

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 12 AUGUST 2020



Ashleigh Sherry
Manager Business Systems and Administration

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 12 August 2020

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 23 JULY 2020

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 23 July 2020 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	REV2020/0017 - 157 VICTOR ROAD, DEE WHY - REVIEW OF DETERMINATION OF APPLICATION DA2019/1179 ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Tony Collier
TRIM FILE REF	2020/449155
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to REV2020/0017 for Review of Determination of Application DA2019/1179 alterations and additions to a dwelling house on land at Lot A DP 378435, 157 Victor Road, Dee Why, subject to the conditions outlined in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2020/0017
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot A DP 378435, 157 Victor Road DEE WHY NSW 2099
Proposed Development:	Review of Determination of Application DA2019/1179 alterations and additions to a dwelling house
Zoning:	Warringah LEP2011 - 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:	Philip Martin Spencer Sophie Justine Spencer
Applicant:	Philip Martin Spencer
Application Lodged:	12/05/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	22/05/2020 to 05/06/2020
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of buildings: 32.94%
Recommendation:	Approval
Estimated Cost of Works:	\$ 510,000.00

EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of Review Application REV2020/0017, which seeks review of the determination (refusal) of DA2019/1179 for alterations and additions to a dwelling house at 157 Victor Road, Dee Why. The proposal is referred to the Development Determination Panel (DDP) for review and determination, as DA2019/1179 was referred to DDP due to the extent of the variation to the height of building development standard.

The proposed development includes variation to the development standard of Clause 4.3 Height of Buildings of the Warringah Local Environmental Plan 2011 (WLEP 2011) of 32.94%. This variation is supported on merit, subject to recommended conditions of consent. The proposed development

required a merit assessment in relation to the side boundary envelope, side boundary setbacks, front boundary setbacks, building bulk, privacy and views controls of the Warringah Development Control Plan 2011 (WDCP 2011), and the assessment established that the non-compliant elements were acceptable on merit, subject to conditions of consent.

The proposed development received three objections in relation to view loss, privacy impacts, inadequate addressing of reasons for refusal of DA2019/1179, not being substantially the same as DA2019/1179, and documentation inaccuracies. These matters are addressed throughout this report.

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

PROPOSED DEVELOPMENT IN DETAIL

REV2020/0017 seeks review of the refusal of DA2019/1179, and seeks consent for alterations and additions to the existing dwelling house, as follows:

- Lower ground floor reconfiguration and extension with pool, deck and undercroft;
- Ground floor extension and deck;
- Addition of an upper floor; and
- Widening of carport and driveway.

DA2019/1179 was refused for the following reasons.

1. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B1 Wall Heights of the Warringah Development Control Plan.*
2. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B3 Side Boundary Envelope of the Warringah Development Control Plan.*
3. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D7 Views of the Warringah Development Control Plan.*
4. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan.*

REV2020/0017 provides amendments in order to address the reasons for refusal of DA2019/1179 as follows:

1. The maximum wall height of the proposed (amended) development is compliant with Clause B1.
2. The boundary envelope non-compliance to the northern elevation has been reduced from 140% to 120%.
3. The first floor addition has been relocated to the southern end of the existing building footprint, to better respond to view sharing principles for properties to the east.
4. The lower ground floor has been set further from the northern boundary to reduce the visual impact of bulk on the neighbour to the north.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings

Warringah Local Environmental Plan 2011 - 6.2 Earthworks

Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land

Warringah Development Control Plan - B3 Side Boundary Envelope

Warringah Development Control Plan - B7 Front Boundary Setbacks

Warringah Development Control Plan - C5 Erosion and Sedimentation

Warringah Development Control Plan - D7 Views

Warringah Development Control Plan - D8 Privacy

Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot A DP 378435 , 157 Victor Road DEE WHY NSW 2099
Detailed Site Description:	The subject site consists of one allotment located on the eastern side of Victor Road, Dee Why. The site is regular in shape with a frontage of 15.24m along Victor Road and an average depth of 36m. The site has a surveyed area of 563.7m². The site is located within the R2 Low Density Residential zone and accommodates a part-one/part-two storey detached dwelling house with carport. The site slopes approximately 14m from west to east, and contains rock outcrops and a range of vegetation.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by one, two and three storey detached dwelling houses.

Map:



SITE HISTORY

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

DA2015/0860 for alterations and additions to a dwelling house was withdrawn by the Applicant on 21 October 2015.

CDC2016/0518 for alterations and additions to an existing dwelling and construction of a detached secondary dwelling was refused on 17 September 2016 by the former Warringah Council, acting as the certifying authority.

DA2017/1048 for alterations and additions to a dwelling house including alterations to an approved complying development certificate was withdrawn by the Applicant on 8 March 2018.

CDC2017/0201 for alterations and additions to an existing dwelling was approved on 5 April 2017 by a private certifier.

DA2018/0894 for alterations and additions to a dwelling house was refused on 26 September 2018 by Council's Development Determination Panel.

Pre-lodgement Meeting PLM2018/0267 was held on 20 November 2018 to discuss alterations and additions to a dwelling house.

DA2019/0106 for alterations and additions to a dwelling house was withdrawn by the Applicant on 20 May 2019.

DA2019/1179 for alterations and additions to a dwelling house was refused on 19 February 2020 by Council's Development Determination Panel. DA2019/1179 is the subject of this review application. The DDP refused the application for the following reasons:

1. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B1 Wall Heights of the Warringah Development Control Plan.
2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B3 Side Boundary Envelope of the Warringah Development Control Plan.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D7 Views of the Warringah Development Control Plan.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 8.3(2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 19 February 2020 and the notice of determination was issued on 4 March 2020. The review was lodged on 12 May 2020 and is to be considered by Council's Development Determination Panel on 12 August 2020, which is within 6 months of the date of determination.

Section 8.3(3) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the 'Detailed Description of Works' section of this report.

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act.

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:
Mr Robert George Graham Kirsten Dorothy Prince	154 Victor Road NARRAWEENA NSW 2099
Dr Sek Cheong Kim Cheng	156 A Victor Road NARRAWEENA NSW 2099
Ms Frances Elizabeth Powell	159 Victor Road DEE WHY NSW 2099

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

- The proposed development results in view loss to 154, 156A, and 159 Victor Road.
- The proposed development results in loss of privacy to 159 Victor Road.
- The proposed development results in a breach to the side boundary envelope control.
- The proposed development results in a breach to the maximum height of building development standard and height poles have not been installed.
- The proposed development is not substantially the same as that which was refused under DA2019/1179 due to inclusion of a swimming pool and redesign of the dwelling house.
- The application fails to address the reasons for refusal of DA2019/1179.
- The submitted plans contain inaccuracies and inconsistencies, as follows:
 - Plan D10 shows the distance between the northern wall and the northern boundary to be 1.85m, but objector's survey finds it to be 1.495m.
 - Plan D11 shows the distance between the carport and the northern boundary to be 990mm, but objector's survey finds it to be 550mm.
 - The geotechnical report and Statement of Environmental Effects have not been updated.
 - Plan labels are incorrect between plans.
 - Plans show the existing carport as aligned with the northern wall, but is actually set further to the south.
 - Cost of works has not been updated.
 - Pool depth of 1.8m is incorrect.

The matters raised within the submissions are addressed as follows:

Amenity - View Loss and Privacy

Comment:

The proposed development is acceptable in relation to view loss and privacy for the reasons detailed in the sections of this report relating to Clauses D7 Views and D8 Privacy of the WDCP 2011.

Building Bulk - Side Boundary Envelope and Building Height

Comment:

The proposed development is addressed in relation to building bulk in the sections of this report relating to Clause 4.6 Exceptions to Development Standards of the WLEP 2011 (regarding building height), and Clauses B3 Side Boundary Envelope and D9 Building Bulk of the WDCP 2011.

Height poles were not considered necessary as the portion of development relating to view loss as a result of height is compliant with the height of buildings development standard.

Not Substantially the Same

Comment:

Council's assessment of REV2020/0017 concludes that the plans demonstrate a development that is substantially the same as that under DA2019/1179.

DA2019/1179 included a swim-spa at the lower ground level, and REV2020/0017 includes a swimming pool of similar dimensions at the same level. The amendments proposed to the remainder of the dwelling house are not materially different in that the development still seeks a first floor addition and extensions to the existing floors. These amendments do not substantially alter the proposal.

Previous Reasons for Refusal

Comment:

The application has responded to the reasons for refusal as detailed in the section of this report relating to Detailed Description of Development.

Plan Inaccuracies and Inconsistencies

Comment:

- A condition of consent has been applied requiring certification that all structures (such as the carport and walls) are constructed in accordance with the dimensions on approved plans, as relative to the boundary.
- An addendum to the original geotechnical report has been submitted and demonstrates that the previous recommendations remain applicable to the amended plans. An amended Statement has been submitted.
- While plan labels between plans may include typographical errors, the plans are able to be interpreted for full assessment.
- The cost of works for the amended plans makes no difference to assessment of the application.
- Plan D33 Section 3 shows the pool depth to be 1.8m, in accordance with the depth shown on Plan D10 Lower Ground Level.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The application is for the Review of Determination of DA2019/1179.

Internal Referral Body	Comments
	The proposal for alterations and additions to the existing dwelling has been amended to the lower ground floor, ground floor and first floor. The Landscape Referral under DA2019/1179 raised no landscape objections. The Review Application is considered by a alternate Landscape Officer. The Landscape Referral is assessed against the Seniors Housing SEPP and the following landscape objectives of Warringah DCP 2011: • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation The existing site includes existing trees of substantial canopy distribution within the front and rear yards to integrate the proposed development into the landscape setting, satisfying WDCP clauses D1 and E1. No significant trees are proposed for removal, and conditions of conditions shall be imposed on the arboricultural requirements for tree protection measures. The existing rock outcrop not impacted by development shall be protected to satisfy WDCP clause D1. No objections are raised with regard to landscape outcomes, subject to conditions.
NECC (Development Engineering)	No amendments have been made the the stormwater plans previously submitted under DA2019/1179. As such, the previous plans are relied upon for assessment. These plans are to be referenced in the issue of any development consent. No objections are raised to the proposed development, subject to conditions.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

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.

[illegible]

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	Max. 8.5m	Max. 11.3m	32.94%	No

Compliance Assessment

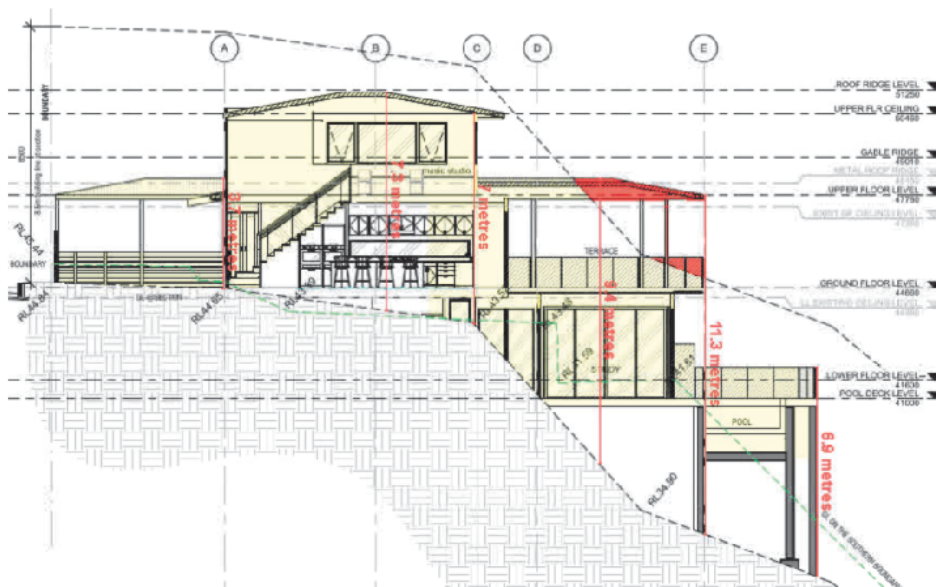
Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	Max. 11.3m
Percentage variation to requirement:	32.94%



The extent of the height of building development standard breach, as shown in red.

Assessment of request to vary a development standard

The following assessment of the variation to Clause 4.3 Height of Buildings, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC

61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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 s 5)

The objects of this Act are as follows:

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

The Applicant's written request details that the impacts of the proposal are not unreasonable (particularly in relation to the site topography) and outlines the proposed development's good design qualities.

The provided justification is generally agreed with by the Assessing Officer although recommended conditions of consent are applied to reduce the proposed building bulk to the rear.

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 design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying Clauses 1.3(c) and (g) of the EPA Act.

Therefore, the Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by Clause 4.6 (3)(b). 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 Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 Height of Buildings of the WLEP 2011 are addressed as follows:

a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development.**Comment:**

As modified by conditions of consent (i.e. to delete the pool and reduce the dimensions of the ground floor deck), the proposed development will be of a height and scale compatible with, and generally anticipated for, the surrounding area.

Other developments on the eastern side of Victor Road appear as single storey presentation to the street. However, the inclusion of a first floor addition to the subject building is not incompatible with these developments. It should also be noted that the proposed first floor addition is compliant with the maximum height of buildings development standard. The variation to the development standard arising as a result of the ground floor terrace and its roof, which are reduced by way of condition of consent.

b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access.**Comment:**

The proposed development is acceptable in relation to views and privacy for the reasons detailed in the sections of this report relating to Clauses D7 Views and D8 Privacy of the WDCP 2011.

The proposed development is compliant with the overshadowing requirements of Clause D6 Access to Sunlight of the WDCP 2011.

c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments.**Comment:**

The proposed development, as modified by conditions of consent, is of a bulk and scale consistent with anticipated development in the locality, and is in a suitably landscaped setting.

As such, the proposed development does not unreasonably impact upon the scenic quality of Warringah's coastal and bush environments.

d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

Comment:

The proposed development is visible from Victor Road in relation to the widening of the carport and the addition of the first floor only. The remainder of alterations and additions are generally not visible from the public domain. The proposed development is set higher than the nearest street to the rear (being Prescott Avenue) and is screened by vegetation from this view.

As such, the proposed development does not result in unreasonable visual impact from the public domain.

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 low density 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 low density residential use of the site.

- ***To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.***

Comment:

The proposed development suitably retains a landscaped setting consistent with the locality.

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, issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 24 May 2019, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of Building development standard associated with a single dwelling house (Class 1 building).

6.2 Earthworks

The objectives of Clause 6.2 Earthworks require 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.*

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 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 suitable quality.

- (f) the likelihood of disturbing relics.*

Comment:

The site is not mapped as being a potential location of Aboriginal or other relics.

- (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.

6.4 Development on sloping land

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

(a) the application for development has been assessed for the risk associated with landslides in relation to both property and life.

Comment:

The Applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. Council is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site.

Comment:

The submitted Geotechnical Report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. Council's Development Engineer has raised no objections to approval, subject to conditions. Council is satisfied that the development will not cause significant detrimental impacts because of stormwater discharge from the development site.

(c) the development will not impact on or affect the existing subsurface flow conditions.

Comment:

The submitted Geotechnical Report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. Council's Development Engineer has raised no objections to approval, subject to conditions. Council is satisfied that the development will not result in adverse impacts or effects on the existing sub-surface flow conditions.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	Max. 7.2m	Max. 7m	-	Yes
B3 Side Boundary Envelope	Max. 4m	North: Max. 4.8m encroachment	120%	No
		South: Max. 800mm encroachment	20%	No
B5 Side Boundary Setbacks	North: Min. 900mm	Lower Ground: 900mm	-	Yes
		Ground Floor: 990mm to Carport 1.8m to Dwelling	-	Yes

		First Floor: 6.4m	-	Yes
	South: Min. 900mm	Lower Ground: 1m	-	Yes
		Ground Floor: 0m to Dwelling (existing) 3.3m to Terrace	100% to Dwelling -	No - Existing Yes
		First Floor: 1.9m	-	Yes
B7 Front Boundary Setbacks	Min. 6.5m	0m to Carport	100%	No - Existing
		5.73m to Ground Floor	11.84%	No - Existing
		5.73m to First Floor	11.84%	No
B9 Rear Boundary Setbacks	Min. 6m	Min. 10.7m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (225.5sqm)	44.8% (252.5sqm)	-	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
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	No	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

The proposed development includes breaches to the side boundary envelope control to the northern and southern elevations, of 120% and 20% respectively.

The variation is therefore considered against the underlying objectives of the control as follows:

- ***To ensure that development does not become visually dominant by virtue of its height and bulk.***

Comment:

Conditions of consent have been applied in order to reduce the building bulk by deletion of the pool and reduction of the ground floor deck. The remaining development, despite its non-compliant elements with the side boundary envelope control, presents reasonable building bulk without being visually dominant. To the north, the breaches to the building envelope control relate to a portion of the first floor addition, the ground floor extension to the east (rear), and the ground floor terrace.

In relation to the first floor addition, the introduction of this built element is consistent with development anticipated for the locality, being two storeys in height. In relation to the ground floor extension to the east, the non-compliance results from the creation of a more usable kitchen space. This extension appears is located so as not to create a portion of development greater than two storeys in height, so is not unreasonable in scale. In relation to the ground floor terrace, the non-compliant element is drastically reduced by way of recommended condition of consent, specifically in relation to building bulk, so is not unreasonable as modified.

- ***To ensure adequate light, solar access and privacy by providing spatial separation between buildings.***

Comment:

The proposed development allows suitable solar access to the subject site and adjacent sites, in accordance with the requirements of Clause D6 Access to Sunlight WDCP 2011. The proposed development is acceptable in relation to privacy for the reasons detailed in the section of this report relating to Clause D8 Privacy of the WDCP 2011.

- ***To ensure that development responds to the topography of the site.***

Comment:

As modified by recommended conditions of consent requiring deletion of the pool and reduction of the ground floor deck, the proposed development suitably steps with the slope of the land, thereby responding well to the site's topography.

B7 Front Boundary Setbacks

The proposed development includes breaches to the front boundary setback to the carport and the ground floor, though these breaches are existing. The proposed development also includes a breach to the front boundary setback to the proposed new first floor, being 5.73m, where 6.5m is required.

The development is therefore considered against the underlying objectives of the control as follows:

- ***To create a sense of openness.***

Comment:

The proposed first floor addition retains a sense of openness to the street presentation of Victor Road in that it does not reduce any landscaped area nor increase any front boundary setback non-compliance. The subject site retains the courtyard area and open carport to the property frontage.

- ***To maintain the visual continuity and pattern of buildings and landscape elements.***

Comment:

The proposed first floor addition is entirely located on the existing building footprint, thereby not impacting upon the built upon area as seen from the street, nor decreasing landscaped elements of the property.

- ***To protect and enhance the visual quality of streetscapes and public spaces.***

Comment:

Other developments along the eastern side of Victor Road present as single-storey to the street. However, the introduction of a first floor to the subject site is not incompatible with this, and not an unreasonable design outcome. The proposed bulk and scale of the development as viewed from the street is consistent with development anticipated for the locality, being two storeys in height.

- ***To achieve reasonable view sharing.***

Comment:

The proposed development is acceptable in relation to view sharing for the reasons detailed in the section of this report relating to D7 Views of the WDCP 2011.

C5 Erosion and Sedimentation

No details of sediment and erosion control have been submitted. A condition of consent requiring appropriate measures to be enforced has been applied.

D7 Views

Submissions from Nos. 154, 156A, and 159 Victor Road raised concern about view loss as a result of the proposed development.

The development is considered against the underlying objectives of the control as follows:

- ***To allow for the reasonable sharing of views.***

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1

The affected views are as follows:

- 154 Victor Road: Distant views to the east towards the ocean, the horizon and land interface are filtered through existing significant vegetation and other existing buildings.
- 156A Victor Road: Distant views to the east towards the ocean, the horizon and land interface are filtered through existing significant vegetation and other existing buildings.
- 159 Victor Road: Views to existing vegetation and other existing buildings. One distant corridor view to the east towards the ocean, the horizon and land interface are filtered through existing significant vegetation.

None of the views are considered iconic. See photographs of the affected views below:



View from 154 Victor Road, from a standing position on the front deck, looking east.



View from 154 Victor Road, from a standing position in the living room, looking east.



View from 154 Victor Road, from a standing position in the kitchen, looking east.



View from 156A Victor Road, from a standing position in the living room, looking east.



View from 159 Victor Road, from a standing position on the rear deck, looking south.



View from 159 Victor Road, from a standing position in the front yard private open space, looking south east.

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

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

Comment to Principle 2

The affected views are obtained as follows:

- 154 Victor Road: Views are obtained from standing and seated positions on the front deck, the living room and in the kitchen looking east across the front boundary.
- 156A Victor Road: Views are obtained from standing and seated positions in the living room looking east across the front boundary.

- 159 Victor Road: Views are obtained from standing and seated positions, from the rear decks and living areas, as well as a private recreational area to the south-west of the site (front yard) across the side boundary.

3. Extent of impact

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

Comment to Principle 3

The affected views are impacted as follows:

- 154 Victor Road: The first floor addition above the existing dwelling on the subject site will result in partial loss of view towards the ocean from the front deck, living room, and kitchen of no. 154 Victor Road. The overall extent of the impact to the view is considered moderate, as the view is reduced, but is distant and obscured by vegetation, and a corridor is retained.
- 156A Victor Road: The first floor addition above the existing dwelling on the subject site will result in partial loss of view towards the ocean from the living room of no. 156A Victor Road. The overall extent of the impact to the view is considered moderate, as the view is reduced, but is distant and obscured by vegetation, and a corridor is retained.
- 159 Victor Road: The rear extension of the existing dwelling on the subject site will result in partial loss of view to vegetation from the rear of no. 159 Victor Road. The extension will also lead to a reduction in the view corridor from the front yard private recreation area. The overall extent of the impact to the view is considered minor, as the view are not significant in nature, and the property retains unaffected views to the east towards the ocean, its horizon, and its interface with the land.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4

In relation to the view impact to Nos. 154 and 156A Victor Road, the element causing the view loss, being the first floor addition, is considered.

The first floor addition results in non-compliance with the side boundary building envelope control. This is as a direct result of the steep and varied topography of the land. However, if the non-compliant

elements of the development were to be deleted, the impact to the view would remain relatively the same, as the front (western) elevation of the first floor addition is compliant with the envelope control. It should be noted that this front elevation is not compliant with the front setback control. However, if this element were to comply and be set back 6.5m from the front boundary (and not 5.73m), the impact to the view would not be materially different.

As such, the question of whether a more skilful design could provide the applicant with the same development potential and reduce the impact on views is considered. The first floor addition (and extensions to the rear) provide the applicant with a more liveable dwelling with greater internal amenity, without unreasonable impact to adjoining properties, as modified by conditions of consent and detailed throughout this report. Further, it is the height of the first floor addition that causes the view impact and it should be noted that the first floor addition is wholly compliant with the height of buildings development standard. This height is compatible with development in the Victor Road streetscape, and is consistent with development envisaged for the area, as it appears as two storeys to the street.

Finally, the first floor addition is set to the south of the site, thereby concentrating the view loss to the portion of the site resulting in the least non-compliance with building envelope, as the slope of the land is lesser. As such, it is considered that the design of the first floor addition as proposed is reasonable. To delete the first floor addition would unreasonably restrict the development potential of the subject site.

In relation to the view impact to No. 159 Victor Road, the elements causing the view loss, being the rear extensions, are considered. The rear extensions are established as resulting in unreasonable bulk and scale, and visual impact to adjoining properties, as they do not reasonably step with the topography of the land. As such, the proposed pool is to be deleted, and the proposed ground floor terrace is to be reduced in dimensions, by way of recommended condition of consent. With these reductions in building bulk, the proposed development is considered to retain suitable development potential to the Applicant, while providing visual relief to No. 159 Victor Road.

In consideration of each of the impacted views, and the modifications made by way of recommended condition of consent, the proposed development is reasonable in its context and acceptable on its merits.

- ***To encourage innovative design solutions to improve the urban environment.***

Comment:

The proposed development is innovative in its design in that the first floor addition (and carport extension) are generally the only elements seen from the street, and the remaining elements of the development (as modified by conditions of consent) step with the topography of the land, so as not to be visually dominant or result in unreasonable view loss.

- ***To ensure existing canopy trees have priority over views.***

Comment:

The proposed development does not include removal of trees as a priority over retention or creation of views.

D8 Privacy

The submission from 159 Victor Road raised concern with the proposed carport extension, and

changes to doors, windows, and terraces, in relation to their impact on privacy.

The development is therefore considered against the underlying objectives of the control as follows:

- ***To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.***

Comment:

The areas of concern raised by 159 Victor Road are addressed in relation to privacy, as follows:

- Door D5 (lower ground floor): This door is a point of access to the laundry, replacing an existing door. No concern is raised in relation to this door, as it is a point of access, is of smaller dimensions than the door it replaces, and is not directly aligned to any window of 159 Victor Road. Further, this door services a laundry, which is not a place of recreation where extended time is spent.
- The walkway (lower ground floor): The walkway is included as a point of external access to the laundry and bathroom. These rooms and the walkway itself are not places of recreation where extended time is spent.
- Window W7 (lower ground floor): This proposed window is adjacent to a corridor between the laundry and bathroom and the study. This area is not anticipated to be heavily trafficked, and is not a place of recreation where extended time is spent.
- Window W9 (lower ground floor): This window is situated adjacent to Door D5 above. This window, when combined with the area of Door D5, is still of smaller dimensions than the existing door it replaces, and is not directly aligned to any window of 159 Victor Road. Further, this window services a laundry, which is not a place of recreation where extended time is spent.
- Window 10 (ground floor): This window is adjacent to stairwell, being a point of circulation and not a place of recreation where extended time is spent.
- Window W15 (ground floor): This window is associated with the kitchen, above the northern-most counter top. A condition of consent has been imposed to require the window be frosted as a kitchen is a frequented room and the height of the window allows viewing to windows of 159 Victor Road.
- Window W27 (first floor): This window is to a bedroom and is located 6.4m from the northern boundary adjacent to 159 Victor Road. The proposed height and distance of this window (first floor), and the associated room use (being a bedroom and not a place of recreation) combine to result in a reasonable window location.
- Privacy Screen (lower ground floor): The proposed privacy screen to the lower ground floor is marked as being 1.8m in height on one plan, and 1.5m in height on another plan. While there is no real privacy concern with regard to this portion of the development, given the screen adjoins a study and accessway deck, a condition of consent has been applied requiring the screen to be to a height of 1.8m above finished floor level of the decking it adjoins, in order to resolve the discrepancy.
- Ground Floor Terrace: The terrace is reduced in dimension by way of recommended condition of consent to extend no more than 3m from the eastern-most dining room wall. This is considered an appropriate balance between allowing for outdoor recreation for occupants of the subject site, while maintaining privacy for adjacent sites.
- Carport: The carport is a point of access and not habitable space for recreation.

- ***To encourage innovative design solutions to improve the urban environment.***

Comment:

The proposed development is innovative in its design in that it provides greater liveable area to the occupants, without resulting in unreasonable impacts to adjoining properties.

- *To provide personal and property security for occupants and visitors.*

Comment:

The proposed development is designed and sited so as to retain suitable personal and property security for occupants and visitors of the subject site and adjoining sites.

D9 Building Bulk

The proposed development does not suitably step with the topography of the land, leading to unsuitable visual impact to adjoining properties.

As such, the proposed development as submitted does not achieve consistency with the objectives of this control.

Conditions of consent to reduce the building bulk by way of deletion of the pool and reduction of the ground floor terrace have been included in the recommendation of this report.

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 \$5,100 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$510,000.

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;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any

unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings 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 for the following specific issues:

- Side Boundary Envelope;
- Side Boundary Setbacks;
- Front Boundary Setbacks;
- Building Bulk;
- Privacy; and
- Views.

The assessment contained within this report establishes that the proposed development is acceptable in relation to the above matters, subject to recommended conditions of consent. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority vary Clause 4.3 Height of Building pursuant to Clause 4.6 of the WLEP 2011, 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 REV2020/0017 for Review of Determination of Application DA2019/1179 alterations and additions to a dwelling house on land at

Lot A DP 378435, 157 Victor Road, DEE WHY, 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
D01 Site Plan Issue A	27 April 2020	Woodhouse & Danks Architects
D10 Lower Ground Level Issue A	27 April 2020	Woodhouse & Danks Architects
D11 Ground Floor Level Issue A	27 April 2020	Woodhouse & Danks Architects
D12 Upper Floor Level Issue A	27 April 2020	Woodhouse & Danks Architects
D13 Roof Ridge Level Issue A	27 April 2020	Woodhouse & Danks Architects
D20 North Elevation Issue A	27 April 2020	Woodhouse & Danks Architects
D21 East Elevations Issue A	27 April 2020	Woodhouse & Danks Architects
D22 South Elevation Issue A	27 April 2020	Woodhouse & Danks Architects
D23 West Elevation issue A	27 April 2020	Woodhouse & Danks Architects
D30 Section 1 Issue A	27 April 2020	Woodhouse & Danks Architects
D32 Section 2 Issue A	27 April 2020	Woodhouse & Danks Architects
D33 Section 3	27 April 2020	Woodhouse & Danks Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
D01 Site / Lower Ground Floor Drainage Plan Revision D	26 August 2019	NB Consulting Engineers
DA02 Ground Floor and Roof Drainage Plans Revision D	26 August 2019	NB Consulting Engineers
DA03 Drainage Details	26 August 2019	NB Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No.A226459_10	24 July 2020	Efficient Living
Geotechnical Assessment Ref 822-C	21 July 2019	D. Katauskas

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	20 January 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. **Compliance with Other Department, Authority or Service Requirements**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	19 June 2020

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

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

3. **Prescribed Conditions**

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

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

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$5,100.00 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 \$510,000.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate

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

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

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

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

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

6. **Security Bond**

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required 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, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

7. **Boundary Identification Survey**

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

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

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

8. **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 Warringah Water Management Policy PL850, and generally in accordance with the concept drainage plans prepared by Northern Beaches Consulting Engineers, job number 170112, drawing number D01 to D03, revision D, dated 26/8/19. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. Stormwater flows from the whole site are to be restricted to the 5-year ARI "state of nature" (0%

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.

9. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. 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 facilitate suitable vehicular access to private property.

10. **Tree Protection Plan**

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

a) A Tree Protection Plan prepared by a AQF Level 5 Arborist (or equivalent) showing the following:

- o Layout of the approved development
- o Location of trees identified for retention
- o Extent of canopy spread
- o Location of tree protection fencing / barriers (fencing in accordance with AS2470 – 2009)
- o General tree protection measures

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

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

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

11. **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.

12. **Ground Floor Privacy Screens**

1.65 metre privacy screens (measured from finished floor level) are to be erected for the entire length of the outermost northern and southern edges of the eastern ground floor terrace located off the kitchen, living room and dining room as shown on the approved plans. The privacy screens shall be of fixed panels or louvre style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development. Details demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain privacy to adjoining properties.

13. **Deletion of Pool**

The proposed pool and associated tiled deck area to the pool's north and east shown on plan D10 Lower Ground Level Revision A dated 27 April 2020 prepared by Woodhouse & Danks Architecture are to be deleted. Decking 1m in width may be provided to the north and east of the study and bedroom at this level ('BED RM- 4') for the purpose of access. Details demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifying Authority prior of the issue of the Construction Certificate.

Reason: To reduce the building bulk at the lower ground level and reduce visual impact to adjoining properties.

14. **Reduction of Ground Floor Terrace**

The proposed terrace shown on plan D11 Ground Floor Level Revision A dated 27 April 2020 prepared by Woodhouse & Danks Architecture is to be reduced so as not to extend to the east more than 3m from the eastern-most wall of the dining room at that level. The area where the terrace level is reduced is to be replaced with non-trafficable roof to the level below, consistent with the roof form of the remainder of the development. Details demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifying Authority prior of the issue of the Construction Certificate.

Reason: To reduce the building bulk at the lower ground level and reduce visual impact to adjoining properties. To reduce privacy impacts to adjoining properties, while maintaining suitable outdoor recreation area.

15. **Window W15**

Window W15 is to be wholly frosted. Details demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure suitable privacy to the adjoining property.

16. Lower Ground Floor Privacy Screen

The privacy screen to the northern elevation of the lower ground floor is to be 1.8m in height from the finished floor level of the decking it adjoins. Details demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure consistency with plans.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. 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.

18. Tree trunk, branch and root protection

a) Existing trees which must be retained include:

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

b) Tree protection measures shall include:

- i) no tree roots greater than 50mm 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 50mm 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 WDCP2011 Clause E1 Private Property Tree Management 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.

19. Project Arborist

- a) A Project Arborist with minimum qualification AQF Level 5 is to be appointed prior to commencement of works.
- b) The Project Arborist is to oversee all tree protection measures, removals and works adjacent to protected trees as outlined in the approved Tree Protection Plan and AS4970-2009 Protection of trees on development sites.
- c) The Project Arborist is to ensure compliance as relevant with any other environmental requirements conditioned under this consent.

Reason: To ensure protection of vegetation proposed for retention on the site.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

20. **Road Reserve**

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

Reason: Public safety.

21. **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.

22. **Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

23. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3 metres wide at the kerb and 6 metres wide at the property boundary in accordance with Northern Beaches Council Drawing No A4-3330/5 EL 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.

24. **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.

25. **Installation and Maintenance of Sediment Control**

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Council's Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

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

26. **Condition of retained vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an AQF Level 5 Arborist (or equivalent), shall be submitted to the Certifying Authority, assessing the health and impact of trees and vegetation required to be retained as a result of the proposed development, including the following information:

- a) Compliance to Arborist recommendations for tree protection and excavation works.
- b) Extent of damage sustained by vegetation as a result of the construction works.
- c) Any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: To ensure compliance with the requirement to retain and protect significant planting on development sites, and protect the existing amenity that trees and/or bushland vegetation provide.

27. **Stormwater Disposal**

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

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

28. **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.

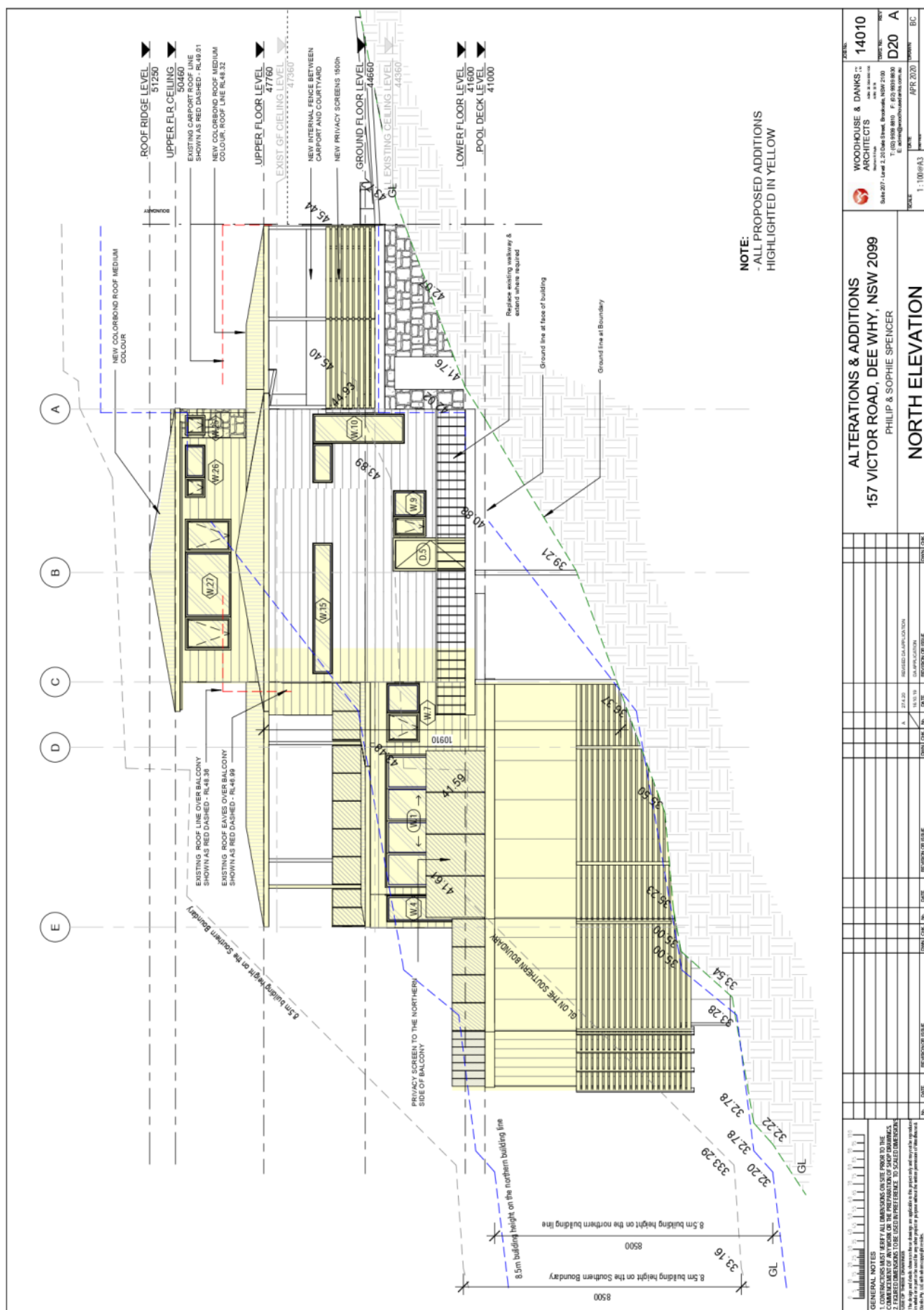
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

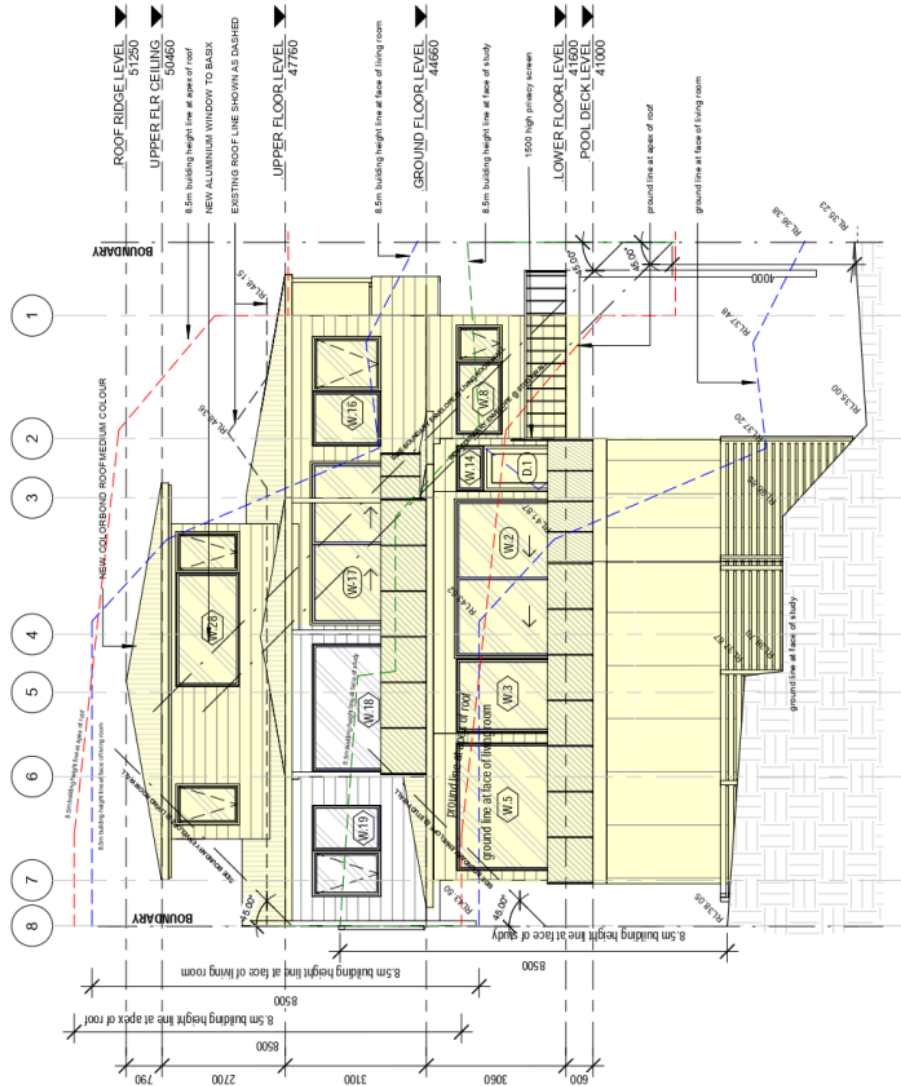
29. **Undercroft Voids**

The undercroft voids below the lower ground and ground levels are to remain voids and are not to be converted to habitable space without prior consent.

Reason: To ensure consistency with approved plans.







NOTE:
- ALL PROPOSED ADDITIONS
HIGHLIGHTED IN YELLOW

WOODHOUSE & DANKS ARCHITECTS T: (02) 9589 4810 F: (02) 9589 4810 Suite 207 - Level 2, 201 Oak Street, Brookvale, NSW 2100 www.woodhouseanddanks.com.au		PROJECT NO: 14010 DRAWING NO: D21 A DATE: APR 2020 SCALE: 1:100 (PA3)
ALTERATIONS & ADDITIONS 157 VICTOR ROAD, DEE WHY, NSW 2099 PHILIP & SOPHIE SPEICER		EAST ELEVATIONS
1. CONSTRUCTORS MUST VERIFY ALL DIMENSIONS ON SITE PRIOR TO THE COMMENCEMENT OF WORK. 2. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED. 3. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED. 4. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED. 5. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED. 6. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED. 7. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED. 8. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED.	9. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED. 10. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED. 11. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED. 12. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED. 13. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED. 14. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED. 15. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED. 16. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED. 17. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED. 18. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED. 19. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED.	20. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED. 21. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED. 22. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED. 23. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED. 24. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED. 25. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED. 26. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED. 27. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED. 28. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED. 29. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED. 30. DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED.





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30 April 2020

Clause 4.6 Variation to Development Standard

Property Description: 157 Victor Road, Dee Why

Development: Alterations to Existing Dwelling House

Development Standard: Height of Buildings

Introduction

This is an amended clause 4.6 variation to support the 8.2 Review of Determination relating to DA2019/1179 for alterations and additions to the dwelling house at 157 Victor Road, Dee Why. This clause 4.6 variation seeks variation to the 8.5m building height development standard contained in clause 4.3 – Height of Buildings of the *Warringah Local Environmental Plan 2011*.

The height of buildings is measured from the existing ground level to the maximum height of the development. The subject site contains a rock outcrop running diagonally across the centre of the site, presenting a fall of 6m over the length of the existing building footprint from the west elevation to the eastern elevation of the building.

The variation to the height of buildings development standard is largely a result of the siting of the existing development on the subject site noting the existing development presents a height of 10.92m at the north eastern corner of roof form.

This amended clause 4.6 variation supports a reduced total building height resulting from the relocation of the proposed first floor level over the southern part of the roof of the existing dwelling and an increased setback of the study from the northern boundary.

The proposed first floor level presents a maximum height of 8.85m to the eastern edge of the first floor level roof at RL50.46 measured from RL41.61 at existing ground.

The proposed lower rear study element of the building presents a maximum height of 8.6m measured from the roof of the study at RL44.66 to the ground level at RL36.

The development proposal presents a maximum height of 10.53m to the north eastern corner of ground level roof at RL47.76 measured from RL37.23 at ground. The new ground floor level roof results in a decrease of 0.39m at this interface.

The proposed building height presents a maximum variation of 2.03 to the maximum height limit of 8.5m, being a variation of 23.8% to the height of buildings development standard.

It is noted the proposed first floor level presents a variation of 0.85m to the maximum height limit, being located over the southern part of the existing roof form.

The proposed heights of the dwelling are shown in the below eastern elevation.

