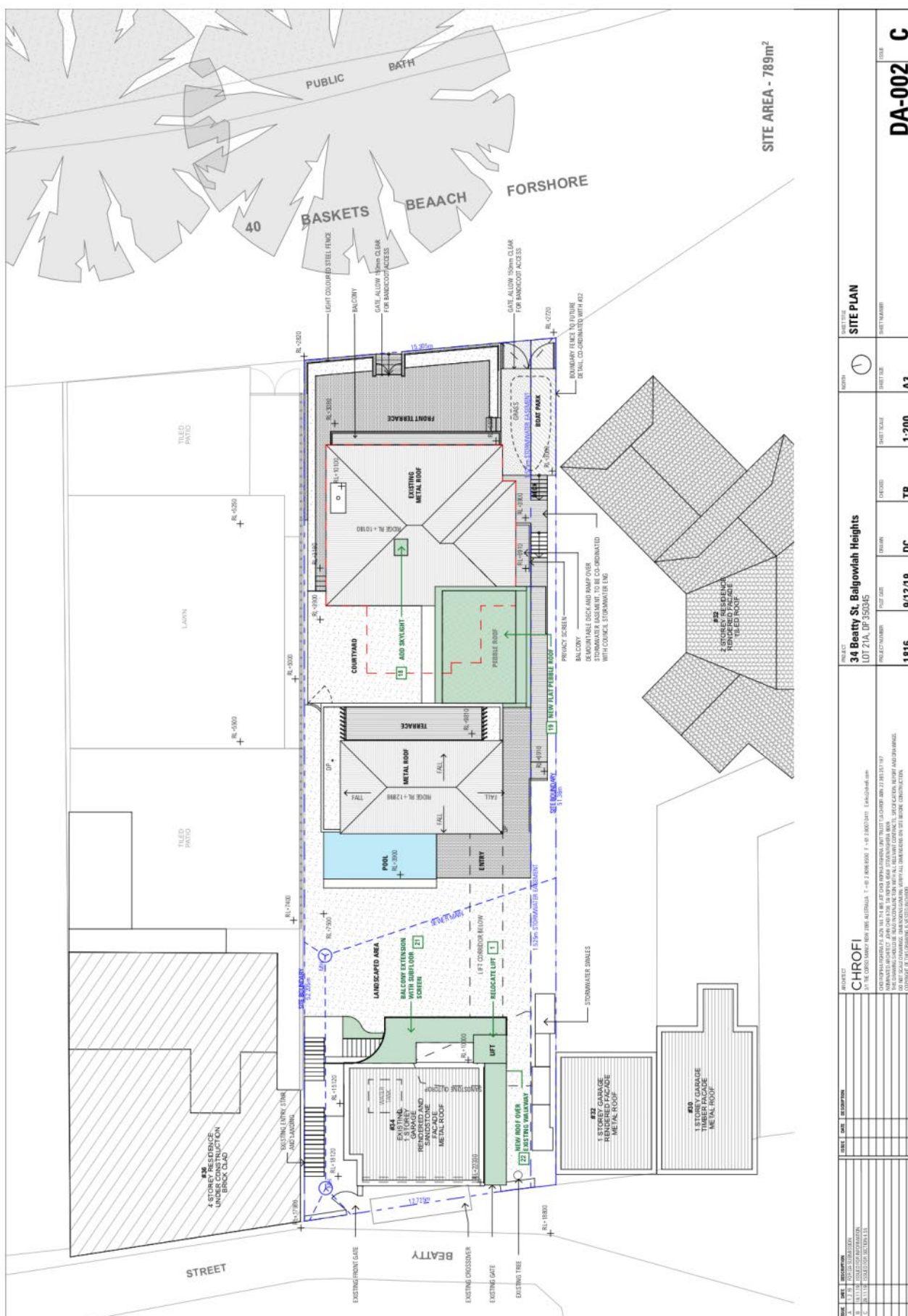
Details are to be provided prior to the issue of a Construction Certificate.

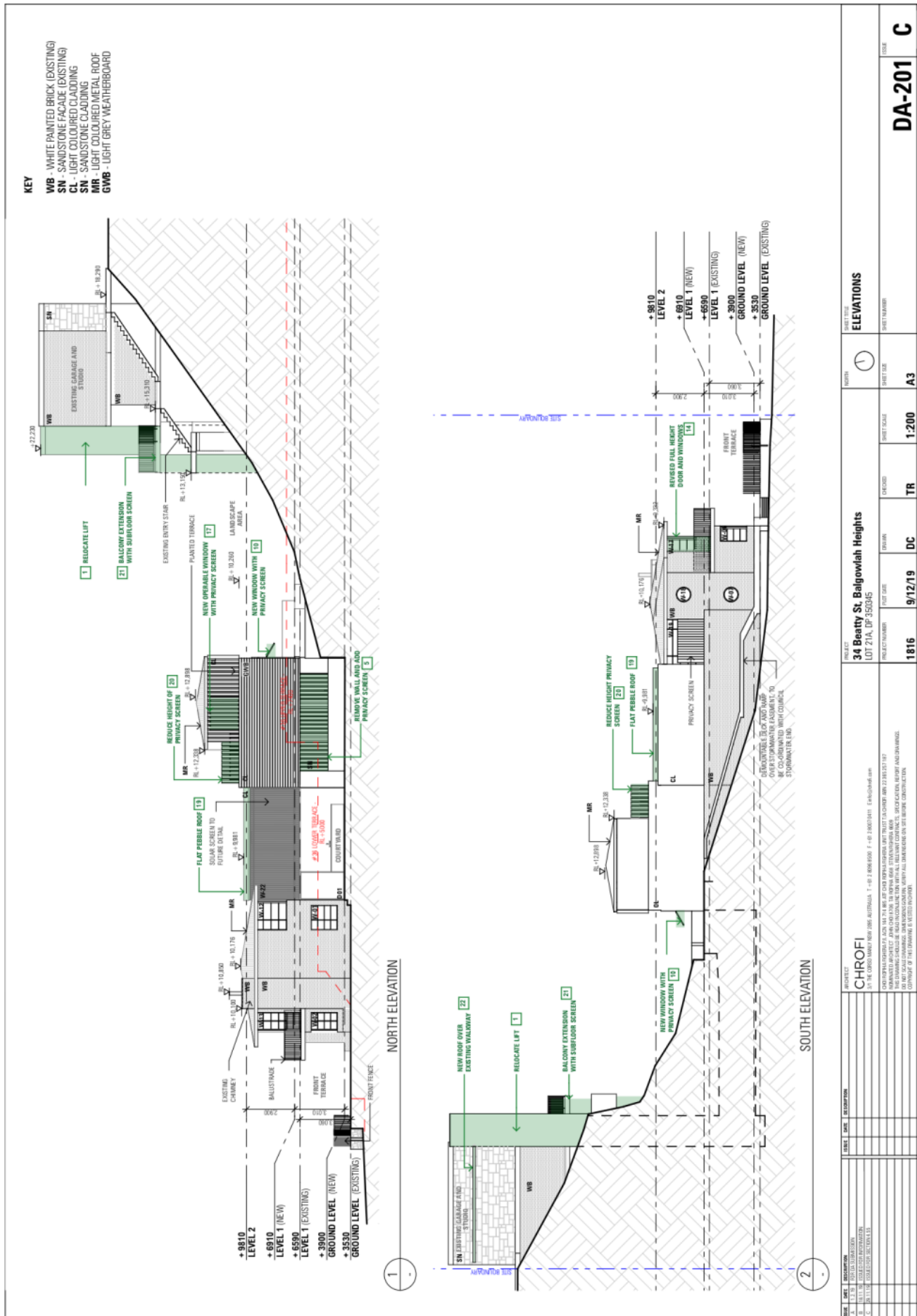
Reason: To ensure the proposed privacy screens do not have openings that would give rise to unreasonable opportunity for overlooking and aural privacy impact.

