

# AGENDA

## NORTHERN BEACHES LOCAL PLANNING PANEL

Notice is hereby given that the Northern Beaches Local Planning Panel will deliberate and determine the matters included in this agenda via video conference on

**WEDNESDAY 19 AUGUST 2020**

There will be no public meeting. A statutory Direction by the Minister of Planning and Public Spaces states the panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection. The applications on this agenda do not satisfy that criterion.



**Peter Robinson**  
**Executive Manager Development Assessment**

### **Panel Members**

Lesley Finn	Chair
Graham Brown	Town Planner
To be advised	Expert Member
Peter Cotton	Community Representative

### **Quorum**

A quorum is three Panel members

### **Conflict of Interest**

Any Panel Member who has a conflict of Interest must not be present at the site inspection and must not take part in any discussion or voting of this Item.

## **Agenda of the Northern Beaches Local Planning Panel for Wednesday 19 August 2020**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>DEVELOPMENT APPLICATIONS .....</b>	<b>4</b>
2.1	DA2019/1539 - 165 Seaforth Crescent, Seaforth - Alterations and additions to existing garage and boundary re-alignment .....	4

## 2.0 DEVELOPMENT APPLICATIONS

**ITEM 2.1                                      DA2019/1539 - 165 SEAFORTH CRESCENT, SEAFORTH -  
ALTERATIONS AND ADDITIONS TO EXISTING GARAGE AND  
BOUNDARY RE-ALIGNMENT**

**AUTHORISING MANAGER     STEVE FINDLAY**

**TRIM FILE REF** **2020/467528**

**ATTACHMENTS**

- 1 [↓ Assessment Report](#)
- 2 [↓ Site Plan and Elevations](#)
- 3 [↓ Clause 4.6](#)

## PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

## RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Minimum Lot Size Development Standard of Clause 4.1 of Manly LEP 2013 as the applicants 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.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2019/1539 for alterations and additions to existing garage and boundary re-alignment at Lots 1 & 2 DP 747438, 165 Seaforth Crescent, Seaforth subject to the conditions and for the reasons set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1539
Responsible Officer:	Ashley Warnest
Land to be developed (Address):	Lot 2 DP 747438, 165 A Seaforth Crescent SEAFORTH NSW 2092 Lot 1 DP 747438, 165 Seaforth Crescent SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to existing garage and boundary re-alignment
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential Manly LEP2013 - Land zoned E3 Environmental Management
Development Permissible:	Yes - Zone R2 Low Density Residential Yes - Zone E3 Environmental Management
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Christopher Andrew Lee Rachel Merylin Lee
Applicant:	Christopher Andrew Lee Rachel Merylin Lee
Application Lodged:	31/12/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	24/01/2020 to 07/02/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.1 Minimum subdivision lot size: Lot 1 (100) - 22.3% Lot 2 (101) - 33.9%
Recommendation:	Approval
Estimated Cost of Works:	\$ 19,000.00

### EXECUTIVE SUMMARY

The proposal is for a boundary adjustment between two lots to facilitate the construction of a double garage.



The proposal involves a variation to the Minimum Lot Size development standard under the Manly Local Environmental Plan 2013 for both lots. Both existing lots do not comply with the development standard and both proposed will also not comply, being under the minimum lot size by 22.3% and 33.9%.

The application is referred to the Northern Beaches Local Planning Panel for review and determination due to the non-compliance with the Minimum Lot Size development standard exceeding 10%.

The proposed development is generally compliant with the numerical controls under the Manly Development Control Plan (MDCP).

The notification resulted in no submissions being received.

The assessment reveals the proposal is satisfactory in terms of height, bulk and scale, streetscape and amenity impacts.

The application has been assessed against the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs) and Council policies.

The Clause 4.6 Variation for the Minimum lot Size is supported for the reasons given in this report, particularly on the basis that the proposal is a good design, that provides enhanced parking and access arrangements for the two lots and that will reasonably protect and improve the amenity of the surrounding built environment.

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

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

## **PROPOSED DEVELOPMENT IN DETAIL**

Development consent is sought for a boundary adjustment and demolition of a portion of the existing single car garage and construction of new double garage.