The application to vary the development standard – height of buildings incorporates the relevant principles in the following judgements:

1. **Winten Property Group Limited v North Sydney Council** (2001) 130 LGERA 79;
2. **Wehbe v Pittwater Council** (2007) 156 LGERA 446 (“Wehbe”);
3. **Four2Five Pty Ltd v Ashfield Council** [2015] NSWLEC 1009; and
4. **Initial Action Pty Ltd v Woollahra Municipal Council** [2018] NSWLEC 118.

The recent judgement by Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 clarified the correct approach to Clause 4.6 variation requests, including that:

“The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.” [88]

Accordingly, this Clause 4.6 variation request is set out using the relevant principles established by the Court. It is noted, it also reflects the further finding by Commissioner O’Neill for *Initial Action Pty Ltd v Woollahra Municipal Council* [2019] NSWLEC 1097 when the case was remitted back to the LEC as a Class 1 Appeal.

Matters required to be demonstrated under clause 4.6(3) of the LEP

Compliance with the development standard is unreasonable or unnecessary in this particular case

Pursuant to clause 4.6(3)(a) of the LEP, the variation to the height of buildings development standard is acceptable in the circumstances of this case and compliance with the development standard is considered unreasonable and unnecessary because the proposed works to the dwelling house are consistent with the objectives of the R2 – Low Density Residential zone and the development meets the objectives of the height of buildings standard, notwithstanding non-compliance with the standard.

• Objectives of the R2 – Low Density Residential Zone

The objectives of the R2 – Low Density Residential 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.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

The proposed alterations to the dwelling house meet the relevant objectives of the R2 – Low Density Residential zone regardless that the development results in a variation to the building height development standard based on the following assessment:

- The proposal provides for the housing needs of the owner of the property improving the amenity and functionality of the existing dwelling;
- The form and scale of the proposed development is consistent with building forms in the immediate locality. The proposed first floor level is located over the southern of the subject site minimising the variation to height resulting from the rock outcrop;
- The proposal maintains the sites landscape setting to the public domain;

- **Objectives of the Building Height Development Standard**

The objectives of the development standard are at clause 4.3(1) of the LEP as follows:

- (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

The proposed alterations to the dwelling house meet the objectives of the height of buildings development standard (notwithstanding non-compliance with the standard) based on the following assessment:

Objective (a) - The proposed 2 storey form is consistent with the built form in the locality noting the topography restricting a large floorplate design.

The variation to height limit is the result of the existing site topography and the location of the existing built form on the subject site.

The roof ridge of the proposed first floor level meets the 8.5m building height limit, with the variation confined to the eastern part of the roof form, being the result of a rock outcrop.

Objective (b) - The dwelling presents to Victor Road as a two storey form, consistent with the intent of 8.5m height limit. The proposed first floor level is located over the southern portion of the site, stepping the location of the built form in accordance with the site constraints.

The variation to height over the northern part of the site is attributed to the existing built form on the site and the location of the rock outcrop on the site. The proposed roof form over this part of the building presents a reduction in height at this interface.

The proposed first floor level is located over the southern part of the site away from the existing rock outcrop, minimizing the variation to height at the rear of the development and maintaining a view corridor across the northern part of the site towards the Dee Why Lagoon.

Objective (c) - The development proposal complies with the 8.5m height of buildings development standard at the street frontage. The proposed works present a reduction in the existing height of buildings at the northern part of the built form noting the new roof line is lower than existing roof.

The proposed first floor level is located over the southern part of the built form away from the rock outcrop maximizing visual separation from development to the east and north noting the steep fall at the rear of the site.

Objective (d) - The height of the building is consistent with adjoining dwellings and will not present overbearing bulk and scale when viewed from dwellings and Prescott Road to the east. Further, the development proposal presents a reduction in maximum building height with the ground floor level roof form reduced in height.

The proposed first floor level is located over the southern portion of the site, providing visual separation from the adjoining dwelling to the north

There are sufficient environmental planning grounds to justify contravening the development standard

Pain J held in *Four2Five vs Ashfield Council* [2015] NSWLEC 90 that to satisfy clause 4.6(3)(b), a clause 4.6 variation must do more than demonstrate that the development meets the objectives of the development standard and the zone – it must also demonstrate that there are **other** environmental planning grounds that justify contravening the development standard, preferably being grounds that are specific to the site.

Pursuant to clause 4.6(3)(b) of the LEP, there are sufficient environmental planning grounds to justify the variation to the height of buildings development standard because:

- The variation to the 8.5m height control is the result of site topography, noting rock outcrop positioned diagonally across the site. The development proposal complies with the height limit at the street frontage with the site falling towards the rear. Due

to site slope the existing dwelling historically presents a variation in height at the north eastern corner.

- The variation at the north eastern corner of the building is a result of the existing building varying the building height development standard at this point.
- The first floor level is located over the southern portion of the site in response to view assessment, maintaining a view corridor across the northern part of the site towards Dee Why Lagoon.
- The roof ridge of the first floor level complies with the 8.5m height of buildings development standard with the variation of the roof form at the first floor level the result of the rock outcrop at the rear of the building footprint.
- Strict compliance with the height control would not achieve a better environmental planning outcome noting the variation to height is a result of the rock outcrop on this site. The proposed first floor level has been located over the southern part of roof form, away from the rock outcrop minimizing the variation to height of this component and reducing the bulk and scale of the development when viewed from the adjoining property to the north.

Clause 4.6 (4)(a)(i) – The consent authority is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3)

As demonstrated above, the proposed development has satisfied the matters required to be demonstrated in Clause 4.6(3) by providing a written request that demonstrates:

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, by establishing that the objectives of the development standard are achieved notwithstanding the non-compliance.
2. The environmental planning grounds relied on are sufficient to justify the development standard.

In accordance with the findings of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the Consent Authority under Clause 4.6(4)(a)(i) must only be satisfied that the request addresses Clause 4.6(3). Under Clause 4.6(4)(a)(i) the Consent Authority is not to determine in their opinion whether the request satisfies the requirements of Clause 4.6(3)(a) and (b), just that the request has been made and that these items have demonstrated.

The relevant items in Clause 4.6(3) have been demonstrated above.

The proposed development is in the public interest

In relation to clause 4.6(4)(a)(ii) of the LEP, the proposed development is in the public interest because it is consistent with the objectives of the applicable height of buildings standard and the objectives for development in the R2 - Low Density Residential zone in accordance with the planning assessment provided above, as follows:

Objective	Consistency
<i>to ensure that buildings are compatible with the height and scale of surrounding and nearby development,</i>	The proposed 2 storey form is consistent with the built form in the locality noting the topography restricting a large floorplate design. The proposal has been located on site to minimise the bulk and scale when viewed from adjoining properties to the north and east.
<i>to minimise visual impact, disruption of views, loss of privacy and loss of solar access,</i>	The additional height will not result in additional view loss noting the additional height is at the rear of the building beneath the roof ridge and the dwelling presents to Victor Road as a two storey form, consistent with the intent of 8.5m height limit. The proposed first floor level is located over the southern part of the roof form, providing a view corridor across the northern part of the site towards Dee Why Lagoon. The additional building height at north eastern corner of the building is a result of the location of the existing building on site presenting a historical variation to height.
<i>to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,</i>	The site features a fall from Victor Road, the primary street frontage. The development proposal complies with the 8.5m height of buildings development standard at the street frontage. The additional height is consistent with adjoining dwellings and the first floor level is located over the southern part of the site generally maintaining a two storey form across the bulk of the building footprint.
<i>to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.</i>	The height of the building is consistent with adjoining dwellings and will not present overbearing bulk and scale when viewed from dwellings and Prescott Road to the east. The development proposal include a reduction in height at the north eastern corner of the building. The proposed first floor level is located over the southern part of the roof form, minimizing the variation to height resulting from the rock outcrop and providing increased visual separation from adjoining dwelling to the north.

In addition to the above reasons, the proposal is also in the public interest because:

- The proposed 2 storey form is consistent with the built form in the locality and the intent of 8.5m height limit. The additional height will not be read from the street frontage, being located at the rear of the site, and the location of the first floor level over the southern part of the site will not present overbearing bulk and scale when

viewed from dwellings to the east or north noting consistent form with adjoining dwellings.

- The development proposal includes the reduction in height of the existing roof form over the north eastern corner of the site.
- The location of the proposed first floor level over the south part of the roof form, minimizing the variation to height at the rear of this site resulting from this element and preserves a view corridor across the northern part of the site towards Dee Why Lagoon.

Taking into consideration the above, the proposed development is in the public interest as it is consistent with the objectives of the development standard and the R2 – Low Density Residential zone.

The proposal and does not undermine the intent and effectiveness of the maximum building height development standard in Clause 4.3 or the objectives of the height development standard and the zone for achieving positive outcomes on environmental planning grounds.

For these reasons, the proposal and the variation to height does not undermine the integrity of the building height development standard and its objectives, as well as the zoning objectives which have been adopted by Council as being in the public interest.

The concurrence of the Secretary

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

Under clause 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under clause 4.6 of the LEP, subject to the conditions in the table in the notice.

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

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

The proposal is not likely to raise any matter of significance for State or regional environmental planning. As addressed above the non-compliance with the building height standard is considered to be in the public interest because the proposed development is consistent with the objectives of the height standard and the objectives of the R2 - Low Density Residential zone.

The public benefit of maintaining the development standard is not considered significant because the building meets the 8.5m height standard – as viewed from Victor Road. The variation to height is a result of the site topography and the location of the existing building on the subject site. The proposed development is compatible with existing dwellings in the locality.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted under clause 4.6(5) of the LEP. The exceedance of the standard will not result in adverse amenity impacts and is in the public interest.

Conclusion

The development proposal has a variation to the 8.5m building height control contained in Clause 4.3(2) of the Warringah LEP 2011; notwithstanding, the proposal has been designed with a built form that is consistent with the intent of the height limit and height of adjacent dwellings.

The variation to the 8.5m height limit is the result of the existing site topography and location of the existing building on the subject site. The development proposal complies with the height limit at the street frontage with the rock outcrop running diagonally across the building footprint presenting a sharp fall from the front boundary to the rear of the allotment. The roof ridge of the first floor level meets the 8.5m height limit.

The dwelling historically presents a variation to building height at the north eastern corner of the building footprint. The proposed first floor level has been located over the southern part of the site, minimizing the variation to height from this element, and maintaining a view corridor across the northern part of the site towards Dee Why Lagoon.

Furthermore, the location of the first floor level over the southern part of the roof form does not result in unreasonable bulk and scale to adjoining properties or the public domain. The proposal complies with height at the street frontage and is visually separated from adjoining properties to the north and east of the site.

The variation to the building height standard does not attempt to affect the planning outcome for the locality, rather the variation is a result of the site topography and the location of the existing building footprint.

In my opinion the application to vary the building height development standard is well founded and as addressed the proposed height meets the objectives of the building height development standard and achieves an acceptable outcome for the subject site that is in the public interest. In accordance with the environmental planning grounds addressed in this clause 4.6 variation, the building height can be supported.

Chapman Planning Pty Ltd

ITEM 3.2	DA2019/1463 - 95 GURNEY CRESCENT, SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2020/449197
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Clause 4.6 - Height of Building 4 Clause 4.6 - Floor Space Ratio

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/1463 for alterations and additions to a dwelling house on land at Lot 44 DP 11214, 95 Gurney Crescent, Seaforth, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1463
Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 44 DP 11214, 95 Gurney Crescent SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Narelle Gaye Van Gemert John Steven Ball
Applicant:	Narele Van Gemert
Application Lodged:	17/12/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	19/05/2020 to 02/06/2020
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 40.2% 4.4 Floor space ratio: 59.4%
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,329,382.00

EXECUTIVE SUMMARY

The proposal seeks consent for alterations and additions to a existing dwelling house including a new swimming pool and double garage off Gurney Crescent.

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

The applicant has lodged a request under Clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013) for a variation to the development standard for height of building and floor space ratio.

The height variation is up to a maximum of 11.92m above the allowable height of 8.5m, representing a maximum variation of 40.2%. The original approved height was 9.1m, the proposal under this application will be 2.82m higher (31%).

The existing approved FSR is 0.4:1 (240.6sqm) and the proposal has a total gross floor area of FSR: 0.63:1 (379.1sqm), representing a 59.4% variation to the Floor Space Ratio development standard of 0.40:1 under the MLEP and under the MDCP - Clause 4.1.3.1 Exceptions to FSR for Undersized Lots it is calculated at FSR 0.5:1 (297.2sqm) representing a 27.6% variation.

As the application proposes a variation to both the Height of Buildings and Floor Space Ratio development standards of more than 10%, the application is referred to the Development Determination Panel.

Council received three (3) submissions objecting to the proposal in response to the application from the owner of 97 Gurney Crescent. The issues raised in the submission have been addressed in the "Public Notification" section of this report and in summary they do not warrant refusal or re-design of the proposal subject to suitable conditions have been imposed where required.

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

PROPOSED DEVELOPMENT IN DETAIL

Alterations and additions to a dwelling house as follows:-

Level 5 (RL26.35) – Garage Level with office and entry (no balcony) - proposed additional floor space outside the approved envelope 35.9sqm

Level 4 (RL23.51) – Master bedroom/bathroom and balcony - alterations to existing plus new floor space and minor increased area for stairs and lift - proposed additional floor space outside the approved envelope 48.2sqm

Level 3 (RL20.42)– Living/dining/kitchen with butlers pantry and balcony - alterations to existing plus balcony extension and increased area for stairs and lift - proposed additional floor space outside the approved envelope 5sqm

Level 2 (RL17.43)– Four (4) bedrooms with two (2) bathrooms and balcony - alterations to existing plus balcony extension and increased area for stairs and lift - proposed additional floor space outside the approved envelope 2.6sqm

Level 1 (RL14.42)– Open Space Entertainment Level and Swimming pool with bathroom and laundry - alterations and additions to existing plus bathroom and laundry and increased area for stairs and lift

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 - 5.10 Heritage conservation
 Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size
 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 44 DP 11214 , 95 Gurney Crescent SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Gurney Crescent. The site is irregular in shape with a frontage of 12.6m along Gurney Crescent and a depth of 48.265m along the northern side boundary and 50.205m along the southern side boundary. The site has a surveyed area of 594.4m². The site is located within the E3 Environmental Management zone and accommodates a partially constructed dwelling house. The site is very steep and has a slope of approximately 26.4% (12.7m) from the top to the bottom of site and approximately 53.6% (11.9m) within the building footprint. The site has limited landscaping which is contained to the rear of the property fronting the waterway. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by double, three and four storey dwellings with landscaping and associated outbuildings and structures.

Map:



SITE HISTORY

The existing partially completed dwelling house was granted Development Consent No. 149/98 on 26 November 1999.

Since construction started in 2000 there have been two modifications to the development consent. To date the super structure of the dwelling house has been completed and the site remains a construction site.

After initial assessment of the proposal Council raised concerns and the applicant submitted amendments on 12 June 2020. The amendments included:

ROOF PLAN – DRAWING A100B

- Hipped roof over Office reduced in length by 1.5m in order to reduce bulk-and scale and height non-compliance.

LEVEL 5/GARAGE PLAN – DRAWING A101B

- Balcony removed (deleted)
- Office projection from current position reduced in length by 750mm in order to reduce bulk and scale and height non-compliance. With removal of balcony combined with reduction in office projection, possible privacy impacts to Northern neighbour (No.97) is reduced by a total of 2.3m
- Garage length reduced by 450mm (incorporating push-back of office)
- Garbage bin enclosure relocated to within the current garage envelope proposal.
- North facing windows retain translucent privacy film as originally submitted.

LEVEL 4 PLAN – DRAWING A102B

- New Privacy louvre placed along North edge of existing balcony. Louvre has vertical blades angled in order to remove view angles to and from No.97 for the Master Bedroom and the Ensuite window
- Northern edge of the balcony is designated Non-trafficable and the glass balustrade will return to façade along Gridline C. This effectively reduces overlooking and privacy from balcony by over 2.2m from side boundary

- *Extent of windows facing North reduced*

LEVEL 3 PLAN – DRAWING A103B

- *Northern edge of the balcony is designated Non-trafficable and the glass balustrade will return to façade along Gridline C. This effectively reduces overlooking and privacy from balcony by over 2.2m from side boundary.*
- *New Privacy louvre placed along North edge of existing balcony. Louvre has vertical blades angled in order to remove view angles to and from No.97 for the North facing windows in Living Room.*

LEVEL 2 PLAN – DRAWING A104B

- *No changes to this level."*

Further on 1 July 2020 an amended Landscape Plan and Coastal Management Statement were received.

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 (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)	<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. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to building bulk and privacy. Amended plans were received from the applicant on 12 May 2020. These plans (amended) were re-notified on 13 May 2020 and this re-notification concluded on 2 June 2020. Additionally, amended landscape plan was submitted by the applicant on 1 July 2020.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is 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 (prepared by Bush Fire Planning Services, dated 22 November 2019). The report stated that the bushfire attack level of the site is "BAL-40 & BAL-29" and the report recommended an alternative solution to comply with Planning for Bush Fire Protection.

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

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Ms Meredith Ellen Symons	97 Gurney Crescent SEAFORTH NSW 2092

Council received three (3) submissions from the owner of No. 97 Gurney Crescent, Seaforth dated 1 January 2020, 18 May 2020 and 3 July 2020. Whilst the proposal has been amended all issues raised in all submissions have been considered.

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

- Removal of native bushland/tree protection *
- Landscape plan and landscape completion certificate *
- Building height/ground levels*
- Floor Space Ratio (FSR) *
- "Wall Height: >191% non-compliance [15.3m v 8.0m]" *
- "Number of Storeys: >250% non-compliance [5 v 2]" *
- Side setback*
- Privacy*
- Building Certificate *
- View loss from the public domain and neighbours (no Tenacity Assessment) *
- Solar access *
- Streetscape and parking*
- Bulk and scale *
- Structural adequacy, excavation work and retaining wall/geotechnical certification*
- Noise and vibration/protection of adjoining property (excavation) and dilapidation survey (prior to Construction Certificate and prior to Occupation Certificate) *
- Height Poles *
- *Rose Bay Marina Pty Limited vs Wollahra Municipal Council* *
- *Byron Shire Businesses for the Future Inc vs Byron Council [the Club Med Case]* *
- Works are proceeding on site that do not have consent *
- Massing Envelope Reductions*
- Glare and reflection*
- Lighting Nuisance from internal and external light sources*

- Swimming Pool (landscaping)*
- Stormwater disposal and sub-soil seepage *
- Survey Certificate/boundary identification survey*
- Removal, handling and disposing of asbestos*
- Road reserve*
- Compliance with standards*
- Soil and water management program*
- Bushfire *
- Development on Sloping sites*
- Construction management/traffic *
- Flora & fauna assessment report *
- Cost summary *
- Clause 4.6*
- Statement of Environmental Effects*
- Driveway plans (crossover plans)*
- Inconsistent with objectives of the DCP, zone objectives of the LEP, aims of the LEP, objectives of the relevant EPI's and the objectives of the EPA&A Act 1979*
- Insufficient detail on the plans including site analysis*
- NSW LEC Planning Principles*

The matters raised within the submission(s) are addressed as follows:

- **Construction management/traffic**

Comment: Questions were raised about the way construction traffic was to be managed and where building materials were to be stored.

The site is currently under construction and materials are stored on site (a condition has been included to ensure this outcome). Materials are delivered to the site via Gurney Crescent and it is noted that larger vehicles are required to reverse up this section given there is no turning area and a limited road width. Accordingly, Council's Development Engineer has added the following condition:- *"Traffic Control During Works"*. This will provide for safety and vehicular access to private properties being maintained during the course of the works.

Given the above is considered that issue does not warrant refusal of the application subject to suitable condition(s).

- **Stormwater disposal and sub-soil seepage**

Issues were raised about stormwater disposal and sub-soil seepage from the development.

Comment: Council's Development Engineer has reviewed the proposal and has conditioned that Stormwater Disposal be in accordance with the Northern Beaches Council's Manly Specification for on-site stormwater management 2003.

Subsoil drainage has been appropriately conditioned via "*Compliance with Standards*" which requires the development to be carried out in accordance with all relevant Australian Standards, in case AS/NZS 3500.3:2003 - Plumbing and drainage.

Given the above is considered that issue does not warrant refusal of the application subject to suitable condition(s).

- **Road Reserve**

An Issue was raised about the road reserve and public access.

Comment: Council's Development Engineer has reviewed the proposal and added a condition (Road Reserve) ensuring the public roadway (Gurney Crescent) is maintained in a safe conditions at all times during the course of the work(s).

Given the above is considered that issue does not warrant refusal of the application subject to suitable condition(s).

- **Development on Sloping Sites**

Issues were raised that the development did not generally step with the slope and required a more skilful design.

Comment: The proposal demonstrates sufficient articulation given the significant slope of the site, in particular over the building footprint. The site is considered to be significantly sloping site with a slope of approximately 26.4% from the top to the bottom of this allotment and a slope of approximately 53.6% (11.9m) within the building footprint.

After an initial assessment Council requested amended plans reducing the top level (level 5) to allow for greater articulation and improved privacy to address concerns raised by 97 Gurney Crescent.

Given the above is considered that issue does not warrant refusal of the application subject to suitable condition(s).

- **Statement of Environmental Effects (SEE)**

Comment: Issues were raised by the owner of 97 Gurney Crescent that the SEE was misleading and incorrect.

Council has reviewed the SEE in addition to reviewing the plans (both the original and amended

plans), submission(s), reports and internal and external referral comments/recommendations and considers sufficient information has been provided for assessment of this application.

- **Clause 4.6**

"The Clause 4.6 fails on multiple levels and there are not sufficient environmental planning grounds to justify the departure. The development does not satisfy the objectives of the standard and gives rise to adverse streetscape and residential amenity consequences. The clause 4.6 variation is not well founded."

Comment: A detailed review of the amended Clause 4.6 submitted by the applicant was undertaken by Council and assessed under Clause 4.6 Exceptions to development standard of this report. It is considered that the amended Clause 4.6 adequately addresses both the Height of building and FSR controls of the MLEP 2013 and the variation was supported.

- **Inconsistent with objectives of the DCP, zone objectives of the LEP, aims of the LEP, objectives of the relevant EPI's and the objectives of the EP&A Act 1979**

Issues were raised by the owner of 97 Gurney Crescent that the proposal was inconsistent the objectives of the DCP, LEP, relevant EPI's and EP& A Act 1979 and the aims of the LEP.

Comment: A review of the above matters has been undertaken and assessed within this report in detail and found that the proposal is consistent with these objectives and aims.

Given the above is considered that issue does not warrant refusal of the application subject to suitable condition(s).

- **Insufficient detail on the plans including site analysis**

Issues were raised by the owner of 97 Gurney Crescent that there is insufficient information to make a proper assessment of this development application.

Comment: The original and amended plans have been reviewed and it is considered that there is sufficient information for an assessment to be undertaken and completed. It is considered that issue does not warrant refusal of this application.

- **Removal, handling and disposing of asbestos**

Comment: Appropriately conditions are contained in the Recommendation to ensure these concerns are ameliorated and any asbestos removal, handling and disposal is undertaken in accordance with all relevant legislation.

- **Survey Certificate/Boundary Identification Survey**

Comment: Appropriately conditions are contained in the Recommendation to ensure these concerns are ameliorated and all works are contained within the site boundaries.

- **Soil & Water Management Program**

Comment: Appropriately conditions are contained in the Recommendation to ensure these concerns are ameliorated and soil and water management is maintained in accordance with all relevant legislation.

- **Driveway plans (crossover plans)**

Comment: Appropriately conditions are contained in the Recommendation to ensure these concerns are ameliorated and the driveway/crossover is consistent with Council requirements.

- **Swimming Pool (landscaping)**

"We are concerned that the height of the landscaping along the boundary to #97 Gurney adjacent the proposed pool should be higher to provide a greater level of privacy. We ask that planting at a mature height of 6m be provided."

Comment: A revised landscaping plan (A106 Rev B dated 1 July 2020) was submitted. It is noted that the planting along the northern boundary consists of two (2) Crimson Bottlebrush trees which can grow up to 5m in height and range 1 to 3m in width and one (1) Grass Tree, which can grow up to 6m in height. A second review was completed by Council's Landscape Officer who had no objections subject to conditions. Privacy is addressed under Clause 3.4.2 of MDCP and the proposal was found present no unreasonable privacy impacts subject to condition(s) as contained in the Recommendation to ensure these concerns are ameliorated.

Given the above is considered that issue does not warrant refusal of the application subject to suitable condition(s).

- **Compliance with standards**

Comment: Issues raised about compliance with Standards.

Conditioned accordingly with "Compliance with Standards" to ensure the development is carried out in accordance with the relevant Australian Standards.

- **Glare and reflection**

Comment: Issue was raised about glare and reflection.

The proposed glazing on the northern elevation it is considered reasonable and proportionate to this facade and will not create any unreasonable reflection or glare. Additionally, conditions will be added for the roof colours to be medium to dark colours to minimise glare or reflection to adjoining and surrounding properties.

Given the above is considered that issue does not warrant refusal of the application subject to suitable condition(s).

- **Lighting Nuisance from internal and external light sources**

Comment: Issues were raised about internal and external light spilling to the north towards 97 Gurney Crescent and causing nuisance to bedrooms and living spaces.

Reviewing the amended plans in particular the northern elevation it is considered that the windows are proportionally sized and coupled with their proximity and spatial separation to the dwelling at 97 Gurney Crescent it is deemed that internal lighting would be reasonable.

In relation to external light sources a condition will be included that all external lighting is to be directed on the subject property (95 Gurney Crescent) to reduce light spill on to the adjoining

property to the north (97 Gurney Crescent).

Given the above is considered that issue does not warrant refusal of the application subject to suitable condition(s).

- **Removal of native bushland/tree protection**

Comment: Concerns have been raised by adjoining owner at 97 Gurney Crescent in relation to the removal of vegetation from the area below the existing retaining wall adjacent to swimming pool down to the foreshore area (Middle Harbour). Council has created a Customer Relation Management (BLD2020/01133) which is being investigated by Council's Compliance Department. Additionally, Council Landscape Officer has added a condition for tree protection which is included in the Recommendation.

- **Flora & fauna assessment/bush regeneration landscape plan**

Comment: Issues were raised that a flora and assessment report was not lodged with the application. An assessment was completed by Council's Biodiversity Department and conditioned accordingly with significant native landscaping particularly to the west of the proposed swimming pool down to the foreshore. Council has now received an amended landscaping plan from the applicant and suitable conditions from both Biodiversity and Landscaping Departments will ensure suitable native landscaping will be planted and established on site.

- **Bushfire**

Comment: Concerns were raised about the development being located within a very high risk bushfire zone and that Council refer the application to NSWRFs for a full Section 79BA referral review.

The application was submitted with a Bushfire Risk Assessment. A response from NSWRFs was received on 11 February 2020 recommending approval subject to conditions.

- **Cost summary**

Comment: A cost summary was supplied with the application and was completed by a registered architect.

- **Landscape plan and landscape certification**

Comment: Issues were raised that the applicant had *"not submitted a Landscape Plan to clearly identify the Landscape Proposals for this very sensitive site."*

A landscape plan was submitted at the time of lodgement of this Development Application (DA) and was assessed by Council's Landscape Department and the following comments were:-

"The plans indicate construction of building works over an existing building footprint.

A landscape plan has been provided, however, no details of treatment of the environmentally sensitive area between the foreshore and the works has been provided. It is evident that clearing works have occurred in this area.

In order to address the planning controls, conditions have been included requiring preparation of a landscape plan to revegetate the lower portion of the site with requirements for certification following completion."

Council's Landscape Officer conditioned that an amended landscape plan was to be submitted to the Certifying Authority prior to the issuing of the Construction Certificate. Council contacted the applicant and requested a detailed landscaping plan consistent with the parameters requested by Council's Landscape Officer in the Landscape Referral Response on 12 June 2020. Council made contact with the adjoining owner at 97 Gurney Crescent via email on 2 July 2020 and a response was received on 3 July 2020 from requesting the following as a condition:

"Provide a continuous, uninterrupted, shrub screen hedge along the northern boundary to 4m minimum mature height, to extend from the eastern boundary of the subject site to the western edge of the proposed pool gutter on the subject site. Delete Swimming Pool fence on common boundary and relocate at least 1.5m from boundary. Provide a new fully rendered masonry fence, painted monument/dark grey, to 1.8m height along the common boundary. Plant mature plants to a minimum of 2m in height, at 0.6m centres, to ensure an immediate landscape screen. Delete all other hard surfaces in a 1m side setback zone, to allow for 1m deep soil planting along these zones. Provide drip irrigation."

Council's Landscape Advisor has reviewed the amended landscape plan and the following comments are:-

"The amended plans have included a Landscape Plan addressing the provision of planting between the building and the foreshore as previously conditioned."

The plans are considered adequate to address the intent of the condition and no objections are raised to approval subject to conditions as amended."

Additionally, Council's Landscape Officer has added the requirement of a "Landscape completion certificate" which is required prior to the issue of an Occupation Certificate. This will certify that the landscape works have been completed in accordance with the approved landscape plan and inclusive of any conditions of consent.

It is now considered that these issues has been considered and suitably addressed and does not warrant further amendment(s) or refusal of this application.

- **Privacy**

Comment: Issues have been raised by 97 Gurney Crescent about privacy issues to their dwelling house, private open space and swimming pool areas.

After completion of the initial assessment and a site inspection by Council officers on 8 April 2020 to 97 Gurney Cr, Council raised concerns, including privacy concerns, with the applicant regarding the proposal.

The applicant subsequently submitted amended plans and the Privacy issues are discussed under Clause 3.4.2 of MDCP. The proposal was found present no unreasonable privacy impacts subject to condition(s) as contained in the Recommendation.

- **Building height/ground levels**

Comment: Issue was raised that the proposed building height is 15.7m with a 185% variation to the control of 8.5m. Council has assessed the building height at 11.92m with a 40.2% variation to the built form control.

Please refer to Principal Development Standards LEP, Clause 4.3 Heights of buildings of the Manly Local Environmental Plan (MLEP) and Clause 4.6 Exceptions to development standard of the MLEP.

A detailed analysis has been completed and the variation has been supported in this instance. It is noted that the height of the proposal 11.92m is consistent with the height of 97 Gurney Crescent approved via DA120/2015 at 11.5m and 91 Gurney Crescent approved by the former Manly Council via Manly Independent Assessment Panel (MIAP) at a height of 14.1m via DA233/2015.

Additionally, it is noted issues were raised about the ground levels prior to the site been excavated in 1999 and whether a survey was undertaken at that time. Council has reviewed the property file and not found a survey (pre-excavation). It is noted that the application was lodged on the basis of it having a height of up to 12.4m above an interpolated level of the site prior to the excavation, which has been amended to a height of 11.92m.

The site has a significant slope from front to rear, but has been noticeably excavated for the original approved dwelling, thus exhibiting a vertical profile towards the upper part of the site. A formal Clause 4.6 Variation was submitted by the applicant. The commentary in the submission in relation to the height of the building was considered in the merit assessment of the proposed height and it is considered that the proposal is reasonable and consistent with adjoining and surrounding buildings within the vicinity.

Given the above it is considered that the proposed alterations and additions to this dwelling house are consistent with surrounding and adjoining dwellings within the area and the variation is supported.

- ***"Floor Space Ratio (FSR) is proposed at 0.84:1 (503.5sqm) or 210% variation"***

Comment: Issue was raised that the proposed (FSR) is 0.84:1 (503.5sqm) or 210% variation to control of 0.4:1. Council has assessed the proposed dwelling at FSR of 0.63:1 (379.1sqm) or 59.4% to MLEP control of 0.4:1 via Clause 4.4 Calculation of floor space ratio and site area of MLEP. Refer to Principal Development Standards LEP, Clause 4.4 Floor Space Ratio of the Manly Local Environmental Plan (MLEP), Clause 4.6 Exceptions to development standard and Clause 4.1.3 Floor Space Ratio of the MDCP.

It is noted the proposed FSR is generally consistent with adjoining and surrounding developments notably:-

91 Gurney Crescent	0.55:1 - 317sqm
97 Gurney Crescent	0.54:1 - 315.6sqm
81 Gurney Crescent	0.70:1 - 303.4sqm
36 Gurney Crescent	0.59:1 - 375sqm

A detailed analysis has been completed and the variation has been supported in this instance and does warrant refusal and/or further amendments via condition(s).

- **"Wall Height: >191% non-compliance [15.3m v 8.0m]"**

Comment: Issue was raised that the proposed wall height will be 15.3m or 191%, a non-compliant with the 8m wall height. Council has assessed the wall height varying from 4.2m - 10.8m (Nil - 35% variation) on the southern elevation and 3.5m - 11.85m (Nil - 48.1% variation) on the northern elevation. Please refer to Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) of the MDCP.

A review of the approval granted at 91 Gurney Crescent via DA233/2015 Section 96 (1A) - Part 2 - had approved wall heights of 13.1m - 13.75m on the northern elevation and 11.8m - 12m on the southern elevation. Additionally at 97 Gurney Crescent the wall height was approved via DA120/2015 at 10.5m on the northern elevation and 11m on the southern elevation.

A detailed analysis has been completed and the variation have been supported in this instance. It is considered that the proposed wall heights are considered generally consistent with recent approvals granted under the current controls of the MLEP 2013 and MDCP.

Given the above it is considered that this issue does not warrant refusal and/or further amendment via condition(s).

- **"Side Setback: >1000% non-compliance [Level 4 & 5, 300mm v 3000mm]"**

Issue was raised that the side setback of proposed alterations and additions are non-compliant with the control.

Comment: A review of the proposed side setbacks has been considered and assessed under Clause 4.4 (front, side and rear) and Building Separation of MDCP. Particular issue where raised in relation to Level 4 & 5 for the proposal and the side setback to the southern boundary which has a proposed side setback of 0.2m to 0.4m where the proposed planter box, lift and stairs will be positioned in the southeast corner of the subject site. It is noted that this part of the building is located adjacent to the elevated carport structure at 93 Gurney Crescent which is located approximately 0.2m away from the common side boundary shared with 95 Gurney Crescent.

Proposed location of stairs and lift between 93 & 95 Gurney Crescent

Given the location, the fall of the land, consistent setback and the position of the dwelling at 93 Gurney Crescent it is considered that the proposed setback will have minimal impacts and hence supportable. Additionally it is noted that 97 Gurney Crescent was approved with a 0.243m setback to the northern boundary and 0.97m setback to the southern boundary and 91 Gurney Crescent was approved with setback of 1m - 4m to the northern boundary and 1.1 - 2.5m to the southern boundary.

Given the above it is considered that this issue does not warrant refusal and/or further amendment

- **Building Certificate - BC2019/0284 - Four storey incomplete single dwelling structure built on bondeck floor slabs supported by core filled concrete blocks, steel columns and beams plus hebel walls.**

Comment: The Building Information Certificate (BIC) application and associated works was issued on 23 June 2020 by Council and it is considered the works currently undertaken are generally consistent with that approval.

- **Structural adequacy, excavation work and retaining wall**

Comment: Issues were raised about the existing structure (half built dwelling) and given the time that these works have been exposed to the elements coupled with the location adjacent to Middle Harbour (salt breezes/air). As previously stated a Building Information Certificate (BC2019/0284) was issued by Council for the existing approvals granted via DA149/98 and the modification approved on 15 May 2011 to ensure that the structural adequacy of the current building. As part of this application Structural Details and Structural Certification was issued by McKee & Assoc. P/L and a Geotechnical Assessment Report by Crozier Geotechnical Consultants. Any future or further works granted beyond these current approvals would require a new Construction Certificate which will require new Structural Details and Structural Certification which would include this current Development Application.

Additionally Council's Development Engineer has added a condition Structural Adequacy and Excavation Work ensuring the protection of adjoining buildings, services, structures and public infrastructure. This condition also details retaining walls which are to be designed and certified by a Structural Engineer.

It is considered that this issue has been reviewed and does not warrant refusal and/or further amendment via condition(s).

- **View loss from the public domain and neighbours (no Tenacity Assessment)**

Comment: Please refer Clause 3.4.3 Maintenance of Views of the MDCP and Clause 4.3 Height of buildings of the MLEP 2013 for a detailed assessment. In short it is was considered that the proposal was acceptable and consistent with other developments in relation to views and does not warrant refusal and/or further amendment via conditions(s).

- **Byron Shire Businesses for the Future Inc vs Byron Council [the Club Med Case]**

Comment: Matters that were raised stating the above court decision by the NSWLEC maybe sufficient grounds that Council has not been provided with '*sufficient probative material to form a proper basis for lawful action.*'

Council has received a Development Application (DA) for alterations and additions to a dwelling house. During the course of this assessment Council has requested amended plans which included the reduction of Level 5 and a landscape plan in accordance with the initial comments and recommendations from Council's Landscape Advisor. This updated landscape plan was assessed by Council's Landscape Advisor on 9 July 2020 as follows:-

"The amended plans have included a Landscape Plan addressing the provision of planting between the building and the foreshore as previously conditioned.

The plans are considered adequate to address the intent of the condition and no objections are raised to approval subject to conditions as amended."

Council has also assessed the Building Information Certificate (BC2019/0284 - Four storey incomplete single dwelling structure built on bondeck floor slabs supported by core filled concrete blocks, steel columns and beams plus hebel walls) which was issued on 23 June 2020 by Council. This certificate covered many issues raised in the submission(s) including the original written submission dated 1 January 2020.

The initial and amended information supplied by the applicant, including the assessment by Council

are considered sufficient to allow for proper and full assessment of this Development Application.

- **Height poles**

Comment: A request was made by the owner of 97 Gurney Crescent for the erection of height poles by a registered surveyor to identify the height, bulk and scale and view loss. Council has assessed these issues during a number of site inspections to the subject site and the adjoining residence to the north known as 97 Gurney Crescent. Council's Planner attended site on 23 July 2020 and located the corners of Level 4 and Level 5 on the northern elevation and eastern most points of the dwelling on Level 5 addressing Gurney Crescent. This information have been included within the assessment of this application and addressed under Clause 3.4.3 Maintenance of Views.

- **Bulk and scale**

Comment: Issues have been raised in relation to bulk and scale of the proposed alterations and additions to the dwelling house.

It is considered that the proposal provides an articulated built form consistent with the surrounding context.

Given the above it is considered that this issue does not warrant refusal and/or further amendment(s) via condition.

- **Massing Envelope Reductions**

The original submission (1 January 2020) requested that the applicant submit amended plans via a Deferred Commencement with a number of proposed modifications:-

Comment: Council has considered these modifications and privacy measures as part of this assessment. The applicant submitted amended plans which reduced Level 5 and removed the balcony from that level. The northern facing window on that level will be fitted with obscured glazing to ensure reasonable levels of amenity (privacy) are maintained. Additionally, privacy measures were added to the Level 4 and Level 3 via the amended plans.

Given the above it considered that the proposed development is generally consistent with the adjoining and surrounding developments and reverting the development back to 2011 building envelope is considered unreasonable given the recent approvals granted.

- **Works are proceeding on site that do not have consent**

Comment: Issues were raised about works which are currently been undertaken on site by owner of 97 Gurney Crescent. Building Information Certificate (BC2019/0284 - Four storey incomplete single dwelling structure built on bondeck floor slabs supported by core filled concrete blocks, steel columns and beams plus hebel walls) was issued on 23 June 2020 by Council. This effectively allows works to be undertaken and completed to ensure the structural integrity of the building and works that were previously approved under DA149/98 and the following approved modification approved 15/5/2011 for internal changes plus increase in floor area.

Given the above it is considered that this issue does not warrant refusal and or further amendment(s) via condition.

- **Noise and vibration/protection of adjoining property (excavation) and dilapidation survey (prior to Construction Certificate and prior to Occupation Certificate)**

Comment: Issue was raised about noise from mechanical plant and that any air conditioning and pool plant positioned along the boundary would create excessive noise nuisance and that these types of systems be located away from the northern side boundary shared with 97 Gurney Crescent.

Suitable conditions will be included that noise from any plant be in accordance with the Clause 3.9.3 Noise from Mechanical Plant of MDCP.

Issues were raised about vibration damage to neighbouring property and the installation of instruments to measure *"particle velocity to be less than 2.5mm/sec at the common boundary, with alarms to stop work if thresholds are exceeded"*.

Reviewing the plans there is excavation required for the pool extension to the approved swimming pool and other works including the internal external and new lift on the southern elevation (adjacent to the carport at 93 Gurney Crescent). It is considered that the requirement for vibration devices/instruments is not required in this instance, however conditions will be included for dilapidation surveys/inspections (both pre & post) to be undertaken on both the adjoining properties/dwellings at 93 and 97 Gurney Crescent.

Given the above it is considered that this issues adequately addressed and does not warrant refusal of this application subject to suitable condition(s).

- **Streetscape and parking**

Issue were raised by the owner of adjoining property to the north at 97 Gurney Crescent as follows:-

"The design of the garaging presenting a 3.0 high wall to the street, and built with minimal or no side setbacks, does not minimise the visual impact on the streetscape and neighbouring properties. It is not the desired character of the street."

The design represents a very hard urban outcome, rather than a more open design to bring the harbour view to the street."

The garage is forward of the building line and dominates the street frontage."

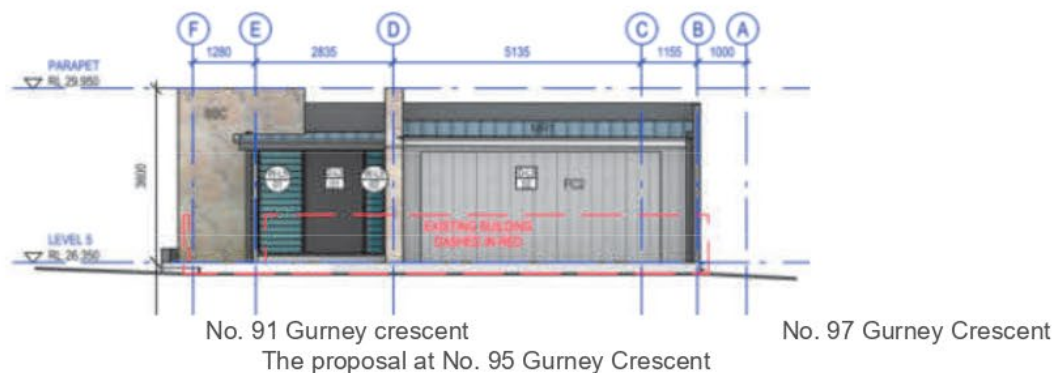
A review of the relevant control of MDCP Clause 3.1.1 Streetscape (Residential areas) states:-

"Streetscape is defined (see Dictionary in this plan) and represents the inter-relationship between buildings, landscape and open spaces in the street scene. Local amenity and identity are closely linked to streetscape character. Development should recognise predominant streetscape qualities, such as building form, scale, patterns, materials and colours and vegetation which contributes to the character of the local area."



No. 81 Gurney Crescent
No. 89 Gurney Crescent

No. 83 Gurney Crescent



Reviewing the streetscape there are many examples of garages at street level take a large portion of their respective site frontage. It is additionally noted that the the most recent approvals at both 91 and 97 Gurney Crescent both have garage structures within the front setback area.

Given the above it is considered that the proposal is consistent with the existing streetscape of Gurney Crescent particularly in this dead end section (Nos. 81 - 97) and the similar walkway (side setback) along the northern boundary will be consistent with the side setback afforded by the dwelling at 97 Gurney Crescent along their southern boundary which will allow for a view corridor down between the two (2) dwellings. It is therefore considered that this issue does not warrant refusal and/or further amendment via condition(s).

- **Solar access**

Issues were raised by 97 Gurney Crescent which is located to the north of the subject site about solar access to 93 Gurney Crescent both to the dwelling and principal private open space which is located to the south of the subject site.

Comment: Please refer Clause 3.4.1 Sunlight Access and Overshadowing of the MDCP for a detailed assessment. In short it is was considered that the proposal was acceptable and consistent with the provisions of this Clause and the development allows for sufficient solar access to the private open space of and living rooms of 93 Gurney Crescent and does not warrant refusal and/or further amendment via condition(s).