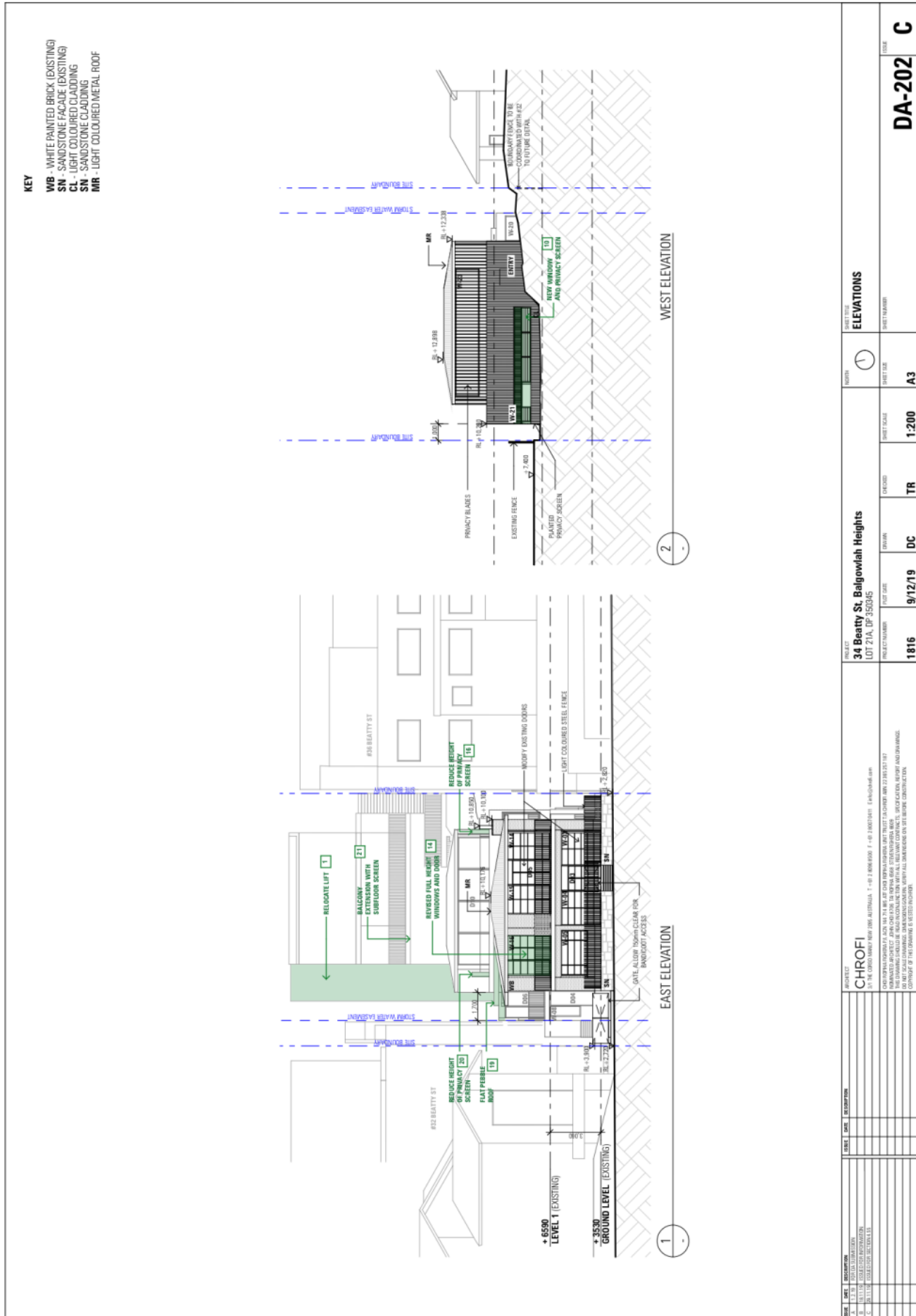
C. Add Condition 28 - Design Impact on Coastal Processes and Public/Private Amenity to read as follows:

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







ITEM 3.2	DA2019/1424 - 42 SEAFORTH CRESCENT, SEAFORTH - CONSTRUCTION OF A DWELLING HOUSE INCLUDING A SWIMMING POOL
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2020/187947
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 DA2019/1424 for construction of a dwelling house including a swimming pool on land at Lot 2 DP 202147, 42 Seaforth Crescent, Seaforth, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1424
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 2 DP 202147, 42 Seaforth Crescent SEAFORTH NSW 2092
Proposed Development:	Construction of a dwelling house including a swimming pool
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:	Ali Raoof Ghasemi Haleh Kakhsaz
Applicant:	Ali Raoof Ghasemi
Application Lodged:	12/12/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	06/01/2020 to 28/01/2020
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.4 Floor space ratio: 55.26%
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,190,000.00

EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of Development Application DA2019/1424 for construction of a dwelling house, including a swimming pool at 42 Seaforth Crescent, Seaforth. The proposal is referred to the Development Determination Panel (DDP) for review and determination, given the extent of the floor space ratio non-compliance proposed.

The proposed development includes a variation to the Floor Space Ratio development standard of the Manly Local Environmental Plan 2013 (MLEP 2013), though this non-compliance is established to be acceptable on merit, having regard especially to the site dimensions and topography. The proposed development required a merit assessment in relation to the sunlight access and overshadowing, privacy and security, maintenance of views, height of buildings, setbacks, and swimming pools controls of the

Manly Development Control Plan 2013 (MDCP 2013), though the non-compliant elements were minor in nature and acceptable on merit.

The proposed development received two objections in relation to built form non-compliance, view loss, and impacts to privacy impacts and sunlight.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for demolition works and construction of a new dwelling, while retaining a portion of the existing dwelling, as follows:

- Attached double garage and entrance at the lower ground level;
- Living room, bedrooms, bathrooms, swimming pool, and green roof over garage at the ground level;
- Open plan living, dining and kitchen area, with guest quarters at the first floor level;
- Master bedroom with ensuite, roof terrace, and green roof at the second floor; and
- Landscaping works.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Local Environmental Plan 2013 - 6.4 Stormwater management
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
Manly Local Environmental Plan 2013 - 6.12 Essential services
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 2 DP 202147 , 42 Seaforth Crescent SEAFORTH NSW 2092
Detailed Site Description:	<p>The subject site consists of one allotment located on the northern side of Seaforth Crescent, Seaforth.</p> <p>The site is irregular in shape with a splayed frontage of 36.575m along Seaforth Crescent and an average depth of 17m. The site has a surveyed area of 577.4m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a part two-, part three-storey detached dwelling with attached double garage.</p> <p>The property slopes approximately 5m from north to south, and includes a steep rock escarpment to the rear (north) of the property.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by detached dwellings of two, three, and four storeys in height.</p>

Map:



SITE HISTORY

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

- DA0126/2014 for alterations and additions to an existing dwelling house including decks, swimming pool, access stairs and landscaping was approved on 21 January 2015 by the former Manly Development Assessment Unit.
- DA0055/2017 for alterations and additions to the existing dwelling house was approved on 31 July 2017 under staff delegation.
- Pre-lodgement Meeting PLM2019/0096 was held on 28 May 2019 to discuss alterations and additions to a dwelling house.