The existing lots 1 and 2 of DP 747438 have existing lot sizes of 893.9m<sup>2</sup> (Lot 1) and 759.5m<sup>2</sup> (Lot 2).

The proposed boundary adjustment involves the relocation of the access handle from the north-eastern boundary to the south-western boundary.

The new lot sizes are 893.4m<sup>2</sup> (new Lot 100/formerly Lot 1) and 760.0m<sup>2</sup> (new Lot 101/formerly Lot 2).

The proposed boundary adjustment will facilitate the above mentioned additions to the existing garage to be wholly located within proposed Lot 101.



## ASSESSMENT INTRODUCTION

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

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

## SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation  
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

## SITE DESCRIPTION

<b>Property Description:</b>	<p>Lot 2 DP 747438 , 165 A Seaforth Crescent SEAFORTH NSW 2092</p> <p>Lot 1 DP 747438 , 165 Seaforth Crescent SEAFORTH NSW 2092</p>
<b>Detailed Site Description:</b>	<p>The subject sites consists of two allotment located on the north-western side of Seaforth Crescent.</p> <p>The site is irregular in shape with Lot 1 having a frontage of 4.8m and depth of 90.3m and Lot 2 a frontage of 14.3m and a depth of 47.8m.</p> <p>Lot 1 has a surveyed area of 893.9m<sup>2</sup> and Lot 2 a surveyed area of 759.5m<sup>2</sup>.</p> <p>Lot 1 is located within the E3 Environmental Management zone and accommodates and existing boatshed fronting Middle Harbour and an inclinor.</p> <p>Lot 2 is located within the R2 Low Density Residential zone and accommodates an existing stepped two to three storey residential dwelling house with a detached parking area.</p>



Lot 1 is heavily vegetated with Lot 2 containing a variety of canopy trees and hedging.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by similar two to three storey residential 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 approvals history:

- Development Application - DA 266/2015  
Construction of an elevated hardstand car parking area, rear stairs and landscaping.
- Development Application - DA 493/2005  
Alterations and Additions to a dwelling, including new lower level 'family room'.

## 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	See discussion on "Environmental Planning Instruments" in this

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Section 4.15 Matters for Consideration'	Comments
of any environmental planning instrument	report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic</p>



Section 4.15 Matters for Consideration'	Comments
	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	No submissions were received in regards to this application.
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 Arborist's Report submitted with the application is noted. The Report indicates that the works can be undertaken with retention of significant trees adjacent to the carport.  No objections to approval subject to conditions as recommended.
NECC (Development Engineering)	3rd referral  As the planning advise, the existing stair and deck shall be deleted within the proposed lot 100 in this application to provide a better planning outcome. As such, the below conditions of the consent has been provided.  2nd Referral An additional letter has been sent to Council about the owner's intention of the below encroachment. However, Development Engineering requested the actual arrangement on the title, such as the right of carriageway, structures over hanging and easement etc.



Internal Referral Body	Comments
	<p>These details must be provided to Council to ensure the accessibility and legitimate rights and responsibilities on both owners of the proposed Lots prior to approving the application.</p> <p>1st referral The applicant proposed to build a garage and modify the subdivided lots. Development Engineering has no issue on the proposed garage.</p> <p>However, the proposed modification on the lots cannot be supported. An existing building, which serves the proposed Lot 101, will be encroached on the proposed Lot 100. There is no information of any arrangement on the encroachment in this submission.</p> <p>As such, Development Engineering cannot support the application with insufficient information.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

#### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\***

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

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

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

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

##### **SEPP 55 - Remediation of Land**

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

##### **SEPP (Infrastructure) 2007**

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

Comment

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

The foreshore area is mapped as having a high likelihood of containing Aboriginal heritage sites. The foreshore area is heavily modified and no 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. A condition of consent has been imposed to stop works if any Aboriginal Engravings or Relics are unearthed.