- **NSW LEC Planning Principles**

- **General impact - Davies v Penrith City Council [2013] NSWLEC 1141 at [116] to [121]**

Issues were raised about floor space and amenity could be achieved while reducing the impacts.

Comment: As previously stated the proposed floor space is consistent with other developments within the vicinity. Additionally amenity issues have also been considered and subject to condition these privacy issues can be suitable addressed.

- **Height, bulk and scale - Veloshin v Randwick Council [2007] NSWLEC 428 at 32-33**

"The impacts are not consistent with the impacts that would be reasonably expected under the controls. The proposals are non-compliant in multiple areas, and the Applicant has not quantified the difference between the impacts of a complying and a non-complying development."

Comment: The proposed development has been assessed against other development within the vicinity and it is noted that both 91 and 97 Gurney Crescent have been granted variations to the built form controls height of buildings and FSR of the MLEP 2013 . Additionally, both these recent approvals vary front setback, side setback, wall height and number of storeys.

It is considered via the submitted information and assessment that the impacts are reasonable and consistent.

- **Privacy - Meriton v Sydney City Council [2004] NSWLEC 313 at 45-46**

"The proposed development allows direct sight lines from proposed windows directly into habitable rooms and private open space without any screening."

Comment: Amended plans have now addressed some of the above comments and additional conditions will ensure that privacy levels are maintained to a reasonable level.

- **Views - Tenacity Consulting v Warringah Council [2004] NSWLEC 140 at 25-29**

"The development breaches multiple planning controls and is unreasonable. The impact on views arises as a result of non-compliance with one or more planning controls, and the moderate to devastating impact is considered unreasonable."

Comment:
A detailed assessment has been completed under Clause 3.4.3 Maintenance of views of MDCP

which included the four (4) point test set by Tenacity Consulting v Warringah Council. It is assessed that the view loss from 97 Gurney Crescent was minor given the dwelling/property maintained uninterpreted views of Middle Harbour, Fig Tree Cove and Bantry Bay.

The view loss from Gurney Crescent (the public domain) has been considered to acceptable given the following: -

Views are maintained from the public domain (Gurney Crescent and Rignold Street Foreshore Reserve);

Views from the Gurney Crescent has been partial or full obscured by previous development (eg. No. 81, 83, 85, 87, 89, 91 and 97 Gurney Crescent).

- Views - Rose Bay Marina Pty Limited v Woollahra Municipal Council and Anor [2013] NSWLEC 1046 at 39 - 49 (Impact on public domain views)

Comment: The above planning principle was cited by the owner of 97 Gurney Crescent which is a five (5) step assessment. The proposal is consistent with the Planning Principle as detailed within this report. In summary views are maintained from the public domain to the north and south of the proposal.

- Demolition - Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187 (The extent of demolition - alterations and additions or a new building)

"We contend that the description of the DA as "Alterations and additions to a dwelling house" is incorrect."

Comment: The existing footprint remains consistent with the original and modified approvals to approved dwelling house. Reviewing the proposal the main elements of the partial constructed dwelling remain with alterations and additions to Level 4 and Level 5 and other works to the lower levels been undertaken as part of this current DA. Therefore is considered that this application is for alterations and additions to a dwelling house and not a new dwelling.

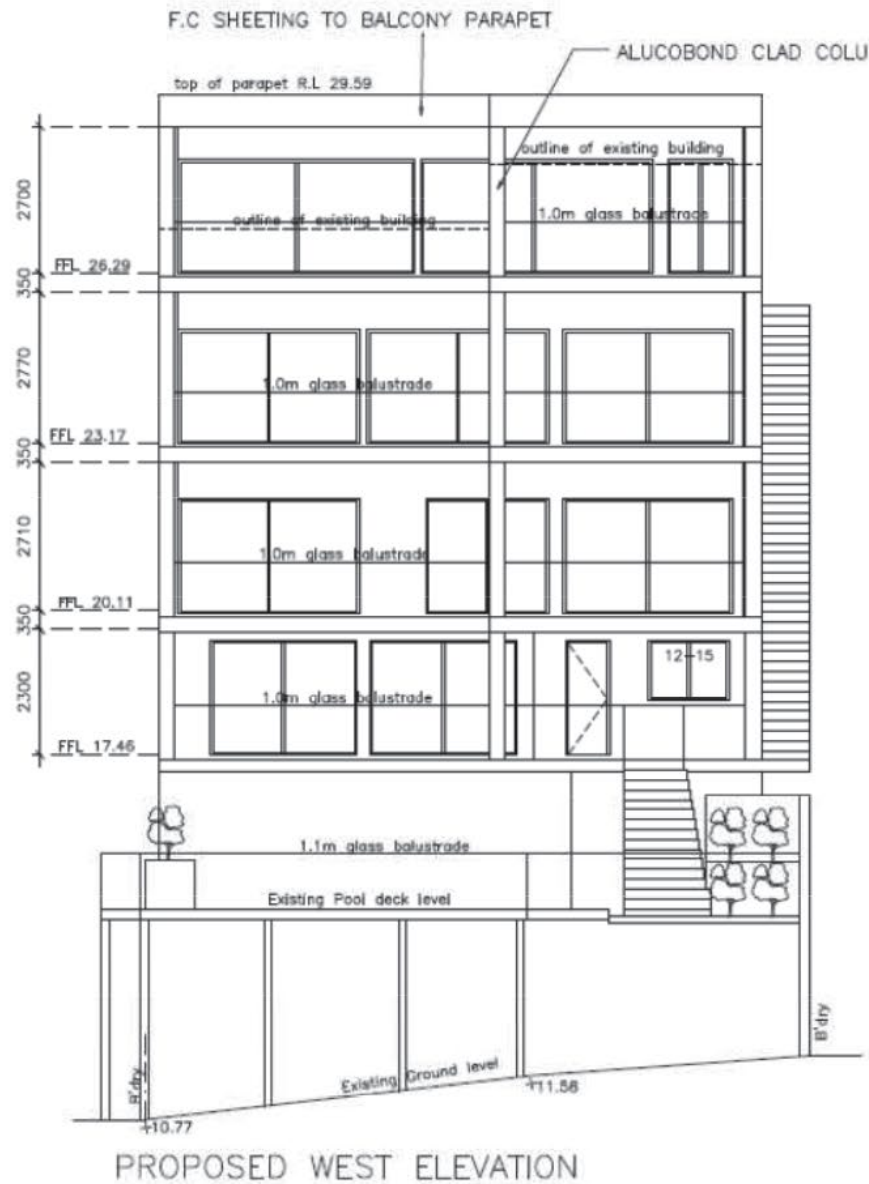
- **"Number of Storeys: >250% non-compliance [5 v 2]"**

Comment: Issue was raised of the number of storeys proposed at five (5) storeys was over the control of two (2) storeys. Council has assessed this under Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) of the MDCP. It is noted that this site and adjoining sites to the north (97 Gurney Crescent) and to the south (93 Gurney Crescent) are located on significant sloping sites with a slope of approximately 26.4% from the top to the bottom of this allotment and a slope of approximately 53.6% (11.9m) within the building footprint.

Additionally it is noted that the adjoining dwelling to the north at 97 Gurney Crescent is a four storey residence with an undercroft area which has a height of R.L. 29.59 and the reduced level on the proposed dwelling at 95 Gurney Crescent is R.L. 29.95 and the height reduces 0.4m to R.L. 29.55 over the proposed office which is below the height of 97 Gurney Crescent.

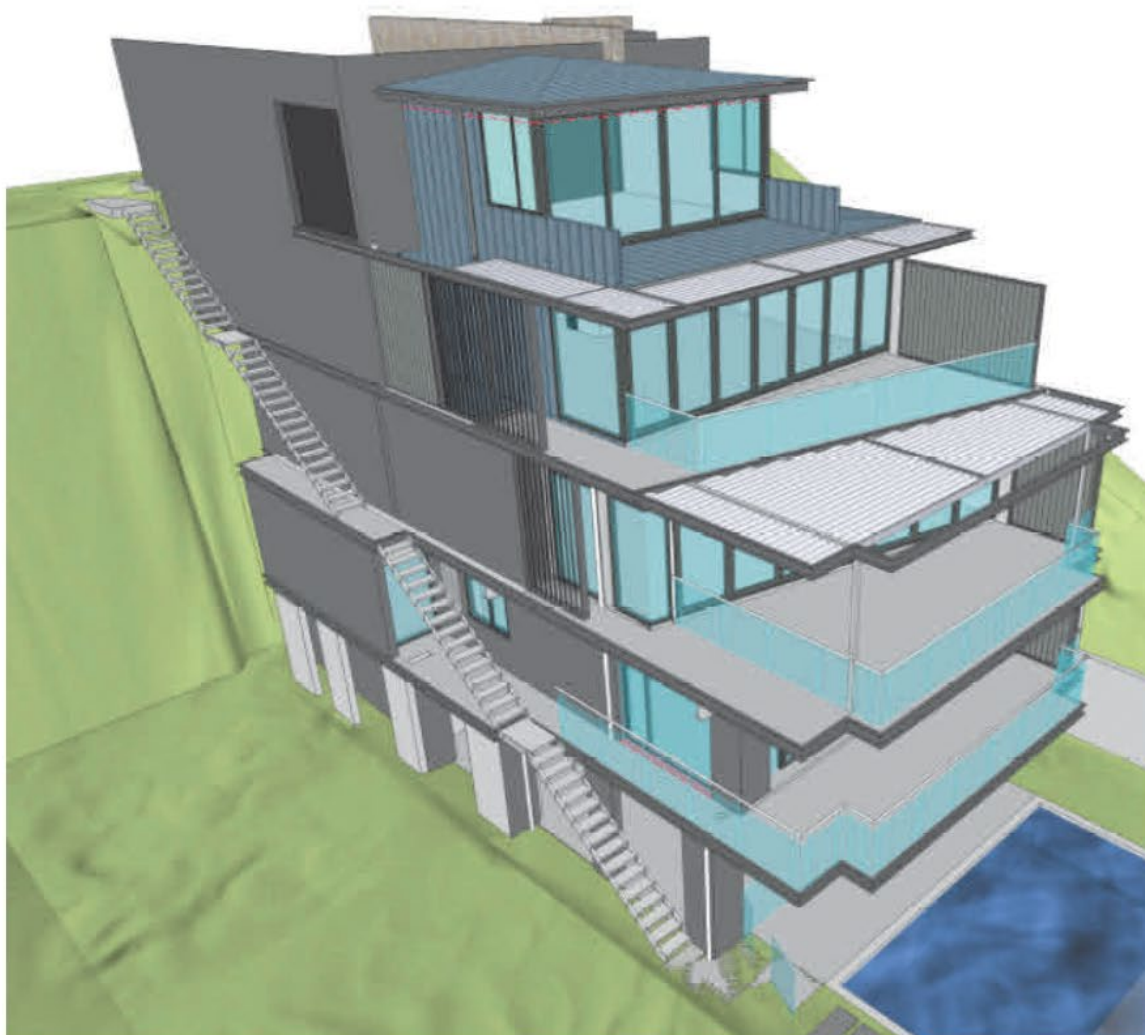
Given the above it is considered that the proposed alterations and additions to this dwelling house are consistent with surrounding and adjoining dwellings within the area and the variation

is supported.





Above: 97 Gurney Crescent
Above: 95 Gurney Crescent



Above: 95 Gurney Crescent (northeast aerial)

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<u>Amended Plans Comment 09/07/2020</u> Amended Plans submitted are noted. The amended plans have included a Landscape Plan addressing the provision of planting between the building and the foreshore as previously conditioned. The plans are considered adequate to address the intent of the condition and no objections are raised to approval subject to conditions as amended.

Internal Referral Body	Comments
	<u>Original Comment</u> The plans indicate construction of building works over an existing building footprint. A landscape plan has been provided, however, no details of treatment of the environmentally sensitive area between the foreshore and the works has been provided. It is evident that clearing works have occurred in this area. In order to address the planning controls, conditions have been included requiring preparation of a landscape plan to revegetate the lower portion of the site with requirements for certification following completion. Subject to the above, no objection are raised to approval subject to conditions.
NECC (Bushland and Biodiversity)	The following biodiversity-related provisions apply to the subject site: - Manly LEP Clause 6.5 (Terrestrial Biodiversity) - SEPP (Coastal Management) - Coastal Environment Area It is noted that the proposal's compliance with these provisions was not addressed in the submitted DA. In order to achieve compliance with these provisions, significant new native landscaping is required to be established to the west of the proposed pool. Planted species are to be in accordance with the original vegetation community which still exists on other properties within the subject site's vicinity. The submitted Landscape Plan, which consists predominantly of exotic species, is to be amended/replaced accordingly.
NECC (Coast and Catchments)	The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, 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. The application has also been assessed using Northern Beaches SREP assessment template. <i>Coastal Management Act 2016</i> The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under

Internal Referral Body	Comments
	Clause 3 of the <i>Coastal Management Act 2016</i>. 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. 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 (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. Comment: On internal assessment and as assessed in the submitted Coastal Management Statement prepared by MHDP Architects dated June 2020, the DA satisfies requirements under Clause 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018. Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005 Harbour Foreshores & Waterways Area The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 2, Clause 14 and Part 3, Division 2 apply in assessing this DA. On internal assessment and as assessed in the submitted Coastal Management Statement prepared by MHDP Architects dated June 2020, it is determined that the Planning Principles and Matters for Consideration of the Area have been met.

Internal Referral Body	Comments
	Manly LEP 2013 and Manly DCP Foreshores Scenic Protection Area Management The subject site is also shown to be as “Manly Foreshores Scenic Protection Area” on Council’s Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site. On internal assessment and as assessed in the submitted Coastal Management Statement prepared by MHDP Architects dated June 2020, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013. As such, it is considered that the application does/does not comply with the requirements of the Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013. Development on Foreshore Area The subject site is also shown to be as “Manly Foreshores Area” on Council’s Area “within the foreshore building line Map” in Manly LEP 2013. Hence, Part 6, Clause 6.10 –Limited development on foreshore area of the Manly LEP 2013 applies for any development within the foreshore area. The DA proposes no development works in this area.
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following conditions of consent.
NECC (Riparian Lands and Creeks)	As this application completes a dwelling that remained incomplete for some time, it is requested that appropriate stormwater quality controls are installed. This is simply a sediment control pit installed prior to stormwater being discharged from the property that must include a removable screen for cleaning. The outlet to Sydney Harbour must be installed in such a way as to not cause erosion or scour of the foreshore or waterway, and must not create a visual impact (to satisfy the Sydney Harbour Regional Environment Plan).

Internal Referral Body	Comments		
	Attention must be paid to sediment and erosion controls to ensure sediment doesn't enter the waterway.		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	This application has been referred as the site adjoins a local heritage item, being Item I1 - Harbour Foreshores , listed in Schedule 5 of Manly Local Environmental Plan 2013.		
	Details of heritage items affected		
	Details of the heritage item, as contained within the Manly Heritage Inventory, are: Item I1 - Harbour Foreshores <u>Statement of Significance</u> Natural landscape type - Aesthetic. <u>Physical Description</u> Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	Comment if applicable
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
This application is for alterations and additions to a dwelling house, using an existing unfinished, previously approved dwelling. The proposed building works do not extend beyond the existing retaining wall on site, which is located some 12 - 15 metres back from the harbour foreshore.			
Given the separation of the works from the heritage listed harbour foreshore, it is considered that there will be no impact upon this heritage item.			
Therefore, no objections are raised on heritage grounds and no conditions required.			
<u>Consider against the provisions of CL5.10 of MLEP 2013</u>			

Internal Referral Body	Comments
	Is a Conservation Management Plan (CMP) Required? NO Has a CMP been provided? N/A Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A Further Comments COMPLETED BY: Janine Formica, Heritage Planner DATE: 4 August 2020

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
NSW Rural Fire Service – local branch (s79BA EPAA)	The application was submitted with a Bushfire Risk Assessment by Bushfire Planning Services. The BAL rating was acknowledged at BAL-40 and BAL-29 but also relied on 'Alternate Solutions' and therefore referred to NSWRFs. A response from NSWRFs was received on 11 February 2020 granting concurrence subject to conditions.

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. 1061333S dated 16 December 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	53

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

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

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP

has been carried out as follows:

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

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

Comment:

Not applicable to the site.

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

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

Comment:

Not applicable to the site.

12 Development on land within the coastal vulnerability area

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

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

are in
place
to
ensure
that
there
are
appropriate
responses
to, and
management
of,
anticipated
coastal
processes
and
current
and
future
coastal
hazards.

Comment:

At the commencement of this Policy, no Coastal Vulnerability Area Map was adopted and therefore no coastal vulnerability area has been identified. Not applicable.

13 Development on land within the coastal environment area

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

Comment:

The proposed works are unlikely to cause an adverse impact upon the matters identified in this clause. The proposal is located wholly within the subject site and does not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes.

- (2) *Development consent must not be granted to development on land to which this clause applies*

unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The proposal has been designed in such a way that it satisfies the relevant matters identified in this clause.

14 Development on land within the coastal use area

(1)

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

Comment:

The proposal is setback from the foreshore and will not impact upon the existing and safe access to and along the foreshore. The visual amenity from private and public space is not adversely effected. In addition, the surrounding area consists of examples of similar developments.

No aboriginal heritage sites have been identified within the vicinity of the proposed development. The proposed works are not likely to cause an adverse impact upon the matters identified in this clause.

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

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

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

Comment:

The proposal is unlikely to cause increased risk of coastal hazards on that land or other land, due to its design, location and relevant reports indicating no unreasonable impacts.

Coastal Management Act 2016

The subject site identified as Coastal use area under the Coastal Management Act 2016. The management objectives for the coastal use area are as follows:

- "(a) to protect and enhance the scenic, social and cultural values of the coast by ensuring that:*
(i) the type, bulk, scale and size of development is appropriate for the location and natural scenic quality of the coast, and
(ii) adverse impacts of development on cultural and built environment heritage are avoided or mitigated, and
(iii) urban design, including water sensitive urban design, is supported and incorporated into development activities, and
(iv) adequate public open space is provided, including for recreational activities and associated infrastructure, and
(v) the use of the surf zone is considered,
(b) to accommodate both urbanised and natural stretches of coastline."

Comment: The proposal is setback from the foreshore and will not impact upon the existing and safe access to and along the foreshore. The visual amenity from private and public space is not adversely effected. In addition, the surrounding area consists of examples of similar developments.

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	11.92m	40.2%	No
Floor Space Ratio	FSR: 0.4:1 (237.8sqm)	Proposed FSR: 0.63:1 (379.1sqm)*	59.4%	No
		Existing FSR 0.4:1 (240.6sqm)	N/A	Yes
		DCP Undersized allotment FSR 0.5:1 (297.2sqm)**	27.6%	No

* Reduction of Level 5 from 39.7sqm to 35.9sqm

** Undersized allotment provisions apply (1150sqm)

Compliance Assessment

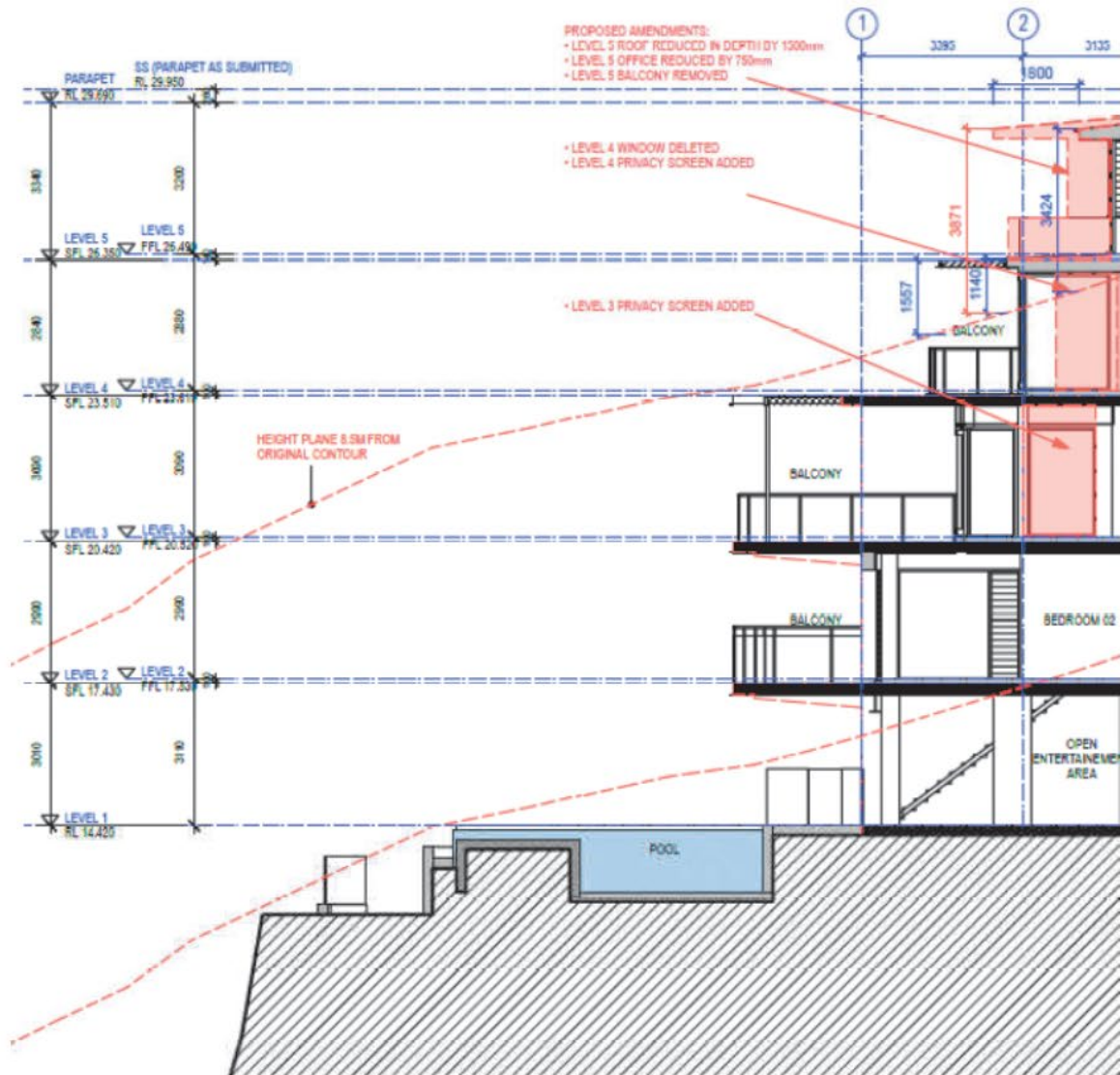
Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Part 2 Permitted or prohibited development	Yes
2.7 Demolition requires development consent	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	No
4.6 Exceptions to development standards	Yes
Part 5 Miscellaneous provisions	Yes
5.5 Development within the coastal zone	Yes
5.10 Heritage conservation	Yes
Part 6 Additional local provisions	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.6 Riparian land and watercourses	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	11.92m
Percentage variation to requirement:	40.2%



Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

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

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

"The main reason for why strict compliance can be regarded as unreasonable or unnecessary is that the proposal is to be constructed directly beside a similar scale (and non-complying) building to the North (No.97). No.97 is a very rectilinear boxy development that includes an enclosed garage at the top level and then 4 stories below this. Like No.95, the fall in the natural ground level means that No.97 definitely does not comply with the height control and they submitted a Clause 4.6 (SEPP1) with their DA, which was approved. The proposal at No.95 is actually more articulated, stepped and less intrusive than No.97.

Two doors down No.91 Gurney is currently under construction and it too is well over the height limit and they also submitted a Clause 4.6 that was approved. In this instance, therefore, applying strict compliance to our proposal would not provide any benefit as this site can already be read as existing between these two noncomplying envelopes.

It is noted that there are a great many developments in Gurney crescent that have been approved over the last number of years that have almost all of them has Height noncompliance. Therefore is it unreasonable by comparison to require strict compliance of the proposal based on bulk and scape when the proposal matches approved neighbouring developments.

Further, the reduction in the extent of non-compliance brings the new extension of the upper level (Home Office) well back behind the neighbour to the North (No.97)."

Reviewing the argument put forward by the applicant the proposed development (overall) combined with the significant slope of land (over 50% grade over the footprint) it is concurred that the variation to the building height is justified in this instance.

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

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

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

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

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

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

Comment: In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the E3 Environmental Management zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment: The proposed development is considered to be consistent and compatible in terms of height with the surrounding dwellings demonstrating varying roof form and overall building height that is general consistent with adjoining and surrounding buildings. The roof over the office encroaches the maximum building height, however it is considered that the building demonstrates adequate setbacks

and reasonable levels of articulation (particularly with the amended design stepping down the site progressively).

b) to control the bulk and scale of buildings,

Comment: The proposed development incorporates a combination of open balconies and varied setbacks which adds modulation to the building. The resultant bulk and scale of the development is consistent with surrounding development along the Gurney Crescent and surrounding streets and will not result in any unreasonable amenity impacts within the locality. The proposed bulk and scale is satisfactory in this circumstance.

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: Given the the location of the site, topography and the design this will ensure that the proposal will minimise any view disruption from adjoining and surrounding dwellings from or to the foreshore, and/or from public spaces.

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

Comment: Given the site location and proximity to adjoining and surrounding properties the solar impacts of this aspect of the development are considered acceptable.

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

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

Zone objectives

The underlying objectives of the E3 Environmental Management zone are:

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

Comment: The development manages the ecological, cultural and aesthetic values of the site with the proposed works on the upper disturbed portion of the site. The amended landscape plan will restore ample plants of shrubs, plants and trees to ensure that the development satisfies these objectives above.

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

Comment: The proposed alterations and additions to the existing uncompleted dwelling and landscaping works is a typical form of development in the locality and the additional height will

maintain the area's ecological and aesthetic values.

It is considered that the development satisfies this objective.

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

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

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 24 May 2019, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of Building and Floor Space Ratio Development Standard associated with a single dwelling house (Class 1 building).

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 (237.8sqm)
Proposed:	0.63:1 (379.1qm)
Percentage variation to requirement:	59.4%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

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

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

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

"Maximum FSR permitted for this site as per LEP is 0.4:1 which gives a Gross Floor Area (GFA) of 237.8 sq.m. However under DCP there is an exception to FSR for undersized lots in areas U on the LEP LSZ map where the maximum floor area is a calculation of FSR based on 750 sqm lot size/ site area, which equals to 300sq.m, which is 0.5:1.

The site area is 594.4 sq.m

Existing Building GFA is 240.6 sq.m which equals to an FSR of 0.40:1

The allowable GFA is 300 sq.m which equals to an FSR for this site of 0.50:1

The Proposed building GFA is 382.9 sq.m which equals to an FSR of 0.64:1 when calculated against the site area (594.4) or 0.51:1 if calculated against the 750 sq.m lot size.

The proposed building therefore exceeds the allowable FSR by 0.14:1, or 14%.

However, it is noted that it would appear that the approved (current) scheme really contains large areas of unenclosed space that do not count at FSR. Filling this in as proposed (eg adding a bathroom and laundry at the pool level) increased the GFA without increasing bulk and scale. Further, they actually constructed on site a larger building area than approved (one of the reasons for previous stop-work orders). Counting this in then the existing building doesn't match the FSR number as approved. In terms of the new works, only the garage, office and Master bedroom is actually a floor area increase that also increases the bulk and scale."

The above matters are agreed with by the Assessing Officer, however it is noted with the reduction of Level 5 via the amended plans that the overall has reduced from 382.9sqm down to 379.1sqm. Of particular note are the site's steep fall from Gurney Crescent down to rear, and the lot is 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 1150sqm, where the site is only 594.4sqm in area.

Additionally, it is agreed that the proposed development is of consistent height, bulk, and scale of surrounding development. The proposed development includes a varying front setback to the garage and entry to the dwelling, which is generally consistent with the prevailing front building line in the street, and provides an improved landscape treatment (planter box adjacent to the entry) to the front setback area. In addition the side setback and wall height non-compliance do not result in any unreasonable overshadowing or privacy impacts, as detailed throughout this report.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor Space Ratio development standard and the objectives of the E3 Environmental Management zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment: The proposed development is well articulated and modulated so as to break down the visual appearance of the built form. The subject site allows for a suitable presentation of landscaping and vegetation via the proposed plantings submitted with the revised landscaping plan that will complementary to the area. The proposal will not unreasonably impact upon the streetscape and is consistent with other parking structures and habitable living spaces/floors at the street level in this section of Gurney Crescent.

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: A majority of additional floor area is contained within the existing footprint of the dwelling and upper level additions. The resultant dwelling provides for a more articulated and modulated development and the revised landscape plan will ensure consistency with this merit objective.

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

Comment: The design of the proposal is suitable in that it maintains the character of the site and consistency with surrounding development. The proposed development will sit appropriately within the residential setting in a manner that is consistent with the character and landscape of the area.

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

Comment: It is considered that the proposed additions have been designed to improve privacy and amenity to adjoining properties. It is noted that this has been achieved by the installation of obscured/frosted glazing, privacy screens and reduction of trafficable area of the balconies on levels 3 and level 4 and the deletion of the balcony on level 5. A review of the shadow diagrams submitted with the application demonstrates that the proposed additions to the upper level will not result in any significant overshadowing to residential properties.

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

Comment: The development is for residential use.

Zone objectives

The underlying objectives of the E3 Environmental Management zone are:

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

Comment: The development manages the ecological, cultural and aesthetic values of the site with the proposed works on the upper disturbed portion of the site. The amended landscape plan will restore ample plants of shrubs, plants and trees to ensure that the development satisfies these objectives above.

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

Comment: The proposed alterations and additions to the existing uncompleted dwelling and landscaping works is a typical form of development in the locality and the additional height will maintain the area's ecological and aesthetic values.

It is considered that the development satisfies this objective.

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

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

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 24 May 2019, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of Building and Floor Space Ratio Development Standard associated with a single dwelling house (Class 1 building).

5.10 Heritage conservation

The site is within close proximity to Heritage Item No. 11 'Harbour Foreshores', as identified within Schedule 5 of the MLEP 2013. Accordingly, the application was referred to Council's Heritage Officer for comment.

Council's Heritage Officer has reviewed the proposal against this clause and noted as follows:

"This application is for alterations and additions to a dwelling house, using an existing unfinished, previously approved dwelling. The proposed building works do not extend beyond the existing retaining wall on site, which is located some 12 - 15 metres back from the harbour foreshore.

Given the separation of the works from the heritage listed harbour foreshore, it is considered that there will be no impact upon this heritage item.

Therefore, no objections are raised on heritage grounds and no conditions required."

Therefore, no further consideration against this clause is required for the purposes of this assessment.

6.5 Terrestrial biodiversity

The site is located on the Manly Local Environment Plan 2013 (MLEP 2013) Terrestrial Biodiversity Map and thus requires a Terrestrial Biodiversity Report (TBR) addressing all points of consideration in Clause 6.5(3) and (4) of the MLEP 2013.

However, given the site, location and nature of the proposed works, the Bushland and Biodiversity Department have determined that a TBR is not required to be submitted by the applicant and have completed an assessment (provided below).

"It is noted that the proposal's compliance with these provisions was not addressed in the submitted DA. In order to achieve compliance with these provisions, significant new native landscaping is required to be established to the west of the proposed pool. Planted species are to be in accordance with the original vegetation community which still exists on other properties within the subject site's vicinity. The submitted Landscape Plan, which consists predominantly of exotic species, is to be amended/replaced accordingly."

Council's Planner requested the applicant to submit a detailed landscaping plan which was received on 1 July 2020 from the applicant. This plan has now been reviewed by Council's Bushland and Biodiversity Department and Council's Landscape Advisor and considered to be satisfactory.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 599.1sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling	1	N/A	Yes
	Dwelling Size: 460sqm (minimum)	379.1sqm	N/A	No
4.1.2.1 Wall Height	S: 8m (based on gradient > 1:4)	4.2m - 10.8m	Nil - 35%	No
	N: 8m (based on gradient > 1:4)	3.5m - 11.85m	Nil - 48.1%	No
4.1.2.2 Number of Storeys	2	5	150%	No
4.1.2.3 Roof Height	Height: 2.5m	0.6m	N/A	Yes
	Parapet Height: 0.6m	0.4m	N/A	Yes
	Pitch: maximum 35 degrees	5 degrees	N/A	Yes

4.1.4.1 Street Front Setbacks	Prevailing building line 1.15m* / 6m	0.3m - 4.1m	Nil - 73.9%	No
4.1.4.2 Side Setbacks	N: 1.17m - 4m (based on wall height)	1.1m - 2.2m	Nil - 72.5%	No
	S: 1.4m - 3.6m (based on wall height)	0.2m - 4.635m	Nil - 85.7%	No
	Windows: 3m	0.9m - 4.635m	Nil - 70%	No
4.1.4.4 Rear Setbacks	8m	25.3m (dwelling) 17.8m (pool)	N/A N/A	Yes Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (356.6sqm) of site area	60.2% (508sqm)	N/A	Yes
	Open space above ground 25% (89.2sqm) of total open space	13.9% (70.7sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% (239.6sqm) of open space	55.4% (331.8sqm)	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	83.8sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	4.9m	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	2.2m	120%	No
	1m curtilage/1.5m water side/rear setback	1.6m, 4.7m	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

* Prevailing building line - 1.15m (93 Gurney Cr (carport) - 0.6m and 97 Gurney Cr - (1.7m garage)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
1 Introduction	Yes	Yes
1.7 Aims and Objectives of this Plan	Yes	Yes
Part 3	Yes	Yes
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3 Landscaping	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
Part 4	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	No	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 Other Development (all LEP Zones)	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
Part 5	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4 Environmentally Sensitive Lands	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedules	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 3 - Parking and Access	Yes	Yes
Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles	Yes	Yes
Schedule 3 - Part B - Minimum Dimensions for parking, access and loading	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

Merit consideration:

The development is considered against the Objectives of the Control:

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

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:

View loss was raised from the adjoining property to the north (97 Gurney Crescent) in relation to views loss from their dwelling. In addition issues were raised of view loss from Gurney Crescent.

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

Comment:

The primary views from 97 Gurney Crescent are achieved over the rear boundary with secondary views achieved over the northern and southern side boundaries. These views are achieved from a standing and sitting position.

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





**View from 97 Gurney Crescent (rear western boundary)
Crescent (southwest)**

**View from 97 Gurney
View from 97 Gurney Crescent (northwest)**

Comment:

Given the primary views is unaffected by the proposal and a large portions of side boundary views are maintained it is considered that the view loss 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.





View from 97 Gurney Crescent (southern side boundary)
(southern side boundary)
Above photo demonstrating position of Level 4
position of Level 5

View from 97 Gurney Crescent
Above photo demonstrating

Comment:

It is noted that the proposed development breaches both controls of the MLEP and MDCP, however it is considered the amended design demonstrates a stepping down the slope of the land given the steep nature of the site (particular over the building footprint). As demonstrated the view loss is considered to be minor and It is therefore considered that the proposed development satisfies this fourth step.

Views from the public domain

"The first step of this stage is to identify the nature and scope of the existing views from the public domain. This identification should encompass (but is not limited to):

- the nature and extent of any existing obstruction of the view;*
- relevant compositional elements of the view (such as is it static or dynamic and, if dynamic, the nature and frequency of changes to the view);*
- what might not be in the view - such as the absence of human structures in the outlook across a natural area (such as the view from Kanangra Walls);*
- is the change permanent or temporary; or*
- what might be the curtilages of important elements within the view."*

Comment: Views are currently available over the site and view corridors will be maintained along the northern and southern sides of the proposal from the public domain.

"The second step is to identify the locations in the public domain from which the potentially interrupted view is enjoyed."

Comment: The view is obtained from the street level at Gurney Crescent.

"The third step is to identify the extent of the obstruction at each relevant location.

Unlike Tenacity (which adopts the proposition that sitting views are more difficult to protect than standing views), the impact on appreciation of a public domain view should not be subject to any eye height constraint. A public domain view is one that is for the enjoyment of the whole population, old or young and whether able-bodied or less mobile. It is not appropriate to adopt some statistically derived normative eye height for the assessment of such views (such as the conventionally adopted 1.6m eye height for the assessment of overlooking privacy impacts). Indeed, some views (such as that from Mrs Macquarie's Chair toward the Opera House and Harbour Bridge) may well be ones likely to be enjoyed frequently from a seated position."

Comment: It is considered that the view is achieved from a standing position and it is noted that the section of Gurney Crescent is a dead end with no pedestrian pathway and/or turning circle for vehicles.

"The fourth step is to identify the intensity of public use of those locations where that enjoyment will be obscured, in whole or in part, by the proposed private development."

The following statement from the owner of 97 Gurney Crescent stated:

"Gurney Crescent is open to the public, so the intensity reflects the residential control in the area"

Comment: The key element in this part of the test is to identify the intensity of the public use of this dead section of Gurney Crescent which has no public pathway and no turning circle for vehicles, therefore it is considered that the frequent of the public use is very limited and very low. View corridors will be maintained along the northern and southern sides of the proposal.

"The final step to be identified is whether or not there is any document that identifies the importance of the view to be assessed.

This will encompass specific acknowledgement of the importance of a view (for example, by international, national, state or local heritage recognition) or where the relevant planning regime promotes or specifically requires the retention or protection of public domain views."

Comment: It is acknowledged that Clause 4.3 Height of buildings and Clause 3.4.3 Maintenance of Views includes maintaining views from public spaces this within the respective objectives. The proposal will maintain view corridors along the northern and southern sides of the proposal.

Views to be maintained from the public domain down both sides of the proposal ensuring that the proposal development meets the above planning principle.

The view loss from Gurney Crescent has been considered to acceptable given the following: -

- Views are maintained from the public domain (Gurney Crescent and Rignold Street Foreshore Reserve);
- Views from the Gurney Crescent has been partially or fully obscured by previous developments (eg. No. 81, 83, 87, 89, 91 and 97 Gurney Crescent)





No. 81 Gurney Crescent
No. 89 Gurney Crescent
No. 97 Gurney Crescent

No. 83 Gurney Crescent
No. 91 Gurney crescent

Given the above it is considered the proposal demonstrates a general consistency with the objectives of the control and Principle. Additionally, it is considered that this part of Gurney Crescent is primarily used by owners, their visitors and services/deliveries to these residents and therefore coupled with the views being maintained from Rignold Street Foreshore Reserve it is considered that the proposal demonstrates compliance with this merit consideration.

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.

4.1.1.1 Residential Density and Dwelling Size

Clause 4.1.1.1 of the MDCP 2013 requires one (1) dwelling to be provided per 1150sqm of land for allotments located within the Residential Density Areas - 1. The subject site is 599.4sqm, therefore does not meet the above-mentioned requirement. The application proposes alterations and additions to an dwelling house on an undersized allotment (599.4sqm). As such, the proposed works are considered acceptable in this regard.

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

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

4.1.3 Floor Space Ratio (FSR)

This Clause relies upon the objectives of Clause 4.4 and Clause 4.6 under MLEP 2013. An assessment of the proposal against the objectives of Clause 4.4 has been provided within this report. This assessment has found the proposal to be consistent with the objectives of Clause 4.4.

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

Description of non-compliance

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

Clause 4.1.4.2 of the Manly DCP requires development be setback at least 2.93m from the eastern boundary and 3.23m from the western boundary. Further, new windows facing side boundaries are to be setback at least 3m from the side boundary.

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

The development proposes the following:

Front setback- 0.3m - 4.1m, consistent with prevailing setback (31.7% - 95% variation to the numeric control).

North side setback- 1.1m - 2.2m (Nil - 72.5% variation to the numeric control).

South side setback- 0.2m - 4.635m (Nil - 85.7% variation to the numeric control).

Rear setback- 25.3m (compliant)

Windows- 1.3m (70% variation to the numeric control).

Merit consideration:

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

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

Comment:

The development proposes a new garage on the front boundary. Similar types of parking arrangements are seen along this dead end section of Gurney Crescent. This proposed development is consistent with the spatial proportions of the street and the street edge.

The development proposes a planter box on the southern edge of the garage addressing Gurney Crescent which allow for plants and shrubs to ensure consistency with this merit consideration.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed development allows for adequate visual and acoustic privacy to be retained between the subject site and neighbouring properties. In regards to sunlight access, the proposed development is consistent with the numeric requirement for solar access under Clause 3.4.1 of the Manly DCP. The proposed development will ensure views of Middle Harbour, Fig Tree Cove and Bantry Bay will be retained from surrounding properties and a view corridor down the northern side boundary. Additionally, it is considered Given the location of the garage with adequate vertical and horizontal spatial separation to the street which also complemented with landscaping.

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

Comment:

Flexibility is provided in this circumstance as the proposed works will not result in any unreasonable impacts (solar access, privacy) upon adjoining properties.

Objective 4) To enhance and maintain natural features by:

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

Comment:

Suitable landscaping is proposed across the site. The proposed development is not the close vicinity of any Open Space Lands or National Parks.

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

Comment:

The subject site is located in bush fire prone lands and suitable measures (via conditions) will be put in place to ensure that this development will satisfy this objective.

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

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

Clause 4.1.9 of the Manly DCP 2013 requires swimming pools be no higher than 1m above natural ground level.

The proposed swimming pool (gutter/retaining wall) at its highest is elevated 1.4m above natural ground level, non-compliant with the numerical control. This represents a 40% variation to the numeric control.

Merit consideration:

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

Objective 1) To 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 is appropriately set back from the side boundaries. While the pool does not meet numerical compliance in relation to height. The proposed fencing and setbacks allow for sufficient visual and aural privacy for the subject site and surrounding properties, subject to conditions of consent relating to the swimming pool mechanical equipment.

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

Comment: The swimming pool will not create contrast within the streetscape along Gurney Crescent given its location within the rear yard. There are swimming pools within the area, notably at Nos. 34, 36, 40, 81, 87 and 97 Gurney Crescent. The proposal therefore remains consistent with the established character of the locality.

Objective 3) To integrate landscaping; and

Comment: The proposal involves the addition of significant vegetation, particularly within the rear and side setback areas are indicated on the landscape plan (drawing number A106 (Rev B) dated 1 July 2020). This will in turn serve to soften the built form of the development as viewed from adjoining and surrounding properties.

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

Comment: The subject site is located in a bush fire asset protection zone and the pool may be a viable water resource during bushfire emergencies.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or

their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

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 \$13,294 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,329,382.

CONCLUSION

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

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

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

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

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

That Northern Beaches Council as the consent authority vary Clause 4.3 Height of Building and Clause 4.4 Floor Space Ratio development standard pursuant to Clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Conclusions on the Assessment of the Application

As addressed within this assessment report the proposed development does not comply with the

Clause 4.3 Height of buildings and Clause 4.4 Floor space ratio and a formal request via Clause 4.6 Exceptions to development standard was lodged by the applicant was assessed and considered acceptable in this instance given the existing building footprint of the existing, substantial sloping nature of the subject site (over 50% sloping grade within the building footprint) and the proposal has been considered as alterations and additions to existing dwelling versus a new dwelling.

Variations to the MDCP 2013 controls Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height), Clause 4.1.3 Floor Space Ratio (FSR) and Clause 4.1.4 Setbacks (front and side) have been considered and addressed and supported. The proposed design does not give rise to any unreasonable amenity impact or visual impact, and is consistent with the objectives of the MLEP 2013 and MDCP 2013.