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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Theresa You	46 Seaforth Crescent SEAFORTH NSW 2092
Mrs Carol Anne Kirkland	10 Richmond Road SEAFORTH NSW 2092
Toby Ledgerwood	Address Unknown

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

- Overshadowing to adjacent properties.
- Impacts to privacy.
- View loss to 10 Richmond Road.
- Non-compliant height of building, without written request to vary the height of buildings development standard.
- Non-compliant floor space ratio.
- Non-compliance with built form controls of the MDCP (wall height, number of storeys).

The matters raised within the submissions are addressed as follows:

Amenity - Overshadowing, Privacy Loss, and View Loss

Comment:

The proposed development provides adequate amenity to adjoining sites for the reasons detailed in the section of this report relating to the Manly Development Control Plan 2013 - Compliance Assessment.

Non-Compliance with Development Standards - Height of Buildings and Floor Space Ratio

Comment:

The proposed development is compliant with the height of building control in accordance with its LEP definition and the interpretation taken by the NSW Land and Environment Court, being that 'ground level (existing)' shall be taken to be reference to ground level in an undisturbed state. That is, not taken from excavated or filled levels, but rather from extrapolated levels prior to development of the land. As such, no written request to vary this development standard is required. The variation to the floor space ratio development control is acceptable for the reasons detailed in the section of this report relating to Clause 4.6 Exceptions to Development Standards of the MLEP 2013.

Non-Compliance with Built Form Controls

Comment:

The elements of the development that are not compliant with their respective built form controls are addressed in the section of this report relating to the Manly Development Control Plan 2013 - Compliance Assessment. In each case, the non-compliant elements are supported on merit for the reasons detailed.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The plans indicate no significant landscape features are to be affected by the proposed works, particularly the rock escarpment at the rear of the site.</p> <p>The plans include re-landscaping of existing gardens within the road reserve. No objections are raised to the all of the proposed works from a landscape perspective subject to conditions as recommended.</p>
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following condition of consent.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1031154S dated 11 September 2019). The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	56

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	N/A	Yes
Floor Space Ratio	0.4:1 (230.96sqm)	0.62:1 (358.6sqm)	55.26%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 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 (230.96sqm)
Proposed:	0.62:1 (358.6sqm)
Percentage variation to requirement:	55.26%

Assessment of request to vary a development standard:

The following assessment of the variation to the development standard under Clause 4.4 Floor Space Ratio 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 is not expressly excluded from the operation of this clause.

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

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

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

Comment:

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

grounds to justify contravening the development standard:

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

Section 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s5)

The objects of this Act are as follows:

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

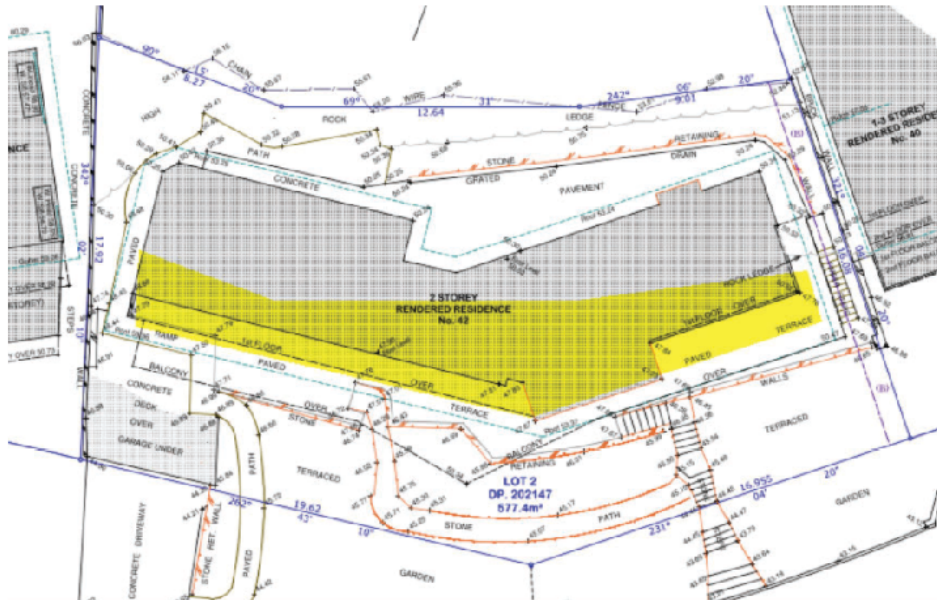
The Applicant's written request argues, in part:

- *The Lot size map identifies the subject site as having a minimum Lot area of 1150m² is required. The site having an area of only 577.4m² is well below the minimum Lot area provision and accordingly the clause 4.1.3 Manly DCP FSR variation provisions apply.*
- *The height, bulk and scale of the development, as reflected by floor space, are entirely consistent with the built form characteristics established by adjoining development and development generally along Seaforth Crescent...*
- *...the development will not obscure any important landscape or townscape features.*
- *The application proposes the implementation of an enhanced site landscape regime as depicted on plans prepared by Paul Scrivener with such landscaping incorporating perimeter plantings, including canopy trees, and roof garden treatments. The building will sit within a landscaped setting. The application is accompanied by a schedule of materials and finishes which will enable the development to blend into the vegetated escarpment which forms and backdrop to the site.*
- *The design and siting of the dwelling with the majority of fenestration orientated to the front and rear of the site will maintain a contextually appropriate relationship with adjoining development and a view sharing scenario to surrounding properties.*
- *The detailed shadow diagrams demonstrate the maintenance of at least 3 hours of solar access to the north, east and south facing living room windows and adjacent private open space areas of the adjoining properties between 9am and 3pm on 21st June.*
- *In relation to privacy and visual bulk we note that the majority of fenestration is orientated to the front and rear of the site as are the proposed terrace and balcony areas. The proposed roof*

terrace is centrally located with the adjacent roof garden providing over 12 metres of spatial separation to the eastern adjoining property. Appropriate levels of aural and visual privacy will be maintained.

- *...the variation provisions contained at clause 4.1.3.1 of Manly DCP reflect an acceptance that the FSR standard on undersized allotments does not provide for the orderly and economic use and development of the land and is an acknowledgment as to the effective abandonment of the FSR standard in such instances. These provisions apply given the undersized nature of the subject site.*
- *Finally, the dwelling house is of good design with the floor space proposed promoting/ reflecting the orderly and economic use and development of the land, consistent with objectives 1.3(c) and (g) of the Act, in circumstances where the FSR standard has effectively been abandoned for recently approved development both on the subject site and within the sites visual catchment generally.*

The above matters are agreed with by the Assessing Officer. Of particular note are the site's unique constraints. The site includes a steep cliff face to the rear, and is severely undersized, according to the minimum lot size set by Clause 4.1 of the MLEP 2013. The MLEP 2013 sets a minimum lot size of 1,150sqm, where the site is only 577.4sqm in area. The proposed development includes a floor space ratio of 100sqm less than that which would be compliant on an appropriately sized lot. If the subject site were of a compliant lot size, the proposed gross floor area would equate to a floor space ratio of 0.31:1, which is well-under the permissible 0.4:1. It is agreed that the proposed development is of consistent height, bulk, and scale of surrounding development. The proposed development is in fact smaller than some other surrounding developments in the immediate vicinity, including 46 Seaforth Crescent, being adjacent to the west. The proposed development includes a 5m front setback, which is consistent with the prevailing front building line in the street, and provides an improved landscape treatment to the front setback area. The rear setback non-compliance does not lead to any unreasonable impacts, as properties to the rear sit atop the cliff face and look over the subject site. The side setback non-compliances do not result in any unreasonable overshadowing or privacy impacts, as detailed throughout this report. It is worth noting that the subject site's dimensions prevent a reasonable development from ever completely complying. See a marked-up survey plan demonstrating a complying building footprint for a two-storey dwelling on the site (shown in yellow using 6m front setback, 8m rear setback, and 2m side setbacks):



Above: A complying building footprint on the subject site.