**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 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
Minimum Subdivision Lot Size:	1150m <sup>2</sup>	Lot 1 (100): 983.4m <sup>2</sup> Lot 2 (101): 760.0m <sup>2</sup>	Lot 1: 22.3% Lot 2: 33.9%	<b>No</b>
Height of Buildings:	8.5m	5.8m (top of garage)	N/A	Yes

### Compliance Assessment

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

### Detailed Assessment

#### **4.6 Exceptions to development standards**

##### **Description of Non-compliance**

Development standard:	Minimum Subdivision Lot Size
Requirement:	1150m <sup>2</sup>

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Existing:	Lot 1: 893.9m <sup>2</sup> Lot 2: 759.5m <sup>2</sup>
Existing variation to requirement:	Lot 1: 22.3% Lot 2: 34.0%
Proposed:	Lot 1 (100): 893.4m <sup>2</sup> Lot 2 (101): 760.0m <sup>2</sup>
Percentage variation to requirement:	Lot 1 (100): 22.3% Lot 2 (101): 33.9%

### **Assessment of Request to vary a Development Standard**

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

### **Clause 4.6 Exceptions to Development Standards**

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

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

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

#### **Comment:**

Clause 4.1 - Minimum subdivision lot size 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 relocation of the access handle from the north-eastern boundary to the south-western boundary will not impact upon the future development of the site.
- Then pattern of subdivision in the vicinity is of a battle-axe blocks arrangement of similar lot sizes.
- The boundary adjustment will not adversely impact the existing character of the locality.
- The boundary adjustment maintains sufficient useable area for building and landscaping.
- The boundary adjustment will not result in an intensification of the dwelling density of the site.
- The desire to provide for two off street parking spaces is constrained by the existing boundary arrangement, siting of the existing building, and sloping topography of the site.
- This will provide for better access arrangement whilst maintaining essential services to both lots.

It is agreed that the proposed boundary adjustment maintains a similar pattern of subdivision along the north-western side of Seaforth Crescent and will maintain the existing character of the locality. It is also agreed that the proposal will provide for an improved access arrangement for both lots without resulting in the intensification in dwelling density of the site.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, that is a good design, that provides enhanced parking and access arrangements for the two lots and 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 Minimum Lot Size development standard and the objectives of the R2 Low Density Residential zone and E3 Environmental Management zone. An assessment against these objectives is provided below.

#### **Objectives of Development Standard**

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The underlying objectives of the standard, pursuant to Clause 4.1 – 'Minimum subdivision lot size' of the MLEP 2013 are:

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

*(a) to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping.*

Comment

The proposed boundary adjustment maintains the existing pattern of subdivision along the north-western side of Seaforth Crescent. Additionally, the proposed lot sizes are consistent with this pattern of subdivision. There is a minor change between the existing lot sizes and the proposed lot sizes. There is sufficient available building area for Lot 1(100) for the future development of the site. It is also noted that the boundary adjustment will not impact upon the amenity of the adjoining and surrounding properties.

*(b) to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns.*

Comment

The character of the locality will remain unchanged by the proposed boundary adjustment. The existing pattern of subdivision along the north-western side of Seaforth Crescent is maintained.

*(c) to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential.*

Comment

The boundary adjustment will not further impact upon the existing vegetation, available views, and natural features of the site.

*(d) to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.*

Comment

The subject site is located along a bus line with a bus stop in close proximity. The proximity to the bus stop encourages use of public transport.

## Zone Objectives

The underlying objectives of the R2 Low Density Residential zone:

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

Comment

The proposal maintains the residential use of the site without increasing the dwelling density.

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

Comment

The boundary adjustment will facilitate the construction of a double garage onsite. This will





provide for two off street parking spaces for each of the lots meeting the day to day needs of residents.

The underlying objectives of the E3 Environmental Management zone:

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

Comment

The proposal does not seek to intensify the use of the site and will maintain the natural, cultural, and aesthetic values of the subject site.

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

Comment

The proposal does not seek to use the site beyond that of the permitted uses within the E3 zone.

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

Comment

No significant trees are required to be removed as part of this application.

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

Comment

No works are proposed within the foreshore area and will not impact upon the natural features of the site.

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

Comment

No works are proposed within the foreshore area with a minor addition to the hardsurfaced area towards to front of the site. Any additional stormwater to be captured is to be disposed of within the existing stormwater disposal arrangement.

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

Comment

The proposal will not adversely impact upon the existing significant vegetation on site nor does it rely on significant excavation. The height and bulk of the garage is consistent with development in the area.