In this case, the proposed development provides a design that involves sufficient modulation and sufficient physical separation from neighbouring dwelling(s). A condition is recommended for a pre-dilapidation and post-dilapidation reports to be completed to ensure the physical condition of the adjoining and surrounding properties are maintained. 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 (subject to standard and specific conditions) 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

Accordingly Council as the consent authority grant Development Consent to DA2019/1463 for Alterations and additions to a dwelling house on land at Lot 44 DP 11214, 95 Gurney 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

A001 (Rev A)	16 December 2019	Mark Hurcum Design Practice Architecture
A100 (Rev B)	11 May 2020	Mark Hurcum Design Practice Architecture
A101 (Rev B)	11 May 2020	Mark Hurcum Design Practice Architecture
A102 (Rev B)	11 May 2020	Mark Hurcum Design Practice Architecture
A103 (Rev B)	11 May 2020	Mark Hurcum Design Practice Architecture
A104 (Rev A)	16 December 2019	Mark Hurcum Design Practice Architecture
A105 (Rev A)	16 December 2019	Mark Hurcum Design Practice Architecture
A201 (Rev B)	11 May 2020	Mark Hurcum Design Practice Architecture
A202 (Rev B)	11 May 2020	Mark Hurcum Design Practice Architecture
A203 (Rev B)	11 May 2020	Mark Hurcum Design Practice Architecture
A204 (Rev A)	16 December 2019	Mark Hurcum Design Practice Architecture
A221 (Rev B)	11 May 2020	Mark Hurcum Design Practice Architecture
A222 (Rev A)	16 December 2019	Mark Hurcum Design Practice Architecture
SK05 (Rev A)	16 December 2019	Mark Hurcum Design Practice Architecture
SK21/1 (Rev A)	16 December 2019	Mark Hurcum Design Practice Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Risk Assessment (Reference number 2696)	22 November 2019	Bush Fire Planning Services
Geotechnical Assessment Report (Project No. 2019-203)	November 2019	Crozier Geotechnical Consultants

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
A106 (Rev A)	16 December	Mark Hurcum Design

	2019	Practice Architecture
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Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	16 December 2019	Narelle Van Gemert

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
NSW Rural Fire Service	Response NSW Rural Fire Service	11 February 2020

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

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

3. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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) The works must comply with the relevant Ausgrid Network Standards and SafeWork

NSW Codes of Practice.

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$13,293.82 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$1,329,382.00.

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

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council

that the total monetary contribution has been paid.

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

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

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

6. **Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required 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, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

7. **On slab landscape planting and associated works**

- a) Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing to all internal walls and slab, and drainage of the concrete slab over which soil and planting is being provided.
- b) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil volume, soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.
- c) The following soil depths are required in order to be counted as landscaping:
 - 300mm for lawn
 - 600mm for shrubs
 - 1metre for trees

Reason: To ensure appropriate and secure waterproofing and drainage is installed to direct water flow into the drainage system, and away from habitable areas.

8. Stormwater Disposal

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

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

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

9. Amendments to the approved plans

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

- Level 4 - The northern privacy screen is to be extended by 2m to the west.
- Level 3 - The northern privacy screen is to be extended by 2m to the west.
- Level 2 - A privacy screen is to be installed along the northern elevation of the walkway connecting the balcony and external stairs.

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

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

10. Boundary Identification Survey

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

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

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

11. 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.

12. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. 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 facilitate suitable vehicular access to private property.

13. **Waste Management Plan**

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

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

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

14. **Water Quality Management**

The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment

15. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities);
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls;
- North point and scale.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval

prior to the issue of the Construction Certificate.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

16. **New landscaping**

Any new landscaping is to be composed entirely of species from the Sydney Coastal Sandstone Foreshore Forest Plant Community Type (PCT). A species list is available from Council upon request. Landscape Plans are to be prepared/amended accordingly and compliance with this condition is to be certified in writing by a qualified landscape architect, horticulturalist or ecologist and evidence provided to the Principal Certifying Authority prior to issue of the Construction Certificate.

Reason: To achieve compliance with Manly LEP Clause 6.5 (Terrestrial Biodiversity).

17. **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.

18. **External Finishes to Roof**

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

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

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

19. **Sydney Water "Tap In"**

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

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

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

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

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

20. **Mechanical Plant Location**

Any mechanical plant associated with the dwelling house is to be located and/or acoustically treated so the noise from the machinery does not exceed 5dB(A) above the background ambient noise levels when measured at the nearest property boundary.

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

Reason: To ensure the acoustic amenity of the neighbouring residents.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

21. Pre-Construction Dilapidation Report

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

Property / Properties: Nos. 93 & 97 Gurney Crescent, Seaforth

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

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

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

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

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

22. Tree protection

(a) Existing trees which must be retained

- i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
- 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.

23. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prepared by Design Practice prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

The discharge of sediment-laden waters from the site may result in clean-up orders and/or fines under Council's Compliance and Enforcement Policy and legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997.

Reason: Protection of the receiving environment

24. **Installation and Maintenance of Sediment and Erosion Control**

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

25. **Road Reserve**

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

Reason: Public safety.

26. **Removing, Handling and Disposing of Asbestos**

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

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

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

27. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

28. **Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

29. **Traffic Control During Works**

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

Reason: Public Safety.

30. **Vehicle Crossings**

The Applicant is to construct a concrete dish drain at the property frontage on Gurney Crescent in accordance with Northern Beaches Council Specification 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.

31. **Waste Management During Development**

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

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

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

32. **Trees Condition**

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

- (a) A general decline in health and vigour.
- (b) Damaged, crushed or dying roots due to poor pruning techniques.
- (c) More than 10% loss or dieback of roots, branches and foliage.
- (d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- (e) Yellowing of foliage or a thinning of the canopy untypical of its species.
- (f) An increase in the amount of deadwood not associated with normal growth.
- (g) An increase in kino or gum exudation.
- (h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
- (i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of Trees.

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

a) All rock outcrops outside of and below 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.

34. **Building materials**

During construction, all material associated with works is to be within the construction area unless a permit is applied and approved to storage materials on the road reserve. All material is to be removed off site and disposed of according to local regulations. The property is to be kept clean and any building debris removed as frequently as required to ensure no debris enters

receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period and ensure materials are stored on site.

35. 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 Level 5 to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

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

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

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

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

36. Landscape completion certification

a) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape consultant/horticulturist or ecologist 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.

b) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape consultant/horticulturist or ecologist shall be submitted to the Certifying Authority, certifying that the landscape works have been established and maintained 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.

37. Stormwater Disposal

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

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

38. Post-Construction Dilapidation Report

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,

- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

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

39. **Required Planting**

Trees, shrubs and groundcovers shall be planted in accordance with the Landscape Plan Drawing No.A106 B Dated 29/6/20 prepared by Mark Hurcum Design Practice.

Reason: To maintain environmental amenity.

40. **Works as Executed Drawings - Stormwater Treatment Measures**

Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment

41. **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

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

Reason: To prevent pollution of the environment and to protect the amenity of the area.
(DACPLF03)

42. **House / Building Number**

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

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

Reason: Proper identification of buildings.

43. **Swimming Pool Requirements**

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

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

(i) Swimming Pools Act 1992;

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

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

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life (DACPLF09)

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

44. Environmental and priority weed control

All weeds are to be removed and controlled in accordance with the Biodiversity Conservation Act 2016.

Reason: Preservation of environmental amenity.

45. Landscape maintenance

i) 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.

ii) 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.

46. Maintenance of Stormwater Treatment Measures

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment

47. **No Planting Environmental Weeds**

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>). Compliance with this condition is to be certified in writing by a qualified landscape architect, horticulturalist or ecologist and provided to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: Weed management.

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

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

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

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

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

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

50. **Swimming pool filter and air-conditioning units (noise)**

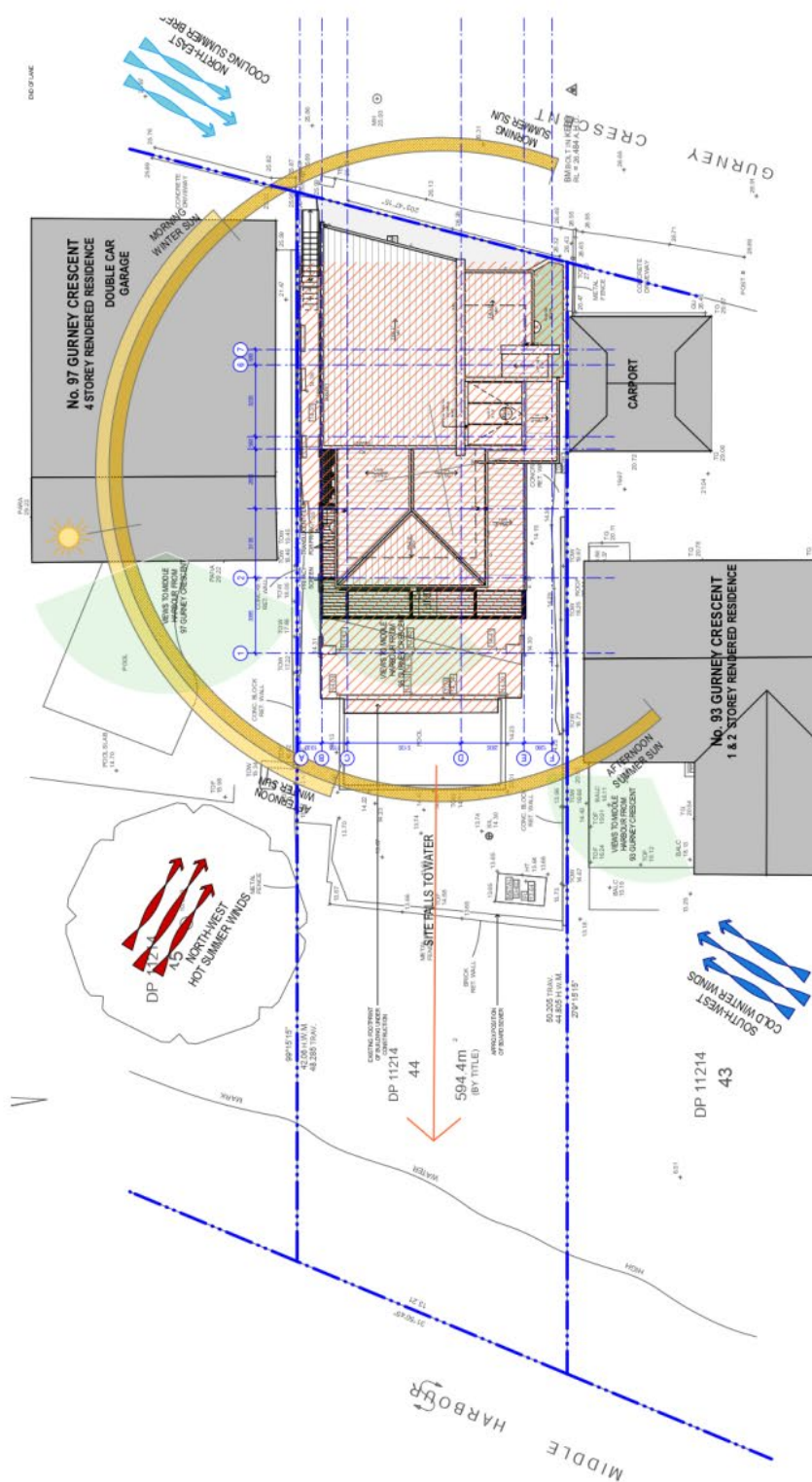
The swimming pool filter and air-conditioning units are not create any noise which exceeds over 5dB(A) above the ambient background noise levels when measured from any property boundary.

Reason: Ensure reasonable acoustic amenity.

51. **Outdoor Lighting**

All outdoor lighting is to be directed away from the adjoining property boundaries and must comply with AS/NZS 4282 '*Control of obtrusive effects of outdoor lighting*'.

Reason: To maintain the amenity of the adjoining properties.



FOR DEVELOPMENT APPLICATION ONLY

NEW DWELLING ON EXISTING STRUCTURE

95 GURNEY CRESCENT SEAFORTH

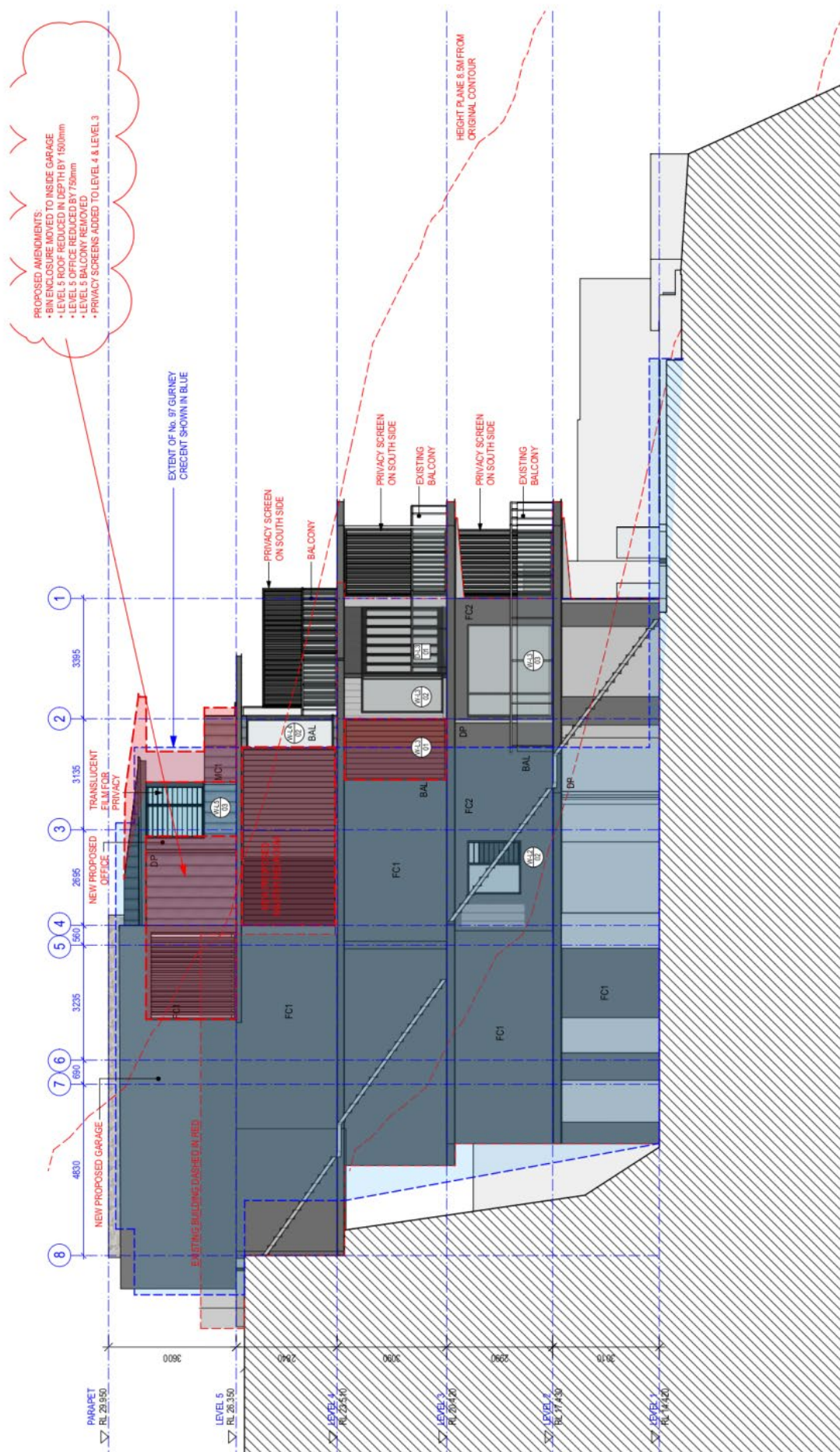
SITE PLAN/ SITE ANALYSIS

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MARK HURJUM DESIGN PRACTICE PTY LIMITED 2019

[illegible]

1:200 @ A3
Monday, 16 December 2019



NORTH ELEVATION

NEW DWELLING ON EXISTING STRUCTURE
95 GURNEY CRESCENT SEAFORTH

A201 B
1:100 @ A3
Tuesday, 12 May 2020

11/20	B	
28/10	BPI	
DATE	ISSUE	

PREPARED FOR: DA ASSISEMENT	BRAND: HURCOM DESIGN PRACTICE
ISSUED TO: COOUNCIL FOR REVIEW	1 2 3 4 5 6 7 8 9 10 11 12 13
PROJECT: MEIKERT	LEVEL: 2/1 ALBERT STREET NORTH
	WORTHINGTON SYDNEY NSW 2040
	DATE: 22/09/2010
	PROJECT NO: 271 9955 5883



HURCOM DESIGN PRACTICE



A202 B
1:100 @ A3
Tuesday, 12 May 2020

NEW DWELLING ON EXISTING STRUCTURE
95 GURNEY CRESCENT SEAFORTH

SOUTH ELEVATION



A203 B
1:100 @ A3
Tuesday, 12 May 2020

NEW DWELLING ON EXISTING STRUCTURE
95 GURNEY CRESCENT SEAFORTH

EAST AND WEST ELEVATION

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NEW DWELLING ON EXISTING STRUCTURE

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1:100 @ A3
Monday, 16 December 2019

ISSUED FOR DEVELOPMENT APPLICATION	18/12/19	A
ISSUED FOR CLIENT MEETING	27/11/19	AP3
AGENDMENT	DATE	ISSUE
MARK HURCUM DESIGN PRACTICE		
A B C H J L C I S		
LEVEL 2 271 ALFRED STREET NORTH		
NORTH SYDNEY NSW 2060		
FACSIMILE 02 9355 5843		
DESIGNER'S OFFICE		



**CLAUSE 4.6 VARIATION – HEIGHT OF BUILDING
ALTERATIONS AND ADDITIONS TO EXISTING (INCOMPLETE) BUILDING
95 GURNEY CRESCENT SEAFORTH
UPDATED AUGUST 2020**

Amendments since original submission noted in blue

This statement constitutes a request for variation to a development standard, made under Clause 4.6 of Manly Local Environmental Plan 2013 for Northern Beaches Council.

The objectives of Clause 4.6 are as follows:

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

For this to occur, the Development Application is to be supported by a written application that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case. This application should be read in conjunction with the accompanying Development Application drawings prepared by Mark Hurcum Design Practice and Statement of Environmental Effects.

The unique situation of this project is that the proposed DA is for an extension to an unfinished building shell undertaken by another applicant and architect, and this has been “under construction” for around 20 years. The original approval for the current building was approved in 1999. A final S.96 application for a revised scheme was approved 2011.

The proposal is to add another level on the existing concrete roof as well as extending out the approved carport and enclosing it as a garage and an office. This work exceeds the height limit.

Following submission of the DA amendments were requested by Council that included reducing the extent of development of the upper levels. By default, this also reduced both the floor area and the extent of height non-compliance, as outlined below. The Clause 4.6 has been updated to describe these amendments and changes to the extent of non-compliance.

1.0 Zoning of the Land

The subject site is zoned E3 “Environmental management”

2.0 Objectives of the Zone

The objectives of zone are as follows:

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



**CLAUSE 4.6 VARIATION – HEIGHT OF BUILDING
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- To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.

3.0 Standard to be Varied

The standard to be varied is Part 4, Clause 4.3 of LEP2013, which sets the maximum building height for a building as shown on the Building Height Map. The maximum building height for 95 Gurney Crescent is 8.5 metres.

4.0 Objectives Pertaining to Standard to be Varied

The objectives that relate to the building height standard is found in LEP 2013 and referenced in DCP paragraph 4.1.2.

“The objectives of this clause are as follows:

- a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) to control the bulk and scale of buildings,*
- (c) to minimise disruption to the following:*
 - (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) views between public spaces (including the harbour and foreshores),*
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

5.0 Extent of Non Conformity to the Standard

To ascertain the level of height compliance we have used the estimated existing ground level contours that were supplied at the time of the original (approved) DA and subsequent approved S96. This approval included a large extent of excavation however the pre-existing ground levels should be used to determine the height as the sections of building that are constructed below the level of the retaining wall at any one point are essentially “invisible”.

The original survey that would have been submitted with the original DA was not obtainable, but in the original DA they superimposed the contour lines onto the site plan. This was used to determine the pre-development existing ground level and therefore the 8.5m height plane.

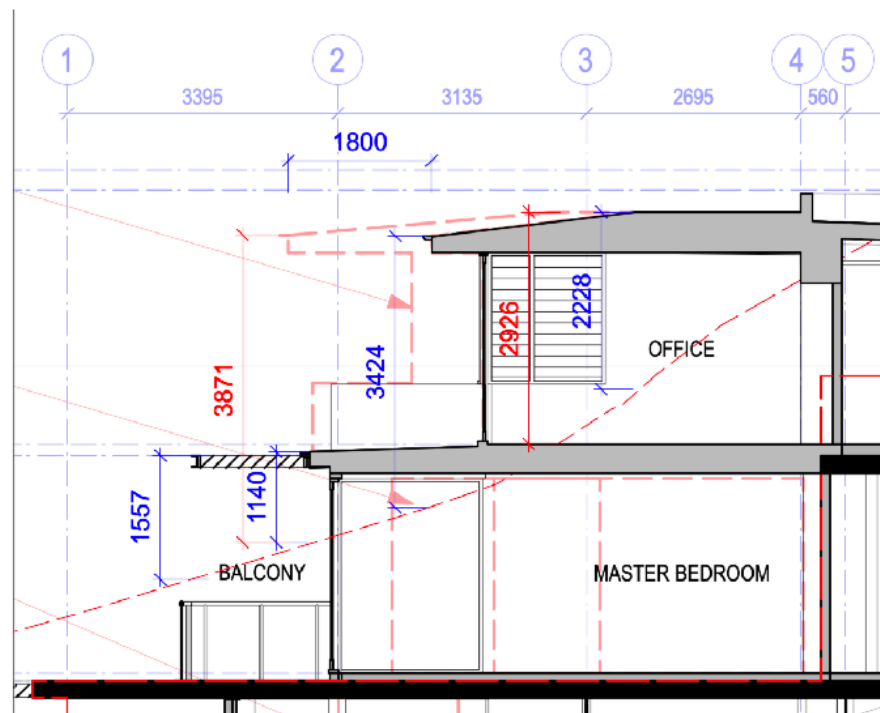


CLAUSE 4.6 VARIATION – HEIGHT OF BUILDING
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The existing building has a maximum building height that does not conform with the building height control. The proposal includes for development of each level, that in effect adds to the height of the building where the additions are above the existing formed structure.

For the originally submitted design (show dashed red below), at the most extreme point, the highest point of building above the existing ground level would be 12.4m, which is 3.9m (3.87m) above the 8.5m height plane at that point. This can be seen in the attached diagram.

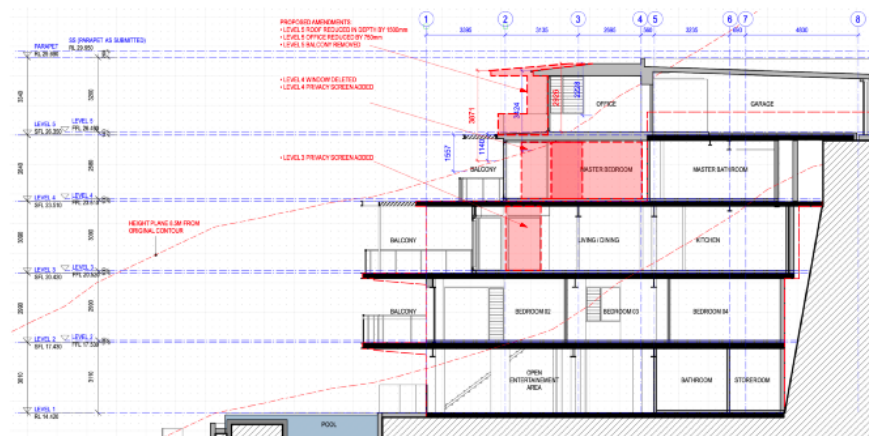
The amended design has reduced this level of non-compliance. Due to setting back the upper level, at the same point that the original non-compliance was 3.87m the noncompliance has been reduced to 1.14m. This was originally the gutter line to the Western eave of the office. This eave overhang was pushed back 1.8m. At this point now the gutter line is now 3.42m, a reduction of 447mm in height non-compliance.



At 3.42m added to the 8.5m height plane, that brings the overall height at the highest point to 11.92m. This can be calculated as a percentage as follows: $(11.92 - 8.5m) / 8.5m = 40\%$ variation.

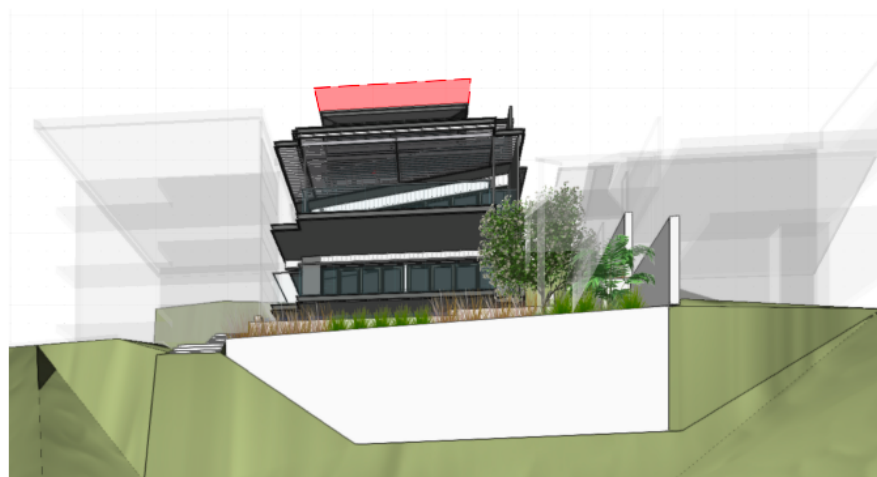


**CLAUSE 4.6 VARIATION – HEIGHT OF BUILDING
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OVERALL SECTION

While this numerically does not seem like much of a reduction, the pushing back of the eave overhang breaks up the overall bulk of the building when viewed from the water – as it would be from the West side. Looking up at the new works, they will visually recede more than the 400mm difference.



VIEW FROM WATER SHOWING TOP EAVE PUSHED BACK



**CLAUSE 4.6 VARIATION – HEIGHT OF BUILDING
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6.0 How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The proposal does not comply with the building height control, however this non-compliance is justifiable and strict compliance can be regarded as unreasonable or unnecessary for the following reasons:

6.1 Existing surrounding conditions and similarly approved examples.

The main reason for why strict compliance can be regarded as unreasonable or unnecessary is that the proposal is to be constructed directly beside a similar scale (and non-complying) building to the North (No.97). No.97 is a very rectilinear boxy development that includes an enclosed garage at the top level and then 4 stories below this. Like No.95, the fall in the natural ground level means that No.97 definitely does not comply with the height control and they submitted a Clause 4.6 (SEPP1) with their DA, which was approved. The proposal at No.95 is actually more articulated, stepped and less intrusive than No.97.

Two doors down No.91 Gurney is currently under construction and it too is well over the height limit and they also submitted a Clause 4.6 that was approved. In this instance, therefore, applying strict compliance to our proposal would not provide any benefit as this site can already be read as existing between these two non-complying envelopes.

It is noted that there are a great many developments in Gurney crescent that have been approved over the last number of years that have almost all of them has Height noncompliance. Therefore is it unreasonable by comparison to require strict compliance of the proposal based on bulk and scape when the proposal matches approved neighbouring developments.

Further, the reduction in the extent of non-compliance brings the new extension of the upper level (Home Office) well back behind the neighbour to the North (No.97)

6.2 Lack of impact to surrounding properties.

As noted above, this proposal utilises an existing unfinished shell from a previously approved DA. Only parts of the proposed DA (namely the Garage, Office, Master bedroom and lift/stair) is an extension of the previously approved building envelope. It is noted therefore that the impact difference of these new areas should be how to assess the level of impact on neighbouring properties.

The major possible impact is overshadowing and over looking to the property to the South (No.93), however their house is quite a different formation to any of the surrounding neighbours. They have a roof carport at the street, raised on very tall pillars with a rocky garden bed and terraced lawns underneath, and their main house is disconnected and much further down the block. As such, there is a much lesser impact for this neighbour than if their main house had been directly adjacent to the subject building.



CLAUSE 4.6 VARIATION – HEIGHT OF BUILDING
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An analysis of the shadow impact shows that the majority of shadow impact to their house, which only occurs between 9am and 12pm, is from the existing approved slab structures. The new additions do add further shadow, but as most of this additional shadow falls on their roof it doesn't create an additional impact resulting from the non-complying portion.

Therefore is it unreasonable to require strict compliance of the proposal based on the fact that there is very little demonstrable impact to surrounding neighbours.

6.3 Lack of properties to the rear (no view loss)

It is an unusual and unique feature of this part of Gurney Crescent that there are no properties on the other side of the road. As such, there is no view loss at all associated with the non-complying height of the proposal. Therefore is it unnecessary to require strict compliance of the proposal based on view loss.

6.4 Development of previously approved design (not by Applicant).

The current Applicant did not design or construct the previously approved scheme that was left unfinished. That design was essentially a 5 storey but only 2 bedroom house. It made no sense and was incredibly vague in terms of where external areas stopped and internal areas began. The evidence of the history of the project shows that it is unlikely that the previous developer was ever going to leave it as per the approval and they were regularly being stopped due to construction of unapproved works. Our Client wishes to develop the unworkable existing approval into a home much more suited to the site as well as suited to their lifestyle. Therefore is it unreasonable to require strict compliance of the proposal considering it has to work with the structure of what has already been constructed.

6.5 Visibility of non-compliance

From the street, the building appears as a single storey, dropping down below the street level. At the street side, all the visible works comply with the height limit. From the water, the majority of the building remains as per the approval and the non-complying sections are stepped back – although they will be visible from the water. However, from this position, the top level is still stepped back further than the approved property to the North (No.97) as well as the new building works to No.91. It can be considered as unreasonable to enforce the height compliance if the proposal sits between to more prominent but approved recent developments. The main area that the non-compliance will be visible is from No. 93 directly to the south, however the design is such that the office is stepped back away from this side in order to reduce the building bulk from that position.

As noted above, the amendments undertaken have pushed the roof extent over the office back by 1.8m. This reduces the non-compliance by almost 500mm. While this numerically does not seem like much of a reduction, the pushing back of the eave overhang breaks up the overall bulk of the building when viewed from the water – as it would be from the West side. Looking up at the new works, they will visually recede more than the 400mm difference.



**CLAUSE 4.6 VARIATION – HEIGHT OF BUILDING
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6.6 Despite the non-compliance, the proposal achieves all objectives of the development standard.

As covered below, despite the non compliance with the standard the Aims and Objectives are still met.

7.0 Compliance with the Objectives Pertaining to Standard to be Varied

7.1 *To provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

The nature of this topography is that it steps down the site. While the previous answer of the building on this site by the original owner/applicant was to dig a big hole, it is more appropriate that the development should step as the site falls away, which this proposal does. This is at odds, it must be acknowledged, to the proposal for No.97 that was approved, which is a directly vertical 5-storey building that also does not comply to the height limit.

7.2 *To control the bulk and scale of buildings,*

It is acknowledged that the Height limit does effectively control bulk and scale. However, if this was the only non-complying building being proposed then the argument would be a lot stronger that the development is inappropriate. But as noted above, the building sits between two larger, taller and equally non-complying buildings (No. 97 and No.91), plus the perception from the street is only of the single storey complying section.

7.3 *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),*

As noted, there are no residential properties directly behind the subject site and as such there are not view loss impacts. It is acknowledged that the approved carport was open whereas the proposed DA includes an enclosed entry and garage, therefore blocking views to the foreshore/harbour from the street, that this is the same situation as next door who have an enclosed garage – plus this is a dead-end street with no pedestrian walkway beyond so there is not general loss of public view.

7.4 *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,*



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In undertaking the proposal the amount of solar impact to the neighbour to the South was carefully assessed. Firstly, it should be acknowledged that the relative positions of the buildings to each other plays an important role in determining the level of impact. The property to the South (No.93) is an undeveloped residence with a carport on tall pillars at the street then a big gap between this and the house, which is much lower down and much further forward than the subject site existing residence.

It also needs to be acknowledged that there is already a substantial development as approved and partially constructed on No. 95 and the level of shadow impact needs to be judged as what is additional to the approved and constructed building.

On close analysis of the existing and the proposed shadow impact to No.93 there is no real change to the shadow impact as the new shadow of the additional area (including the non-complying portion) falls on the roof of the neighbour or the zone in between the carport and house. No.93 still achieves the same sunlight amenity in the afternoon to their living areas and this is unchanged.

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

The proposal is constructed off the original approved and half-constructed building. As such the deep excavation is not part of this application and both existing vegetation and topography have already been severely impacted.

8.0 Conclusion

It is submitted that a variation to the maximum height control within Manly Council LEP2013 is appropriate for this project as the non-conformity does not add any specific impact to adjoining or nearby properties whilst complying with all objectives of the standard and providing suitable accommodation for the occupants.

Following submission and assessment of the application by Council, amendments were requested and agreed upon that not only reduced the numerical non-compliance of the building height but more importantly reduced the perceptible non-compliance by stepping the building more in line with the ground levels.

As demonstrated above, strict compliance with this standard is inappropriate to this Development Application.

Approval should not therefore be withheld due to the non-compliance of the development standard.



**CLAUSE 4.6 VARIATION – FSR
ALTERATIONS AND ADDITIONS TO EXISTING (INCOMPLETE) BUILDING
95 GURNEY CRESCENT SEAFORTH
DECEMBER 2019**

This statement constitutes a request for variation to a development standard, made under Clause 4.6 of Manly Local Environmental Plan 2013 for Northern Beaches Council.

The objectives of Clause 4.6 are as follows:

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

For this to occur, the Development Application is to be supported by a written application that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case. This application should be read in conjunction with the accompanying Development Application drawings prepared by Mark Hurcum Design Practice and Statement of Environmental Effects.

The unique situation of this project is that the proposed DA is for an extension to an unfinished building shell undertaken by another applicant and architect, and this has been “under construction” for around 20 years. The original approval for the current building was approved in 1999. A final S.96 application for a revised scheme was approved 2011.

The proposal is to add another level on the existing concrete roof as well as extending out the approved carport and enclosing it as a garage and an office. This work exceeds the height limit.

1.0 Zoning of the Land

The subject site is zoned E3 “Environmental management”

2.0 Objectives of the Zone

The objectives of zone are as follows:

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



CLAUSE 4.6 VARIATION – FSR
ALTERATIONS AND ADDITIONS TO EXISTING (INCOMPLETE) BUILDING
95 GURNEY CRESCENT SEAFORTH
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3.0 Standard to be Varied

The standard to be varied is Part 4, Clause 4.4 of LEP2013, which sets the maximum FSR for a building as shown on the FSR Map. The maximum FSR for 95 Gurney Crescent is 0.4:1.

In the DCP there is a provision for undersized lots, which No.95 is. On existing sites in Residential LEP Zones (including E3 & E4) with a site area less than the minimum lot size required on the LEP Lot Size (LSZ) Map, Council may consider exceptions to the maximum FSR under LEP clause 4.6 when both the relevant LEP objectives and the provisions of this DCP are satisfied.

This standard assumes building works added to existing buildings must also comply with the standard.

The following definitions within the LEP or DCP are relevant for this 4.6 variation

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,

but excludes—

- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement—
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.

basement means the space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing).

habitable floor area (for the purposes of the Flood Prone Land paragraph in this plan only) means:

- a) In a residential situation: any floor containing a room or rooms used or capable of being adapted for use for residential purposes, such as a bedroom, living room, study, dining room, kitchen, bathroom, laundry, toilet
but excluding any floor used solely for the purposes of car parking or storage;



CLAUSE 4.6 VARIATION – FSR
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4.0 Objectives Pertaining to Standard to be Varied

The objectives that relate to the building height standard is found in LEP 2013 and referenced in DCP paragraph 4.1.2.

“The objectives of this clause are as follows:

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

5.0 Extent of Non Conformity to the Standard

Maximum FSR permitted for this site as per LEP is 0.4:1 which gives a Gross Floor Area (GFA) of 237.8 sq.m. However under DCP there is an exception to FSR for undersized lots in areas U on the LEP LSZ map where the maximum floor area is a calculation of FSR based on 750 sqm lot size/ site area, which equals to 300sq.m, which is 0.5:1

The site area is 594.4 sq.m

Existing Building GFA is 240.6 sq.m which equals to an FSR of 0.40:1

The allowable GFA is 300 sq.m which equals to an FSR for this site of 0.50:1

The Proposed building GFA is 382.9 sq.m which equals to an FSR of **0.64:1** when calculated against the site area (594.4) or 0.51:1 if calculated against the 750 sq.m lot size.

The proposed building therefore exceeds the allowable FSR by 0.14:1, or 14%

However, it is noted that it would appear that the approved (current) scheme really contains large areas of unenclosed space that do not count at FSR. Filling this in as proposed (eg adding a bathroom and laundry at the pool level) increased the GFA **without** increasing bulk and scale. Further, they actually constructed on site a larger building area than approved (one of the reasons for previous stop-work orders). Counting this in then the existing building doesn't match the FSR number as approved. In terms of the new works, only the garage, office and Master bedroom is actually a floor area increase that also increases the bulk and scale.



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To demonstrate this, the GFA has been broken down in the following table into GFA per type and per floor. This is also described in colour in the FSR diagram.

Of note is the additional area that is proposed outside of the approved envelope is only 95.5 sq.m, which is only 25% of the overall GFA. However, even this area includes some new floor area constructed below the side retaining walls, and therefore essentially invisible. There is another 46 sq.m of additional area that is officially counted within the approved envelope, which does not add any bulk and scale to the site at all. This area, which equates to 12% of the overall floor area, is area that was, in our opinion, always intended to be internal area but not declared in the original approval.

FIG. 1 BREAKDOWN OF GROSS FLOOR AREA AND FSR CALCULATION

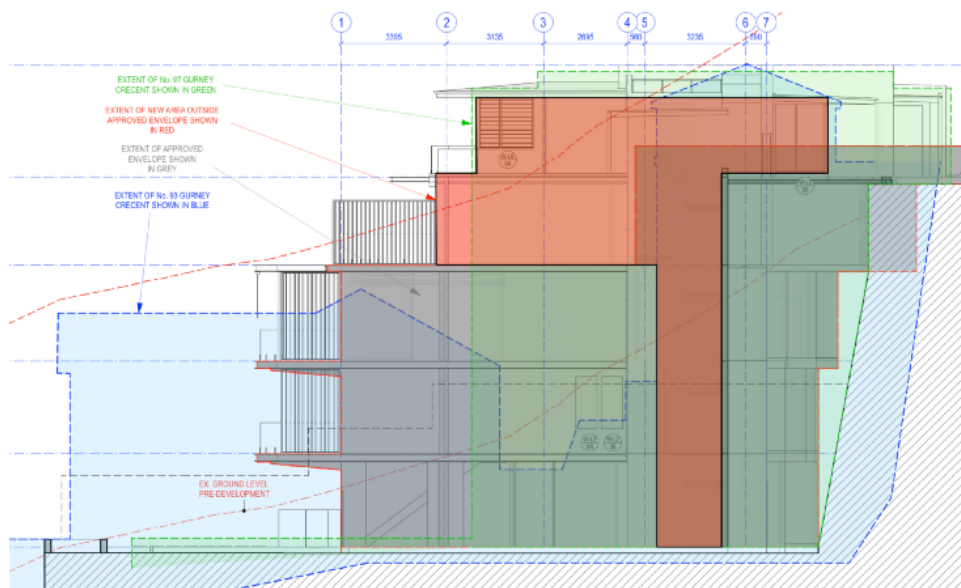
SITE AREA	ORIGINAL APPROVED DA	ADDITIONAL AREA INSIDE OF APPROVED ENVELOPE	PROPOSED ADDITIONAL FLOOR AREA OUTSIDE APPROVED ENVELOPE	PROPOSED TOTAL PER FLOOR
				594.4m²
LEVEL 5			39.7m ²	39.7m ²
LEVEL 4	38.7m ²		48.2m ²	86.9m ²
LEVEL 3	100.7m ²	13.0m ²	5.0m ²	118.7m ²
LEVEL2	101.2m ²	9.6m ²	2.6m ²	113.4m ²
LEVEL1		24.2m ²		24.2m ²
TOTAL	240.6m²	46.8m² + 240.6m² = 287.4	95.5m² + 287.4m² = 382.9	382.9m²
FSR	0.40:1	0.48:1	0.64:1	0.64:1



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To further describe the difference between visible and invisible additional area, this can be seen in section – with an overlay of the neighbouring buildings as well so that it is possible to see where new area is matching existing (particularly No. 97)

Fig 2 – ENVELOPE COMPARISON



The section diagram shows the new area in red and the existing approved envelope in grey. This sits against the neighbour at No.97 (in green) and the neighbour at No.93 (in blue).

This demonstrates how reasonable the additional area actually is in terms of real impact. The proposal, despite the numerical end-point, is NOT making the building 50% larger.

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

The proposed final FSR does not comply with the FSR control, however this non-compliance is justifiable and strict compliance can be regarded as unreasonable or unnecessary for the following reasons.

6.1 Analysis of “Visible” and “Invisible” GFA

The main reason for why strict compliance can be regarded as unreasonable is that, as noted above, the previous approval already created a large amount of floor area – declared and undeclared, that is effectively “Invisible” and constructed within a deep excavation.



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It is reasonable to argue that such a depth of excavation would not have been approved under current policies, but in the calculation for this application it still adds to the total GFA.

The FSR control is effectively used to control bulk and scale as viewed from outside the building – from the street, from public places and from neighbours. If you discounted any “Invisible” GFA for the parts of this building that are below the surrounding retaining wall, the proposal would easily comply with the FSR control. All other buildings in the area have a much larger proportion of this bulk and scale as visible. This is a unique case and as such is it unreasonable to require strict compliance of the proposal based on bulk and scape when much of this is not visible.

6.2 Existing surrounding conditions and similarly approved examples.

Another factor for why strict compliance can be regarded as unreasonable or unnecessary is that the proposal is to be constructed directly beside a similar scale (and non-complying) building to the North (No.97). No.97 is a very rectilinear boxy development that includes an enclosed garage at the top level and then 4 stories below this. Like No.95, the fall in the natural ground level means that No.97 definitely does not comply with the height control and they submitted a Clause 4.6 (SEPP1) with their DA, which was approved. The proposal at No.95 is actually more articulated, stepped and less intrusive than No.97.

Two doors down No.91 Gurney is currently under construction and it too is well over the height limit and they also submitted a Clause 4.6 that was approved. In this instance, therefore, applying strict compliance to our proposal would not provide any benefit as this site can already be read as existing between these two non-complying envelopes.

It is noted that there are a great many developments in Gurney crescent that have been approved over the last number of years that have almost all of them has FSR noncompliance, as follows. However, on a detailed review of these applications, it is questionable how accurate some of these calculations are and a number of larger scale developments are described with some questionably small GFAs:

97 Gurney Crescent – Approved FSR of 0.54:1
91 Gurney Crescent – Approved FSR of 0.6:1
89 Gurney Crescent – Approved FSR of 0.46:1
81 Gurney Crescent – Approved FSR of 0.68:1
34 Gurney Crescent – Approved FSR of 0.48:1
36 Gurney Crescent – Approved FSR of 0.48:1

Therefore is it unreasonable by comparison to require strict compliance of the proposal based on bulk and scape when the proposal matches approved neighbouring developments.



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6.3 Lack of impact to surrounding properties from non-complying portions of GFA.

As noted above, this proposal utilises an existing unfinished shell from a previously approved DA. Only parts of the proposed DA (namely the Garage, Office, Master bedroom and lift/stair) is an extension of the previously approved building envelope. It is noted therefore that the impact difference of these new areas should be how to assess the level of impact on neighbouring properties.

It is acknowledged that this development does have a Height non-compliance as well as an FSR non-compliance. But due to the unique situation of this development – as noted above containing large areas of “invisible” GFA, it is more difficult to argue that it is specifically the non-complying FSR that causes any detrimental impact to neighbours.

The major possible impact is overshadowing and over looking to the property to the South (No.93), however their house is quite a different formation to any of the surrounding neighbours. They have a roof carport at the street, raised on very tall pillars with a rocky garden bed and terraced lawns underneath, and their main house is disconnected and much further down the block. As such, there is a much lesser impact for this neighbour than if their main house had been directly adjacent to the subject building.