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, thereby satisfying Clauses 1.3 (c) and (g) of the EPA Act, and has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by Clause 4.6 (3)(b).

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the 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 addressed as follows:

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

Comment:

The existing streetscape consists of detached dwellings of varying building heights and architectural styles. Of particular consideration is 46 Seaforth Crescent to the west, being five storeys in height, and

40 Seaforth Crescent to the east, being three storeys in height. The proposed development provides a comfortable transition between those two developments and is not of dominant bulk or scale in consideration of the 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,

Comment:

As detailed in the section of this report relating to Part 3 of the MDCP 2013 General Principles of Development – Maintenance of Views, the proposed works do not unreasonably obscure any significant landscape or townscape features, or any unreasonable view loss.

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

Comment:

The resultant dwelling is designed and scaled to be consistent with existing nearby development in the street, particularly in consideration of 46 Seaforth Crescent to the west. Further, the proposed works include an improved landscaping outcome in the front yard. In this way, the proposed works maintain an appropriate visual relationship between the new development and the character of the street, as well as improving the landscape treatment of the area.

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

Comment:

Despite its variation of the floor space ratio development standard, the proposed development does not unreasonably impact upon the use or enjoyment of adjoining land or the public domain, as detailed throughout the assessment in this report.

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

Comment:

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

Zone Objectives

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

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

Comment:

The proposed development retains the existing residential use of the site.

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

Comment:

Not applicable. The proposed development retains the existing residential use of the site.

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 Floor Space Ratio development standard associated with a single

dwelling house (Class 1 building).

6.2 Earthworks

Clause 6.2 Earthworks requires development:

(a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and

(b) to allow earthworks of a minor nature without requiring separate development consent.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development

Comment:

The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

(b) the effect of the proposed development on the likely future use or redevelopment of the land

Comment:

The proposal will not unreasonably limit the likely future use or redevelopment of the land.

(c) the quality of the fill or the soil to be excavated, or both

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties

Comment:

The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

(e) the source of any fill material and the destination of any excavated material

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

Comment:

The site is mapped as being a potential location of Aboriginal or other relics. The previous application on the site was referred to the Aboriginal Heritage Office. At that time, the Aboriginal Heritage Office established the following:

"No sites are recorded in the current development area. The Aboriginal Heritage Office inspected the area with Council on 6th June 2017 and found no Aboriginal heritage sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development."

As such, no referral to the Aboriginal Heritage Office was necessary for this application. A condition of consent has been included requiring that, should any Aboriginal sites be uncovered during earthworks, 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.

(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area

Comment:

The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment:

Conditions are included in the recommendation of this report that will minimise the impacts of the development.

6.4 Stormwater management

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

(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and

Comment:

The development will provide a suitable amount of permeable surfaces given the zoning of the land and the proposed use. In this regard, Council is satisfied that the design will maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water.

(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and

Comment:

On-site stormwater retention is not required for this development. The proposed development is supported by suitable stormwater management plans. These plans have been reviewed as acceptable by Council's Development Engineer and included in the recommendation.

(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

Comment:

The proposal has been assessed by Council's Development Engineers who have raised no objections to approval, subject to conditions. In this regard, Council is satisfied that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

6.9 Foreshore scenic protection area

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

(a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,

- (b) measures to protect and improve scenic qualities of the coastline,
(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,
(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

Comment:

The proposed development shall have no unreasonable impact on the visual aesthetic amenity of the area. The proposed development does not unreasonably impact upon views, is suitably designed to protect and impact the scenic quality of the coastline, is suitable for the site and its relationship to the foreshore due to its design and finishes, and does not result in any conflict between land-based and water-based coastal activities.

6.12 Essential services

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

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

Comment:

The subject site is currently supplied with water, electricity and sewage services. The proposed development is supported by suitable stormwater management and vehicular access arrangements.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 577.4sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 1,150sqm	1 dwelling per 577.4sqm site	49.8%	No - Existing and unchanged
	Dwelling Size: Min. 151sqm	358.6sqm	-	Yes
4.1.2.1 Wall Height	E: 8m (based on gradient 1:1.5)	Ground Floor: 3m First Floor: 6m Second Floor: 8.4m	- - 5%	Yes Yes No
	W: 8m (based on gradient 1:1.5)	Lower Ground: 2.6m Ground Floor: 3m First Floor: 6m Second Floor: 8.4m	- - - 5%	Yes Yes Yes No

4.1.2.2 Number of Storeys	2	Max. 4	100%	No
4.1.2.3 Roof Height	Height: 2.5m	1.2m	-	Yes
	Pitch: maximum 35 degrees	Flat roof	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	5m, consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages (Based on Wall Height)	Lower Ground: E: 867mm	0m	100%	No
	Ground Floor: E: 1m W: 1m	E: 1.2m W: 1.9m	- -	Yes Yes
	First Floor: E: 2m W: 2m	E: 1.2m W: 1.9m	40% 5%	No No
	Second Floor: E: 2.8m W: 2.8m	E: 10m W: 3.9m	- -	Yes Yes
	Windows: 3m	Min. 2m with screening	33%	No
4.1.4.4 Rear Setbacks	8m	Min. 2.4m	Max. 70%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Total Open Space: Min. 60% of site area (346.44sqm)	75.13% (433.8sqm)	-	Yes
	Above Ground: Max. 40% of total open space (173.52sqm)	16.68% (72.4sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped Area: Min. 40% of open space (173.52sqm)	51.86% (225sqm)	-	Yes
	3 native trees	3 trees	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	Xsqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	7.7m	24.2%	No
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	2.2m	120%	No
	Setback 1m to deck Setback 1.5m to water	Side: 1.5m to deck 1.7m to water Front: 2.3m to deck 2.5m to water	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Note: The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the

proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

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

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

The proposed development results in a decrease in direct sunlight to 46 Seaforth Crescent (to the west of the subject site) during the morning of the winter solstice. It is important to note that 46 Seaforth Crescent (along with other properties along Seaforth Crescent) are particularly vulnerable to overshadowing, given the steep topography of land to the north, preventing direct sunlight for a significant portion of the day during the winter solstice. With regard to the consideration for a variation, the development is considered against the underlying objectives of the control as follows:

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

Comment:

The proposed development provides equitable access to light and sunshine in that the majority of overshadowing as a result of the development falls to the street. The portion of 46 Seaforth Crescent that is subject to overshadowing is not principal private open space (being an entry terrace only). The proposed development does not result in additional overshadowing to the principal private open space (at the levels above the point of overshadowing) or windows to habitable rooms of the subject site or adjacent properties.

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:

As above, the proposed development does not result in any additional overshadowing of to the principal private open space of the subject site or adjacent properties.

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

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

Comment:

The proposed development does not result in any additional overshadowing of windows to habitable rooms or of principal outdoor areas of the subject site or adjacent properties. The proposed development retains an acceptable southern setback and modulates bulk with the inclusion of balcony and open terrace spaces.