## **Conclusion**

For the reasons detailed above, the proposal is considered to be consistent with the objectives of



the R2 Low Density Residential and E3 Environmental Management zones.

**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 with the objectives of the zone and the development standard, the concurrence of the Secretary for the variation to the Minimum Subdivision Lot Size Development Standard can be assumed by the Local Planning Panel.

**Manly Development Control Plan**

Built Form Controls

Built Form Controls	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	NE: 7.7m (based on gradient 1:5)	5.8m	N/A	Yes
4.1.4.1 Street Front Setbacks	6.0m	8.4m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	1.9m (based on wall height)	0.3m	N/A	No
4.1.4.4 Rear Setbacks	8.0m	N/A	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	68%	N/A	Yes
	Open space above ground 25% of total open space	13%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	87%	N/A	Yes
	3 native trees	>3 trees	N/A	Yes
4.1.5.3 Private Open Space	18m <sup>2</sup>	>18m <sup>2</sup>	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	100% of frontage 5.0m	N/A	No
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

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

Compliance Assessment

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



Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 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
4.1.1.2 Residential Land Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.8 Subdivision	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

#### Detailed Assessment

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

The proposed 300mm side setback to the north-eastern side boundary does not comply with the 1.9m side setback requirement. The side setback requirement is based on the maximum height of the garage wall, it is notes that the proposed garage is located on a slope of 50% and the overall height of the



garage varies between 3.0m to 5.8m. In addition, the 30cm side setback is an existing setback and the portion of the brick work is to be retained.

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

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

Comment

The proposed garage is consistent with the front setback control and will not have a dominate appearance when viewed from the street. There are several examples of hardstand parking spaces located at a nil setback with reduced side setbacks along Seaforth Crescent.

*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 garage will maintain a reasonable level of amenity to the residents of the subject site and to the adjoining and surrounding properties. The enclosed double garage has a proposed front setback of 8.4m which will minimise impacts on available street views. The proposed development allows for adequate visual and acoustic privacy to be retained between the subject site and neighbouring properties.

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

Comment

The reduced side setback will not unreasonably impact upon the adjoining property of 167 Seaforth Crescent. An inclinometer line is located along the adjoining boundary on 167 Seaforth Crescent and the existing building does not rely on outlooks or private open space within the front yard.

*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 Arborist Report that accompanies the application indicated that the proposed works can be undertaken without requiring the removal of any significant trees. There are sufficient opportunities



throughout the site to support a variety of plantings.

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

Comment

N/A the site is not bushfire effected.

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)**

The proposed garage does not comply with the requirement for carparking spaces not to exceed a width equal to 50 percent of the frontage. The overall 5.0m width of the garage is 100% of the proposed frontage.

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

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

Comment

The proposed garage seeks to increase the available onsite parking from one space to two spaces. Two available onsite car parking spaces is the minimum requirement of Schedule 3 of MDCP - Parking and Access.

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

Comment

The available on-street parking is limited due to the width of the existing road. The additional parking space to be provided will reduce the demand for on-street parking along Seaforth Crescent.

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

Comment

The proposed garage complies with the Australian Standards for car parking structures. The provision of an 8.4m front setback minimises any impacts on available street views.

*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

No significant excavation is required for the construction of the proposed garage.

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

Comment

One vehicle crossover is proposed for Lot 2 (101).

*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

Due to the slope of the site internal access to the dwelling is not visible from public space. All significant trees are to be retained as part of the application.

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

Comment

The proposed works are not expected to unreasonably increase car demand. The site is within close proximity to regular public transport services that may be used by residents and visitors.

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**

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

**CONCLUSION**

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

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





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

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

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

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 4.1 Minimum Subdivision Lot Size 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 as the proposal includes a non-compliance with clause 4.1 Minimum Lot Size of MLEP 2013, clause 4.1.4.2 Side Setback, and 4.1.6.1 Parking Design of MDCP. The variation to the Minimum Lot Size development standard was assessed as part of a Clause 4.6 variation assessment and is supported.

The boundary adjustment results in a minor lot size change between the existing arrangement and the proposed arrangement being for Lot 1/100 893.9m<sup>2</sup> existing to 893.4m<sup>2</sup> proposed and for Lot 2/101 759.5m<sup>2</sup> existing to 760.0m<sup>2</sup> proposed.