An analysis of the shadow impact shows that the majority of shadow impact to their house, which only occurs between 9am and 12pm, is from the existing approved slab structures. The new additions do add further shadow, but as most of this additional shadow falls on their roof it doesn't create an additional impact resulting from the non-complying portion.

Therefore is it unreasonable to require strict compliance of the proposal based on the fact that there is very little demonstrable impact to surrounding neighbours.

6.4 Development of previously approved design (not by Applicant).

The current Applicant did not design or construct the previously approved scheme that was left unfinished. That design was essentially a 5 storey but only 2 bedroom house. It made no sense and was incredibly vague in terms of where external areas stopped and internal areas began. The evidence of the history of the project shows that it is unlikely that the previous developer was ever going to leave it as per the approval and they were regularly being stopped due to construction of unapproved works. Our Client wishes to develop the unworkable existing approval into a home much more suited to the site as well as suited to their lifestyle. Therefore is it unreasonable to require strict compliance of the proposal considering it has to work with the structure of what has already been constructed.

6.5 Despite the non-compliance, the proposal achieves all objectives of the development standard.

As covered below, despite the non compliance with the standard the Aims and Objectives are still met.



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7.0 Compliance with the Objectives Pertaining to Standard to be Varied

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

This objective specifically references “Streetscape character” and in this instance the streetscape façade is only a single storey appearance, entirely matching (but with better materiality and articulation) the development at No.97.

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

Again, this DA incorporates a large amount of approved but sunken GFA and the large excavation and retaining wall as constructed would probably not have been approved under today’s policies. So in effect, any impact on the existing landscape has already been made. Adding additional floor area as proposed doesn’t necessarily mean the impact will increase. In fact there is no additional proposed site coverage and the additional areas are constructed on top of the existing shell. Further, the proposal does not obscure any landscape or townscape features.

- 7.3 *To maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

It is acknowledged that the FSR does effectively control bulk and scale and non-compliance of FSR could – if not well managed – have a detrimental impact on the existing character of an area. However, if this was the only non-complying building being proposed then the argument would be a lot stronger that the development is inappropriate. But as noted above, the building sits between two larger, taller and equally non-complying buildings (No. 97 and No.91), plus the perception from the street is only of the single storey complying section.

- 7.4 *To minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

In undertaking the proposal the amount of solar impact to the neighbour to the South was carefully assessed. Firstly, it should be acknowledged that the relative positions of the buildings to each other plays an important role in determining the level of impact. The property to the South (No.93) is an undeveloped residence with a carport on tall pillars at the street then a big gap between this and the house, which is much lower down and much further forward than the subject site existing residence.

It also needs to be acknowledged that there is already a substantial development as approved and partially constructed on No. 95 and the level of shadow impact needs to be judged as what is additional to the approved and constructed building.

On close analysis of the existing and the proposed shadow impact to No.93 there is no real change to the shadow impact as the new shadow of the additional area (including the non-complying portion) falls on the roof of the neighbour or the zone in between the carport and house. No.93 still achieves the same sunlight amenity in the afternoon to their living areas and this is unchanged.



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In terms of public domain, the proposal does not impact on the street side of the public domain and from the water side it sits against a collection of similar examples, as noted above.

- 7.5 *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.*

Not applicable

8.0 Conclusion

It is submitted that a variation to the maximum FSR control within Manly Council LEP2013 is appropriate for this project as the non-conformity does not add any specific impact to adjoining or nearby properties whilst complying with all objectives of the standard and providing suitable accommodation for the occupants.

As demonstrated above, strict compliance with this standard is inappropriate to this Development Application.

Approval should not therefore be withheld due to the non-compliance of the development standard.

ITEM 3.3	DA2020/0491 - 3 ALMA STREET, CLONTARF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2020/449262
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2020/0491 for alterations and additions to a dwelling house on land at Lot 2 DP 535345, 3 Alma Street, Clontarf, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0491
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Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 2 DP 535345, 3 Alma Street CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Paul Benjamin Sigaloff
Applicant:	Paul Benjamin Sigaloff

Application Lodged:	15/05/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	27/05/2020 to 10/06/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 29%
Recommendation:	Approval

Estimated Cost of Works:	\$ 580,000.00
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Executive Summary

The proposal seeks consent for alterations and additions to an existing three storey dwelling house. The application is referred to the Development Determination Panel as a portion of the development has a maximum building height of 10.98m, or a maximum 29% variation to the development standard. The portion of the development that encroaches the standard consist of new window opening (10.98m), new door openings (10.1m) and the top of the new balcony balustrades (8.8m). The non-compliance is a result of the existing building height and site topography, with a significant portion of the existing building exceeding the 8.5m height limit. The proposed balcony provides improved residential amenity whilst not impacting adjoining land owners in terms of privacy, overshadowing or views and is therefore considered to be a reasonable addition to the existing dwelling.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for alterations and additions to a dwelling house. Specifically, the proposal involves:

Lower Ground Floor

- Demolish external arches and spiral staircase, replace with new square opening and spiral staircase;
- Demolish existing deck which is partially encroaching Council reserve;
- Construction of a new deck adjacent to western boundary with louvered roof over;

Ground Floor

- Demolish windows on southern elevation and replace with sliding doors;
- Cantilevered balcony off living room and dining room on Southern Elevation

First Floor

- Internal changes to create en-suite for bedrooms 3 and 4;
- New windows for bedrooms eastern elevation (obscure glass);

Roof

- Replace roof with dark tiles or metal sheeting;
- New photovoltaic panels.

Stairs on Road Reserve

- Proposed replacement of stairs located within Council's Road Reserve.

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 - 6.9 Foreshore scenic protection area

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of

Storeys & Roof Height)

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

Manly Development Control Plan - 4.1.8 Development on Sloping Sites

SITE DESCRIPTION

Property Description:	Lot 2 DP 535345 , 3 Alma Street CLONTARF NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Alma Street. The site is irregular in shape with a frontage of 12.8m along Alma Street, a frontage of 25.91m along Moore Street and a depth of 25.8m. The site has a surveyed area of 642.6m². The site is located within the R2 Low Density Residential zone and accommodates a three storey dwelling house, swimming pool and double garage. A low level deck existing in the rear yard and partially encroaches the Council reserve. The site is steeply sloping from front to rear with a slope of 1 in 4 across the building footprint. The site has a number of medium and low lying shrubs and native plants along the Moore Street boundary, rear boundary and eastern boundary. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by detached two and three storey dwelling houses. To the rear of the site is a Council reserve known as Cutler Road Reserve. The reserve is heavily vegetated with tall canopy trees. To the east is a two storey dwelling. The site is located on the corner of Alma Street and Moore Street, with only one dwelling immediately adjoining the site (to the east).

Map:



SITE HISTORY

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

- Pre-lodgement Meeting **PLM2019/0185** was held on 19/09/2019 for 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 (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	None applicable.

Section 4.15 Matters for Consideration'	Comments
agreement	
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <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. <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. <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. <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. <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. <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. <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.
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	(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. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The proposal is for alterations and additions to the existing dwelling and construction of a new elevated deck with pergola shade structure and two cantilevering balconies. The site contains existing garden vegetation as well as natural rock outcrops, and the proposal does not seek removal of existing trees or vegetation, nor disturbance to the natural rock outcrops. Council's Landscape Referral section have assessed the application against the landscape controls of Manly DCP 2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types. No Landscape objections are raised subject to completion of the development works as documented on the DA plans.
NECC (Bushland and Biodiversity)	The proposed development has been assessed against Manly LEP Clause 6.5 (Terrestrial Biodiversity). Subject to no impact to existing trees on the adjoining bushland reserve, the proposal is considered to comply.
NECC (Development)	The applicant proposed to connect to Council's stormwater pipe.

Internal Referral Body	Comments
Engineering)	An stormwater application must be submitted and approved prior to issue the construction certificate. A condition has been placed to address the issue. Development Engineering raise no objection to the application subject to the following conditions of consent.
Road Reserve	No objection to maintenance of the existing stairs however the materials proposed (timber sleeper and gravel tread) on the plans are not acceptable. The stairs on the road reserve will require a Minor Encroachment application, detailing the proposed works for Council approval. Work shall be in accordance with Council standards. Development Engineering to provide conditions regarding the proposed reconstruction works on the driveway - that is a Driveway Application will be required. The proposed pavers on the driveway are not acceptable - driveway crossing on Council road reserve to be plain concrete.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

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. A370356_02 dated 17 February 2020).

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	9.15m-10.98m	29%	No
Floor Space Ratio	FSR: 0.45:1	FSR: 0.54:1	N/A	No - However, existing non-compliance unchanged via this development.

Compliance Assessment

Clause	Compliance with Requirements

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.98m
Percentage variation to requirement:	29%

The area of non-compliance is limited to the top of the new window openings (10.98m), top of the new door openings (10.1m) and top of the new balconies balustrades (8.8m) associated with the alterations and additions. The figures below show the areas of non-compliant building:

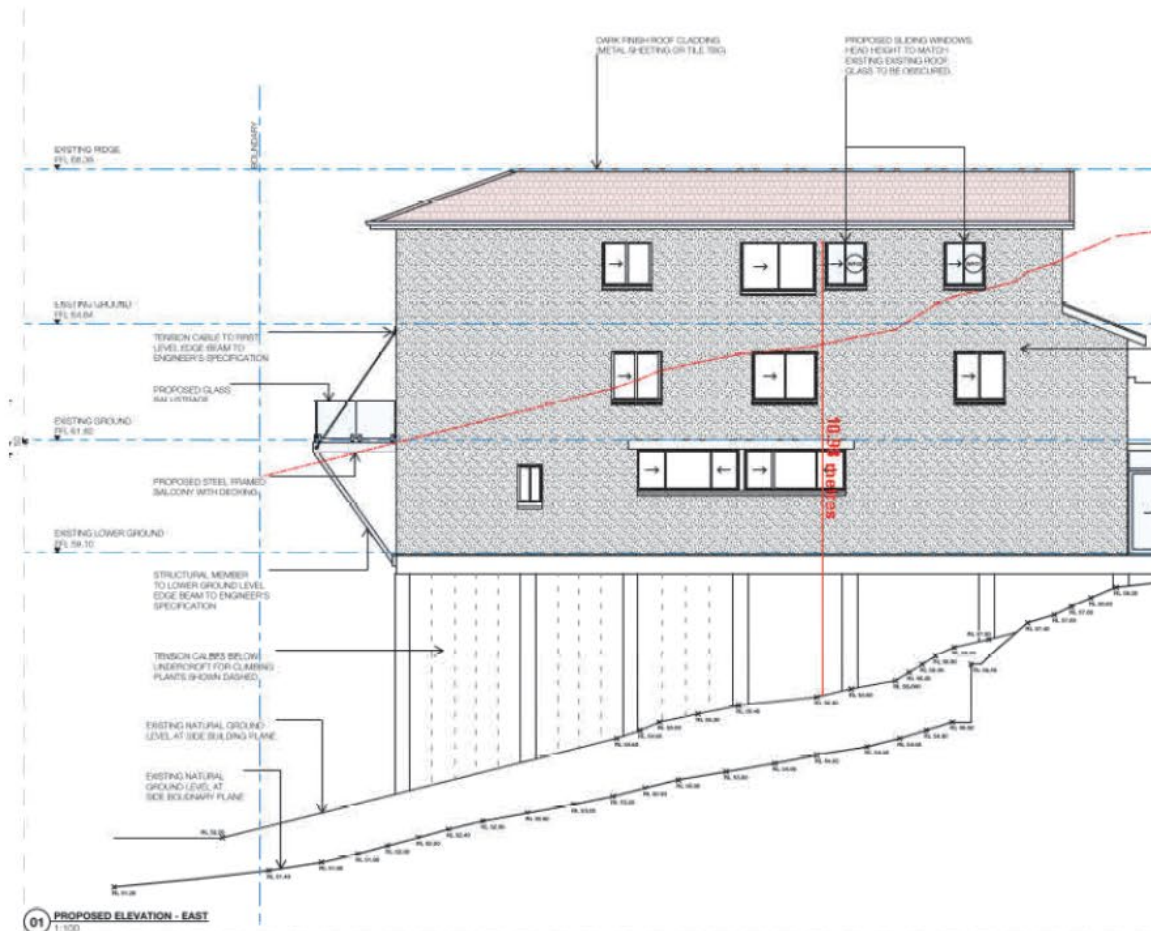


Figure 1 - Eastern Elevation.

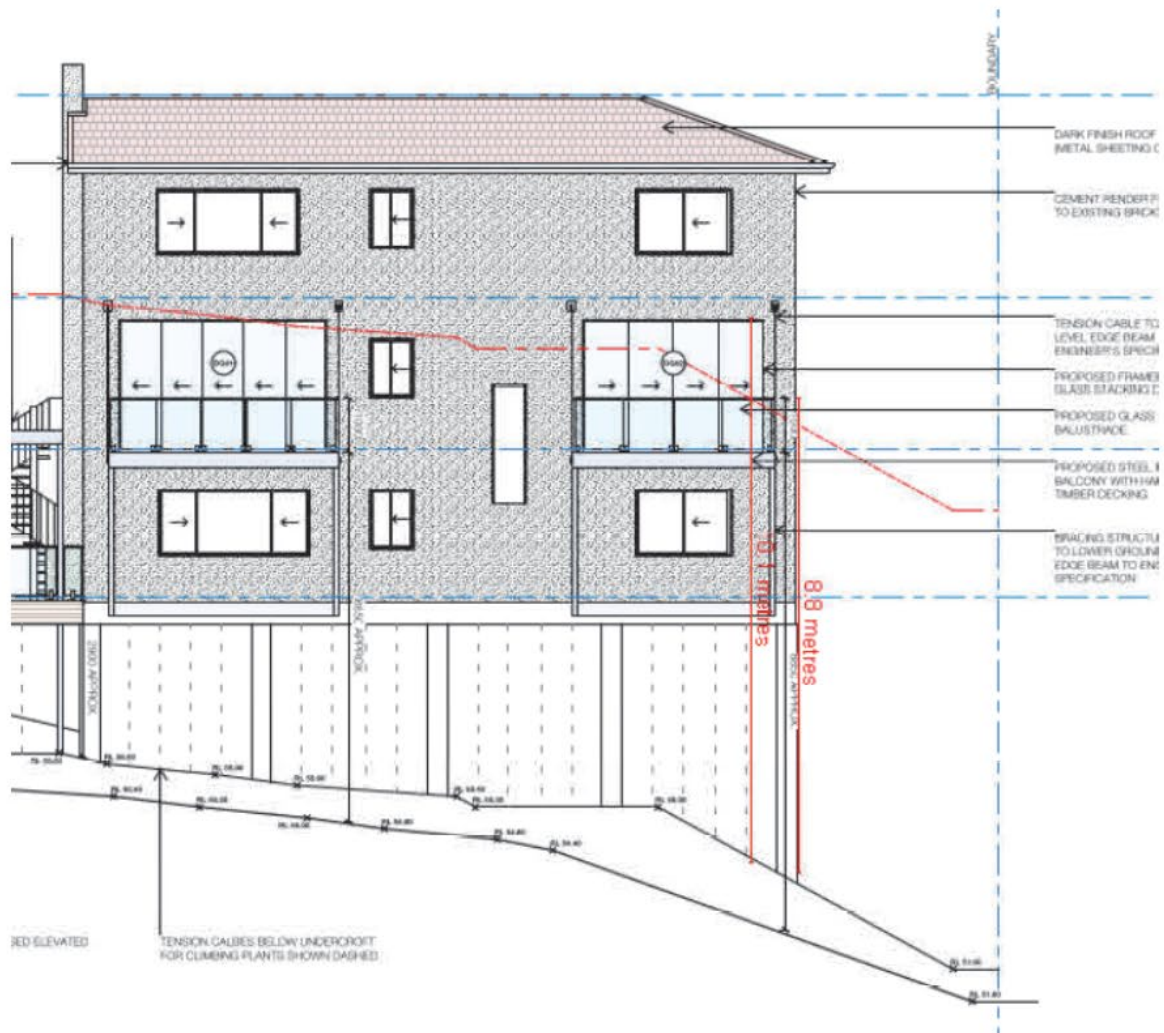


Figure 2 - Southern elevation

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

(2) Development consent may, subject to this clause, be granted for development even though the

development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

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

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

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

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

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

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

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

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

Comment:

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

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

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

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ

provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *The existing built form departs from the standard.*
- *The proposed works height is less than that existing.*
- *The environmental impacts of the existing higher built form are known. The proposed works are lower than the existing and are unlikely to result in any further adverse environmental impacts.*
- *It has been argued in the statement of environmental effects that works exceeding the height limit will not result in adverse environmental impacts or cause disruption to adjacent properties and the public domain in relation to solar access, overshadowing, visual privacy, acoustic privacy, views and visual impact.*
- *The proposal allows adequate sunlight to penetrate the private open space of the adjoining dwelling and public domain.*
- *The neighbouring dwelling's visual and acoustic privacy will be protected by the physical separation of the existing staggered rear building setbacks.*
- *The proposed works will maintain consistency with the general height, scale and bulk of residential development in the area and existing and desired streetscape character of the locality.*
- *The finished floor level of the proposed balcony (RL 61.77) is compatible with and does not exceed the height of the adjoining property's balcony at 1 Alma (RL 63.04). The proposed balcony door head height (RL 64.38) is also compatible and does not exceed the height of the adjoining property's balcony door head height at 1 Alma (RL 65.28).*
- *The proposed work negotiates and responds to the steep topography of the landscape and existing*

structures on the site.

- The proposed works does not result in a significant bulk when viewed from neighbouring properties, the street or public reserve. Favourable foreshore, harbour and bushland views from neighbouring dwellings will not be obstructed.
- The proposed works will not be easily visible from the nature reserve and public spaces due to the dense surrounding vegetation. The proposed dark structure will blend in with the natural earthy bushland tones.
- The finished floor level of the proposed balcony does not exceed this standard. Only the proposed glass balustrade safety barrier and proposed stacking doors exceeds the standard. A door to access the balcony and safety barrier are considered essential elements to a balcony and unreasonable to not have.
- The variation to the height control is a numerical non-compliance only. It promotes good design, improved amenity and greater articulation of the rear elevation of the existing dwelling.
- Strict compliance with the standard would limit improvement to the existing dwelling.
- The proposal is consistent with the objects of this development standard.

It is argued that the development will not compromise the planning intent for the site of the character and amenity of the surrounding area. The variation is well founded and has justified that the development standard relating the building heights are unreasonable and unnecessary in this instance. This variation occurs as a result of the siting and design of the existing building. This request for a variation argues that the proposed development should be supported.

Council Comment

The points raised by the applicant are generally agreed with and there are considered sufficient environmental planning grounds to warrant a variation to the development standard in this circumstance. Namely, the development represents an economic and orderly use of land which provides alterations to the existing building below the existing ridge line to promote good design and additional amenity for the resident, whilst not presenting an adverse environmental or amenity impact to neighbouring properties. The existing building exceeds the height limit and the non-compliance with the development standards are a direct result of this existing situation. However given there are no adverse environmental impacts, the additions are considered reasonable in this circumstance, notwithstanding the numerical non-compliance.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposed additions of the deck and windows are below the existing and prevailing building heights. The proposed additions do not impact the streetscape character being located at the rear of the building and new windows sit flush with the existing eastern elevation wall.

b) to control the bulk and scale of buildings,

Comment:

The proposed balconies are open, lightweight structures with glass balustrades which do not result in unreasonable bulk and scale as viewed from the adjoining property or public domain. The additions are well under the existing ridgeline of the building and do not result in bulk and scale out of character for the area.

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 does not result in a view impact for surrounding properties or the public domain.

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 additional decks are located on the southern elevation of the building and do not give rise to overshadowing which would result in non-compliance with the planning controls. The adjoining property will retain solar access to living room windows and private open space in accordance

with the planning controls.

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

Comment:

The land is within a residential zone and therefore the above objective is not relevant to this site.

Zone objectives

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

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

Comment:

The proposal provides additional usability and functionality for an existing residential dwelling. The proposal achieves this objective.

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

Comment:

This is not relative to the proposed development.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 24 May 2019, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building Development Standard associated with a single dwelling house (Class 1 building).

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 involves minor alterations to the building which does not attribute to excessive bulk and scale as visible from the harbor. The proposal is visually screened by existing canopy trees on cutler reserve to be retained.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 642.6sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	E: 8m (based on gradient 1 in 4)	13.7m - Existing	N/A	No - Unchanged
	W: 7.7m (based on gradient 1 in 5)	14.1 -Existing	N/A	No - Unchanged
4.1.2.2 Number of Storeys	2	3 - Existing	N/A	No - Unchanged
4.1.2.3 Roof Height	Height: 2.5m	1.4m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	Unchanged	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E 4.5m (based on wall height) W 4.7 (based on wall height)	E 3m - Existing W 8.4m - Existing	N/A	No - Unchanged
	Windows: 3m	3.1m (Bathroom window proposed)	N/A	Yes
	Secondary street frontage: No Prevailing setback, therefore setback of 0.9m based on pergola height	2.36m Pergola/Deck proposed	N/A	Yes
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	8m (rear boundary)	1.32m - Deck	83%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	65.6%	N/A	Yes
	Open space above ground 25% of total open space	7.6%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	48.4%	N/A	Yes

	3 native trees	3 new proposed	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm retained	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces retained	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.7 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
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

The proposed balconies off the ground floor level have been assessed with regards to the potential privacy impact on adjoining properties. It is noted that there is only one (1) residential property adjoining the subject site, this property being to the east at 1 Alma Street Clontarf. Directly to the south of the site is a heavily vegetated Council Reserve. The properties further downslope of 3 Alma Street are screened by the dense canopy trees in Council reserve.

Overlooking towards the south does not present a residential amenity impact. The adjoining property to the east contains obscure glazed privacy screens to the upper floor balcony, therefore no direct views will be available to this area from the proposed balconies. The rear yard area to the south of the dwelling on 1 Alma Street is heavily vegetated and does not present as a usable/frequented area of private open space which would be susceptible to an overlooking impact. The balconies are positioned in a way that does not provide direct, downward views of the area immediately adjoining the dwelling on 1 Alma Street.

The proposed balconies are considered an additional opportunity to provide indoor/outdoor connectivity for the dwelling on 3 Alma Street and take advantage of the views available over the Council reserve towards the harbour. The balconies are therefore considered reasonable and will not present an adverse privacy impact.

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

The non-compliance to the wall height control and number of stories is an existing situation that is not made worse/increased via the proposed development. The existing walls are unchanged via this development application with the addition only of new windows which are considered not to present a privacy impact.

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

Description of non-compliance

The proposed development requires a setback of 8m to the Council Reserve. The proposed development has a setback of 1.32m to the decks. The existing building has a rear setback of 3.4m.

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 non-compliance is at the rear of the building and does not impact the streetscape.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed decks do not result in a view impact. A detailed discussion regarding the retention of the adjoining properties privacy can be found under Clause 3.4.2 *Privacy and Security* earlier in this report. The overlooks a heavily vegetated Council reserve at the rear and does not directly overlook areas of private open space or living rooms of the adjoining property to the east.

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

Comment:

The addition of the deck enables indoor/outdoor connectivity whilst not presenting an 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 decks are elevated structures that are cantilevered off the existing building. No further vegetation removal will result from the proposed decks. The proposal is compliant with the open space and landscaping provisions.

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

Comment:

The site is not identified as bushfire prone land.

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.

4.1.8 Development on Sloping Sites

A geotechnical report has been provided by a suitably qualified engineer assessing the development with regards to geotechnical risk. The report concludes that the proposal will not present an unacceptable risk subject to the recommendations of the report being followed. Compliance with the geotechnical report will form a condition of development consent.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

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 \$5,800 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$580,000.

Replacement of Stairs in Council's Road Reserve

The applicant proposes to replace an existing staircase which is located on the Council road reserve. The stairs at present are stone steps and provide access from the road down the eastern side of the property. The application has been referred to Council's Road Reserve Team and also Council's Development Engineer who support the stair replacement, subject to conditions of consent. A stair encroachment application is to be submitted to Council prior to the issue of a CC.

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:

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

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

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2020/0491 for Alterations and additions to a dwelling house on land at Lot 2 DP 535345, 3 Alma Street, CLONTARF, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A000 - Issue D	02/03/2020	Baikie Corr
A100 - Issue D	02/03/2020	Baikie Corr
A101 - Issue D	02/03/2020	Baikie Corr
A102 - Issue D	02/03/2020	Baikie Corr
A103 - Issue D	02/03/2020	Baikie Corr
A104 - Issue D	02/03/2020	Baikie Corr
A105 - Issue D	02/03/2020	Baikie Corr
A106 - Issue D	02/03/2020	Baikie Corr
A107 - Issue D	02/03/2020	Baikie Corr
A200 - Issue D	02/03/2020	Baikie Corr
A202 - Issue D	02/03/2020	Baikie Corr
A204 - Issue D	02/03/2020	Baikie Corr
A205 - Issue D	02/03/2020	Baikie Corr
A206 - Issue D	02/03/2020	Baikie Corr
A207 - Issue D	02/03/2020	Baikie Corr
A300 - Issue D	02/03/2020	Baikie Corr
A301 - Issue D	02/03/2020	Baikie Corr
A302 - Issue D	02/03/2020	Baikie Corr
A303 - Issue D	02/03/2020	Baikie Corr
A400 - Issue D	02/03/2020	Baikie Corr
A401 - Issue D	02/03/2020	Baikie Corr
A402 - Issue D	02/03/2020	Baikie Corr
A403 - Issue D	02/03/2020	Baikie Corr
A404 - Issue D	02/03/2020	Baikie Corr
A405 - Issue D	02/03/2020	Baikie Corr

Engineering Plans		
Drawing No.	Dated	Prepared By
Site Drainage Plan	22/11/2019	Greenwood Consulting Engineers
Ground Floor Drainage Plan	22/11/2019	Greenwood Consulting Engineers
Roof Drainage Plan	22/11/2019	Greenwood Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment - J2615	17/03/2020	White Geotechnical Group
BASIX Certificate No.A370356_02	17/02/2020	Baikie Corr Pty Ltd

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	Undated	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) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) 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.

4. **Photovoltaic Panels**

The proposed Photovoltaic Panels shall not protrude above the existing ridge line of the dwelling. This shall be maintained for the life of the development.

Reason: To ensure there are no additional amenity impacts on surrounding properties.

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$5,800.00 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 \$580,000.00.

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

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

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

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

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

6. **Security Bond**

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required 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, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

7. **Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

8. **Encroachment Application of stair case**

The applicant is to submit an Minor Encroachments/ Constructions With Road Reserve Application for approval.

The applicant is to enter into any appropriate agreements with Council. All costs related to the above application are to be borne by the applicant.

A letter from Council indicating this conditions has been satisfied to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Identify the responsibility of the structures on Council road reserve

9. **Boundary Identification Survey**

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

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

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

10. **Stormwater Drainage Application**

The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the connection to Council's pipeline which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

11. **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 TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. **Road Reserve**

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

Reason: Public safety.

13. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to

the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

14. Tree and vegetation protection

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

- i) all trees and vegetation within the site identified on the Site Plan DA-A200, excluding exempt vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a qualified AQF Level 5 Arborist,
- iii) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by a qualified AQF Level 5 Arborist. Details including photographic evidence of works undertaken shall be submitted by an AQF Level 5 Arborist to the Certifying Authority,
- iv) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified AQF Level 5 Arborist on site,
- vi) all structures are to bridge tree roots greater than 25mm diameter unless directed by a qualified AQF Level 5 Arborist on site,
- vii) excavation for stormwater lines is not permitted within the tree protection zone, without consultation with a qualified AQF Level 5 Arborist,
- viii) should either or all of v), vi) and vii) occur during site establishment and construction works, a qualified AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- ix) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009,
- x) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

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

Any request to remove a tree approved for retention under the development application is subject to a Section 4.55 modification application, or an assessment by a qualified AQF Level 5 Arborist that determines that the tree presents an imminent risk to life or property.

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

15. Landscape completion

Landscaping is to be implemented in accordance with the landscape plan DA-A202 as prepared by Baikie Corr.

Prior to the issue of an Occupation Certificate, the Certifying Authority shall approve the works in accordance with the landscape plan DA-A202, 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. **Stormwater Disposal**

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

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

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

17. **Landscape maintenance**

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

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

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

18. **No Planting Environmental Weeds**

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

Reason: Weed management.

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

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

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

20. **Landscape Plan to be Implemented**

Landscaping is to be implemented in accordance with the approved Landscape Plan (Baikie Corr, DA-A2020:D, 2/3/2020). The new landscaping is to be approved as completed by the accredited certifier upon issue of the Occupation Certificate unless further conditions regarding the completion timeframe are imposed. This landscaping is to then be maintained for the life of the development.

Reason: To achieve compliance with Manly LEP Clause 6.5 (Terrestrial Biodiversity).











11 APPENDIX 1: APPLICATION TO VARY A DEVELOPMENT STANDARD

CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

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

Manly Local Environment Plan 2013 (LEP 2013)

2. What is the zoning of the land?

The land is zones R2 Low Density Residential.

3. What are the objectives of the zone?

The objectives of the R2 Low Density Residential zone are:

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

4. What is the development standard being varied?

Height of Buildings

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

The development standard is listed under Clause 4.3 of Manly Local Environment Plan 2013.

6. What are the objectives of the development standard?

The objectives of the development standard are:

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

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

(c) to minimise disruption to the following:

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

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

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

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

As illustrated on the Height of Buildings Map (Manly LEP 2013), the maximum overall building height limit imposed on the site is 8.5m.

8. What is the proposed numeric value of the development standard in your development application?

Element	Proposed Numeric Value
Top edge of glass balustrade	9.15m
Top of glass stacking doors	9.95m
Top of window WF01	9.94m
Top of window WF02	10.98m

9. What is the percentage variation?

Element	Proposed Percentage Variation
Top edge of glass balustrade	7.6%
Top of glass stacking doors	17.1%
Top of window WF01	17.4%
Top of window WF02	29.2%

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

- The existing built form departs from the standard.
- The proposed works height is less than that existing.
- The environmental impacts of the existing higher built form are known. The proposed works are lower than the existing and are unlikely to result in any further adverse environmental impacts.
- It has been argued in the statement of environmental effects that works exceeding the height limit will not result in adverse environmental impacts or cause disruption to adjacent properties and the public domain in relation to solar access, overshadowing, visual privacy, acoustic privacy, views and visual impact.
- The proposal allows adequate sunlight to penetrate the private open space of the adjoining dwelling and public domain.
- The neighbouring dwelling's visual and acoustic privacy will be protected by the physical separation of the existing staggered rear building setbacks.
- The proposed works will maintain consistency with the general height, scale and bulk of residential development in the area and existing and desired streetscape character of the locality.
- The finished floor level of the proposed balcony (RL 61.77) is compatible with and does not exceed the height of the adjoining property's balcony at 1 Alma (RL 63.04). The proposed balcony door head height (RL 64.38) is also compatible and does not exceed the height of the adjoining property's balcony door head height at 1 Alma (RL 65.28).
- The proposed work negotiates and responds to the steep topography of the landscape and existing structures on the site.
- The proposed works does not result in a significant bulk when viewed from neighbouring properties, the street or public reserve. Favourable foreshore, harbour and bushland views from neighbouring dwellings will not be obstructed.
- The proposed works will not be easily visible from the nature reserve and public spaces due to the dense surrounding vegetation. The proposed dark structure will blend in with the natural earthy bushland tones.
- The finished floor level of the proposed balcony does not exceed this standard. Only the proposed glass balustrade safety barrier and proposed stacking doors exceeds the standard. A door to access the balcony and safety barrier are considered essential elements to a balcony and unreasonable to not have.
- The variation to the height control is a numerical non-compliance only. It promotes good design, improved amenity and greater articulation of the rear elevation of the existing dwelling.
- Strict compliance with the standard would limit improvement to the existing dwelling.
- The proposal is consistent with the objects of this development standard

Conclusion

It is argued that the development will not compromise the planning intent for the site of the character and amenity of the surrounding area. The variation is well founded and has justified that the development standard relating the building heights are unreasonable and unnecessary in this instance. This variation occurs as a result of the siting and design of the existing building. This request for a variation argues that the proposed development should be supported.

ITEM 3.4	MOD2020/0141 - 27 BELLEVUE PARADE, NORTH CURL CURL - MODIFICATION OF DEVELOPMENT CONSENT DA2018/1894 GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING A SWIMMING POOL
REPORTING MANAGER	Steve Findlay
TRIM FILE REF	2020/449301
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** MOD2020/0141 for Modification of Development Consent DA2018/1894 granted for demolition works and construction of a dwelling house including a swimming pool on land at Lot 46 DP 10571, 27 Bellevue Parade, North Curl Curl, subject to the conditions outlined in the Assessment Report.



APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0141
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 46 DP 10571, 27 Bellevue Parade NORTH CURL CURL NSW 2099
Proposed Development:	Modification of Development Consent DA2018/1894 granted for demolition works and construction of a dwelling house including a swimming pool
Zoning:	Warringah LEP2011 - 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:	Kerry Patrick Moore Pamela Joan Moore
Applicant:	Kerry Patrick Moore Pamela Joan Moore
Application Lodged:	16/04/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	27/04/2020 to 15/05/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

The proposal involves modifications to an approved dwelling house.

The application is referred to the Development Determination Panel as it is a modification of consent under Section 4.55(2) of the Act, and the original application was determined by the Panel.

The proposal involves internal changes and external changes to the rear balcony.



There have been no submissions made in regard to this modification.

The assessment concludes that the proposed design is appropriate for the site as the changes do not result in any further non-compliance with the WLEP controls, the proposed works to the balcony area would not cause any unreasonable amenity impact, and the slight further non-compliance with the landscaped area control under the WDCP would not result in a development that is inconsistent with the outcomes of the relevant clause.

Therefore, it is recommended that the application be approved.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for modifications to the consent which was granted for "*demolition works and construction of a dwelling house including a swimming pool.*"

Modifications in Detail

In detail, this modification involves:

- Request to amend Condition 2 to allow a 1.5m setback of the balcony from the western boundary (as opposed to 2.4m required by condition)
- Remove Balcony 2 from ground floor level
- New lower ground floor level covered area with gable roof
- All roof pitches to be reduced to 12 degrees
- Increase of sub-floor storage by 900mm to lower ground level
- Internal configuration of room sizes

The proposed amendments to Condition 2 are as follows (new wording of condition provided - 1.5m instead of 2.4m):

- **Balcony 1 on the First Floor Level is to be modified as follows:**
 - a) Deletion of the eastern walkway portion of the balcony (adjacent to the kitchen, living room and stairs) and the installation of a roof section for a distance of 5.0m running south from the master bedroom,
 - b) The balcony is to be stepped from the eastern side boundary by a minimum distance of 2.3m and by a minimum distance of **1.5m** from the western side boundary; and
 - c) A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost western edge of the balcony located off the dining/lounge room (first floor level) as shown on the approved plans. The privacy screen shall be of fixed panels or louvre style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.
- **Windows modifications as follows:**
 - a) W300 and W301 on the first floor level are to be installed with highlight windows (minimum sill height of 1.5m above the finished floor level); and
 - b) W204 is to be treated with obscured glazing and W205 is to be deleted on the ground floor.
- **Roof modifications as follows:**
 - a) The roof is to be modified to ensure compliance with Clause 4.3 Height of Buildings (maximum height of 8.5m above existing ground level) as defined within the WLEP 2011.



Assessment of Proposed Amendments

As discussed in this report, the proposed amendment to the western side setback is acceptable due to the lack of unreasonable amenity impact that would result from the change. The proposal also remains compliant with the planning controls for side setback and building envelope at this point of the dwelling.

Furthermore, the privacy screen will minimise opportunities for privacy loss and the balcony is above the more substantial view corridors for the neighbouring property.

As such, the proposed change to Condition 2 is acceptable.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D7 Views

SITE DESCRIPTION

Property Description:	Lot 46 DP 10571 , 27 Bellevue Parade NORTH CURL CURL NSW 2099
Detailed Site Description:	The subject site consists of an allotment located on the southern side of Bellevue Parade. The site is irregular in shape with a frontage of 12.2m along Bellevue Parade and a depth of 47.815m-49.15m. The site has a surveyed area of 581.3m². The site is located within the R2 Low Density Residential zone and accommodates a dwelling house and detached garage structure on site.

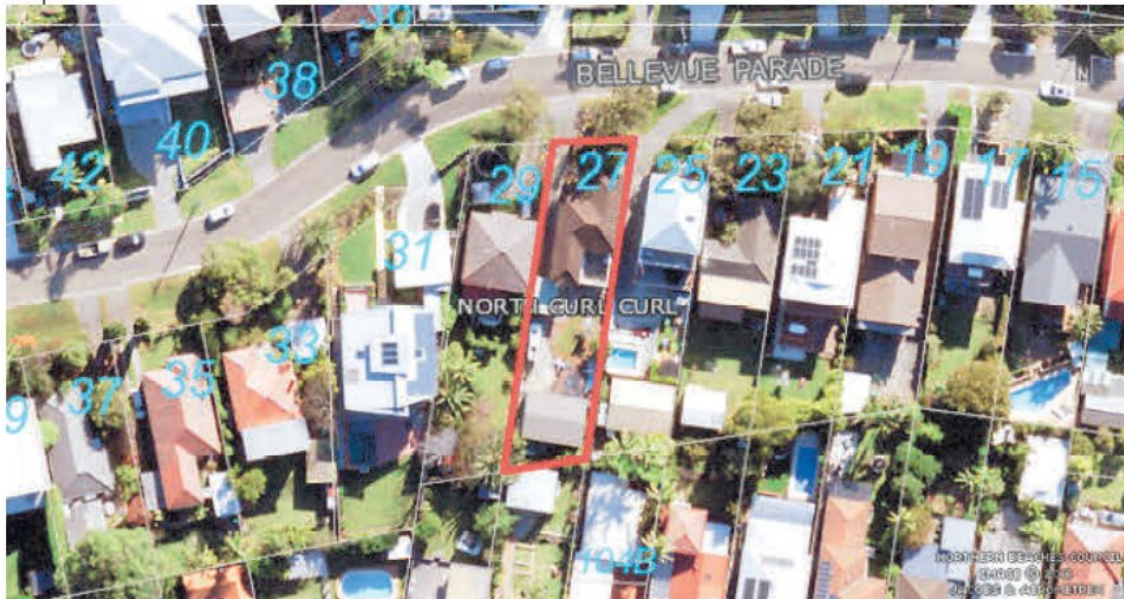


The site has a slope from Bellevue Parade down to the rear of the property, with a crossfall of approximately 5.0m.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached dwelling houses on either side of Bellevue Parade.

Map:



SITE HISTORY

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

- **DA2018/1894** - Demolition works and construction of a dwelling house including a swimming pool approved by the DDP on 16 May 2019. This is the application which is subject to this modification.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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



- development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2018/1894, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2018/1894 for the following reasons: The proposal is for internal changes and external changes to the rear balcony areas of the approved dwelling. The proposal does not involve any change of use, does not involve any substantial change to the height and bulk of the dwelling, and does not involve any further non-compliance with the applicable planning controls.
(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 DA2018/1894 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environmental Plan 2011 and Warringah Development Control Plan.
(i) the regulations, if the regulations so require, or	
(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made	No submissions were received in relation to



Section 4.55 (2) - Other Modifications	Comments
concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	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	Warringah 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)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. <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. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.



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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

REFERRALS

No referrals were sent in relation to this application

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. 957956S_05).

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

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

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

SEPP (Coastal Management) 2018

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

(1) Development consent must not be granted to development on land identified as "proximity area for coastal wetlands" or "proximity area for littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:

- (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
- (b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

The alterations involve internal works and minor changes to the approved dwelling. This would not have an unreasonable impact on coastal wetlands or rainforest.

12 Development on land within the coastal vulnerability area

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



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

Comment:

The proposal will not have a detrimental impact on the above and is not likely to alter coastal processes. This is a result of the lack of additional bulk proposed and the physical separation of the site from the beach and coastal area (over 100m).

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 have an adverse impact on the above as the proposed works do not involve excavation, substantial addition of bulk, or any other change to the natural environment which could cause an unreasonable impact on the coastal environment area.

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

Comment:

The proposal retains the siting of the existing dwelling which is over 100m from the beach. This physical



separation from the coastline along with the proposed works being maintained within the existing siting, provides a circumstance in which potential impact is sufficiently minimised.

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m (see DDP Condition No.2 to limit height)	8.5m	Nil	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B3 Side Boundary Envelope	5.0m and 45 degrees	Outside	Within (modified works)	Yes
B5 Side Boundary Setbacks	0.9m	1.4m	1.4m	Yes
	0.9m	1.1m	1.1m	Yes
B9 Rear Boundary Setbacks	6.0m	18.7m	18.3m	Yes
D1 Landscaped Open Space and Bushland Setting	40%	37%	36%	No (see comments)

Compliance Assessment



Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes

Detailed Assessment

D1 Landscaped Open Space and Bushland Setting

Description of Non-compliance

The proposal does not comply with the requirement for landscaped open space (40%). The proposal provides for a LOS of 36%. The approved landscaped area is 37% (216m²).

Merit Consideration

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

- *To enable planting to maintain and enhance the streetscape.*

Comment:



The proposal maintains landscaping to the front of the site and this provides reasonable opportunity for planting to maintain and enhance the streetscape.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment:

The proposal provides landscaping to the front and rear of the site and vegetation, topographical features and habitat for wildlife

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment:

The proposal provides landscaping to the front of the site and also has a landscaped road reserve to ensure the presentation of the building is sufficiently screened by vegetation.

- *To enhance privacy between buildings.*

Comment:

The proposal provides a landscaped buffer at the eastern and southern boundaries to ensure that there is a separation and screening that adequately contributes to the privacy between buildings.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment:

The proposal involves a large area of open space to the rear of the dwelling, accessible off living areas, that is available for outdoor recreational use. This includes a pool area as well as lawn areas to sufficiently provide for the needs of occupants.

- *To provide space for service functions, including clothes drying.*

Comment:

There is adequate space to the rear of the property for services functions including clothes drying.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

Council's Stormwater officer provided conditions so that an adequate outcome could be provided for the stormwater on site. In addition to this, the soft landscaped area to the front and rear of the site allows for sufficient water infiltration on site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the



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

D7 Views

Description of View Issue

The neighbouring property has views over the side boundary of the subject site toward the ocean. The proposed modification to the upper level balcony is above this view corridor.

At the level of this view corridor, a gable roof is proposed in place of the approved flat roof and balcony. This provides an improvement to the view corridor.

An assessment of the overall impact of the development on views is made below.



Photo 1: Views from neighbouring property at 29 Bellevue Parade

Merit Consideration



Assessment of Views in relation to 29 Bellevue Parade

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

- *To allow for the reasonable sharing of views.*

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

The neighbouring property at 29 Bellevue Parade has access to ocean views to the rear of the property, over the side boundary of the subject site. These water views are partially obscured by palm trees and built form which interrupt the extent of the horizon view.

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

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

Comment to Principle 2:

The views are obtained from living spaces including kitchen and living area at the top level of the building. The views are obtained from the rear of the property over the side boundary of the subject site. The views can be obtained from standing and sitting position.

3. Extent of impact

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

Comment to Principle 3:

As a result of the views to be affected being over a side boundary and being partially obscured,



along with the retention of some ocean views from the rear of the property, the overall impact is assessed as being **negligible to minor**.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The proposal complies with the controls for rear setback, side boundary envelope and side boundary setback. As the views are available through the rear of the site, these are the most applicable controls as opposed to building height and wall height. As such, the compliance with these particularly applicable controls in regard to the view loss, provides a situation in which the negligible to minor overall impact on views is reasonable.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The development provides modulation and stepping to the side and rear setbacks to provide a situation in which view sharing is encouraged and reasonably provided. This is an appropriate design solution for the site.

- *To ensure existing canopy trees have priority over views.*

Comment:

The proposal will have no unreasonable impact on existing canopy trees.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011/WDCP 2011 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019



Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

Conclusions on Assessment

The proposal involves changes to the approved dwelling that will not cause an unreasonable impact on surroundings.