3.4.2 Privacy and Security

The proposed development is consistent with the requirements of this control. However, a submission has raised concern about the upper level imposing on the visual privacy of 46 Seaforth Crescent. The development is considered against the underlying objectives of the control as follows:

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

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

Comment:

The proposed development minimises the loss of privacy to adjacent and nearby development with the inclusion of privacy screening where appropriate, and generally restricting the location of windows to the front and rear elevations. In this way, the proposed development is appropriately designed for privacy and mitigates direct viewing between properties to the east and west across side boundaries. The western elevation of the upper level of the proposed dwelling is set 3.9m from the western property boundary shared by 46 Seaforth Crescent, though that elevation is a blank wall containing no windows. The deck to the upper level is set 4.5m metres from the western boundary, and is screened for the entire depth of the deck, so as to obscure viewing from the subject site to 46 Seaforth Crescent. As such, the upper level does not present a privacy imposition to 46 Seaforth Crescent.

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

Comment:

As above, the proposed upper level is suitably designed to provide adequate privacy for adjacent sites without compromising access to light and air for the subject site. The outlook and views from habitable rooms and private open space is balanced in that overlooking is minimised, but views from the subject site are still available.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development includes windows, balconies and terraces orientated to the street frontage (southern elevation) at each level, thereby encouraging awareness of neighbourhood security through passive surveillance.

3.4.3 Maintenance of Views

Objections from 46 Seaforth Crescent and 10 Richmond Road raised concern about view loss as a result of the proposed works. The development is considered against the objectives of the control as follows:

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

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).

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.

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

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:**46 Seaforth Crescent:**

46 Seaforth Crescent benefits from uninterrupted panoramic views spanning across the east, south, and

west. The whole view contains the subject site, other properties, the Spit, the Sydney city and North Sydney skylines, the harbour, and the interface between land and water. The affected view is a small portion of the whole view.



Above: The affected view, from standing position on the terrace adjoining a bedroom at 46 Seaforth Crescent, looking east across the subject site.



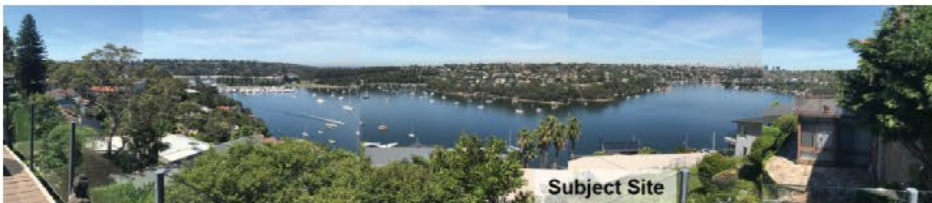
Above: The whole view, from a standing position on the terrace adjoining a bedroom at 46 Seaforth Crescent.

10 Richmond Road:

10 Richmond Road benefits from uninterrupted panoramic views spanning across the east, south, and west. The whole view contains the subject site, other properties, the Spit, the Sydney city and North Sydney skylines, the harbour, and the interface between land and water. The affected view is a small portion of the whole view.



Above: The affected view, from standing position on the terrace adjoining the living room at 10 Richmond Road, looking south-west towards the subject site.



Above: The whole view, from a standing position on the terrace adjoining the living room at 10 Richmond Road.

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:

46 Seaforth Crescent:

The views from 46 Seaforth Crescent are obtained from the first, second and third floor balconies, and the adjoining rooms. The views are obtained in seated and standing positions. The affected portion of the view is directly to the east, across the side boundary, towards the subject site.

10 Richmond Road:

The views from 10 Richmond Road are obtained from the ground floor balconies and adjoining rooms. The views are obtained in seated and standing positions. The affected portion of the view is to the south-west, across the rear boundary, towards the subject site.

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:

46 Seaforth Crescent:

The portion of view affected by the proposed development is not considered to be of significance. The affected view is of the roof top of the existing dwelling at the subject site, other properties to the east, the horizon, and a negligible portion of water view, from the second floor balcony. The remainder of the panoramic view available to 46 Seaforth Crescent at the second floor will remain unaffected by the proposed development. This includes the views to the Spit, the Sydney city and North Sydney skylines, the harbour, and the interface between land and water, which are the most valuable elements of the view. The proposed development is not likely to result in any additional view loss to the east at the first floor, as this is already obstructed. The proposed development is not likely to result in any additional view loss to the east at the third floor, as this level looks over the subject site, from a height above the proposed development. The overall view loss to 46 Seaforth Crescent is minor.

10 Richmond Road:

The portion of view affected by the proposed development is not considered to be of significance. The affected view is of a small portion of water only. The views to the the Spit, the Sydney city and North Sydney skylines, the harbour, and the interface between land and water (which are the most valuable elements of the view) remain unaffected by the proposed development. The overall view loss to 10 Richmond Road is minor.

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

Comment:

The proposed development includes several non-compliant built form elements. However, these non-compliant elements are acceptable on merit for the reasons detailed throughout this report, and do not result in any unreasonable impacts. As such, it can be established that the development is skilful, despite those non-compliant elements. In order for there to be no impact on views to 46 Seaforth Crescent and 10 Richmond Road, the proposed upper level would have to be deleted altogether. This is not a reasonable response, given the acceptability of the development as proposed, and given the resultant view loss is minor only. Therefore, it is not considered reasonable to require design changes to facilitate retention of the small portions of views lost.

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

Clause 4.1.2.1 of the MDCP 2013 allows for development to a maximum of two storeys on the subject site, with a maximum wall height of 8m. The proposed development seeks a third storey, and wall heights up to 8.4m. Clause 4.1.2.1 relies on the objectives of Clause 4.3 Height of Buildings of the MLEP 2013. The objectives are addressed in relation to development as follows:

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

Comment:

The proposed development is compliant with the maximum height of building development standard within Clause 4.3 of the MLEP 2013. The proposed development and roof form are of a comparable bulk, scale and style to existing development in the vicinity, so are complementary in the streetscape. The roof form is compliant with Clause 4.1.2.3 of the MDCP 2013 in relation to roof height. The proposed third storey is set towards the rear of the site and does not present as a visually dominant element of the development. Finally, the third storey is stepped in from the side boundaries, thereby articulating the bulk of the development.

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

Comment:

The proposed development is of an acceptable bulk and scale (in relation to its floor space ratio) for the reasons detailed in the section of this report relating to Clause 4.6 Exceptions to Development Standards of the MLEP 2013.

(c) to minimise disruption to the following:

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

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

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

Comment:

The proposed development is acceptable in relation to maintenance of views for the reasons detailed in the section of this report relating to Clause 3.4.3 Maintenance of Views of the MDCP 2013.

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

Comment:

The proposed development is acceptable in relation to solar access for the reasons detailed in the section of this report relating to Clause 3.4.1 Sunlight Access and Overshadowing of the MDCP 2013.

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

Comment:

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

4.1.3 Floor Space Ratio (FSR)

The floor space ratio variation is addressed in the section of this report relating to Clause 4.6 Exceptions to Development Standards of the MLEP 2013.

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

The proposed development includes non-compliant side setbacks to the first floor of 1.2m to the east and 1.9m to the west, where 2m is required. The development is addressed in relation to the objectives of the control as follows:

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

Comment:

The proposed side setbacks are consistent with the existing developments within the immediate vicinity, and introduces an improved landscape treatment to the front setback area. As such, the proposed

development maintained the existing desired spatial proportions of the street, the street edge and the landscape character of the street, despite the non-compliant side setbacks.