The boundary adjustment results in a relocation of the existing access handle to the south-western boundary. The boundary relocation facilitates the proposed double garage addition within the future Lot 101.

The proposal will result in the provision for two off street parking spaces wholly located on each of the new Lots 100 and 101. This will significantly improve the access amenity for the lots.

A special condition was imposed for the existing encroachment within the proposed access handle to be removed to ensure future residents of Lot 100 are not unreasonably burdened by the structure.

Following a detailed assessment, the proposal 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 4.1 Minimum Subdivision Lot Size 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2019/1539 for Alterations and additions to existing garage and boundary re-alignment on land at Lot 2 DP 747438, 165 A Seaforth Crescent, SEAFORTH, Lot 1 DP 747438, 165 Seaforth Crescent, SEAFORTH, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. Approved Plans and Supporting Documentation

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

##### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Plan	01/12/2019	MDB
Garage Plan	01/12/2019	MDB
East and West Elevations	23/12/2019	MDB
North and South Elevations	23/12/2019	MDB
Subdivision Plans - Sheet 1 and 2	21/11/2019	DP Surveying

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arborist Report	December 2019	Growing My Way

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	19/12/2019	Chris Lee

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.

## FEES / CHARGES / CONTRIBUTIONS

### 4. Security Bond

A bond (determined from cost of works) of \$1,000 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](http://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

### 5. Deletion of the existing deck and stair in Proposed Lot 100

The existing stair, deck and associated structures must be removed within proposed Lot 100.

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

Reason: To ensure suitable access to private property.

### 6. Compliance with Standards

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

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

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

## CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

### 7. Tree trunk, root and branch 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 the Project Arborist on site.
- ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by the Project Arborist on site.
- iii) All tree protection to be in accordance with the Construction Impact and Management Statement dated December 2019 prepared by Growing My Way Tree Consultancy and 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 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.

8. **Project Arborist**

- i) A Project Arborist with minimum qualification AQF Level 5 is to be appointed prior to commencement of works.
- ii) The Project Arborist is to oversee all tree protection measures, removals and works adjacent to protected trees as outlined in the Construction Impact and Management Statement dated December 2019 prepared by Growing My Way Tree Consultancy and AS4970-2009 Protection of trees on development sites.
- iii) 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**

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

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

Reason: Preservation of significant environmental features.

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

10. **Condition of retained vegetation**

Prior to the issue of an Occupation Certificate, a report prepared the Project Arborist 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.

#### **CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE**

**11. Certification of Civil Works**

The Applicant shall submit a suitably qualified Engineer's certification that the removals of the existing deck and stair in proposed Lot 100 have been completed in accordance with this consent.

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

**12. 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.

**13. Services**

The Applicant shall ensure all utilities/services and street lighting is installed. The Applicant is to submit a Certification stating the above requirement has been complied with by the relevant authority(s) and/or authorised contractor.

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

Reason: To ensure services have been provided in accordance with the relevant authorities requirements.

**14. 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.sydneywater.com.au](http://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 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.

15. **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.

16. **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.