On balance, the proposal should be approved as the changes do not result in an intensification or extension of built form that is unsuitable for the site and area.

Therefore, the application is recommended for approval.

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2020/0141 for Modification of Development Consent DA2018/1894 granted for demolition works and construction of a dwelling house including a swimming pool on land at Lot 46 DP 10571,27 Bellevue Parade, NORTH CURL CURL, 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
S4.55-BM-01 Site Analysis Plan/ Site Plan	30/04/20	Brianna Emily design
S4.55-BM-02 Lower Ground Floor Plan	30/04/20	Brianna Emily design
S4.55-BM-03 - Ground Level Plan	30/04/20	Brianna Emily design
S4.55-BM-04 - First Floor Level	30/04/20	Brianna Emily design
S4.55-BM-05 Roof Floor Plan	30/04/20	Brianna Emily design
S4.55-BM-06 West Elevation	27/02/20	Brianna Emily design
S4.55-BM-07 East Elevation	27/02/20	Brianna Emily design
S4.55-BM-08 North Elevation	27/02/20	Brianna Emily design
S4.55-BM-09 South Elevation	27/02/20	Brianna Emily design
S4.55-BM-10 Section A	27/02/20	Brianna Emily design
S4.55-BM-13 Section D	27/02/20	Brianna Emily design
S4.55-BM-11 Section B	27/02/20	Brianna Emily design
S4.55-BM-12 Section C	27/02/20	Brianna Emily design
S4.55-BM-14 Section E	27/02/20	Brianna Emily design

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

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

B. Modify Condition 1B - Amendments to approved plans to read as follows:

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

- Balcony 1 on the first floor is to modified as follows:-
 - Deletion of the eastern walkway portion of the balcony (adjacent to the kitchen, living room and stairs) and the installation of a roof section for a distance of 5m running south from the master bedroom
 - The balcony is to be stepped from the eastern side boundary by a minimum distance of 2.3m and by a minimum distance of 1.5m from the western side boundary; and
 - A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost western edge of the balcony located off the dining/lounge room (first floor level) as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.
- Windows modification as follows:-



- a) W300 and W301 on the first floor level are to be installed with highlight windows (minimum sill height of 1.5m above the finished floor level); and
- b) W204 is to be treated with obscured glazing and W205 is to be deleted on the ground floor.

- Roof modifications as follows:-
 - a) The roof is to be modified to ensure compliance with Clause 4.3 Height of Buildings (maximum height of 8.5m above existing ground level) as defined within the Warringah Local Environmental Plan 2011Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate. Reason: To ensure development minimises unreasonable impacts upon surrounding land.

C. Add Condition 13A - Deletion of Wet Bar to read as follows:

The proposed wet bar at the Lower Ground Level is to be deleted from the modified plans. Details notating compliance are to be provided prior to the issue of a Construction Certificate.

Reason: To ensure this consent does not give inappropriate opportunity to establish an additional dwelling (given that the consent is for a single dwelling only).

In signing this report, I declare that I do not have a Conflict of Interest.

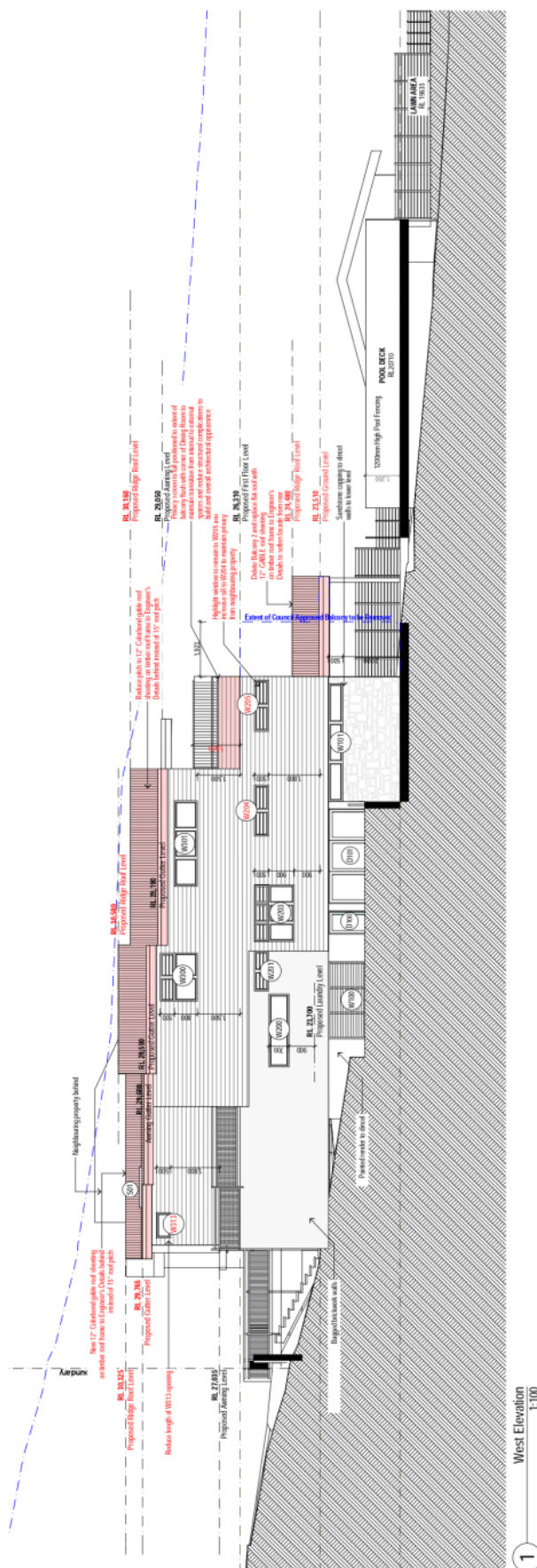
Signed

Steven Findlay, Manager Development Assessments

The application is determined on //, under the delegated authority of:

Steven Findlay, Manager Development Assessments





West Elevation

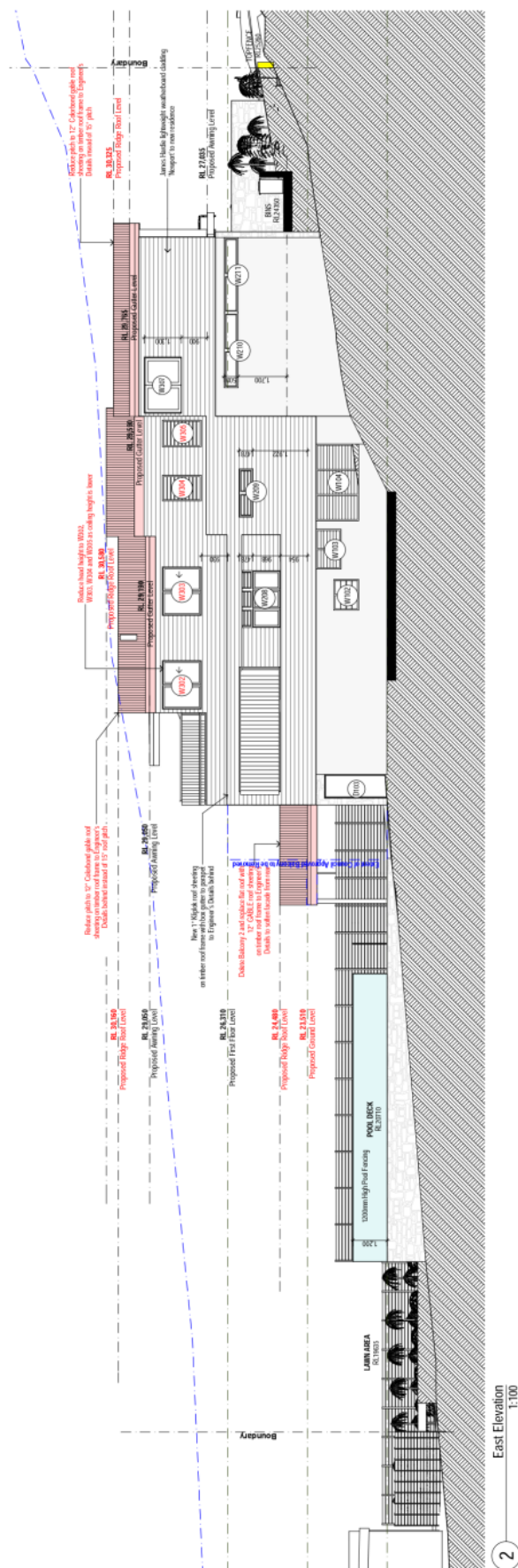
HWY:	S4 55-BM-06
DATE:	27/02/2020
ISSUE:	A
SCALE:	1:100 @ A2

MOORE RESIDENCE
Proposed Alterations and Additions
27 BELLEVUE PARADE NORTH CURL CURL NSW 2099

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ITEM 3.5	DA2020/0508 - 122 PITTWATER ROAD, MANLY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Steve Findlay
TRIM FILE REF	2020/449487
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 DA2020/0508 for alterations and additions to a dwelling house on land at Lot 1 DP 88475, 122 Pittwater Road, Manly, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0508
Responsible Officer:	Gareth David
Land to be developed (Address):	Lot 1 DP 88475, 122 Pittwater Road MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Danny John Carter Nicole Louise Carter
Applicant:	Nicole Louise Carter
Application Lodged:	20/05/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	29/05/2020 to 12/06/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 17.97%
Recommendation:	Approval
Estimated Cost of Works:	\$ 250,000.00

EXECUTIVE SUMMARY

The proposal involves alterations and additions to a existing dwelling house including the construction of a new first floor addition.

The application includes a request under Clause 4.6 of the Manly LEP 2013 for a variation to the development standard for floor space ratio (FSR). The application proposes a 18.44% variation to the FFSR development standard of 0.6:1 under the Manly LEP 2013.

The FSR for the site is also subject to special provisions under the Manly DCP - Clause 4.1.3.1, "Exceptions to FSR for Undersized Lots", where it is calculated at FSR 0.612:1 representing a 2% variation.



As the application proposes a variation to the FSR development standard of more than 10% and involves a Class 1 Dwelling, the application is referred to the Development Determination Panel.

Council received no submissions in response to the application.

The proposal was amended during the assessment in order to reduce the FSR non-compliance and provide a design which increased solar access to the adjoining property by reducing the extent of the first floor addition (in both length and height) and providing modulation of the southern side setback.

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

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

PROPOSED DEVELOPMENT IN DETAIL

Development consent is sought for alterations and additions to an existing dwelling. The proposed works consist of:

Ground Floor

- Demolition works
- New entry area with stairs to first floor and storage area
- New bathroom
- Minor changes to kitchen and dining area
- Alterations to laundry
- Alterations to sunroom including an increase in roof height

First Floor

- Demolition of existing mezzanine
- Construction of new first floor level containing three new bedrooms and a bathroom

External Alterations/Additions

- Four new windows on first floor on northern elevation
- New window/bi-fold to first floor eastern elevation
- Alterations to ground floor windows on north elevation including filling in two windows and a door
- Replacement of the existing rear veranda

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report)



taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot 1 DP 88475 , 122 Pittwater Road MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Pittwater Road. The site is regular in shape with a frontage of 6.16m along Pittwater Road and a depth of 35.2m. The site has a surveyed area of 215.3m². The site is located within the R3 Medium Density Residential zone and accommodates a single storey dwelling with a partial mezzanine area located towards the front of the dwelling. The site has no vehicular access. The site is relatively flat with a cross fall of approximately 0.5m from the street frontage (west) to the rear (east). The site has a small lawn area with a frangipani tree located at the rear. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development predominately consists of residential accommodation including one and two



	storey dwelling houses, semi-detached dwellings and residential flat buildings. The site to the immediate south (No.120 Pittwater Road) contains a two storey, 11 room boarding house.
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Map:

Object reference not set to an instance of an object.

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 approvals history:

- **1991** - DA3884/91 for Alterations and additions to the dwelling house

APPLICATION HISTORY

01 July 2020

Preliminary assessment of the application revealed issues in relation to the following which were forwarded to the applicant:

- Floor Space Ration non-compliance
- Sunlight access and overshadowing impacts to the adjoining southern property

16 July 2020

Amended plans and additional information were submitted in response to Council's issues letter. The amendments involved:

- Reduction in the length of the first-floor addition by 2.0m at the rear (eastern elevation)
- Reduction of the hallway ceiling height to 2.1m.
- Reduction in the wall height on the southern boundary to 6.0m.
- Reduction in the maximum building height from 6.75m to 6.58m.



23 July 2020

Council wrote to the applicant indicating there were still concerns in relation to the modulation to the southern elevation and that this should be addressed by increasing the southern side setback of Bedroom 4.

30 July 2020

Amended plans were submitted in response. The amendments involved:

- Increased the southern side setback of Bedroom 4 by 1.2m for a length of 3.0m.
- Increased the length of Bedroom 4 by 0.5m towards the rear boundary.

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 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended plans and updated survey plan. <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. <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



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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental



Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development. Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following conditions of consent.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed works are outside of the flood planning area.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	The proposal has been referred to Heritage as the subject site is located in the Pittwater Road Conservation Area and within the vicinity of a number of heritage items: Item I2 - All stone kerbs - Manly municipal area Item I204 - House - 105 Pittwater Road Item I205 - House - 107 Pittwater Road Item I259 - House - 65 Whistler Street
	Details of heritage items affected
	Details of the Conservation Area and the heritage items as contained within the Manly Heritage Inventory are: Pittwater Road Conservation Area <u>Statement of Significance</u> This street pattern is distinctive and underpins the urban character of the area. The streets remain unaltered in their alignment, although the names of Malvern, Pine and North Steyne are now names for what were Whistler, Middle Harbour and East Steyne respectively. <u>Physical Description</u> The streetscape of Pittwater Road is a winding vista of late 19th

Internal Referral Body	Comments
	and early 20th century commercial and residential architecture of generally one or two floors - although there are exceptions such as the four storey private hotel. The streetscape provides a 19th century atmosphere due to it's scale, width and the number of extant Victorian structures. Within the streetscape there are a number of individually significant buildings which are listed seperately. Adjacent streets generally comprise a consistent pattern of one and two story residential cottages, with the occasional terrace. Some streets have intermittent street plantings and remnant stone kerbs. The flat topography is accentuated by the escarpment to the west which provides an important visual, vertical and vegetated backdrop. <i>Item I2 - All stone kerbs</i> <u>Statement of significance:</u> Stone kerbs are heritage listed. <u>Physical description:</u> Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century. Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight. <i>Item I204 - House</i> <u>Statement of significance:</u> This item is of local cultural heritage signifigance as it demonstrates the pattern of development of Manly and in particular that associated with Pittwater Road. Constructed on the main road it is associated with development of the area following the introduction of the tram service. It is an intact and good example of an early Twentieth Century cottage which contributes to the streetscape of Pittwater Road and to the overall character of the Pittwater Road Conservation Area. <u>Physical description:</u> Single storey face brickwork early Twentieth Century villa with gable roof and parapeted ends. The Building is constructed in a transitory style displaying features of both the Late Victorian period and the Federation Style including terracotta tiles and ridge capping, central gabled feature to tower entry and bull nosed awning to verandah. Use of both Federation style and classical elements including tripartite casement windows and label mould to arched entrance. Low timber picket fence and high hedge behind. Filigree metal gate. <i>Item I205 - House</i> <u>Statement of significance:</u> This item is of local cultural heritage signifigance as it demonstrates the pattern of development of Manly and in particular that associated with Pittwater Road. Constructed on the main road it is associated with development of the area following the introduction of the tram service. It is an unusual example of an early Twentieth Century small villa style cotege which contributes to the

Internal Referral Body	Comments																					
	streetscape of Pittwater Road and to the overall character of the Pittwater Road Conservation Area. <u>Physical description:</u> This item is a single storey hipped roof early Twentieth century cottage displaying elements of both the Late Victorian period and that of the Federation Style. Its assymetrical layout, tower entrance with label moulds and double hung windows of Late Victorian style are combined with Queen Anne style decoration of the valence and brackets and general form. Low masonry wall, concrete tile roof and Inter-War period entry door are modifications. <i>Item I259 - House</i> <u>Statement of significance:</u> Cottage at 65 Whistler Street is of significance for Manly area as a representative example of a Victorian sandstone cottage and for its ability to demonstrate the pattern of Manly's development, particularly that associated with the early development of the flat area north of Manly Village. It is a late 19th Century sandstone cottage and an important remnant of early development in Manly. <u>Physical description:</u> Small scale single storey sandstone cottage with hipped roof anf awning over front verandah. Obscured by face brickwork fence close to verandah and vegetation. New painted corrugated metal roof and awning. Sandstone is rock faced ashlar with pronounced quoins, now painted over. Victorian style chimney. Windows to near front side double hung with louveres. <table><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>No</td><td></td></tr></table> Consideration of Application The subject property is not a heritage listed item, but located within the Pittwater Road Conservation Area, which is listed in Schedule 5 of Manly LEP 2013. The proposal seeks consent for alterations and additions to the existing Inter-War period dwelling which has already been modified internally. The development proposes a first floor addition to the	Other relevant heritage listings			Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of Significance	No		Other	No	
Other relevant heritage listings																						
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No																					
Australian Heritage Register	No																					
NSW State Heritage Register	No																					
National Trust of Aust (NSW) Register	No																					
RAIA Register of 20th Century Buildings of Significance	No																					
Other	No																					



Internal Referral Body	Comments
	rear section of the house and the retention of the heritage facade facing Pittwater Road. It is considered that the proposed alterations and additions are all confined to the rear, not be visible from Pittwater Road and there will be no change to the presentation of the dwelling in the Pittwater Road Conservation Area and the proposed works will not adversely impact the views to and from the heritage items within the vicinity. Therefore, no objections are raised on heritage grounds, subject to the imposition of a condition. <u>Consider against the provisions of CL5.10 of MLEP 2103</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? No, but has been addressed in the SEE. Further Comments COMPLETED BY: Oya Guner, Heritage Advisor DATE: 15 June 2020

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.A376411 dated 15 May 2020).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

The 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 proposed works are not likely to cause an adverse impact upon the matters identified in this clause. The proposed works do not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes.

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

Comment:

Council is satisfied the proposed works are designed, and can be managed, to avoid adverse impacts based upon the matters identified in this clause.

14 Development on land within the coastal use area

- (1)



Comment:

The proposal does not impact upon the existing and safe access to and along the foreshore. The visual amenity from private and public space is not considered to be adversely effected and the surrounding area consists of examples of similar developments. The proposed works are not likely to cause an adverse impact upon the matters identified in this clause.

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

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

Comment:

Council is satisfied that the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land.

As such, it is considered that the application does not comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

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	6.3m	N/A	Yes
Floor Space Ratio Site Area: 215.3sqm	FSR: 0.6:1 (129.18sqm)	FSR: 0.711:1 (153.0sqm)	18.44%	No, see comments under Clause 4.6

Note on FSR:

Under Clause 4.1.3.1 of the Manly DCP 2013, exceptions to FSR for undersized lots are provided. In this case, the subject site is in Area 'C' for subzones on the LEP lot size map. The clause provides that calculation for FSR on this 'undersized lot' can be based on '250sqm lot size/site area'. The following shows that the proposed development exceeds this requirement by 2.4sqm (1.6%):

Requirement (based on 250sqm lot size/site area)	Proposed
0.6:1 (150sqm)	0.612 (153.0sqm)

Compliance Assessment



Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
5.10 Heritage conservation	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance

Development standard:	Floor Space Ratio (FSR)
Requirement:	FSR: 0.6:1 (129.18sqm)
Proposed:	FSR: 0.711:1 (153.0sqm)
Percentage variation to requirement:	18.44%

Assessment of request to vary a Development Standard

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to Development Standards

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

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

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

Comment:



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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written



request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.’

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *The height, bulk and scale of the development is consistent with the established surrounding development including adjoining development and development generally within the visual catchment of the site.*
- *The proposal is retained behind the front building line which is already two storeys in scale, therefore no impact to the the existing streetscape or Conservation Area.*
- *The proposal is located on the existing building footprint, with no increase impacts on the user enjoyment of adjoining land and the public domain. The proposal retains existing landscaping and functionality of the site.*
- *The proposal has been skillfully designed with reduced wall heights and modulation to minimise adverse impacts on the adjoining neighbours.*
- *The proposal presents a new functional design which enhances the internal amenity of the dwelling and economic use of the land on a constrained lot.*

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

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

Therefore, Council is satisfied that the applicant’s written request has adequately addressed the



matters required to be demonstrated by cl 4.6(3).

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor Space Ratio development standard and the objectives of the R3 Medium Density Residential zone. An assessment against these objectives is provided below.

Objectives of Development Standard

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

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

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

Comment:

The proposed works are located behind the front building line and will not be readily visible from the public domain. The prevailing façade of the existing building is two storeys in scale, therefore there is expected to be minimal impact to the visual relationship between the new development and the existing streetscape. The proposed works have been reviewed by Council's Heritage Officer who raises no objection or concern in relation to the presentation of the works from the Conservation Area. Furthermore, the non-compliant setbacks of the proposal adhere to the established side building lines along the northern and southern elevations of the existing site and surrounding properties.

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

Comment:

As above, the proposed works are located behind the front building line and will not be readily visible from the public domain. The proposed works have been reviewed by Council's Heritage Officer who raises no objection or concern in relation to the presentation of the works from the Conservation Area.

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

Comment:



The proposal is located on the existing building footprint and retains existing landscaping and functionality of the site. As above, the proposed works are located behind the front building line and will not be readily visible from the public domain or Conservation Area.

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

Comment:

The amended design of the proposal incorporates an increased rear setback to the first floor element, modulation of building bulk and increased side setbacks towards the rear to maximise sunlight penetration to the adjoining neighbour. The amended design of the proposal has also reduced the wall height to a maximum of 6.0m and incorporates a flat roof design along the southern boundary to encourage solar penetration. No windows are proposed on the southern elevation to ensure minimal privacy impacts. Overall it is considered the proposal has been designed 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.

Comment:

The subject site is not within a business zone.

Zone Objectives

The underlying objectives of the R3 Medium Density Residential zone are:

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

Comment:

The proposal maintains the residential use of the site and therefore continues to contribute to providing housing needs for the community.

It is considered that the development satisfies this objective

- *To provide a variety of housing types within a medium density residential environment.*

Comment

The proposed additions to the dwelling contributes to the variety of housing types and densities in the area.

It is considered that the development satisfies this objective.

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



Comment

The proposal involves a residential land use which is appropriate for the zone.

It is considered that the development satisfies this objective.

- *To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*

Comment

The proposal encourages the revitalisation and rehabilitation of the existing site to bring it in line with the needs of the residential area i.e. a four-bedroom house.

- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

Comment

Not applicable

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone.

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

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 215.3m²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling/250m ²	1 dwelling/215.3m ²	N/A	Existing and unchanged
4.1.2.1 Wall Height	N: 6.5m	6.1m	N/A	Yes
	S: 6.5m	6.0m	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes



4.1.2.3 Roof Height	Height: 2.5m	Less than 2.5m	N/A	Yes
	Pitch: maximum 35 degrees	Less than 35 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	2.7m, consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: 2.01m (based on wall height)	1.2m	40%	No
	S: 1.98m (based on wall height)	Nil	100%	No
	Windows: 3.0m	1.2m	60%	No
4.1.4.4 Rear Setbacks	8.0m	5.9m	26.3%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	26.5% (57sqm)	51.8%	No (Existing and unchanged)
	Open space above ground 25% of total open space	0%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	64% (36.5sqm)	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	57sqm	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	0 spaces	N/A	No (Existing)

***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
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	No	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes



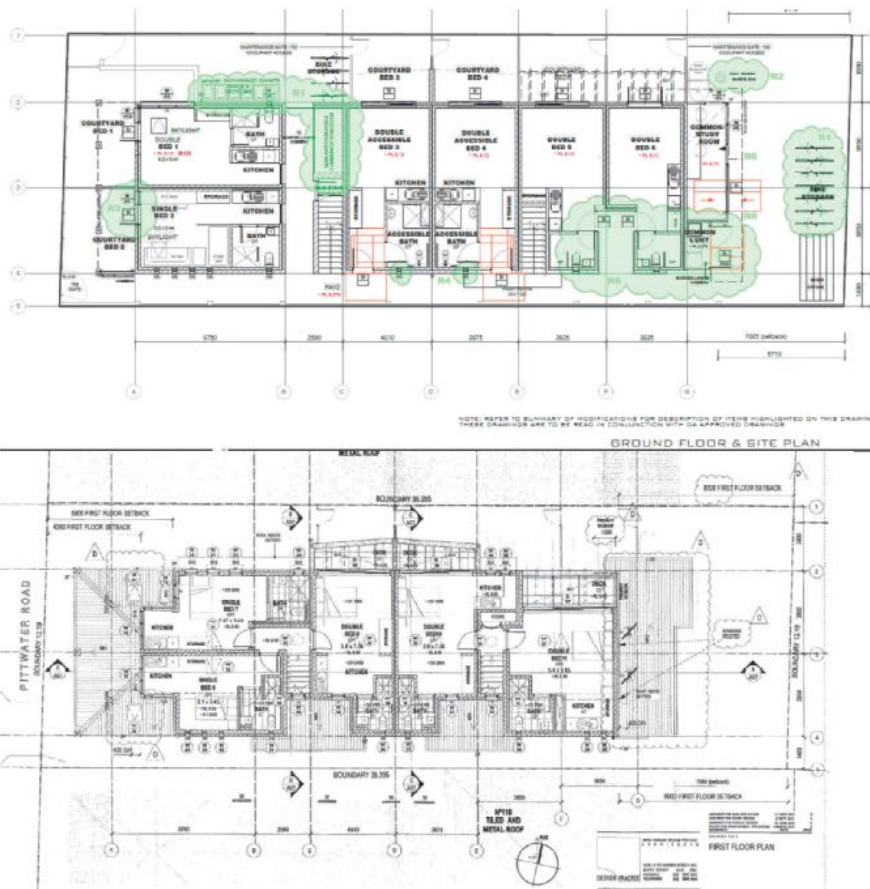
Clause	Compliance with Requirements	Consistency Aims/Objectives
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.4.2 Awning supported from the ground	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

No.120 Pittwater Road

The adjacent building to the south (No.120 Pittwater Road) is a two (2) storey, eleven (11) room boarding house. Each boarding room within this development contains a ensuite, kitchenette and bedroom. This boarding house contains six (6) boarding rooms and a common room on the ground floor and five (5) boarding rooms on the first floor level. All but two (2) boarding rooms contain north facing windows. Seven (7) boarding rooms comprise of north facing private open space (four (4) ground floor courtyards and three (3) first floor balconies). The site contains communal open space to the rear. This can be seen in figures 1 and 2 below.



Figures 1 & 2: Ground and First Floor plan of the boarding house development at No.120 Pittwater Road (southern neighbours of subject site). Note: the northern boundary of the subject site is located at the top of the plans

Description of Non-compliance

3.4.1.1 Overshadowing Adjoining Open Space

Clause 3.4.1.1 specifies that:

In relation to sunlight to private open space of adjacent properties:

(a) New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June) ; or

(a) Where there is no winter sunlight available to open space of adjacent properties from 9am to 3pm, the calculations for the purposes of sunlight will relate to the equinox in March and September from 9am to 3pm

No.120 Pittwater Road - Ground Floor

By virtue of their location directly adjacent to the northern boundary of the subject site, the four (4) north facing, ground floor private courtyards of No.120 Pittwater Road currently do not receive solar access during the winter solstice. Therefore, the calculations for the purposes of sunlight will relate to the equinox in March and September from 9am to 3pm. The addition of the first floor element and the alteration to the existing ground floor sunroom and deck would result in additional overshadowing of



these courtyards between the hours of 9am-12pm. It should be noted that these courtyards are also overshadowed due to the design of the existing first floor balconies which extend over a portion of these areas. Furthermore, the proposed work only results in a small increase to the existing shadowing situation.

No.120 Pittwater Road - First Floor:

The elevational shadow diagrams demonstrate there is an increased impact to the north (side) facing first floor balconies used by two separate boarding rooms, predominately during the hours of 12pm-3pm on the winter solstice. Solar access to the third (easternmost) balcony would not be impacted by the proposal. The proposal would not reduce to level of solar access to these balconies during the equinox in March and September.

3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties

This clause states the following in relation to maintaining solar access for adjacent properties:

'a) for adjacent buildings with a with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June).'

The adjacent building to the south has an east-west orientation. Therefore, the level of solar access to be maintained to windows or glazed doors to living rooms is a minimum of 2 hours during 9am and 3pm on 21 June.

No.120 Pittwater Road - Ground Floor

The elevational shadow diagrams provided show additional shadow impacts to the northern elevation at 120 Pittwater Road. The ground floor impact relates to the increase of height to the existing sunroom and deck. This would result in the complete overshadowing of the ground floor, north facing windows of boarding room 5 and 6. Given the ground floor common room has east facing windows, it is expected to maintain at least 2 hours of sunlight in the mornings between 9am-12pm.

No.120 Pittwater Road - First Floor

The elevational shadow diagrams provided demonstrate that the first floor north facing windows will obtain a minimum of 2 hours during 9am and 3pm on 21 June.

Merit Consideration

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

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

Comment:

The proposal provides a reasonable level of solar access to the subject site and neighbouring site, considering the site's (and neighbouring sites) context and existing built form. As described above, the ground floor courtyards and north facing windows of No.120 Pittwater Road are considered to be *highly vulnerable* to overshadowing given their design and orientation directly adjacent to the northern side boundary in an area that permits a building height of 8.5m.

The vulnerability of the ground floor north (side) facing private open space is such that any first floor addition with a compliant building height would result in additional overshadowing of these areas. It is also noted that sunlight to the communal courtyard to the rear is maintained for the whole of the morning and for some afternoon hours during the worst case scenario of winter solstice. Sufficient



sunlight access will be maintained to the windows and open spaces of the first floor of the adjoining development. The proposed development demonstrates that it is acceptable in relation to the objectives of all built form controls, for the reasons detailed in this report. As such, given the reasonableness of the proposed additions, the overshadowing impact is considered reasonable and equitable.

Objective 2) To allow adequate sunlight to penetrate:

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

Comment:

The proposal retains sufficient sunlight access to the communal courtyard to the rear and to the communal living area of the boarding house. The proposal also retains sufficient sunlight to the north facing first floor balconies. As described above, the ground floor courtyards and north facing windows of No.120 Pittwater Road are considered to be *highly vulnerable* to overshadowing given their design and orientation directly adjacent to the northern side boundary.

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 additions would be situated atop of the existing footprint of the dwelling. The location of these additions is considered reasonable and appropriate given the siting of the existing building and constraints of the site. The amended design of the proposal incorporates an increased rear setback of the first floor element and modulation of building bulk and increased side setbacks towards the rear to maximise sunlight penetration to the adjoining first floor balconies. Given the extremely narrow width of the site, the maintenance of existing ground floor side setback is considered reasonable in this circumstance.

The amended design of the proposal has also reduced the wall height to a maximum of 6.0m and incorporates a flat roof design along the southern boundary to encourage solar penetration. The proposed development is acceptable in relation to the relevant built form controls within the Manly DCP, for the reasons detailed throughout this report. In this way, the proposed development is reasonable in its context. Overall the proposal represents a modest increase to the existing built form which is sited and designed to provide reasonable solar access in consideration of the context of the site.

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

4.1.3 Floor Space Ratio (FSR)

Clause 4.1.3.1 provides for exceptions to FSR for undersized lots is relevant and the control is outlined below:



DCP FSR Control (for Area C)

	Requirement	F
Calculation of FSR based on 250sqm lot size/ site area	0.6:1 (150sqm)	0 (

This control does not override the Manly LEP development standard and a full assessment can be found under the Clause 4.6 assessment in this report. However, the lesser extent of the percentage variation does give a context to Floor Space Ratio at this site.

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

Description of Non-compliance

Clause 4.1.4.2 of the MDCP 2013 requires the side building line to be no less than one third of the wall height from side boundaries. The northern elevation of the proposed first floor addition has a maximum wall height of 6.1m. Therefore, the setback requirement is at least 2.01m from the northern side boundary. The first floor addition is proposed to be setback 1.2m from the the northern side boundary which represents a 40% variation from the prescribed control.

The southern elevation of the proposed first floor addition has a maximum wall height of 6.0m. Therefore, the setback requirement is at least 1.98m from the southern side boundary. The first floor addition and the ground floor rear addition is proposed to maintain a nil setback from the the northern side boundary which represents a 100% variation from the prescribed control.

It should be noted that the proposed additions are on top of an existing building footprint and maintains the side setback of the existing dwelling. It should also be noted that the narrowness of the site and the proximity of the existing ground floor renders the site too constrained to provide a complaint setback to the first floor. Furthermore, amended plans have been submitted which set-in the proposed southern first floor wall by 1.2m for a length of 3.0m towards the rear in order to provide modulation of this first floor addition.

This provision also requires windows adjoining habitable space to be setback at least 3.0m from side boundaries. The proposed development comprises six (6) new windows on the northern elevation of the dwelling setback 1.2m from the northern side boundary, which fails to comply with the requirement. No windows are proposed on the southern elevation.

In addition, the policy also requires a minimum rear setback of 8.0m. The proposed replacement rear pergola would be setback 5.9m from the rear boundary, representing a variation of 26.3%. It should be noted that the replacement pergola would be replacing a existing structure with the same rear setback.

Merit Assessment

With regard to the consideration for a variation, the proposed development is considered against the underlying objectives of the control as follows:

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

Comment:



The proposed works are located behind the front building line and will not be readily visible from the public domain. The proposed works have been reviewed by Council's Heritage Officer who raises no objection or concern in relation to the presentation of the works in the Conservation Area. As such, the development will not be to the detriment of the streetscape. Furthermore, it is noted that the new non-compliant elements of the proposal adhere to the established side building lines along the northern and southern elevations on the existing site and surrounding properties. In this regard, a variation to the control is considered to be appropriate.

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 and at the street intersection.*

Comment:

No windows are proposed within the southern elevation. The neighbour to the north (No.124 Pittwater Road) contains no windows located along the southern elevation and is built with a nil setback along this boundary. As such no privacy impacts would result from the proposed windows in the northern elevation.

As detailed within *CI 3.4.1 Sunlight Access and Overshadowing* of this report, the proposal is considered to maintain equitable access to light.

No unreasonable view loss is expected to arise as a result of the proposal.

The proposed side and rear building lines adhere to the established side lines on the existing site and surrounding properties.

As above, the proposal would not be readily visible from the street and hence, it is not considered to impact upon the existing streetscape or traffic conditions.

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

Comment:

Flexibility is provided in this circumstance as the development responds to established side building lines on the property. The location of the new development will have minimal impacts upon the streetscape and will not significantly detract from the amenity of adjoining properties, specifically having regard to views, solar access and privacy. Furthermore, amended plans have been received which set-in the proposed southern first floor wall by 1.2m for a length of 3.0m towards the rear in order to provide modulation of this first floor addition.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across the sites, native vegetation and native trees;*
- *ensuring the nature of the development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks;*



- and
- ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.

Comment:

The proposed development will not require the removal of any existing vegetation and the site as a whole demonstrates compliance with the landscaped area requirement.

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

Comment:

The site is not bushfire prone.

Having regard to the above assessment, it is concluded that the applicable objectives of the control have been achieved. Therefore, the application is supported on merit

4.1.5 Open Space and Landscaping

Description of Non-compliance

Clause 4.1.5.1 of the MDCP 2013 stipulates that development is to provide at least 55% (118.42sqm) of the site area as Total Open Space (TOS). 26.5% (57.0sqm) of the site is currently reserved for TOS, which does not comply with the control. It is noted that the application proposes no changes to the existing TOS. Nevertheless, the application is assessed against the objectives of the control as follows:

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

Comment:

The proposal does not involve the removal of trees or significant landscape features on the site.

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

Comment:

The constraints of the site limits areas available for landscaping. The proposal complies with the numerical requirement for landscaped open space. The site will contain sufficient dimensions for open space within the property that will service the needs of the occupants.

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

Comment:

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

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

Comment:

No change to the existing hard surface on the site is proposed. The landscaping dimensions on site



area appropriate and will assist with stormwater infiltration on site, thereby reducing stormwater runoff.

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

Comment:

The proposal does not include the introduction of any weeds.

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

Comment:

The proposal is not expected to have unreasonable impact upon wildlife habitat or corridors.

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

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

Description of Non-compliance

The proposal does not provide for any parking on-site and therefore does not comply with the requirement of two (2) parking spaces. It is noted a variation to the car parking requirement can be considered where there would be an adverse impact on a heritage item. The stone kerb located along Pittwater Road directly out the front of the subject site is designated as a heritage item within the MLEP. Hence, the provision of a crossover would impact upon this item of heritage significance. With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

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

Comment

The provision of parking onsite would not be reasonably accessible or adequate as there is insufficient space between the front of the existing dwelling and the front boundary to support a parking space that complies with the Australian Standards.

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

Comment

The provision of one off street parking space would not reduce the demand for on-street parking. The subject site does not have an existing crossover and would therefore remove one available on-street parking space to facilitate the crossover.

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

Comment

The available space within the front setback would not support a car parking space that meets the Australian Standard size requirements. The provision of a hardstand parking space would not provide for safe and convenient access.



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

Comment

Minimal excavation would be required for a hardstand parking space onsite.

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

Comment

The provision of an on-site parking space would require the construction of a crossover increasing the number of footpath crossings along Pittwater Road.

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

Comment

The provision of car parking would likely require the removal of one street tree. The proposed arrangement maintains an attractive street frontage.

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

Comment

The subject site is situated on Pittwater Road and contains numerous public transport options for the residents of the subject site to utilise.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

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 \$2,500 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$250,000.

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.

Conclusions on Assessment

As addressed within this assessment report, the proposed development does not comply with Clause 4.4 Floor Space Ratio under MLEP 2013 and the formal request via Clause 4.6 Exceptions to development standard was assessed and considered acceptable in this instance. Variations to the MDCP 2013 controls Clause 3.4.1 Sunlight Access and Overshadowing; Clause 4.1.3 Floor Space Ratio (FSR); Clause 4.1.4 Setbacks (front, side and rear); Clause 4.1.5 Open Space and Landscaping; Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) have been considered and addressed and supported.

The proposed design does not give rise to any unreasonable amenity impact or visual impact, and is consistent with the objectives of the MLEP 2013 and MDCP 2013.



In this case, the proposed development provides a design that would not adversely impact the existing streetscape or Conservation Area and would appropriately minimise adverse impacts on the adjoining properties. Furthermore, an assessment against the objectives of the development standard and DCP controls has found the proposal to be consistent with those provisions and reasonable.

On balance, the proposal should be approved (subject to standard and specific conditions) 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 modulation to reduce any unreasonable impact caused by building bulk.

Therefore, the application is recommended for approval.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2020/0508 for Alterations and additions to a dwelling house on land at Lot 1 DP 88475, 122 Pittwater Road, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA03 Rev.C (Site Plan)	29/07/2020	Action Plans
DA04 Rev.C (Existing Floor/Demolition Plan)	29/07/2020	Action Plans
DA05 Rev.C (Proposed Floor Plans)	29/07/2020	Action Plans
DA06 Rev.C (North/East Elevation)	29/07/2020	Action Plans
DA07 Rev.C (South/West Elevation)	29/07/2020	Action Plans
DA08 Rev.C (Sections)	29/07/2020	Action Plans
DA21 Rev.C (Long Section)	29/07/2020	Action Plans

Reports / Documentation – All recommendations and requirements contained



within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate (A376411_02)	15 May 2020	Action Plans

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	16/05/2020	-

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 (Demolition):

- (a) 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 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
 - (ii) 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.

(b) 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.

(c) 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.

Reason: Legislative Requirement.

3. Prescribed Conditions

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

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

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



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

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

Reason: Legislative requirement.

4. General requirements (Demolition):

(a) Unless authorised by Council:

Demolition and excavation works are restricted to:

- o 8.00 am to 5.00 pm Monday to Friday only.

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

(b) At all times after the submission a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. The consent shall be available for perusal of any Authorised Officer.

(c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(e) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

(i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.



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

5. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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



erection of any fences, hoardings or other temporary works.

- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

Reason: To ensure that works do not interfere with reasonable amenity expectations of



residents and the community.

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$2,500.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$250,000.00.

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.

7. Security Bond

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required 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, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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



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

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

8. Stormwater Disposal

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003. Details demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

9. Compliance with standards (Demolition):

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 Council prior to the commencement of demolition works.

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

10. Compliance with Standards

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11. Road Reserve

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

Reason: Public safety.

12. Removing, Handling and Disposing of Asbestos

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

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005;
- and



- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

13. **Protection of sandstone kerbing**

The sandstone kerbing located in the road reserve along the western boundary of 122 Pittwater Road, Manly, is to be protected at all times during demolition and construction works on site.

Reason: To ensure that the heritage listed sandstone kerbing is not damaged as a result of the proposed works.

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

14. **Stormwater Disposal**

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

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

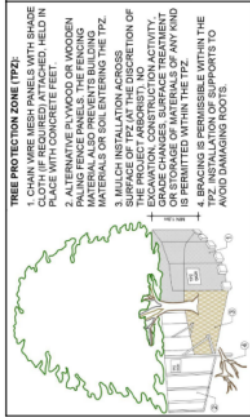
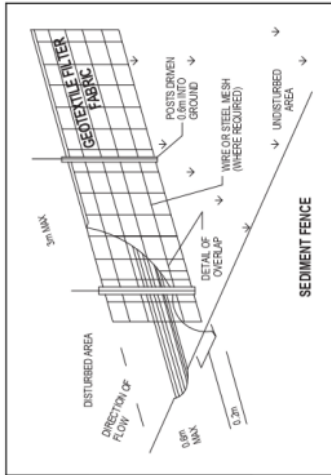
In signing this report, I declare that I do not have a Conflict of Interest.

Signed

Steven Findlay, Manager Development Assessments

The application is determined on //, under the delegated authority of:

Steven Findlay, Manager Development Assessments



DUST CONTROL :

TO REDUCE DUST GENERATED BY WIND ACTION, THE REMOVAL OF THE TOP SOIL IS TO BE MINIMISED. TO PREVENT THE EXCAVATION OF TOP SOIL, THE EXCAVATION OF THE SITE, ESPECIALLY DURING THE MOVEMENT OF MACHINERY IS REQUIRED, WHERE EXCAVATING INTO ROCK, KEEP THE SURFACE MOIST TO MINIMISE DUST. CONSTRUCT A GRAVEL ENTRY/EXIT POINT USING BLUE METAL AND RESTRICT ALL VEHICLE MOVEMENTS WITHIN THE SITE TO A MINIMUM. ENSURE WIND BREAKS, SUCH AS EXISTING FENCES ARE MAINTAINED DURING THE CONSTRUCTION PHASE UNTIL NEW LANDSCAPING IS PROVIDED OR REINSTATED. PREVENT DUST BY COVERING STOCKPILES.

SEDIMENT NOTE :

1. ALL EROSION AND SEDIMENT CONTROL MEASURES TO BE INSPECTED AND MAINTAINED DAILY BY THE SITE MANAGER.
2. MINIMISE DISTURBED AREAS. REMOVE EXCESS SOIL FROM EXCAVATED AREAS SOON AS POSSIBLE.
3. ALL EXCAVATED AREAS TO BE COVERED WITH DRAINAGE GUTTERS AND FOOTPATHS, OR WITHIN SEDIMENT FENCE AREA.
4. DRAINAGE TO BE CONNECTED TO STORMWATERS AS SOON AS POSSIBLE. IF STORED ON SITE, IT MUST BE FILTERED BEFORE RELEASING INTO STORMWATER SYSTEM OR WATERWAYS.
5. ROADS AND FOOTPATHS TO BE SWEPT DAILY.

STOCKPILES :

ALL STOCKPILES ARE TO BE KEPT ON-SITE WHERE POSSIBLE. ANY MATERIALS PLACED ON THE FOOTPATHS OR NATURE STRIPS REQUIRE COUNCIL'S PERMISSION.