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 sunlight access, privacy, maintenance of views and streetscape character impacts resulting from the proposed development are acceptable for the reasons detailed in the section of this report relating to Part 3 General Principles of Development of the MDCP 2013. The proposed development does not impact upon traffic conditions.

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

Comment:

The proposed development is adequately sited in order to provide an appropriate level of amenity to the subject site and adjacent sites.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed development provides adequate landscaping and planting and does not unduly detract from the context of the site. The subject site does not contain urban bushland.

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

Comment:

The subject site is not within an area of bushfire prone land.

4.1.9 Swimming Pools, Spas and Water Features

Clause 4.1.9.1 of the MDCP 2013 provides that swimming pools must be built on or in the ground and not elevated more than 1m above natural ground level. The proposed swimming pool is up to 2.2m above ground. Exceptions to the maximum height above ground must not detract from the amenity or character of the neighbourhood and must be minimum distance from any side boundary equivalent to the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level. The proposed pool is located 2.3m from the side boundary, and is acceptable in relation to amenity and character, as detailed below in relation to the objectives of the control.

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

Comment:

The proposed swimming pool provides adequate amenity for the neighbourhood in that it is adequately set back from all boundaries and surrounded by vegetation. As such, the proposed swimming pool is located and designed to maintain privacy of neighbouring properties. Noise arising from the swimming pool filter has been suitably conditioned.

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

Comment:

Given the topography of the land, the proposed pool is approximately 3.5m above street level. Further, the pool is proposed to be surrounded by screening vegetation. As such, the proposed swimming pool is not likely to be visually intrusive from the street, so will not unreasonably impact upon the streetscape or the character of the locality.

Objective 3) To integrate landscaping; and

Comment:

The proposed development integrates an improved landscaped treatment to the front setback area, particularly around the swimming pool.

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

Comment:

The subject site is not within an area of bushfire prone land.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$21,900 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,190,000.

CONCLUSION

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

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

- Codes and Policies of Council.

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

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

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

Council is satisfied that:

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

In summary, a detailed assessment has been required in relation to floor space ratio, sunlight access and overshadowing, privacy and security, maintenance of views, height of buildings, setbacks, and swimming pools. Each non-compliant element is established as acceptable on merit. 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 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 DA2019/1424 for Construction of a dwelling house including a swimming pool on land at Lot 2 DP 202147, 42 Seaforth Crescent, 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
DA05 Site & Roof Plan	19 September 2019	Watershed Design
DA06 Garage Floor Plan	19 September 2019	Watershed Design
DA07 Ground Floor Plan Pool Plan	19 September 2019	Watershed Design
DA08 First Floor Plan	19 September 2019	Watershed Design
DA09 Second Floor Plan	19 September 2019	Watershed Design
DA10 Section AA	19 September 2019	Watershed Design
DA11 Section BB	19 September 2019	Watershed Design
DA12 Section CC & CC	19 September 2019	Watershed Design
DA13 Elevation, South Seaforth Crescent	19 September 2019	Watershed Design
DA14 Elevation North Schedule of Finishes	19 September 2019	Watershed Design
DA15 Elevation, West	19 September 2019	Watershed Design
DA16 Elevation, East	19 September 2019	Watershed Design

Engineering Plans		
Drawing No.	Dated	Prepared By
D01 Stormwater Management Plan 1	September 2019	iSTRUCT Consulting Engineers
D02 Stormwater Management Plan 2	September 2019	iSTRUCT Consulting Engineers
DA03 Sediment & Erosion Control Plan	September 2019	iSTRUCT Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1031154S	11 September 2019	Efficient Living Pty Ltd
NatHERS Certificate No. 0004202263	11 September 2019	Efficient Living Pty Ltd
Geotechnical Report J2362	26 August 2019	White Geotechnical Group

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Site Plan	13 September 2019	Paul Scrivener Landscape Architecture
Planting Plan	13 September 2019	Paul Scrivener Landscape Architecture

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	1 October 2019	Applicant

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

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

2. **Prescribed Conditions**

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

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

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

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

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

Reason: Legislative requirement.

3. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be

maintained in a safe and clean state until such time as new construction works commence.

- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009

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

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$21,900.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$2,190,000.00.

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

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

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

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

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

5. **Security Bond**

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

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

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

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

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

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

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

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003, and generally in accordance with the concept drainage plans prepared by istruct Consulting Engineers, project number 190611, drawing number DA01- 02, dated 25/9/2019.

The drainage plans must address the following:

i.the control/ inspection pit must be able to be accessed externally to the building

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

7. **Submission Roads Act Application for Civil Works in the Public Road**

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The application is to include four (4) copies of Civil Engineering plans for the design of driveway and retaining structure which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges. An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate

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

8. **Structural Adequacy and Excavation Work**

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

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

9. **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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

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

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

11. **Tree Protection**

(a) Existing trees that must be retained:

- i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation; and
- ii) Trees located on adjoining land.

(b) Tree protection:

- i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development

sites, with particular reference to Section 4 Tree Protection Measures.

iv) All tree pruning within the subject site is to be in accordance with relevant local planning controls and AS 4373 Pruning of amenity trees.

v) All tree protection measures, including fencing, 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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. 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.

13. Vehicle Crossings

The Applicant is to construct one vehicle crossing 5.5 metres wide at kerb and 6 metres wide at boundary in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

14. 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.

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

OCCUPATION CERTIFICATE**15. Landscape Completion Certification**

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

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

16. Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**17. Landscape Maintenance**

Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

Reason: To maintain local environmental amenity.





SCHEDULE OF FINISHES

REVISIONS

NOTES

Any discrepancy is to be brought to the Architect's attention. Use these dimensions in preference to markings on drawings.

Only note under direction from Architect.