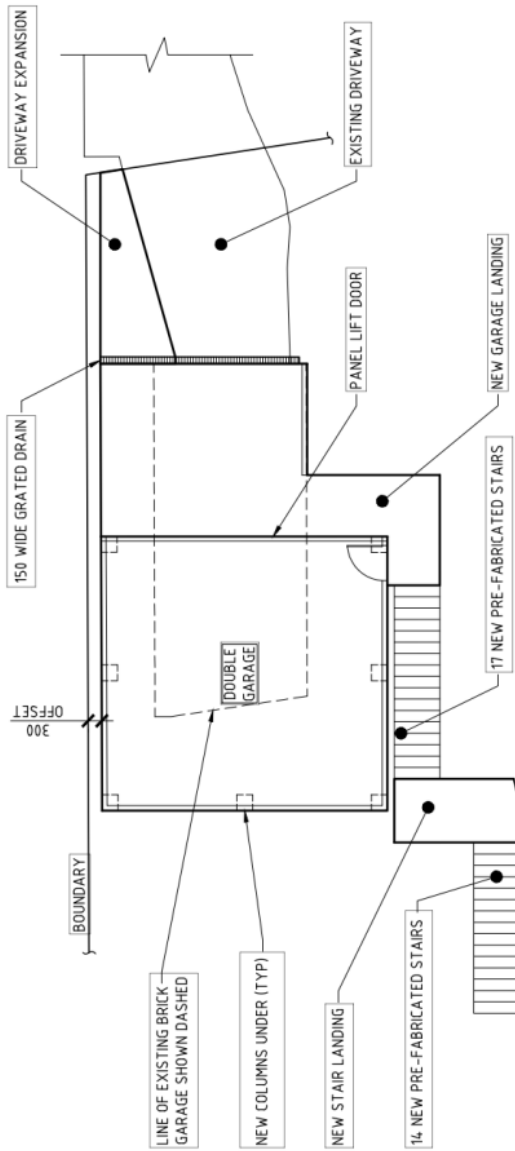
17. **Title Encumbrances**

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.

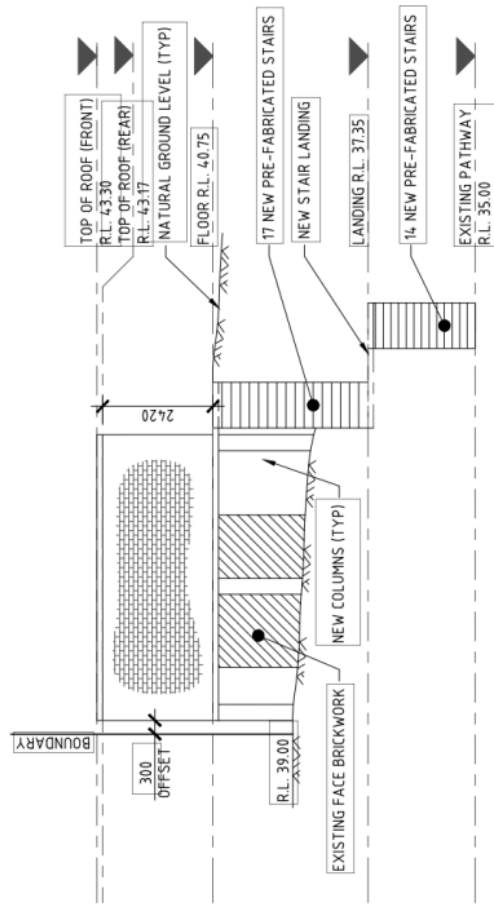
Reason: To ensure proper management of land.



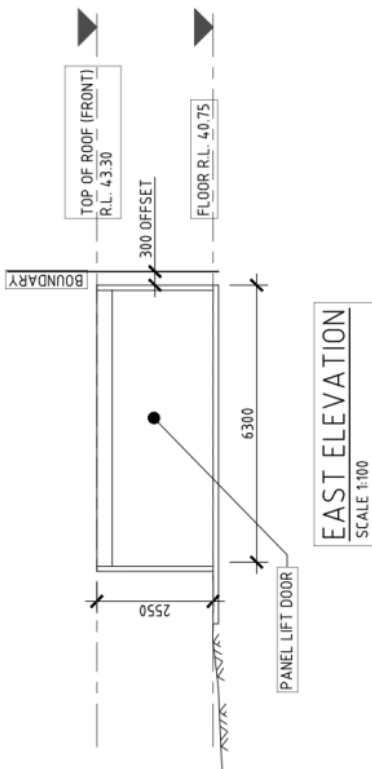


**PROPOSED GARAGE PLAN**  
 SCALE 1:100

DRAWING NO.		<b>SHEET-2</b>	
			
TITLE PLAN OF ALTERATIONS AND ADDITIONS 165 SEAFORTH CRESCENT AND 165A SEAFORTH CRESCENT, SEAFORTH LOTS 1 AND 2 IN DP 747438 FOR R LEE AND CA & RM LEE		CHECKED  	SCALE A3 1:100
DRAWN MDB	DATE 1 DECEMBER 2019		