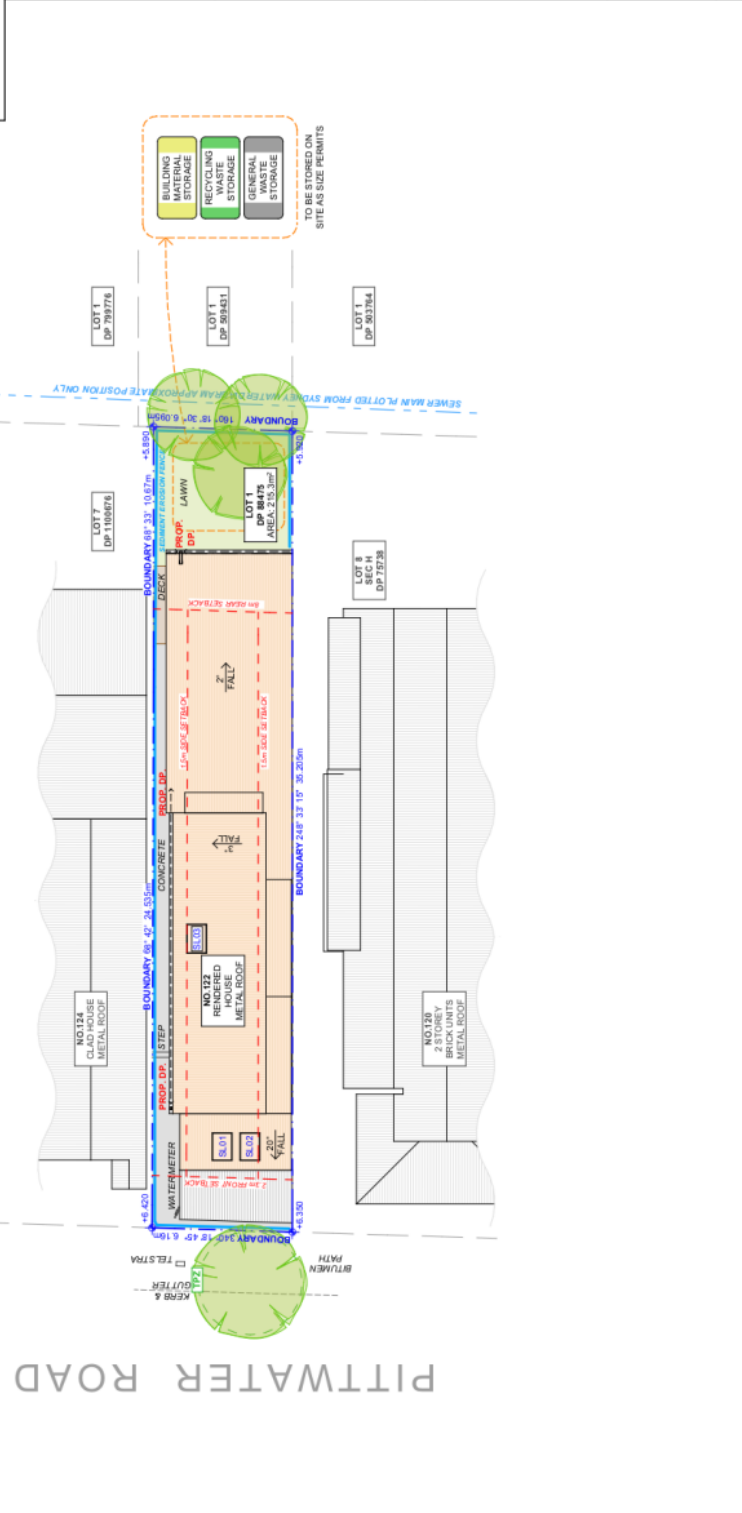
ALL STOCKPILES ARE TO BE PLACED AWAY FROM THE DRAINAGE LINES AND STREET GUTTERS. IT IS BEST TO LOCATE THESE ON THE HIGHEST PART OF THE SITE. WHERE POSSIBLE, PLACE WATERPROOF COVERING OVER STOCKPILES.

IF REQUIRED, PROVIDE DIVERSION DRAIN & BANK AROUND STOCKPILES.

GUTTER PROTECTION :

PROVIDE PROTECTION TO DOWNHILL GRATE IN DRAINAGE LINES OF SIDEWALKS OR OPEN METAL GUTTERS IN CURBSIDE DRAINAGE LINES. SAND BUILDS UP AROUND THIS SEDIMENT BARRIER. THE MATERIAL SHOULD BE RELOCATED BACK TO THE SITE FOR DISPOSAL.

NOTE: ALL PROPOSED STORMWATER TO CONNECT WITH EXISTING



1 SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT / STORMWATER CONCEPT PLAN 1:200

ACTION PLANS
m: 0426 957 518
e: operations@actionplans.com.au
w: www.actionplans.com.au

REV. **DATE** **COMMENTS** **DRWN** **NOTES**

A	05/02/2020	EA DOCUMENTATION	EA	
B	11/02/2020	DA REV A	AP	
C	26/02/2020	DA REV B	AL	

CLIENT
DANNY & NICOLE CARTER

EXISTING
DOWNPIPE
PROPOSED
DOWNPIPE
DEMOLISHED
DOWNPIPE

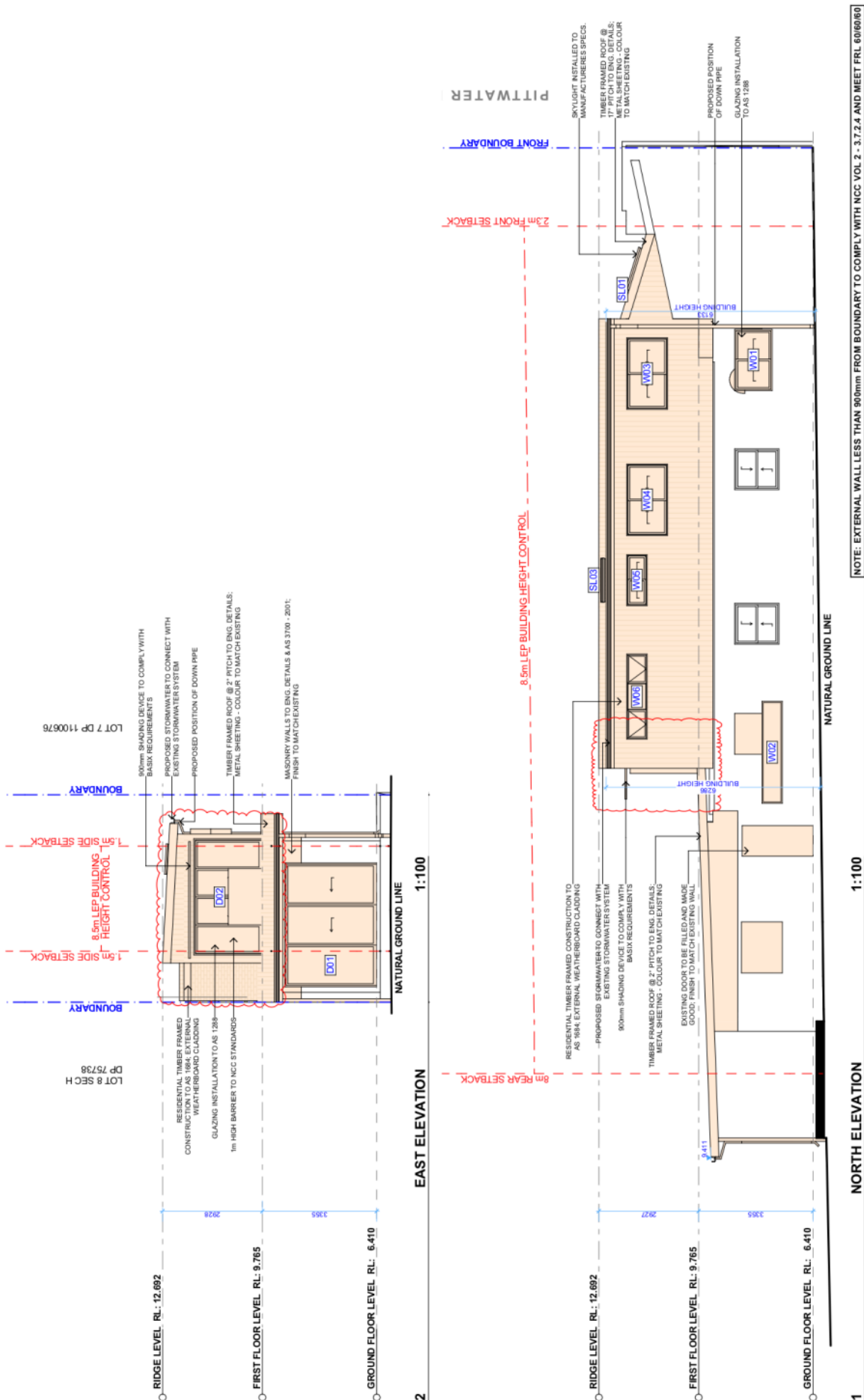
PROJECT ADDRESS
122 PITTMATER ROAD,
MANLY 2095

DRAWING NO.
DA03

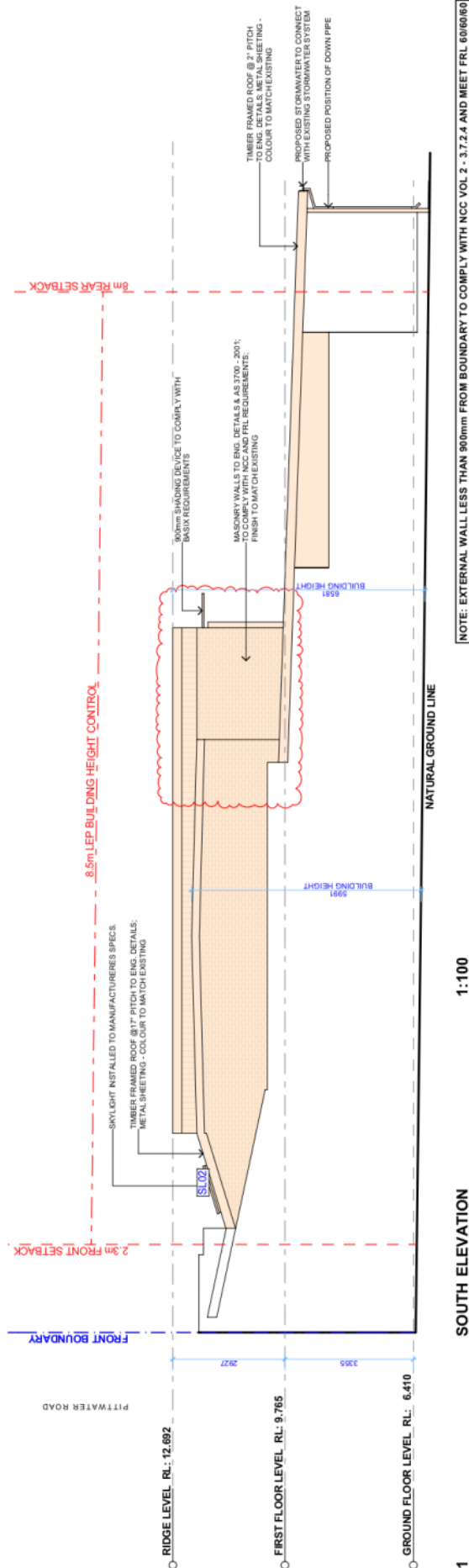
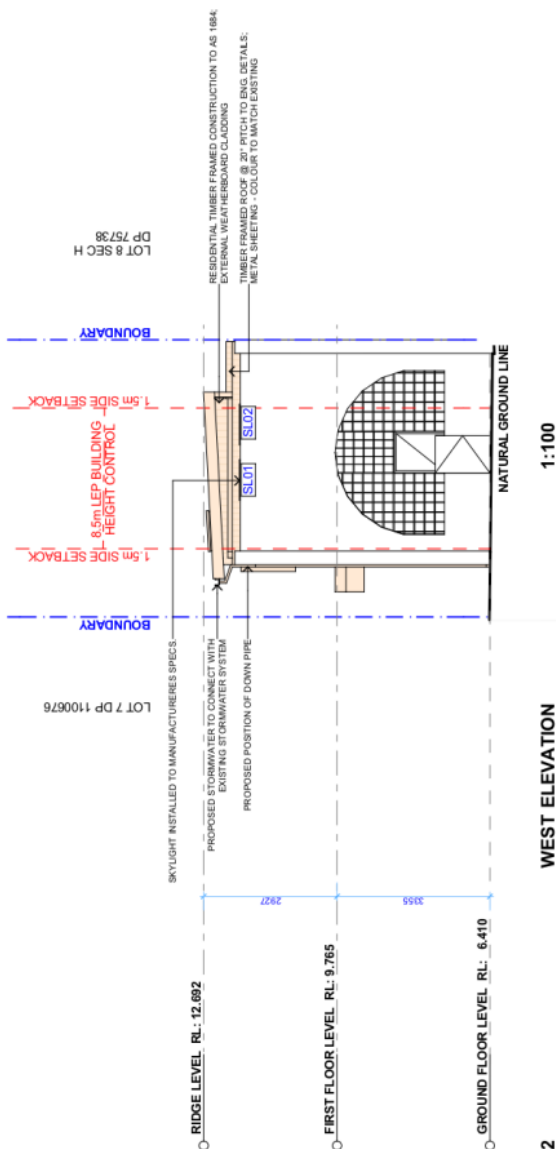
DATE
Wednesday, 29 July 2020

DRAWING NAME
SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT / STORMWATER CONCEPT PLAN

SCALE
1:200 @A3



REV.	DATE	COMMENTS	DRWN/NOTES	LEGEND	CLIENT	DRAWING NO.	DRAWING NAME
A	05/02/2020	DA DOCUMENTATION	EAS	EXISTING	DANNY & NICOLE CARTER	DA06	NORTH / EAST ELEVATION
B	11/07/2020	DA REV A	AP	PROPOSED			
C	28/07/2020	DA REV B	AL				
				ACTION PLANS m: 0426 957 518 e: operations@actionplans.com.au w: www.actionplans.com.au			
				PROJECT ADDRESS 122 PITTMATER ROAD, MANLY 2095			
				DATE Wednesday, 29 July 2020			
				SCALE 1:100 @A3			





**REVISED OBJECTION PURSUANT TO
CLAUSE 4.6 OF MANLY LOCAL
ENVIRONMENTAL PLAN 2013**

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

**ALTERATIONS AND ADDITIONS TO
AN EXISTING DWELLING HOUSE**

122 PITTWATER ROAD, MANLY

✉ mathew@fourtowns.com.au

☎ 0425232018

www.fourtowns.com.au

PO Box 361, Balgowlah NSW 2093

Alterations and Additions to Dwelling House – 122 Pittwater Road, Manly

This report has been prepared to support a Development Application under the *Environmental Planning and Assessment Act 1979*.

Report prepared by:

Mathew Quattroville
Director – Four Towns Pty Ltd

Report prepared for:

Danny and Nicole Carter

Original Version: May 2020

Amended: 15 June 2020

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Alterations and Additions to Dwelling House – 122 Pittwater Road, Manly

Introduction

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

The following assessment of the variation to Clause 4.4 – Floor space ratio development standard is assessed taking into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement	0.6:1 129.18sqm
Proposed	0.77:1 166.06sqm
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a numerical/or performance based variation?	Numerical
If numerical enter a % variation to requirement	22%

The proposal must satisfy the objectives of Clause 4.4 – Floor space ratio, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013.

The variation to the FSR control occurs within the existing building footprint with an extension to the first-floor level. The proposal is consistent with surrounding developments and the proposed minor increase in GFA compatible with the locality and complies with the maximum building height. The breach to the FSR control is considered minor as it is confined within the existing structures.

A variation to the strict application of the FSR standard is considered appropriate for the subject site as:

- The objectives of the MLEP2013 FSR control are achieved notwithstanding the technical non-compliance.
- The objectives of the MLEP2013 R3 Medium Density Residential zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary.
- There are sufficient environmental planning grounds to support the proposed variation (given the existing scale of Pittwater Road, the existing building footprint on the site and precedence through other sites approved with a variation).

Alterations and Additions to Dwelling House – 122 Pittwater Road, Manly

Clause 4.6 Variation Requirements

The grounds of objection are based upon the various tests of the recent judgement in the *NSW Land and Environment Court Case Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* by the Chief Judge Preston and review the following:

Compliance being unreasonable or unnecessary

1. Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: *Wehbe v Pittwater Council* at [42] and [43].
2. The underlying objective or purpose of Clause 4.4(2) is not relevant to the development with the consequence that compliance is unnecessary. *Wehbe v Pittwater Council* at [45]
3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. *Wehbe v Pittwater Council* at [46]
4. The development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the stand is unnecessary and unreasonable: *Wehbe v Pittwater Council* at [47].
5. The relevance of the zoning provisions of the land to which the development is proposed.

Sufficient environmental planning grounds

1. First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard"
2. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31]

Is the proposed development in the public interest?

The Consent Authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of:

- a. the particular development standard;
- b. the zone in which the development is proposed to be carried out.

Secretary's Concurrence

Under clause 4.6(5), in deciding whether to grant concurrence, the Secretary must consider the following matters:

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

Alterations and Additions to Dwelling House – 122 Pittwater Road, Manly

General Provisions Relating to Clause 4.6 which will be applicable to Clause 4.4(2) Floor Space Ratio

4.6 Exceptions to development standards

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

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

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

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

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

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

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

(5) *In deciding whether to grant concurrence, the Planning Secretary must consider—*

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

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

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

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

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

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

Alterations and Additions to Dwelling House – 122 Pittwater Road, Manly

- (a) a development standard for complying development,
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,
- (c) clause 5.4,
- (ca) clause 6.15,
- (cb) a development standard on land to which clause 6.19 applies.

Comment: As detailed previously in this request, Clause 4.6 of MLEP2013 is applicable to enable a variation to the Floor Space Ratio to permit Northern Beaches Council power to grant development consent to the subject development.

This proposal involves a departure from the FSR control of MLEP2013, a formal variation to this standard is required under *Clause 4.6 – Exceptions to Development Standards*. This provision allows consent to be granted for a development even though it would contravene a development standard imposed by this or any other planning instrument.

The provisions of Clause 4.6, which the consent authority must have regard to in determining whether a development that contravenes a development standard should be supported, includes the following:

- That compliance with the development standard is unreasonable and unnecessary in the circumstances of the case; Cl 4.6 (3)(a)
- That there is sufficient environmental planning grounds to justify contravening the development standard; Cl 4.6 (3) (b)
- 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: Cl 4.6 (4)(a)(ii)
- The public benefit of maintaining the development standard, and Cl 4.6 (5)(b)
- Any other matters required to be taken into consideration by the Planning Secretary before granting concurrence Cl 4.6 (5)(c)

4.4 Floor space ratio

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

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

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).

(2A) Despite subclause (2), the floor space ratio for a building on land in Zone B2 Local Centre may exceed the maximum floor space ratio allowed under that subclause by up to 0.5:1 if the consent

Alterations and Additions to Dwelling House – 122 Pittwater Road, Manly

authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises.

Comment: It is acknowledged that the proposed development does not comply with clause 4.4 (2) and accordingly there is a requirement to submit a Clause 4.6 Variation. This Clause 4.6 seeks an exemption to the development standard as prescribed under the MLEP2013 and demonstrates that compliance with the provisions of clause 4.4 (2) is both unreasonable and unnecessary and the proposed development meets the required steps that are set out in the relevant NSW Land and Environment Court decisions to justify that the standard can be varied to achieve the subject proposal.

The development standard in Clause 4.4 (2) of the MLEP2013, is amendable to variation. The purpose of this Clause 4.6 is to vary the Floor Space Ratio as a floor space referable to the building to give Council the power to grant development consent to the non-compliant purposes. This proposition is reinforced by the following:

Clause 4.4 (2) states:

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).

The Floor Space Ratio Map sets a maximum FSR control of 0.6:1. For the purpose of calculating FSR, the MLEP2013 provides the following definition:

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,

but excludes—

- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement—
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.

It is proposed to provide 166.06sqm of GFA on the site which has a site area of 215.3sqm. This equates to an FSR of 0.77:1, representing a 22% variation to Council's standard.

The Floor Space Ratio in clause 4.4(2) of the MLEP2013 is a development standard in accordance with the definition set out below:

Development standards' is defined in section 1.4 of the EP&A Act 1979 as:

Alterations and Additions to Dwelling House – 122 Pittwater Road, Manly

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which **requirements are specified or standards are fixed** in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

(d) *the cubic content or floor space of a building,*

Despite the variation to the floor space ratio control which occurs as a result of the small lot size, the proposed alterations and additions are considered to be in keeping with the desired future character of the locality. The proposed first floor additions are sited 5.2m from the front boundary of the existing dwelling, therefore the alterations and additions will not result in any unreasonable visual impact on the Pittwater Road streetscape.

The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing. Therefore, this written submission is considered to be compliant with the Statutory Provisions prescribed both under MLEP2013 and the provisions of Clause 4.6 which permit a variation to a development standard.

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Objection to Development Standard – Floor Space Ratio (Clause 4.4(2))

Compliance being unreasonable or unnecessary

1. Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the stand: *Wehbe v Pittwater Council* at [42] and [43].

Comment: Clause 4.6(3)(a) of the MLEP2013 states that the proposed variation to the development standard must demonstrate that compliance with the development standard is *'unreasonable or unnecessary in the circumstances of the case'*.

In determining a merits based assessment for the floor space ratio of the development due consideration has been given to the above objectives and the planning principles set by the Land and Environment Court of NSW, Planning Principle – floor space ratio (*Salanitro-Chafei v Ashfield Council* (2005) NSWLEC 366) and *Project Venture Developments v Pittwater Council* (2005) NSW LEC 91).

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the FSR of the site should be assessed on a greater numerical figure, noting the sites constraints and the unique nature of the locality in a varying degree of development types. Given the proposed application is minor and consistent with similar approvals granted in the area, Council's assessment should be focused on this numerical allowance as opposed to the variation to the specific standard. By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for residential needs within the Northern Beaches LGA in particular the Manly precinct. As noted under the review of Clause 4.4 within the Statement of Environmental Effects, the proposal is consistent with the objectives of Clause 4.4, as outlined below:

- The proposal is consistent with the existing and desired streetscape character. As previously noted, the immediate area has a variety of property types ranging in scale from one storey to three storeys.
- The proposal is retained behind the front building line which is already two storeys in scale, therefore no impact to important landscape or townscape features.
- As per above, the prevailing façade is two storeys in scale, therefore no impacts to the visual relationship between new developments and the existing streetscape of the area.
- The proposal has been strategically located within the existing building footprint, with no increase impacts on the user enjoyment of adjoining land and the public domain. The proposal retains and enhances the existing landscaping and functionality of the site.
- The proposal has been strategically designed by the project architects who have worked with relevant consultants and the clients to achieve a design which meets the needs of the project while maintaining the streetscape, heritage conservation values and the privacy and solar values for adjoining neighbours.
- The site falls under MDCP control 4.1.3.1 Variation to FSR for undersized lots.
- The proposal has also been designed with regards to the development consent granted for 128 Pittwater Road, Manly, which also had a variation to the FSR control

As outlined above, the proposed development is consistent with the underlying objectives of the FSR standard, notwithstanding the proposed variation. Given the building footprint does not change through this application the permissible FSR control does not align with the permissible height on the site, nor several built form controls of the MDCP2013. This essentially limits any redevelopment potential of the site without varying Councils FSR standard.

Alterations and Additions to Dwelling House – 122 Pittwater Road, Manly

2. The underlying objective or purpose of Clause 4.4 is not relevant to the development with the consequence that compliance is unnecessary. *Wehbe v Pittwater Council at [45]*

Comment: The underlying objective and purpose of Clause 4.4 is not relevant as the existing building breaches existing controls for the site. The proposal has been designed within the existing building footprint which should allow for a greater FSR for the site. The project architects have also skilfully designed the alterations to be located within existing structures which enhance the building and maintain the visual appearance by retaining the existing front façade.

3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. *Wehbe v Pittwater Council at [46]*

Comment: It would indeed be unreasonable for Council to refuse the development that is proposed by way of relatively minor works to the existing building as the development does not have any adverse impacts on the immediate amenity of the area. The development has been designed with the necessary sensitivity to complement existing buildings and the natural landform of the area. There is no adverse visual impact associated with the form and structures proposed within the existing building footprint.

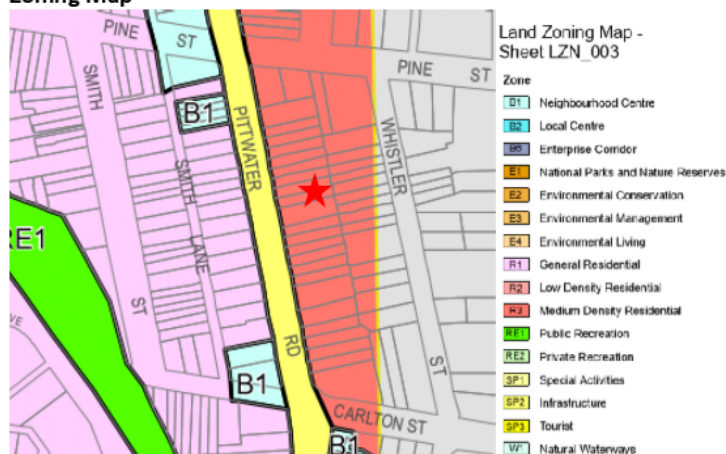
4. The development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the stand is unnecessary and unreasonable: *Wehbe v Pittwater Council at [47]*.

Comment: Whilst the proposal seeks a variation to Councils numerical FSR standard, it is consistent with the relevant objectives (as outlined previously in this report).

A review of other developments (in particular 128 Pittwater Road, Manly) within the immediate area and approvals granted for this site show that the development standard for FSR has been virtually abandoned or destroyed by Council's own decisions in granting development consents, hence compliance with this development standard is unnecessary and unreasonable.

5. The relevance of the zoning provisions of the land to which the development is proposed.

Zoning Map



Alterations and Additions to Dwelling House – 122 Pittwater Road, Manly

Zone R3 Medium Density Residential

1 Objectives of zone

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.
- To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.

2 Permitted without consent

Home-based child care; Home occupations

3 Permitted with consent

Attached dwellings; Boarding houses; Boat sheds; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Emergency services facilities; Environmental protection works; Flood mitigation works; Group homes; Home businesses; Home industries; Hostels; Information and education facilities; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Recreation areas; Recreation facilities (indoor); Residential flat buildings; Respite day care centres; Restaurants or cafes; Roads; Secondary dwellings; Semi-detached dwellings; Seniors housing; Service stations; Shop top housing; Signage; Take away food and drink premises; Tank-based aquaculture; Tourist and visitor accommodation; Water recycling facilities; Water supply systems

4 Prohibited

Advertising structures; Farm stay accommodation; Pond-based aquaculture Water treatment facilities; Any other development not specified in item 2 or 3

Comment: The relevance of the zone objectives are assessed below:

Clause 4.6(4)(a)(ii) states that a request for exemption from a development standard must establish that the proposed variation is consistent with both the objectives of the zone and standard.

Objectives of the R3 Medium Density Residential zone:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.
- To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.

The site is zoned R3 Medium Density Residential. A dwelling house is a permissible land use, therefore any alterations and additions are permissible with Council's consent. The proposed alterations and additions are consistent with the objectives of the zone, as supported below:

- The proposal retains the dwelling house which in turn provides for the housing needs of the community with the R3 Medium Density Residential zone.

Alterations and Additions to Dwelling House – 122 Pittwater Road, Manly

- The proposal retains the dwelling house which provides a variety of housing types in the immediate precinct.
- The proposal encourages the revitalisation and rehabilitation of the existing site which is run down and in need of new facilities to bring it in line with the needs of the residential area – i.e. a four-bedroom house.

Sufficient environmental planning grounds

1. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”

Comment: As detailed above, there are sufficient environmental planning grounds to justify the proposed variation to the MLEP2013 FSR control. Further justification to support the proposed variation is provided below:

- The proposed development is for a minor increase to the existing GFA within the parameters and building footprint of the existing structures, which have set the ground rules for the bulk, scale and mass of the proposal with no breaches to the existing building footprint or height.
- The LEC planning principles on FSR relate to compatibility between subject buildings and its surrounding context to ensure the proposal is compatible with its context. The planning principle seeks qualification of the following:

- *Are the proposals physical impacts on the surrounding development acceptable?*
- *Is the proposals appearance in harmony with the buildings around it and the character of the street.*

In addressing the above planning principals, the benefits of the first-floor addition, represents a new functional design which enhances the internal amenity of the dwelling. Not only does this provide improved amenity for the occupants of the building, it complies with the objectives of the zone.

From a planning perspective, there is sufficient grounds to justify the variation to the FSR development standard for the following reasons:

- The design proposed represents an increase in GFA which is minor and within the existing building footprint
- The site is constrained due to the small width and lot size. The proposed alterations and additions have been strategically located to retain privacy and solar access to neighbouring properties.
- The variation has been reviewed against relevant LEC court principles in regards to FSR, and the proposal is considered suitable in the context of the site and the merit analysis required given the existing scale and the proposed building improvements.
- The proposal is consistent with other approved developments within the adjoining precinct such as 128 Pittwater Road, Manly.
- The desired future character of the locality is not jeopardised by the proposal and is consistent with Council’s objectives for this precinct in regards to the R3 Medium Density Residential zone.
- The area of non-compliance does not give rise to any adverse environmental impacts to the amenity of the neighbouring properties. The area of non-compliance does not contribute to any adverse overshadowing impacts to adjoining developments.

Alterations and Additions to Dwelling House – 122 Pittwater Road, Manly

A further review of the solar access and amenity to the southern neighbour at 120 Pittwater Road, Manly, is provided below:

As demonstrated in the shadow diagrams prepared by Action Plans, the proposal will not result in any adverse overshadowing impacts to the adjoining neighbours. The shadow impacts to the neighbours are consistent with the existing impacts, in particular to the south, and are acceptable for the following reasons:

- The dwelling house complies with the maximum building height requirements as prescribed under Clause 4.3 of the Manly Local Environmental Plan 2013;
- The neighbouring dwellings will retain the minimum number of hours of direct solar access to the rear private open spaces.
- It is also noted that the southern neighbours ground floor northern elevation windows are blocked by vegetation and the first floor enclosed balconies.

The adjoining site is an overdevelopment and was approved through the L&E Court and subsequent modifications through council. Our clients land should not be impacted by decisions that did not assess the impacts of our land and building structures existing. The project architects have strategically designed the project to have minimal adverse impacts while retaining existing structures, being cost effective and designed to the narrow width of the site.

The elevational shadow diagrams show additional shadow impacts to that existing on the neighbour's northern elevation at 120 Pittwater Road, Manly. We query whether there is an increase shadow impact to the ground floor with existing landscaping (we would assume as per approved plans) which already blocks any significant sunlight to the ground floor windows. This is not shown on the elevational diagrams as they are not a fixed structure but should be strongly considered when determining the application.

The ground floor impact relates to the small increase of height to the sunroom and deck. Even with a compliant setback there would be an impact due to the constraints of the area and the small nature of the sites. It is noted that the maximum building height for the ground floor portion (eastern elevation) is 3.5m. Refer to elevational shadow plans prepared by Action Plans for full details. A photograph of existing vegetation along the boundary is shown on the next page:



Existing Landscaping

Photograph of the side boundary between 122 and 120 Pittwater Road, Manly. The photograph was taken at 9am on 11th May 2020 and show the vegetation which impacts sunlight to the ground floor windows along with screening and pergola structures which impact the first floor windows existing.

Alterations and Additions to Dwelling House – 122 Pittwater Road, Manly

The elevational shadow diagrams show there is an increased impact to the first floor. It is noted that sufficient sunlight is still achieved to the site in general with some windows retaining adequate access to sunlight throughout the day. The adjoining neighbour has constrained itself by screening balconies and covering ground floor windows with popped out balconies and landscaping.

It is important for Council to note that the existing southern elevation of our client's site is built on boundary and the existing landscaping on the adjoining neighbours land which impacts the access of sunlight to the ground floor windows. Any potential impacts will be minor and do not adversely impact the rear (eastern) part of the southern neighbour and private open space. The proposal retains full sunlight to the private open space of the adjoining neighbour and retains adequate access to sunlight on the northern elevation.

2. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31]

Comment: This report demonstrates that there is sufficient environmental planning grounds to justify contravening the development standard for Clause 4.4(2). The proposal has assessed the relevant impacts (if any) and has assessed the bulk, scale and mass of the existing building and the proposed new parts which will breach the development standard. This report finds that a merit assessment is applicable and determines that there is sufficient grounds to justify the breach to the Floor Space Ratio. The proposal has been skilfully designed within the existing building footprint and strategically located to not have an adverse impact to neighbouring properties. Therefore, the development as proposed is sufficiently justified to contravene the development standard.

Is the proposed development in the public interest?

The Consent Authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of:

- a. the particular development standard;
- b. the zone in which the development is proposed to be carried out.

Comment: The proposal is in the public's interest as there is very little public benefit in maintaining the development standard of FSR applicable to this site. Additionally, the building improvements add significant social and healthy benefits through a new functional design. Council should encourage such building upgrades via support of positive intention to upgrade old residential buildings within the Northern Beaches LGA.

Secretary's Concurrence

Under clause 4.6(5), in deciding whether to grant concurrence, the Secretary must consider the following matters:

- (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*

Alterations and Additions to Dwelling House – 122 Pittwater Road, Manly

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

Comment: The contravention of the development standard will not result in any consequences for State or regional environmental planning.

There would be no public benefit in maintaining the development standard in this instance for the following reasons:

- The variation to the FSR development standard does not give rise to any adverse environmental impacts. As such, the maintenance of the development standard in this specific instance would not provide any public benefit and would hinder the orderly and economic development of the site.
- Maintaining the development standard, in the context of this site, would be inconsistent with the objectives of the zone, and the Act, as it would be inconsistent with the surrounding developments.

There are no other relevant matters required to be taken into account by the Secretary.

Summary and Conclusion

It is therefore submitted that Clause 4.6 is applicable to the subject development in respect to the variation to clause 4.4(2) Floor Space Ratio and this statement verifies that compliance with the provisions of clause 4.4(2) would be both unreasonable and unnecessary in the circumstances of this case. The development is consistent with the objectives of Clause 4.6 as per below:

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

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

A variation to the strict application of Council's Floor Space Ratio development standard is considered appropriate for the site at 122 Pittwater Road, Manly. The variation to FSR is isolated and retained within the existing building footprint.

This development proposes a departure from the maximum floor space ratio development standard, with the proposal to provide an FSR of 0.77:1, or 0.664:1 based on a lot which complies with the minimum lot size.

From a planning perspective, there is sufficient grounds to justify the variation to the FSR development standard for the following reasons:

- The proposal is consistent with the existing and desired streetscape character. As previously noted, the immediate area has a variety of property types ranging in scale from one storey to three storeys.
- The proposal is retained behind the front building line which is already two storeys in scale, therefore no impact to important landscape or townscape features.
- As per above, the prevailing façade is two storeys in scale, therefore no impacts to the visual relationship between new developments and the existing streetscape of the area.

Alterations and Additions to Dwelling House – 122 Pittwater Road, Manly

- The proposal has been strategically located within the existing building footprint, with no increase impacts on the user enjoyment of adjoining land and the public domain. The proposal retains and enhances the existing landscaping and functionality of the site.
- The proposal has been strategically designed by the project architects who have worked with relevant consultants and the clients to achieve a design which meets the needs of the project while maintaining the streetscape, heritage conservation values and the privacy and solar values for adjoining neighbours.
- The site falls under MDCP control 4.1.3.1 Variation to FSR for undersized lots.
- The proposal has also been designed with regards to the development consent granted for 128 Pittwater Road, Manly, which also had a variation to the FSR control
- The variation has been reviewed against relevant LEC court principles in regards to FSR, and the proposal is considered suitable in the context of the site and the merit analysis required given the existing scale and the proposed building improvements.

In addition to the above justification, the proposal is considered to meet the intent of Council's controls relating to Floor Space Ratio, the R3 Medium Density Residential zoning objectives and the desired future character of this precinct. It is therefore submitted that the non-compliance with the Floor Space Ratio Clause 4.4(2) is acceptable and flexibility should be exercised by Council as a better outcome is achieved for the site and the immediate locality. The variation under Clause 4.6 is to vary the Floor Space Ratio control to give Northern Beaches Council the power to grant development consent to the proposed development.

ITEM 3.6	DA2020/0092 - 70 LAUDERDALE AVENUE, FAIRLIGHT - DEMOLITION OF EXISTING STRUCTURES, CONSTRUCTION OF TWO (2) SEMI-DETACHED DWELLINGS AND TORRENS TITLE SUBDIVISION OF ONE LOT INTO TWO
REPORTING MANAGER	Steve Findlay
TRIM FILE REF	2020/449527
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2020/0092 for demolition of existing structures, construction of two (2) semi-detached dwellings and Torrens Title Subdivision of one lot into two on land at Lot 1 DP 965132, 70 Lauderdale Avenue, Fairlight, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0092
Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 1 DP 965132, 70 Lauderdale Avenue FAIRLIGHT NSW 2094
Proposed Development:	Demolition of existing structures, construction of two (2) semi-detached dwellings and Torrens title subdivision of one lot into two
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Jason Barry Warburton Idette Kristine Warburton Katherine Sarah Hadfield John Malcolm Boulton
Applicant:	Jason Barry Warburton Idette Kristine Warburton Katherine Sarah Hadfield John Malcolm Boulton
Application Lodged:	05/02/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	24/02/2020 to 09/03/2020
Advertised:	Not Advertised
Submissions Received:	8
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,915,260.17

EXECUTIVE SUMMARY

The proposal is referred to the Development Determination Panel as it is an application with a value of more than \$1 million and has received more than three (3) public objections. The proposed development includes; demolition, site preparation and excavation, construction of two dwellings (semi-



detached) with ancillary site works.

In addition, the site will be subdivided into two Torrens Title lots along the dividing wall between the two dwellings. The site has sufficient land area to permit subdivision in accordance with the minimum lot size of 300sqm for each lot, complying with the floor space ratio and density controls. However, the floor space ratio, while compliant for the site as a whole is not compliant after subdivision for one resultant lot, due to the irregular shape of the future lots and this factor is addressed.

Options to use Strata Title instead have been considered in the context of the Manly LEP density and setback controls. In this regard, it is noted that the variation to the side setback control (along the common wall) and FSR is not created for the existing site and proposed building as whole, but the later subdivision of the building subsequently creates that variation from the two future land holdings. The applicant was advised to use strata subdivision to avoid this effect, but has chosen to stay with Torrens Title.

The proposed building is considered to be suitable and appropriate development for the site and is in context with the residential scale and intensity of the residential zone. Principal environmental impact considerations are views, bulk, landscaping, traffic and parking access, building height (including walls and envelope), privacy, overshadowing, urban character, construction impacts (during works) and stormwater management.

The public submissions received have been considered and addressed within this report and conditions have been applied where appropriate to address the concerns; including, landscaping, privacy, bulk, overshadowing, views, traffic safety, parking, access and stormwater.

The proposal will not have an unreasonable impact in relation to view sharing considerations. Additional amenity impacts that may arise during construction works are addressed by standard conditions, including dilapidation risk, dust, noise, site management and the like.

Suitable conditions are recommended to address engineering, traffic and landscape referral responses as detailed in this report. Other Internal Referral considerations from Landscape and Development Engineering have been addressed by conditions. No objections have been raised to approval of the proposal by the External Referrals, including *Ausgrid* and *Sydney Water*.

During the assessment period, no changes were made by the applicant that would require re-notification and some supplementary information was provided to further assist solar access and landscape considerations.

The planning controls under the Manly LEP and Manly DCP apply and in this regard matters relating to streetscape character, setbacks, building envelope, bulk and scale, external materials, overshadowing, privacy, views, stormwater and traffic have been addressed. In this case, the non-compliances with the wall height, setbacks and landscaping controls are addressed in accordance with the objectives and requirements of those considerations.

Subject to conditions, no issues have been raised that warrant refusal of the application.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks approval for the demolition of existing structures and construction of a two (2) semi-detached dwelling houses with a two (2) car garage for each dwelling house as follows:

Proposed Eastern Dwelling (No. 70A)

FL 34.58 Basement



- External access door and internal corridor to lift access and sub-floor, storage and rainwater tank area in subfloor space.

FL 37.43 Lower Ground Floor Level

- Lower ground floor level of dwelling to comprise three bedrooms including master bedroom with ensuite, bathroom, laundry, lift shaft, internal access stairs and balcony.

FL40.58 Upper Ground Floor Level

- Proposed new ground floor level to provide for dwelling entry, open plan kitchen, living and dining, lift shaft, internal access stairs, store and balcony
- Detached double garage and bin storage with external access to the dwelling and driveway access provided from Rosedale Avenue.

Proposed Western Dwelling (No. 70B)**FL 34.58 Basement**

- External access door and internal corridor to lift access and sub-floor, storage and rainwater tank area in subfloor space.

FL 37.43 Lower Ground Floor Level

- Lower ground floor level of dwelling to comprise three bedrooms including master bedroom with ensuite, bathroom, laundry, lift shaft, internal access stairs and balcony.

FL40.58 Upper Ground Floor Level

- Proposed new ground floor level to provide for dwelling entry, open plan kitchen, living and dining, lift shaft, internal access stairs, store and balcony
- Detached double garage and bin storage with external access to the dwelling and driveway access provided from Rosedale Avenue.

Subdivision

The proposal also seeks to subdivide the existing Lot into two Torrens Title Lots for the new dwellings, as shown on the draft plan of subdivision:

- 70B - Proposed Lot 10 (364.3sqm)
- 70A - Proposed Lot 11 (302.7sqm)

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report)



taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;

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

SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

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 - 3.5.5 Landscaping

Manly Development Control Plan - 4.1.1.2 Residential Land Subdivision

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 - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot 1 DP 965132 , 70 Lauderdale Avenue FAIRLIGHT NSW 2094
Detailed Site Description:	The subject land has a dual road frontage to Lauderdale Avenue and Rosedale Avenue with an angled boundary along Rosedale Avenue. The site width varies from 21.1 metres (m) to 22.9m and has a depth that varies from 26.3m to 38.0m with a total area of 667.1 square metres (sqm). The land falls steeply toward Lauderdale Avenue, having a fall of 9.2m from north to south. The Lauderdale Avenue frontage has a 3.0m high embankment below the site and therefore only pedestrian access is available from this road. The site currently contains two storey dwelling house and garage with landscaped gardens presenting to Lauderdale Avenue, and using Rosedale Avenue as the secondary frontage. The area surrounding the site is predominantly represented by a mix of development comprising one, two and in some instances, three level detached single and multi-occupancy



dwellings and residential flat buildings.

The adjoining property to the east is occupied by a residential flat development, with the adjoining properties to the west being developed with single dwellings.

Development in the vicinity has been designed with living areas and associated open space that are oriented to take advantage of the significant views to Reef Bay and to Sydney Harbour further to the south-east.

The site is not identified as containing any threatened species habitat or items of environmental heritage.

Map:



SITE HISTORY

Pre-lodgement Meeting No.PLM2019/0183 was held with Council on 12 September 2019 to discuss the subdivision, demolition and construction of two semi-detached dwelling houses on the site. The proposal has responded to the PLM advice, including compliance with FSR and height controls, views, privacy, setbacks, building bulk and increased landscaping.

The existing dwelling, all associated/ancillary structures and vegetation on site will be demolished/cleared as part of the proposal. The site does not contain any items of environmental heritage. Therefore, no further investigation of site history is required.

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
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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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <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 in the form of amended plans or substantial changes. <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 as all existing building structures on site are to be demolished. <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, access, building work / materials the development). This matter is subject to BCA compliance for Construction Certificate stage for the new build rather than 'upgrade' of existing. <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. <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. This includes but is not limited to fire safety, access, building work / materials the development). This matter has been addressed via a condition of consent and fire separation / fire safety arrangements (partition wall within the building) are subject to BCA compliance appropriate for <i>Construction Certificate</i> stage.