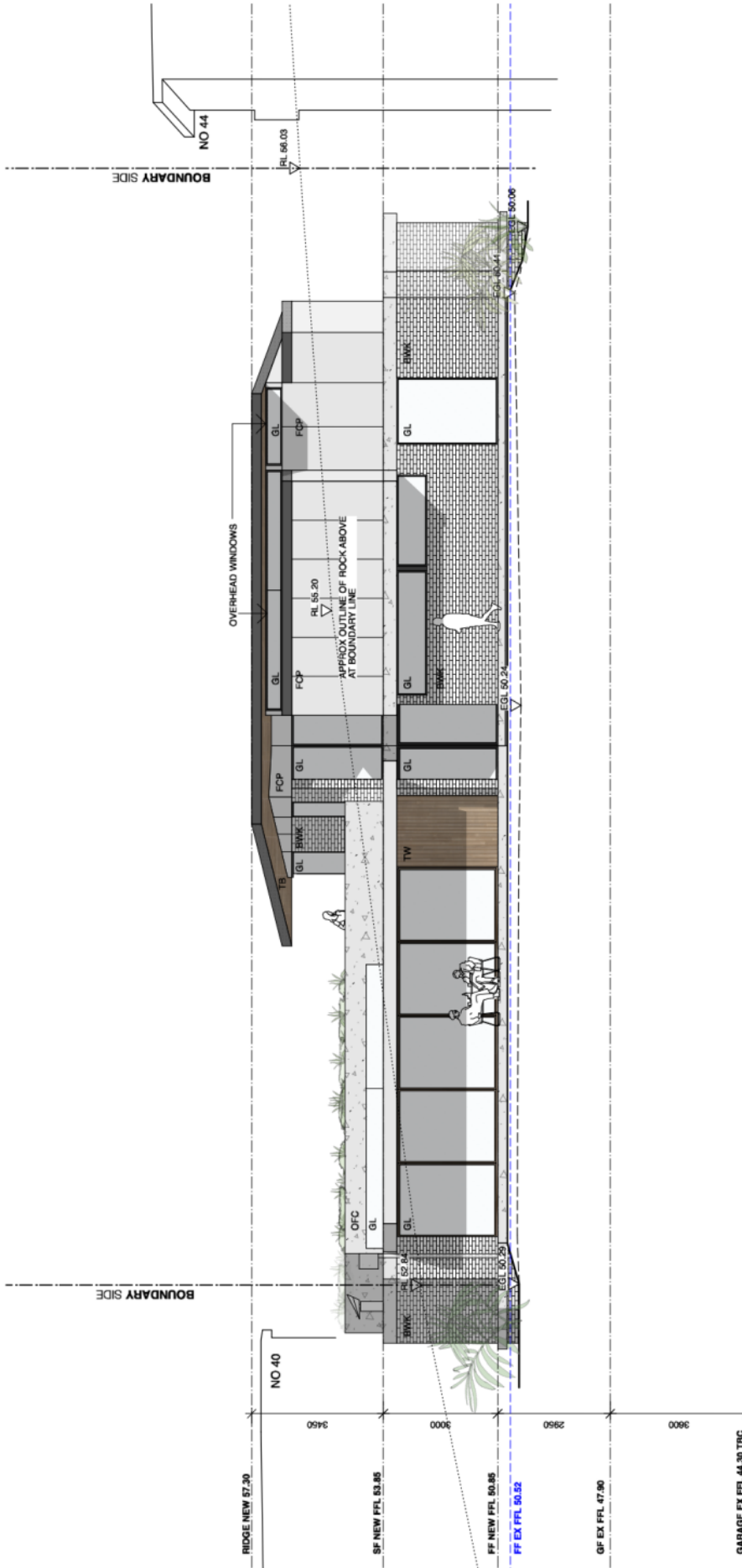
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Ali & Haleh Ghassami42 Seaforth Crescent.



NORTH ELEVATION

					
OFC FORM CONCRETE	BWK BRICKWORK, PAINT FINISH	TW/TB CLADDING & SOFFIT VERTICAL CLADDING	FCP FIBRE CEMENT PANEL, PAINT FINISH	GLB GLASS BALUSTRADE	MR METAL ROOFING

SCHEDULE OF FINISHES

NOTES

- Any discrepancies to be brought to the Architect's attention.
- Use figures dimensions in preference to words.
- Refer to drawings for details and dimensions.
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- Refer to drawings for details and dimensions.

REVISIONS

NO	AMENDMENT	DATE
A	PRE DA ISSUE	19/09/19
B	PRE DA ISSUE	19/09/19

 **WATERSHED
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CLIENT Ali & Haleh Ghaseini

ADDRESS 42 Seaford Crescent,
Seaford

DRAWING NO DA14

ISSUE B

18026

JK

MK

1:100

SCALE

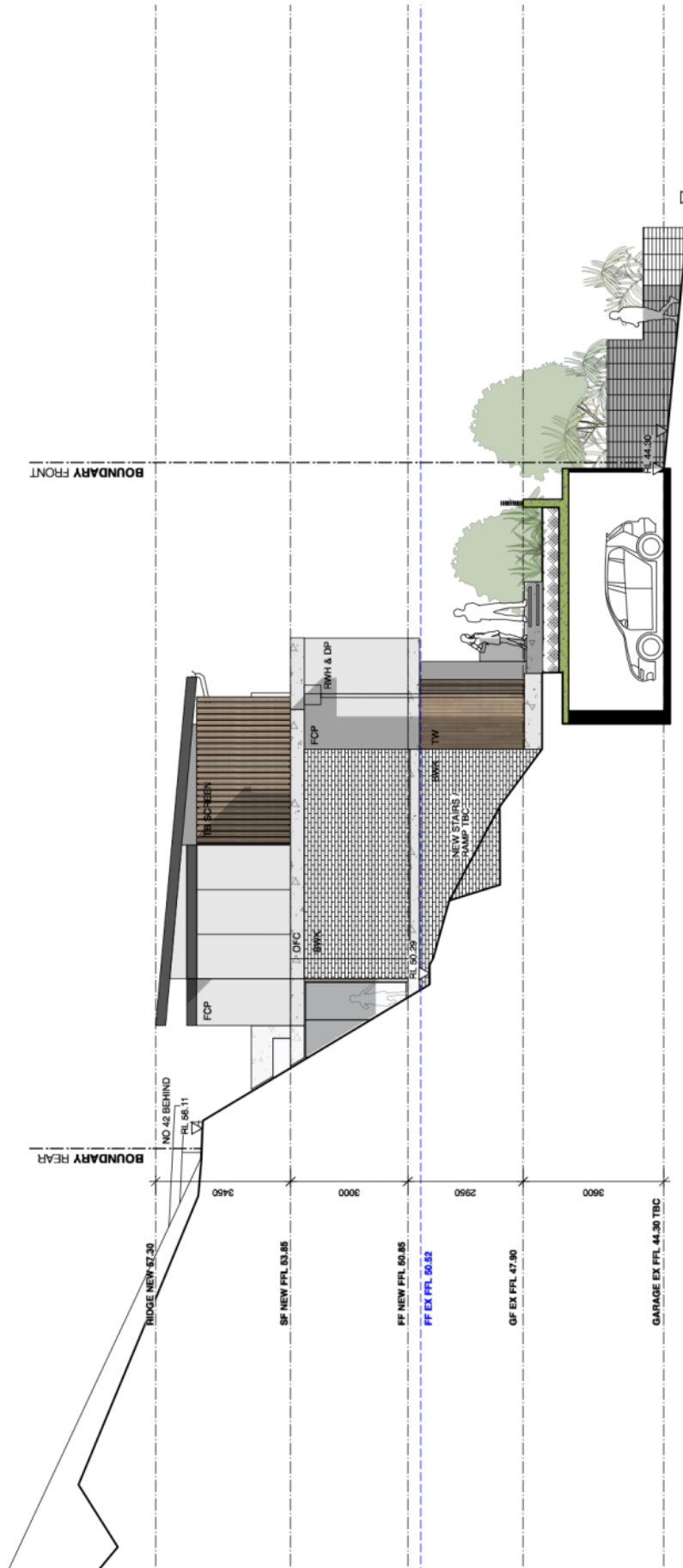
CHECKED

DRAWN

JOB NO

TITLE

Elevation, North
Schedule of Finishes



WEST ELEVATION

NOTES

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- Use figures dimensions to provide a guide to the building.
- Refer to drawings for a more detailed description of the building.
- Check to ensure that the building is in a safe condition.
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REVISIONS

NO	AMENDMENT	DATE
A	PRE DA ISSUE	19/09/19
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ADDRESS 42 Seaford Crescent,
Seaford

CLIENT Ali & Haleh Ghaseini

PROJECT New Residence

TITLE Elevation, West

JOB NO 18026
DRAWN JK
CHECKED MK
SCALE 1:100

DRAWING NO DA15
ISSUE B



NOTES

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CLIENT	Ali & Haish Ghaseini	ADDRESS	42 Sadiorth Crescent, Sadiorth	JOB NO	18026	DRAWING NO	DA16
PROJECT	New Residence	TITLE	Elevation, East	DRAWN	JK	ISSUE	B
				CHECKED	MK		
				SCALE	1:100		

ANNEXURE 1

Clause 4.6 variation – Floor space ratio

Clause 4.6 variation – Floor space ratio

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Pursuant to Clause 4.4 MLEP 2013 the maximum FSR for development on the site is 0.4:1 representing a gross floor area of 230.96 square metres. The stated objectives of this clause are:

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

It has been determined that the proposed development results in a total gross floor area of 339.6 square metres representing a floor space ratio of 0.58:1 and therefore non-compliant with the FSR standard by 108.64 square metres or 47%.