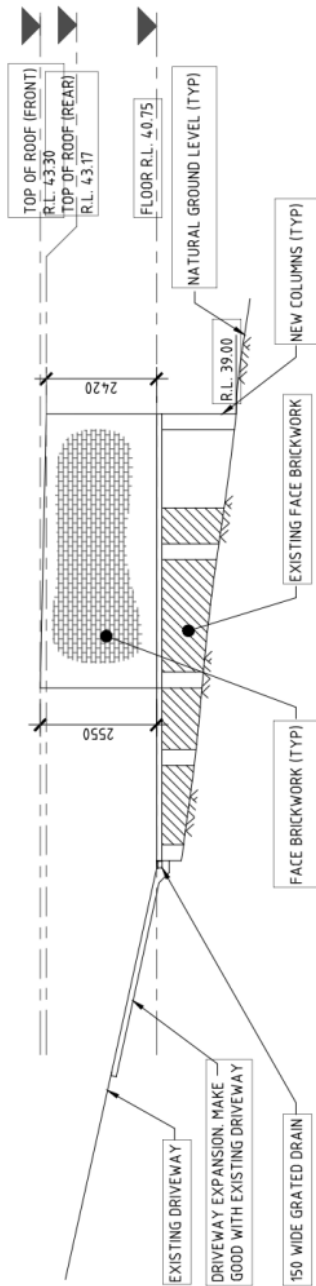
WEST ELEVATION  
SCALE 1:100



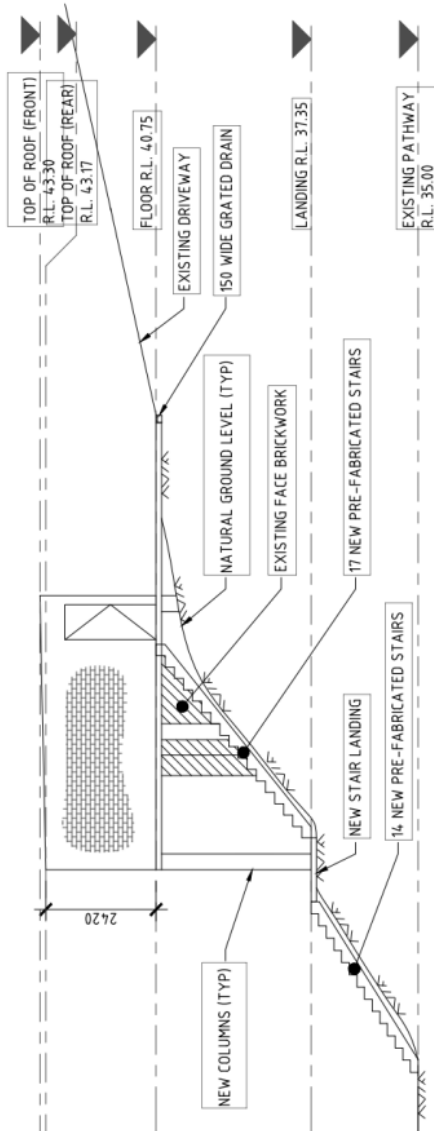
EAST ELEVATION  
SCALE 1:100

DRAWING NO	
SHEET-3	
TITLE	
PLAN OF ALTERATIONS AND ADDITIONS 165 SEAFORTH CRESCENT AND 165A SEAFORTH CRESCENT, SEAFORTH LOTS 1 AND 2 IN DP 747438 FOR R LEE AND CA & RM LEE	
DRAWN	DATE
MD8	23 DECEMBER 2019
CHECKED	SCALE
	A3 1:100





**NORTH ELEVATION**  
SCALE 1:100



**SOUTH ELEVATION**  
SCALE 1:100

DRAWING NO.		<b>SHEET-4</b>					
<p>PLAN OF ALTERATIONS AND ADDITIONS 165 SEAFORTH CRESCENT AND 165A SEAFORTH CRESCENT, SEAFORTH LOTS 1 AND 2 IN DP 747438 FOR R LEE AND CA &amp; RM LEE</p>							
				DRAWN	DATE	CHECKED	SCALE
				MDR	23 DECEMBER 2019		1:100

## 4.6 Variation request

### Address

165 and 165A Seaforth Crescent SEAFORTH NSW

### Proposal

Boundary adjustment and demolition of a portion of the existing single car garage and construction of new double garage.