Section 4.15 Matters for Consideration'	Comments
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	(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. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development subject to conditions.
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	Subject to conditions, no matters have arisen in this assessment that would justify the refusal of the application in the public interest. All submission issues have been considered and relevant considerations under the Manly LEP and Manly DCP including, but not limited to, surrounding amenity, landscaping, traffic, parking, construction / demolition and the built form of the proposal including ancillary works.

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 8 submission/s from:

Name:	Address:
Mrs Michelle Montgomery	72 Lauderdale Avenue FAIRLIGHT NSW 2094
Mr Geoffrey John Dickson	8 Rosedale Avenue FAIRLIGHT NSW 2094
Mr Geoffrey James Fogarty	20 Rosedale Avenue FAIRLIGHT NSW 2094



Name:	Address:
Mrs Catherine Louise Hamer Mr Damian Bruce Hamer	16 Rosedale Avenue FAIRLIGHT NSW 2094
Mr David Malcolm Allan	12 Rosedale Avenue FAIRLIGHT NSW 2094
Ms Deborah Anne Taylor	1 / 68 Lauderdale Avenue FAIRLIGHT NSW 2094
Mrs Jennie Elizabeth Fogarty	20 Rosedale Avenue FAIRLIGHT NSW 2094
Warwick McKenzie Mrs Carolyn Joyce McKenzie	22 Rosedale Avenue FAIRLIGHT NSW 2094

The following issues were raised in the submissions:

1. Solar access
2. View impacts
3. Traffic, safety and parking
4. Streetscape bulk
5. Privacy
6. Landscape planting
7. Setbacks
8. Stormwater detention
9. Submission time

The matters raised within the submissions are addressed as follows:

- **1. Concerns with regard to overshadowing impacts created by the proposal toward adjacent land including Unit 1/68 within that residential flat building and No. 72 Lauderdale Avenue.**

Comment:

Detailed shadow diagrams have been provided by the applicant (reference Dwg No.DA16 and Dwg No.DA12 drawn by *Marston Architects* dated January 2020). A detailed consideration of this issue is provided within this report under *Part 3.4.1 Sunlight Access and Overshadowing* including consideration of hourly solar diagrams provided to assist Council's detailed consideration.

In summary, the proposal will alter the existing shadow pattern toward adjacent land, however proposal is consistent with the objectives of the Manly DCP control to maintain reasonable solar access to adjacent land.

- **2. Concerns with regard to view impacts created by the proposal for properties overlooking the site, including No.8, No.10, No.12, No.16, No.18, No.20 Rosedale Avenue.**

Comment:

A view analysis has been provided by the applicant (reference View Sharing Assessment by *Richard Lamb and Associates* dated January 2020). The subject site and surrounding lands were inspected during a site inspection to consider view sharing, including access to alternate view lines available. Where direct access was not available, a direct view line was considered in best proximity and comparative consideration to view lines (including survey datum) analysis and taking into account particular submissions regarding views as received or identified following the notification period for the application.



A detailed consideration of this view sharing is provided within this report under *Part 3.4.3 Maintenance of Views*. In summary, the proposal will have a minor impact on existing views from particular adjacent and surrounding properties as assessed pursuant to view assessment criteria. On balance, the proposal is consistent with the objectives of the Manly DCP control and the LEC Planning Principle on views and does not warrant refusal of the application.

- **3. Concern that the proposal will affect car traffic, pedestrians and cyclists, including road safety and parking in Rosedale Avenue and basement parking should be accessed from Lauderdale Avenue.**

Comment:

The proposal includes compliant resident carparking with two separate double garages fronting Rosedale Avenue. The proposed access and driveway will comply with safety and design requirements under Australian Standards and the location of the garages and are consistent with the existing pattern of garages west of the site and along Rosedale Avenue. The road alignment has been constructed off-centre to the road reserve along Rosedale Avenue that creates an extra-wide nature strip on the northern side. Vehicle access from Lauderdale Avenue is not appropriate due to the existing footpath, public stairs and rock face along the southern site frontage.

This issue is addressed in further detail under *Part 4.1.6 Parking, Vehicular access and Loading* within this report.

In summary, this objection issue is not considered to warrant refusal of the application.

- **4. Concern that the proposal has garage structures within the setback to Rosedale Avenue that creates building bulk and streetscape impacts.**

Comment:

The site has two road frontages and is formally addressed as No.70 Lauderdale Avenue with the principle outlook from within the existing dwelling towards North Harbour and Wellings Reserve (Balgowlah Heights). The proposed semi-detached dwellings maintain the existing orientation southward toward the harbour and the setback for the new garages are consistent with the existing garage and adjacent pattern of garage structures in proximity to the site. The use of carports in Rosedale Avenue is less common but the proposed garages for the development will be similar in appearance to No.72 Lauderdale Avenue, and include landscaping adjacent the driveway zone. The garage and driveway design is satisfactory for Council's engineering design requirements, subject to conditions.

In summary, this issue is address in further detail under *Part 4.1.4 Setbacks (front, side and rear) and Building Separation* within this report.

This objection issue is not considered to warrant refusal of the application.

- **5. Concern that the privacy screening to No.72 Lauderdale Avenue should include fixed louvers (not hinged) and angled to maintain a 45 degree angle offset to minimize overlooking toward adjacent living areas.**

Comment:

This issue has been considered and confirmed that the louvres are designed to be fixed as shown on the plans. A condition is recommended to address this issue to ensure the suitable angle shown is used and the privacy screens are not installed as hinged or sliding.



Therefore, this issue does not warrant refusal of the application.

- **6. Concern that the landscape elements may include trees that will block out future views across the site toward the Harbour and affect thermal warming of adjacent dwelling/s.**

Comment:

The inclusion of canopy trees is a requirement of the Manly DCP and the applicant has shown the planting of three "Water Gums". A suitable alternative tree on the lower side of the site is also appropriate and alternative plant selection from the applicants landscape expert. Additional advice and further consideration from Council's Landscape Officer for providing suitable alternative plant selections include the planting of 'like for like' or similar. Generally the proposal included a minimum number of trees that have a height that is commensurate with the proposed building and are suitably spaced so that they are not clustered to form a continuous line of canopy.

Council's Landscape Officer has recommended the planting of a smaller street tree, rather than *Eucalyptus Haemestoma* (Scribbly Gum) being a smaller like for like species such as 1 x *Callistemon viminalis*. It should be noted the planting in the road reserve is also limited by the soil zone such that growing conditions are not ideal for a large tree thus a suitable similar street tree is recommended. The tree planting is under the Manly DCP is encouraged to include native plants for the local area and encourage tree canopy habitat / food sources for fauna (such as birds / arboreal animals).

In summary, it is considered that the landscaping plan and recommended tree planting will not create an unreasonable impact on the amenity of surrounding land subject to conditions as recommended.

This issue is not considered to warrant refusal of the application.

- **7. Concern that the proposal does not comply with setbacks, including the building envelope.**

Comment:

This issue has been addressed in detail under the heading *Part 4.1.4 Setbacks (Front, side and rear)* within this report. Additional consideration is also provided under the heading *Part 4.1.2 Height of Buildings (Incorporating wall height, number of storeys and roof height)* within this report. In summary the variation to the front boundary setback is consistent with the pattern of garages in Rosedale Avenue and the permits at-grade access from the street due to the steepness of the site adjacent the road reserve. The non-compliance with wall height, setbacks and building envelope do not create any unreasonable amenity or view impacts on adjacent or surrounding land.

This issue is not considered to warrant refusal of the application.

- **8. Concern that the dwelling proposed as 70B does not include onsite stormwater detention.**

Comment:

A detailed stormwater design analysis has been provided by the applicant (Reference: Stormwater Management Plans by *Stellen*, dated 17 December 2019). This issue is addressed in further detail under the heading *Part 3.7 Stormwater Management*, within this report and Council's Development Engineering Referral Response within this report. The stormwater plan includes water management for both dwellings proposed as '70A' and '70B'.

In summary, this objection issue is not considered to warrant refusal of the application.



- **9. Concern that insufficient time was available during the notification period and from when the notification sign was placed on site.**

Comment:

Any submissions received after the notification period, if submitted in reasonable time prior to the finalisation of this assessment are fully considered in this report, regardless of the closing date for submissions. The site notification sign was placed on site as required and all surrounding residents were also notified in accordance with Council's notification policy. Submissions from properties not notified are still considered equally to submissions from properties notified by letter. Any submissions made post this report will be provided to the Panel separately.

This issue is not considered to warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The proposed development is for the proposed demolition of existing structures, and the construction of a semi-detached multi-dwelling development, and torrens title subdivision of one lot into two lots. Council's Landscape section have assessed the application against the landscape controls of Manly DCP 2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types, and specifically: 3.3.1 Landscaping Design; and 4.1.5 Open Space and Landscaping, as well as Manly Council's Tree Management Policy 2011 and the Street Tree Master Plan. Existing vegetation within the Lauderdale Ave frontage proposed for removal consists of exempt species by type or by height. An existing Bottlebrush street tree is required to be removed to facilitate a new driveway and crossover, and this shall be subject to street tree replacement. The landscape component of the application is supported subject to completion of proposed landscape works and the protection of existing vegetation in close proximity to the works, with the following requirements: • one replacement street tree planting • one native tree planting within the site frontage • limitation on mature tree height to accommodate particular site circumstances (views, amenity) The installation of footpath trees is supported to satisfy the aims of Manly Council's Tree Management Policy 2011 and the Street Tree



Internal Referral Body	Comments
	Master Plan. Alternative suitable species have been considered including 'like for like' and are included with conditions. <u>Planning Comment:</u> Landscape Assessment has considered landscape planting requirements including submission issues and replacement planting within the public domain and the site generally and the recommended conditions are concurred with.
NECC (Development Engineering)	Development Engineering has no objection to the application subject to conditions of consent. <u>Planning Comment:</u> Development Engineering has considered engineering considerations, including but not limited to vehicle access, road safety and traffic management during works, parking and stormwater issues and the recommended conditions are concurred with.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. A referral response was received on 5 March 2020 and no objections are raised and no conditions are recommended from Ausgrid.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No's.1065658M_02 dated 24 January 2020) for both dwellings. The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No's. 0004454336-01 and 0004454328-01).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass



Energy	50	50
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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. A referral response was received on 5 March 2020 and no objections are raised and no conditions are recommended from Ausgrid.

Other Service Infrastructure Authorities

The proposal was not required to be referred to the *Roads and Maritime Service* and no other service infrastructure referral issues are raised pursuant to the SEPP.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	300sqm	Lot 10 364 sqm	N/A	Yes
		Lot 11 302 sqm	N/A	Yes
Height of Buildings: (EGL from existing floor level)	8.5m	Dwelling 70B 8.5m	N/A	Yes



slab)		Dwelling 70A 8.5m	N/A	Yes
Floor Space Ratio (FSR)	0.5:1	0.48:1 (Subject site area Lot)	N/A	Yes (Existing Lot)
		Post subdivision Lot 10 / 70B Lot 11 / 70A	0.516:1 (3.2%) 0.45:1 (N/A)	No* Yes

See discussion under the heading Floor Space Ratio within this report.

Manly LEP Note: *The site area is taken to be: if the proposed development is to be carried out on only one lot, the area of that lot.*

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area:	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 300sqm	D4 Residential Area Dwelling 70B - proposed Lot 10: 364.3sqm Dwelling 70A - proposed Lot 11: 302.7sqm	N/A	Yes
	Dwelling Size: Minimum 90sqm	Dwelling 70B - 162 sqm Dwelling 70A - 156 sqm	N/A N/A	Yes Yes
4.1.2.1 Wall Height*	North Elevation: 8.0m (based on site gradient 1:4)	4.0m	N/A	Yes
	South Elevation: 8.0m (based on site gradient 1:4)	8.2m	2.5%	No*
	East Elevation: 8.0m (based on site gradient 1:4)	8.3m	3.7%	No*
	West Elevation: 8.0m (based site gradient 1:4)	8.3m	N/A	No*
4.1.2.2 Number of Storeys	2	2*	N/A	Yes*



		(*plus basement lift access / stairway and subfloor storage)		
4.1.2.3 Roof Height	Height: 2.5m	1.13m	N/A	Yes
	Parapet Height: 0.6m	0.6m	N/A	Yes
	Pitch: maximum 35 degrees	3 to 14 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks (Lauderdale Avenue)	Prevailing building line / 6m (Lauderdale Avenue)	Consistent with prevailing setback	N/A	Yes*
4.1.4.2 Side Setbacks and Secondary Street Frontages (Rosedale Avenue)	Windows: 3.0m	6.0 to 7.5m (West)	N/A	Yes
		4.9m to 6.8m (East)	N/A	Yes
	Secondary street frontage: (Rosedale)	Consistent with prevailing setback 0.0m to 6.0m	N/A	Yes
	Minimum frontage <50% for garage structures	>50% for garaged on Rosedale Avenue (11.4m Lot width)	N/A	No*
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (Total site area sqm)	423sqm Site total 63%	N/A	Yes
	Open space above ground <40% of total open space	45 sqm 14.8%	N/A	Yes
4.1.5.2 Landscaped Area (500sqm to 800sqm site area) (Total site area 667.1sqm)	Landscaped area 35% of open space	258.8 sqm 38%	N/A	Yes
	3 native trees	3 trees	N/A	Yes
4.1.5.3 Private Open Space	18 sqm per dwelling	227 sqm Dwelling 70A 269 sqm Dwelling 70B	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas*	Maximum 50% of frontage up to maximum 6.2m	6.0m garage x 2 lots 12m / 22.9m frontage to	N/A	No*



		Rosedale Ave (site has two frontages)		
Schedule 3 Parking and Access	2 spaces per dwelling	2 spaces per dwelling	N/A	Yes

For the purposes of calculation, the two dwellings are constructed as a single building. In terms of the northern and southern setbacks and the eastern and western setback to adjacent land as applied under the MLEP "Site area" definition. After subdivision, the partition wall creates non-compliance with the side boundary setback through the centre of the building, therefore to address this issue for the purpose the built for controls, the amenity considerations marked "*" are addressed in specific details as they are also relevant to each proposed Lot.

* Refer to detailed merit assessment under the heading 'Built Form Controls' within this report.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3 General Principles of Development	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.2 Energy Sources and Systems	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.1.2 Residential Land Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	Yes	Yes
4.4.1 Demolition	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

General Amenity considerations pursuant to *Clause 3.4 Designing for Amenity* are considered as follows:

Merit Assessment Comments:

- Design considerations have been made to minimise loss of sunlight, privacy, views, noise and vibration impacts and other nuisance (odour, fumes etc.) for neighbouring properties and also to the proposed development for the two new dwellings. Relevance of the higher densities of the area including development adjacent (residential flat buildings) and development types that may potentially impact on neighbour's amenity, including privacy and solar access have been accommodated in the design, including screens, room orientation, windows, wall setbacks and landscaping.
- The design of the proposal is of a contemporary architecture and does not detract from the scenic amenity of the area. In particular, the visual pattern of bulk and design of a development is consistent with adjacent and nearby dwellings and has been considered from surrounding public and private viewpoints.
- Adequate space on site is retained for open space to provide a landscape setting and meet the recreational needs of the occupier for the proposed lot sizes and dwelling design for the proposed new lots.
- The materials and finishes selected are suitable for the surrounding urban environment in terms of reflectivity including the roof material and style and window glazing extent for walls. The use of screens, wall articulation, natural materials and colours are appropriate for the residential nature of the building and do not detract from the existing streetscape and surrounding amenity.



- In summary, the proposal has been designed to ensure no unreasonable amenity of existing and future residents and including privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts, subject to conditions.

3.4.1 Sunlight Access and Overshadowing

Specific solar access requirements and objectives, pursuant to *Clause 3.4.1 Sunlight Access and Overshadowing*, are considered as follows:

Merit Assessment Comments:

- The proposal will maintain equitable access to light and sunshine for No 72 Lauderdale and No.68 Lauderdale Avenue that are situated on the western and eastern sides of the site respectively. The building of No.68 Lauderdale Avenue is residential flat building on a corner site which has windows on all elevations. The submitted solar access diagrams (DA16 [Jan 2020] *Shadow Diagram* and DA16 [Jun 2020] *Sun Eye Diagram Hourly Supplement*, drawn by Marson Architects) demonstrate that the the corner location of the flat building and wide separation to other surrounding dwellings assists to maintain sunlight access to No.68 Lauderdale Avenue.
- The proposed new dwelling of No.70A will cast shadow toward No.68 Lauderdale Avenue. The submitted shadow diagrams provided by the applicant demonstrate that the existing solar access will not be unreasonably reduced during 9am to 3pm for private open spaces of the adjacent apartments (which face south for balconies). In addition, the windows to the living spaces/ habitable rooms to No.72 Lauderdale Avenue and the adjoining units within No.68 Lauderdale Avenue (in particular the ground floor / Unit 1) will maintain adequate solar access. The adjacent flat building of No.72 Lauderdale Avenue is situated on a corner lot and therefore is separated from other buildings to the north by the width of Rosedale Avenue.
- The proposal does not unreasonably reduce the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas and has been designed to include modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties. The use of side setbacks on the southern side (Lauderdale Avenue) also encourage solar penetration within and across the site in the late afternoon period.
- The site has a (marginally offset) north-south orientation, the level of solar access impact to adjacent windows of living rooms between 9am to 3pm on the winter solstice (21 June) will maintain reasonable amenity in accordance with the objectives of the DCP and Planning Principle considerations for Access to Sunlight outlined in *Parsonage v Ku-Ring-Gai Council [2004] NSW LEC 77*.

3.4.2 Privacy and Security

Specific privacy requirements and objectives, pursuant to *Clause 3.4.2 Privacy and Security*, are considered as follows:



Merit Assessment Comments:

- The proposal has been designed to ensure no unreasonable loss of privacy to adjacent and nearby development by the use of design responses including window size and placement, including use of narrow or translucent or obscured glass windows to maximise privacy and where necessary the use of screening devices and landscaping.
- Where walls are close to the adjacent boundaries of No. 68 Lauderdale or No. 72 Lauderdale windows are off-set where practicable or designed to ensure no unreasonable impact on the adjacent dwellings with regard to viewing. The building separation and landscaping is also provided to mitigate impacts on privacy appropriate to residential living in the surrounding residential environment.
- The proposed dwellings of No. 70A and No. 70B have been designed with appropriate response to ensure no unreasonable impacts on privacy (both acoustical and visual) including the use of fixed screening between spaced buildings so that direct viewing is reduced. Generally the orientation of both proposed dwellings is toward the south, across the road reserve with the outlook toward the vicinity of Forty Baskets Beach and the Middle Harbour National Park. The proposal does not create direct unreasonable viewing toward properties along the northern side of Rosedale Avenue or the southern side of Lauderdale Avenue.
- Landscaping and privacy screening devices have been incorporated to mitigate direct viewing between windows and/or outdoor living areas of adjacent buildings. Overall the proposal provides an appropriate level of privacy in the context of the surrounding density of the residential living environment without unreasonably compromising access to light and air. Bedrooms areas, being normally occupied less during the day and used for sleeping at night will not be unreasonably impacted.
- In summary, the design of the proposed new dwellings provided a balanced outlook and views from habitable rooms and private open space with appropriate security.

3.4.3 Maintenance of Views

Specific view considerations and objectives, pursuant to *Clause 3.4.3 Maintenance of Views*, are addressed as follows:

Merit Assessment Comments:

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:



The views affected include partial water views toward the southern edge of North Harbour in the vicinity of Wellings Reserve and marina area. The Balgowlah Heights urban area is situated in the area above Wellings Reserve. At present the view is already affected by the hipped roof profile of the existing house and garage on the subject land. Impacts in the view also include power line structures, trees and other surrounding development that interrupt views at various points or angles / directions.

The alternate view line (south-eastwards) along Rosedale Avenue is also interrupted by powerline structures, trees, adjacent terrace structures and variations in the setback of buildings along the street. An alternate principle point of interest being the ocean and Sydney Harbour entrance area between North Head and South Head is visible from various positions / levels from No.10 to No.20 Rosedale Avenue in a southeastern direction. These south-eastern views along Rosedale Avenue are iconic views that include land around the Sydney Harbour entrance and ocean interface.

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:

Views across the site from No.12 to No.16 Rosedale Avenue are sitting and standing views and above ground floor level (being the first storey, where existing), the height advantage gives a more favourable view that is less affected since the subject site is substantially lower and falls away steeply from Rosedale Avenue. The views from No.12 to No.16 Rosedale Avenue are from the front of those properties. Views from No.10, No.18 and No.20 are at a greater angle and partly over the side boundaries of the subject site if looking across the site toward Wellings Reserve area.

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

Comment:

The affected properties are on the opposite side of Rosedale Avenue that directly overlook the site in a southerly direction and include No.10 to No.20 Rosedale Avenue at various angles in relation to distance from the site. With the exception of No.14 & No.20 Rosedale Avenue which are single storey, the properties directly opposite are multi-storey dwellings with terraces, glazing and windows that overlook the street from the front of those dwellings. The opposite side of Rosedale Avenue is approximately 2.0m higher at the edge of the road reserve and these properties have carports or garages aligned with the front boundary and terrace areas on their garage roofs, within the front setback area.

Due to the angle street alignment the most direct view corridor is from No.12 to No.16 Rosedale with No.10, No.18 and No.20 having a more diagonal view line over the subject site. Notwithstanding this all properties have a significant view corridor southeast along Rosedale Avenue toward the ocean with the iconic views of the harbour area between North Head and South Head. The view across the site has partly obstructed water views of North Harbour due to the pattern of development along Lauderdale



Avenue.

In this regard, the views from above ground floor that also overlook the site includes the wider district outlook toward Wellings Reserve bushland and Balgowlah Heights urban area. The building alignment of the proposal in comparison with No.72 Lauderdale Avenue is a minor view impact being across a side boundary with the view line generally being over the rear private open space and not the major building elements (see landscape comments regarding tree replacement considerations).

On balance, considering the whole of the view, alternative view lines, pattern of surround development, district outlook and the existing roof profile of the proposed dwelling in comparison to the proposed new roof, the view loss is qualitatively considered to be 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:

An assessment of the non-compliance with the planning controls has been made and in summary the proposal meets the overall building height control but does not comply with the wall height, FSR, building envelope and front setback. In consideration of these non-compliance, the design of the two dwellings, including the proposed subdivision has sought to achieve minimal view impacts by maintaining a low roof profile. Small pitched roof elements have included in the roof form do not create an unreasonable view impacts.

While some elements of the view space are obstructed, other elements of the view space are opened up which assists to balance the view impact. It is also noted the alternative view line of the Harbour entrance area remains and is unaffected by the proposal for dwellings opposite the site in Rosedale Avenue. Additionally, the design of the proposal has also considered reasonable in terms of views across the site from No.72 Lauderdale Avenue and views from the balcony areas of No.68 Lauderdale if looking toward the west are an urban street outlook.

In summary, the overall view impact when considered in terms of the proposed building design for the two dwellings, landscaping, height, setbacks, and floor to ceiling space is considered satisfactory and does not create an unreasonable view impact for any adjacent or surrounding properties.

The development is further considered against the Objectives of the DCP control as follows:

- *To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

Comment:

The proposal maintains view sharing with a reasonable design response that minimises impacts that are consistent with view sharing principles outlined above. The existing dwelling house and garage will be demolished and the profile or outline of the new development including the house and garage does not create an unreasonable loss of view sharing on balance with the change between quantitative and qualitative overall outlook.



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

Comment:

Views from nearby development along the northern side of Rosedale Avenue where dwellings overlook the site will not be unreasonably disrupted. Rosedale Avenue also has a significant alternate view line southeast along the road corridor toward the harbour entrance between North Head and South Head that is unaffected by the proposal.

Public views along Rosedale Avenue are directed toward the southeast, rather than across the subject site due to the pattern of surrounding development and the direction of the street alignment. The development of the site will present as single storey to Rosedale Avenue with the two new garages on a variable setback with landscape spaces either side, which is consistent with the visual impact of other detached or semi detached garages in the Rosedale Avenue and Lauderdale Avenue. Additionally, the setback from Lauderdale Avenue in consideration of the proposed building height, envelope and alignment of the building will not have an unreasonable impact on views from adjacent properties of No.68 or No.72 Lauderdale Avenue.

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

Comment:

The proposal is consistent with the objectives of the Manly DCP to ensure development may take place and the design responds appropriately to the site constraints and opportunities without creating unreasonable view amenity impacts for surrounding development that overlook the site. The demolition of the existing house and garage has sought to maintain a low profile (lower than the existing house) and maintain view sharing as demonstrated. This is also supported in the 'View Sharing Assessment' submitted by the applicant, dated January 2020. On balance in considering the whole of views available from various positions and relevant properties and view lines in particular over / through the site, the proposal is considered to be consistent with this objective.

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

3.5.5 Landscaping

Specific landscaping requirements and objectives, pursuant to *Clause 3.5.5 Landscaping*, are considered as follows:

Merit Assessment Comments:

- Landscaping has been selected that includes suitable trees and vegetation that is adaptable to the site conditions, including the site of ground level open space, soil / rocky conditions, available solar patterns, slope, proximity to existing vegetation, building services and to provide



amenity to the occupants.

- Detailed landscape referral assessment comments are provided under the heading "internal referrals" within this report. In summary, the landscaping is consistent with the objectives and requirement of this clause subject to conditions. This includes consideration for some where alternative tree planting is appropriate, including the road reserve and particular canopy trees on site and maintain landscape amenity.
- Landscape planting will assist to provide screening and complement the height and scale of the building by using a mix of small, medium and larger planting. Wide tree spacing has been used to ensure an open / spaced canopy that does not unreasonably impact surrounding views or outlook over the long term.
- The use of native trees suitable for the local environment are slow growing and adapted for low water requirements and assist to provide habitat and food sources for insects, birds and arboreal animals. The site is not within a bushfire zone that would limit certain tree species from selection.
- Landscape elements have been designed to complement the architecture of the building and provide amenity when viewed from public and private land. The proposal has been designed to retain the main landscape open space on the southern side of the site and is convenient to the principal living areas of the proposed new dwelling houses for the site.

Subject to conditions the proposal is consistent with the objectives of this clause.

4.1.1.2 Residential Land Subdivision

The proposal demonstrates that it achieves the land subdivision requirements in relation to minimum lot width and area, including access. The proposal complies with density requirements for the zone and successfully accommodates two semi-detached dwellings within the available site area of the parent lot which is 667.1 sqm. The two resultant lots proposed comply with the minimum site area (300sqm or more) and will maintain vehicle access and drainage to Council's infrastructure.

Options to use Torrens Title as opposed to Strata Title have been considered in the context of the Manly LEP density and setback controls. In this regard, it is noted that the variation to the side setback control, along the common dividing wall and FSR is not created for the existing site and proposed building as whole, but the later subdivision of the building subsequently creates that variation from the two future Torrens Title land holdings. The applicant was encouraged to use Strata subdivision instead to avoid this effect but has selected to use Torrens Title, which is permissible and does not offend clause 4.1(1) of the LEP.

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

The DCP height requirements and objectives, pursuant to *Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys and Roof Height)*, are addressed as follows:

Merit Assessment Comments:

- The non-compliance with the wall height (up to 3.7%) is limited to the east and west elevations toward the southern end of the side wall plane. The property has a moderately steep gradient and the floor to ceiling heights being proposed are consistent and are not unreasonable or excessive such that they create any unreasonable impact on view, amenity, overshadowing or building



bulk and scale.

- The building presents as single storey when viewed from Rosedale Avenue and two storeys within a sub-floor entry when viewed from Lauderdale Avenue with Ground Level access at grade. The sub-floor area (RL34.58) contains stormwater tanks, storage, services and basement access to the two (2) internal lift shafts. Therefore, the lower storey level is non-habitable space and integrated into the sub-floor area as basement access to the Lower Ground Level and does not create any unreasonable impacts for the building height and bulk in terms of amenity impacts.
- The requirements of this clause permit roof parapets to extend up to 0.6m above the actual wall height as a permitted additional element to wall height. The parapet feature is considered to be appropriate to the design of the roof form and satisfies the objectives of this clause under the DCP with minimal impact on views and amenity to adjacent land.
- In summary, the proposal is considered to be of a satisfactory architectural design and built form with regard to wall height considerations pursuant to the Manly DCP. The non-compliance to the wall height controls does not create any unreasonable impacts of overshadowing, views, bulk or general amenity to adjacent land.
Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the MDCP and the objectives specified in section 1.3 (a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.3 Floor Space Ratio (FSR)

Floor space requirements requirements and objectives, pursuant to *Clause 4.1.3 Floor Space Ratio*, are addressed as follows

Merit Assessment Comments:

- The proposed building on the existing site area complies with the FSR control of 0.5:1, however when split between the two proposed lots, the FSR is non-compliant for proposed Lot 11 due to the narrower lot depth and irregular lot shape. In this regard, it is noted that the Manly LEP calculates FSR based on the whole of the site area. Overall, the scale of development does not unreasonably obscure important landscape features as the proposal maintains a single storey appearance from Rosedale Avenue and is compatible in height and scale to adjacent buildings when viewed from Lauderdale Avenue
- The non-compliance with the FSR does not create an unreasonable disruption to views for adjacent and nearby development as the design of the building (being designed as semi-detached dwellings) maintains a low building roof profile and reasonable side setbacks. The proposal is not inconsistent with the surrounding bulk and scale of dwellings in the vicinity (visual catchment) of the site and maintains compliant landscape open space that is proportionate to the DCP requirements for lots sizes to be of sufficient dimensions and area to maintain a landscape setting for dwelling houses.
- The proposed FSR does not create any unreasonable impact on sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development. This is demonstrated on solar access



diagrams DA12 and DA16 drawn by *Marston Architects*.

In summary, the proposal is considered to maintain consistency with the FSR objectives pursuant to this clause.

Note: The objective of Manly LEP objectives at clause 4.4(1) have been also considered in context of the DCP requirements.

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

Setback requirements and objectives, pursuant to *Clause 4.1.4 Setbacks (front, side and rear) and Building Separation*, are addressed as follows:

Merit Assessment Comments:

- The proposal has maintained the existing streetscape, including the desired spatial residential proportions of the street, including the street edge and the landscape character of the street for Lauderdale Avenue, to which the property is addressed, and will have pedestrian access from Lauderdale Avenue. The site is oriented to present toward Lauderdale Avenue as the principal outlook, with Rosedale Avenue being a secondary road frontage. Notwithstanding this, the principal vehicle access is from Rosedale Avenue with pedestrian access also and garage setbacks of 0.0m to 6.0m. The garages and entry foyer facing Rosedale Avenue are a variation to the 6.0m setback control for this northern frontage.
- The proposal is consistent with maintaining local amenity by the design response to ensure no unreasonable impact on privacy (by windows, balconies, screens, landscaping and the like) and providing equitable access to natural light, direct sunlight and air circulation for the proposed dwellings and the surrounding environment. In this regard, setbacks of 1.9m to 2.1m including recessed elements and breaks in the side walls to reduce impacts of bulk and scale. Building separation is 5.0m to 5.6m along the side setbacks or wider with the non-compliance to the side boundary envelope limited to the upper corner of the side elevation (screen elements / parapet) at the southern end of the building (low side of these site) fronting Lauderdale Avenue. The non-compliance with the side boundary envelope does not create any unreasonable impact on surrounding amenity including views.
- The proposal is consistent with the DCP objective to allow for the flexibility in the siting of buildings while allowing for view sharing and maintaining adequate space between buildings including views and vistas from private and public spaces. While the proposal has no setback to the middle lot boundary that will form the separating (common wall) between the two proposed dwellings does not create an inconsistent pattern against the existing pattern and rhythm of building form for surrounding development. The location of the garages fronting Rosedale Avenue is consistent with the pattern of existing garages also in Rosedale Avenue near the site and will maintain safe and adequate traffic conditions, including visibility for car egress and pedestrians.
- Adequate side setbacks have been proposed to maintain natural features of landscaping including deep soil zones and appropriate planting subject to conditions. The proposed setbacks allow for compliance with the Building Code of Australia for maintenance, access, drainage work and emergency requirements (fire safety). The nature of development does not unduly detract from the context of the site and particularly in relation to street frontages and front and side setbacks including the context of neighbouring properties and the prevailing building lines in the



immediate vicinity.

- Consistency is maintained to the Lauderdale Street building line of neighbouring properties including the minimum 6.0m front setback. For Rosedale Avenue, a single storey character has been maintained at the street frontage and the setback varies from 0.0m to 6.0m due to the angled boundary line. The existing pattern of significant areas of landscaped open space are retained with smaller elements of landscaping used to provide visual interest and amenity to the side setback areas and garage entry areas.

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

4.1.5 Open Space and Landscaping

Open Space requirements and objectives, pursuant to *Clause 4.1.5 Open Space and Landscaping*, are addressed as follows:

Merit Assessment Comments:

- The site will be cleared and new landscape trees and vegetation will be provided to support local biodiversity of native flora and fauna appropriate for the urban zone.
- Appropriate areas of deep soil soft landscaped areas and open space at ground level is provided to support tree planting and the maintenance of outdoor areas for the absorption of rainfall and runoff. The landscape plan will not create any unreasonable risk to the spread of weeds and the degradation of private and public open space.
- A variety of landscaping has been designed to maintain reasonable levels of amenity including sunlight, privacy and views and addressing the streetscape to both Lauderdale Avenue and Rosedale Avenue including consistency with the pattern of development in the surrounding area.
- Deep soil zones are provided on the lower side of the site for water infiltration on-site with porous landscaped areas and soft surface to minimise stormwater runoff and work in unison with stormwater management systems required for the proposed two dwelling lots.

Subject to conditions, the proposal is consistent with the objectives this clause.

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

Parking and traffic considerations and objectives, pursuant to *4.1.6 Parking, Vehicular Access and Loading*, are addressed as follows:

Merit Assessment Comments:

- The proposal includes adequate parking on site for the development in the form of two (2) double garages. The garages are consistent with the objective to meet on-site parking



requirements and provide vehicular access that is efficient, safe, convenient and are integrated into the design of the development with minimal visual impact in the streetscape. The height and width of the garages are of minimal width to comply with design standards and the front setback (driveway apron) area is to remain open (un-fenced) with landscaping integrated as far as practicable to enhance the streetscape setting.

- The proposed parking spaces limits the amount of site excavation and the interruption to ground water flows on the lower side of the site, toward the Lauderdale Avenue. The use location of carparking structures in the primary setback to Lauderdale Avenue would also require significant impacts on Council's road embankment and nature strip area, including compromising the existing landscape open space for the Lauderdale Street frontage. The use of Rosedale Avenue for the garages will have a minimal impact on pedestrian area and on-street parking as is of a satisfactory design to meet Development Engineering requirements.
- It is not practicable, as with most dwelling houses in the local surroundings, for cars to enter and leave in a forward direction. However the setback area for the garages will include adequate layback width and crossovers for traffic safety, including pedestrians. While the width of the garage exceeds 50% for each proposed lot a variable setback is provided up to 6.0 metres, with landscaped elements and separate pedestrian entries for each dwelling.
- In summary, the variation to the setback for carparking (including garage widths) for the proposed garages do not create an unreasonable impact on the streetscape, on-street parking, views, traffic safety or views and are consistent with the objectives of this clause. practicable through appropriate landscape treatment.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$19,153 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,915,260.



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

The site has sufficient land area to permit subdivision in accordance with the minimum lots size of 300 square metres for each lot complying with floor space ratio and density control for the site as a whole.

The proposed semi-detached dwellings are considered to be a suitable and appropriate form of development for the site and are in context with the residential scale and intensity of development in the General Residential zone. Principal environmental impact considerations are views, bulk, landscaping, traffic and parking access, building height (including walls and envelope), privacy, overshadowing, urban character, construction impacts (during works) and stormwater management.

The public submissions received have been considered and are addressed within this report, and conditions have been applied where appropriate to address those concerns, including; landscaping, privacy, bulk, overshadowing, views, traffic safety, parking, access and stormwater.

The proposal will not have an unreasonable impact in relation to view sharing considerations from adjacent and nearby properties in Rosedale Avenue and Lauderdale Avenue. Additional amenity impacts such as may commonly arise during construction works are addressed by standard conditions (including dilapidation, dust, noise, site management and the like). Suitable conditions are recommended to address stormwater engineering, vehicle access and landscape related issues as detailed in this report.

During the assessment period, no changes were made by the applicant that would require re-notification and some supplementary information was provided to further assist solar access and landscape considerations.



The requirements of the Manly LEP and Manly DCP apply and in this regard matters relating to desired future character, setbacks, building envelope, bulk and scale, external materials, overshadowing, privacy, views, stormwater and traffic have been addressed. In this case the non-compliances with the FSR, setbacks and landscaping controls are addressed in accordance with the objectives and requirements of those considerations.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2020/0092 for Demolition of existing structures, construction of two (2) semi-detached dwellings and Torrens title subdivision of one lot into two on land at Lot 1 DP 965132, 70 Lauderdale Avenue, FAIRLIGHT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural and Draft Subdivision Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA00 Location Plan	January 2020	Marston Architects
DA02 Excavation Plan	January 2020	Marston Architects
DA03 Roof Plan	January 2020	Marston Architects
DA04 Upper Ground Plan	January 2020	Marston Architects
DA05 Lower Ground Plan	January 2020	Marston Architects
DA06 Basement Plan	January 2020	Marston Architects
DA07 South Elevation	January 2020	Marston Architects
DA08 North Elevation	January 2020	Marston Architects
DA09 West Elevation	January 2020	Marston Architects
DA10 East Elevation	January 2020	Marston Architects
DA11 Section	January 2020	Marston Architects
DA17 Schedule of Materials and Finishes	January 2020	Marston Architects
9918B Proposed Subdivision of Lot 1 in DP965132	1.11.2019	Adam Clerke Surveyors

Engineering and Subdivision Plans		
Drawing No.	Dated	Prepared By
DR000 Legend Sheet	17.12.2019	Stellen
DR001 Pipe Layout	17.12.2019	Stellen



DR002 Roof Layout	17.12.2019	Stellen
DR002 Rainwater Head Details	17.12.2019	Stellen
DR004 Details	17.12.2019	Stellen
DR005 Site Areas	17.12.2019	Stellen
CV100 Driveway Plans	9.12.2019	Stellen
CV101 Driveway Long Sections	9.12.2019	Stellen

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Basix 1065658M 02	24.1.2020	Brian Teplicanec Consultancy
Geotechnical Site Investigation 2019-155	17.10.2019	Crozier Geotechnical

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

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Planting Plan Sheet 1	13.1.2020	Woodside Plants and Design
Landscape Planting Plan Sheet 2	13.1.2020	Woodside Plants and Design
Alternative Planing Recommendations	5.6.2020	Blues Bros Arboriculture

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	13.1.2020	Vaughan Milligan

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

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- 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);
- 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) Where applicable 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.

(n) All
sound
producing
plant,
equipment,
machinery
or
fittings
that are
permanent
fixtures
for the



building
and
their
ongoing
use will
not
exceed
more
than
5dB (A)
above
the
background
level
when
measured
from
any
property
boundary
and/or
habitable
room
(s)
consistent
with
the
Environment
Protection
Authority's
NSW
Industrial
Noise
Policy
and/or
Protection
of the
Environment
Operations
Act
1997.

- (o) Any
roofed
covered
BBQ
cooktops
if
installed
(fixture)
on side
balcony
areas
shall



include
vertical
smoke
fan /
rangehood
(vented
toward
roof) to
reduce
smoke
drift.

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 \$19,152.60 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$1,915,260.17.

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 \$5,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a



result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

6. **Stormwater Disposal**

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

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

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

7. **Boundary Identification Survey**

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

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

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

8. **Structural Adequacy and Excavation Work**

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

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



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

Reason: To provide public and private safety.

9. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. 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 facilitate suitable vehicular access to private property.

10. **Compliance with Standards**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

11. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items. Including but not limited to, subject to the direction of the Certifying Authority:

No.72 Lauderdale Avenue; and
No.68 Lauderdale Avenue.

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

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

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

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



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

12. **Tree and vegetation removal within the property**

The removal of exempt trees and vegetation as shown on the Demolition Plan DA02 prepared by Marston Architects is permitted.

Any future request for tree removal is subject to a Section 4.55 modification application, or an assessment by a AQF level 5 Arborist that determines that a tree presents an imminent risk to life or property.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

13. **Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work and appropriate public liability insurance held by the applicant for works on public land during construction where applicable.

Reason: Public safety.

14. **Removing, Handling and Disposing of Asbestos**

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

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

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

15. **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.

16. **Installation and Maintenance of Sediment Control**



Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

17. Property Boundary Levels

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

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

Reason: To maintain the existing profile of the nature strip/road reserve.

18. Traffic Control and Management During Works

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual and to the satisfaction of the Roads Authority.

Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during demolition, construction and landscaping works.

Reason: Traffic access and public safety.

19. Vehicle Crossings

The Applicant is to construct two vehicle crossings 5.5 metres wide 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.

20. Tree and vegetation protection

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

- i) all trees and vegetation within the site not approved for removal, excluding exempt vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

b) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a



AQF minimum Level 5 Arborist,

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

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

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

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

21. Landscape works completion

Landscape works are to be implemented in accordance with the Landscape Plan labelled sheet 1 of 2 and sheet 2 of 2, prepared by Woodside Plants & Design, issue E, inclusive of the following requirement:

- i) 1 x street tree (Banksia or Bottlebrush species or similar) shall be planted at 75 litre container size, located centrally within the road verge between the two driveways, within a prepared planting hole 1m x 1m x and at least 700mm depth, backfilled with sandy loam soil mix, and finished with a mulch layer and 3 post tree guard and hessian wrap,
- ii) 1 x native tree shall be planted along the western boundary within the frontage, as selected from Northern Beaches Council's Tree Guide, to achieve a mature height of at less than 6 metres (Banksia or Bottlebrush species or similar), and shall be planted at 75 litre container size,
- iii) all tree planting within the site shall be planted at 75 litre container size, located within natural ground areas of substantial area (minimum 12 sqm) for each tree, located away from common boundaries, planted at least 4-5 metres from buildings, and at least 4 metres from all other trees, and shall be positioned in locations to minimise significant impacts on neighbours (by spacing) in terms of blocking winter sunlight, or where the proposed tree locations may otherwise be positioned to minimise any significant loss of views. Tree selection should be



approximate to the height of the subject building or less at maturity.

For suggested alternative species selection by the Certifying Authority refer to *Blues Bros Arboriculture* advice and recommendations, dated 5 June 2020.

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

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

22. **Stormwater Disposal**

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

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

23. **Privacy Screens**

Privacy screens are to be fitted generally consistent with the approved plans. The angle of louvres (blades) are to be fixed to provide a suitable viewing angle for privacy (to limit / screen overlooking or open line of sight) between adjacent dwellings at No.72 Lauderdale Avenue and No.68 Lauderdale Avenue.

Details demonstrating compliance with this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

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

24. **House / Building Number**

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

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

Reason: Proper identification of buildings.

25. **Sydney Water**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to



be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

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

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

26. **Landscape maintenance**

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

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

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

CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE

27. **Provision of Services for Subdivision**

The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan of subdivision. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure that utility services have been provided to the newly created lots.

28. **Sydney Water Compliance Certification**

The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneypwater.com.au <<http://www.sydneypwater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and fees to be paid. Please make early contact with the coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

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



29. **Release of Subdivision Certificate**

The final plan of subdivision will not be issued by Council until the development has been completed in accordance with terms and conditions of the development consent.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

30. **Subdivision Certificate Application**

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, four copies of the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

31. **Title Encumbrances**

The Applicant shall ensure all easements, rights of carriageway, positive covenants and restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

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

Reason: To ensure proper management of land.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed

Steven Findlay, Manager Development Assessments

The application is determined on //, under the delegated authority of:

Steven Findlay, Manager Development Assessments