We note that clause 4.1.3 of Manly Development Control Plan 2013 contains FSR exemption provisions applicable to R2 zoned land where the site area is less than the minimum Lot size required on the LEP Lot size map provided the relevant LEP objectives and the provisions of the DCP are satisfied.

The Lot size map identifies the subject site as having a minimum Lot area of 1150m² is required. The site having an area of only 577.4m² is well below the minimum Lot area provision and accordingly the clause 4.1.3 Manly DCP FSR variation provisions apply.

Clause 4.1.3.1 states that the extent of any exception to the LEP FSR development standard pursuant to clause 4.6 of the LEP is to be no greater than the achievable gross floor area for the lot indicated in Figure 30 of the DCP.

We confirm that pursuant to Figure 30 the calculation of FSR is to be based on a site area of 750m² with an achievable gross floor area of 300m².

In this regard the 339.6 square metres proposed, representing an FSR of 0.45:1 (based on 750m²), is only 39.6m² over the maximum prescribed gross floor area of 300m² and as such provides for an outcome consistent with that anticipated by the DCP provision. Notwithstanding consideration must also be given to the objectives of the zone and the FSR development standard. Clause 4.6 of MLEP 2013 provides a mechanism by which a development standard can be varied. The objectives of this clause are:

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

Pursuant to clause 4.6(2) consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

This clause applies to the clause 4.4 Floor Space Ratio Development Standard.

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

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

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

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

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

Clause 4.6(5) states that in deciding whether to grant concurrence, the Director-General must consider:

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

Claim for Variation

Zone and Zone Objectives

The subject site is zoned R2 Low Density Residential pursuant to the provisions of Manly Local Environmental Plan 2013 (MLEP). Dwelling houses are permissible in the zone with the consent of council. The stated objectives of the zone are as follows:

- 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 proposed works are permissible and consistent with the stated objectives of the zone in that the development seeks to reinstate a dwelling house on the site which will provide for the housing needs of the community within a low density residential environment.

The proposed development has been found to be consistent with the stated zone objectives. Accordingly, there is no zone or zone objective impediment to the granting of consent.

Floor Space Ratio Standard and Objectives

This standard and the associated objectives have been previously identified. Pursuant to Clause 4.4 MLEP 2012 the floor area of any building on the land shall not exceed an FSR of 0.4:1. The variation provisions contained at clause 4.1.3.1 reflect an acceptance that the FSR standard on undersized allotments does not provide for the orderly and economic use and development of the land and an acknowledgment as to the effective abandonment of the FSR standard in such instances. We note that the vast majority of properties located along Seaforth Crescent are undersized with such properties displaying an FSR well in excess of the standard. This is reflected in the following recent approvals within immediate proximity of the site:

No. 42 Seaforth Crescent (subject site) – FSR 0.56:1
No. 77 Seaforth Crescent – FSR 0.59:1

Notwithstanding, having regard to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

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

Response: The height, bulk and scale of the development, as reflected by floor space, are entirely consistent with the built form characteristics established by adjoining development and development generally along Seaforth Crescent within this particular street block as depicted in Figures 1, 2 and 3 over page.



Figure 1 – View towards No. 42 Seaforth Crescent



Figure 2 – View towards No. 40 Seaforth Crescent



Figure 3 – View towards No. 38 Seaforth Crescent

In this regard, it is apparent that development within the site visual catchment displays an existing FSR, and in many cases building height, which far exceed the standards with the development clearly consistent with the existing streetscape character. It is reasonably concluded that the building height and FSR standards have effectively been abandoned for undersized allotments along this section of Seaforth Crescent with the existing character entirely disparate to the desired future character as reflected by the height and FSR standards.

That said, the proposal complies with the applicable 8.5 metre height control ensuring that in terms of building height the proposal is consistent with the desired streetscape character as anticipated by the height standard. A significant area of non-complaint floor space is associated with areas of the building located below surrounding ground level which do not contribute to actual or perceived building bulk.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development by virtue of its form, massing or scale (as reflected by FSR), offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.

Accordingly, we have formed the considered opinion that this objective is satisfied.

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

Response: Having inspected the site and its surrounds we have formed the considered opinion that the development will not obscure any important landscape or townscape features.

Accordingly, we have formed the considered opinion that this objective is satisfied.

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

Response: The application proposes the implementation of an enhanced site landscape regime as depicted on plans prepared by Paul Scrivener with such landscaping incorporating perimeter plantings, including canopy trees, and roof garden treatments. The building will sit within a landscaped setting. The application is accompanied by a schedule of materials and finishes which will enable the development to blend into the vegetated escarpment which forms and backdrop to the site.

Accordingly, we have formed the considered opinion that this objective is satisfied.

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

Response: The design and siting of the dwelling with the majority of fenestration orientated to the front and rear of the site will maintain a contextually appropriate relationship with adjoining development and a view sharing scenario to surrounding properties.

In this regard we note that the primary views from all surrounding properties are in a southerly direction across Middle Harbour. The proposal will have no impact on existing views from the south facing living room windows and adjacent private open space areas of any adjoining property and therefore maintain a view sharing scenario in accordance with the *Tenacity Consulting v Warringah Council* view sharing principle established by the Land and Environment Court of NSW.

The detailed shadow diagrams demonstrate the maintenance of at least 3 hours of solar access to the north, east and south facing living room windows and adjacent private open space areas of the adjoining properties between 9am and 3pm on 21st June.

In relation to privacy and visual bulk we note that the majority of fenestration is orientated to the front and rear of the site as are the proposed terrace and balcony areas. The proposed roof terrace is centrally located with the adjacent roof garden providing over 12 metres of spatial separation to the eastern adjoining property. Appropriate levels of aural and visual privacy will be maintained.

Accordingly, we have formed the considered opinion that this objective is satisfied.

- (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.*

Response: This objective is not applicable.

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

In this regard, we have formed the considered opinion that sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the site's visual catchment and the fact that a significant area of non-complaint floor space is associated with the existing predominantly subterranean lower ground floor storage area which does not in any manner contribute to actual or perceived building bulk.

Further, the variation provisions contained at clause 4.1.3.1 of Manly DCP reflect an acceptance that the FSR standard on undersized allotments does not provide for the orderly and economic use and development of the land and is an acknowledgment as to the effective abandonment of the FSR standard in such instances. These provisions apply given the undersized nature of the subject site.

Finally, the dwelling house is of good design with the floor space proposed promoting/ reflecting the orderly and economic use and development of the land, consistent with objectives 1.3(c) and (g) of the Act, in circumstances where the FSR standard has effectively been abandoned for recently approved development both on the subject site and within the sites visual catchment generally.

The current property owner seeks to realise the reasonable development potential of their property, consistent with that of surrounding development, which are all located in prime waterfront location.

Conclusions

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and
- (b) that the contextually responsive development is consistent with the objectives of the floor space ratio standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the floor space ratio development standard is unreasonable or unnecessary in the circumstances of the case, and
- (e) that given the developments ability to comply with the zone and floor space ratio standard objectives that approval would not be antipathetic to the public interest, and
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a floor space ratio variation in this instance.

Boston Blyth Fleming Pty Limited



Greg Boston
Director