### Introduction

Clause 4.1 restricts the minimum size of a lot this clause applies to a subdivision of any land shown on the "Lot Size Map".

The relevant minimum lot size for the site is 1150m<sup>2</sup> and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

Due to the existing subdivision arrangement the proposed new lots will be 983.4m<sup>2</sup> (Lot 1 / 100) and 760.0m<sup>2</sup> (Lot 2 / 101). The proposal represents a variation of 22.3% (Lot 1 / 100) and 33.9% (Lot 2 / 101).

The proposal is considered acceptable and there are sufficient environmental planning grounds to justify contravening the development standard.

### Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The latest authority in relation to the operation of clause 4.6 is the decision of Chief Justice Preston in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 ("Initial Action"). Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of Initial Action the Court held that:

*"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."*

The legal consequence of the decision in Initial Action is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(3) provides that:

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

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

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

### **Justification of Proposed Variation**

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

Paragraph 27 of the judgement states:

*Clause 4.6 of LEP 2014 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).*

### **Precondition 1 - Consistency with zone objectives**

The proposed development of and use of the land within the R2 Low Density Residential Zone and E3 Environmental Management Zone is consistent with the zone objectives. Zone objectives are as follows:

#### **R2 Low Density Residential Zone**

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

#### Comments

The proposed boundary adjustment maintains the current level of housing with improved amenity that contributes to the housing needs of the community. The proposed dwellings contribute to the variety of housing types available in the area and to the variety of densities of dwelling in the area.

#### **E3 Environmental Management Zone**

- *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.*

#### Comment

The proposed boundary adjustment will not adversely impact upon the ecological significance or the aesthetic value of the site. The relocation of the access handle from the north-eastern boundary to the south-western boundary will not impact upon the future development of the site. The boundary adjustment will not result in an intensification of the dwelling density of the site.

No significant trees will be removed as part of this application. The boundary adjustment and the future development of the site will not impact upon the foreshore area or the natural features of the site.

No works are proposed within the foreshore area or the rear lot. The proposal will not result in development of an unreasonable bulk and scale.

#### **Precondition 2 - Consistency with the objectives of the standard**

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

- (a) to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping,*
- (b) to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns,*
- (c) to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential,*
- (d) to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.*

#### Comments

The pattern of subdivision in the vicinity is of battle-axe blocks arrangement of similar lot sizes. The boundary adjustment maintains sufficient useable area for building and landscaping.

The boundary adjustment will not adversely impact the existing character of the locality. The proposed boundary adjustment will result in only minor changes to the lot size. The future development of the rear lot will take into consideration the planning controls in relation to the natural environment and amenity.

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



It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for a boundary adjustment and the construction of a double garage. The desire to provide for two off street parking spaces is constrained by the existing boundary arrangement, siting of the existing building, and sloping topography of the site.

The boundary adjustment results in two lots with a similar configuration to the existing arrangement, this includes lot sizes and maintaining a battle axe arrangement. The proposed boundary adjustments will facilitate the capacity to construct a double garage for each of the lots. This will provide for better access arrangement whilst maintaining essential services to both lots.

Overall there will not be a significant change to the existing arrangement nor an intensification of dwelling density for the site.

**Precondition 4 - To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed**

The above are the environmental planning grounds which are the circumstance which are particular to the development which merit a variation to the development standard.

In the *Wehbe* judgment (*Wehbe v Warringah Council* [2007] NSWLEC 827), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded and that approval of the Objection may be consistent with the aims of the policy. These 5 questions may be usefully applied to the consideration of Clause 4.6 variations: -

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

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

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

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

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

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

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

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

Comment: Not applicable.

5. the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Comment: The development standard is applicable to and appropriate to the zone.

**Conclusion**



This development proposed a departure from the minimum lot size development standard, with the proposed new lots of 983.4m<sup>2</sup> (Lot 1 / 100) and 760.0m<sup>2</sup> (Lot 2 / 101).

This variation occurs as a result of an existing subdivision arrangement and the desire to provide two parking spaces on each of the lots that form part of this application.

This objection to the minimum lot size specified in Clause 4.1 of the Manly LEP 2014 adequately demonstrates that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the minimum lot size control would be unreasonable and unnecessary in the circumstances of this case.