

# AGENDA

## DEVELOPMENT DETERMINATION PANEL MEETING

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

**WEDNESDAY 9 DECEMBER 2020**



**Ashleigh Sherry**  
**Manager Business Systems and Administration**



## **Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 9 December 2020**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
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## **2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

### **2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 1 DECEMBER 2020**

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#### **RECOMMENDATION**

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

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### 3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2020/0884 - 129 UPPER CLONTARF STREET, SEAFORTH - ALTERATION AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL
REPORTING MANAGER	Rebecca Englund
TRIM FILE REF	2020/752800
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

#### PURPOSE

To refer the attached application for determination by the discretion of the Executive Manager Development Assessment.

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#### RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2020/0884 for alterations and additions to a dwelling house including a swimming pool on land at Lot 189 DP 11162, 129 Upper Clontarf Street, Seaforth, subject to the conditions outlined in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/0884
<b>Responsible Officer:</b>	Maxwell Duncan
<b>Land to be developed (Address):</b>	Lot 189 DP 11162, 129 Upper Clontarf Street SEAFORTH NSW 2092
<b>Proposed Development:</b>	Alteration and additions to a dwelling house including a swimming pool
<b>Zoning:</b>	Manly LEP2013 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Justin Paul Caruana Rowena Mary Caruana
<b>Applicant:</b>	Justin Paul Caruana
<b>Application Lodged:</b>	07/08/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	17/08/2020 to 31/08/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 90,000.00

### EXECUTIVE SUMMARY

Development application DA2020/0884 has been submitted for alterations and additions to a dwelling house including a swimming pool.

The public exhibition period generated a total of one (1) individual submission. The submission raised a number of concerns including privacy, overshadowing and suitability of the development. All concerns have been addressed within the report, and overall, there were no matters raised that would warrant the refusal of the application.

The application has been referred to DDP under the discretion of the Executive Manager of

#### Development Assessment.

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

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

#### PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for alterations and additions to an existing dwelling house including a swimming pool.

Specifically, the works incorporate the following:

- Construction of a swimming pool off the existing ground floor deck;
- Associated planting;
- Demolitions works;
- New stair access.

#### 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 - 3.4.1 Sunlight Access and Overshadowing  
Manly Development Control Plan - 4.1.5 Open Space and Landscaping  
Manly Development Control Plan - 4.1.8 Development on Sloping Sites  
Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 189 DP 11162 , 129 Upper Clontarf Street SEAFORTH NSW 2092
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the western side of Upper Clontarf Street. Upper Clontarf Street is a partially unformed road located above Clontarf Street to the south.</p> <p>The site is irregular in shape with a frontage of 12.52m along Upper Clontarf Street and a depth of 43.84m. The site has a surveyed area of 531.1m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a three-storey dwelling positioned to the rear of the site. The site has vehicular access via an existing driveway from Upper Clontarf Street to an existing single garage to the front of the existing dwelling. This driveway is subject to a right of carriageway easement with the adjoining neighbour at No.131 Upper Clontarf Street.</p> <p>The site slopes steeply down from the northern to southern side boundary with a fall of approximately 6.0m.</p> <p>The site contains large rock outcrops, canopy trees and a grassed lawn area within the front setback .</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by one and two storey detached dwelling of varying architectural styles.</p>

Map:



#### **SITE HISTORY**

- DA62/2008 – Alterations and additions to dwelling including new deck, rendering cladding and refurbishment of carport – Approved May 2008
- DA161/2017 - Alterations and additions to the existing dwelling house - Approved 05/09/2017
- PLM2019/0264 - Pre-lodgement advice - Alterations and additions to the dwelling house - December 2019
- DA2020/0116 - Alterations and additions to an existing driveway, parking area and ancillary works - 21 May 2020

#### **APPLICATION HISTORY - DA2020/0116**

The proposed swimming pool proposed under DA2020/0116 was not supported and deleted from the proposal and subsequent consent.

As detailed in the assessment report, the swimming pool was not supported due to the following reasons:

- Height,
- Amenity (privacy, solar access)
- Impact on natural/ landscape features including the bedrock underneath the proposed swimming pool.

The current proposal has incorporated the following amendments to address the issues raised by Council.

- Increased south side setback to the swimming pool coping from 2.05m to 3m. The increased side setback has also lowered the overall height of the swimming pool above natural ground level.
- Reduced the size of the pool decking along the eastern side of the swimming pool.
- Introduced screen planting to adjoin the southern side of the swimming pool to help offset the



visual impact of the swimming pool and resulting undercroft area.

## 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	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&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 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&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 clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent</p>

Section 4.15 Matters for Consideration'	Comments
	<p>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> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> 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.</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 impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 17/08/2020 to 31/08/2020 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:

<b>Name:</b>	<b>Address:</b>
Ms Emma Margaret Lane Mr David Stuart Simington	127 Upper Clontarf Street SEAFORTH NSW 2092

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

- **Subject site and context**
- **Overshadowing**
- **Noise**
- **Built form non-compliance/Building Bulk**
- **Development on sloping site**
- **Stormwater**
- **Landscaping**

The matters raised within the submissions are addressed as follows:

- **Subject site and context**  
Comment:  
Concern was raised in regards to the suitability of the proposed swimming pool on site, and the resulting amenity impacts. A swimming pool is a appropriate type of development in a residential setting. The proposed pool is located to the rear of the property with suitable separation to neighbouring properties to ensure neighbouring properties are not unreasonably impacted by the proposed swimming pool. The location of the proposed swimming pool is suitable, noting the constraints of the site.
- **Overshadowing**  
Comment:  
Concern was raised about resulting shadowing impacts to the adjoining property to the south. This is discussed in detail within the report (Refer to Clause 3.4.1 Manly DCP) . In summary, the proposal complies with the relevant provisions and underlying objectives under Clause 3.4.1 of the Manly DCP.
- **Noise**  
Comment:  
Concern is raised in regards to the swimming pool and the associated mechanics including the pool filter. A condition of consent has been included as part of this recommendation to ensure that the pool filter box is sound insulated to ensure there are no unreasonable aural impacts to adjoining properties throughout the life of the development is approved. The condition of consent imposed will ensure noise levels do not exceed 5 dB(A) above ambient noise levels (measured at the property boundary). The *NSW Industrial Noise Policy* (EPA 2000) defines intrusive noise a 5 decibels above the background noise level.
- **Built form non-compliance/ Building Bulk**  
Comment:  
Concern is raised regarding the bulk and scale of the proposed development, noting the height non-compliance of the swimming pool. Each of the specific areas of non-compliance raised are addressed in detail within the report. In summary, the proposed swimming pool is considered to be an appropriate design solution in response to the constrained nature of the site. The bulk and



scale of the proposal is not considered to present as overly bulky or out of scale with surrounding properties.

- **Development on sloping site**

Comment:

Concern has been raised with regard to the extent of works on site, and the associated hazards/risks to adjoining properties. The application was lodged with a geotechnical risk management report which considers the potential risks associated with the development, and provides recommendations to ensure construction and overall development risks are suitably mitigated. Conditions within the geotechnical assessment have been incorporated into the conditions of this recommendation to ensure that the development is undertaken in accordance with the recommendations of the geotechnical risk management report.

- **Stormwater**

Comment:

The application was referred to Council's development engineers for comment in regards to stormwater management. Suitable conditions have been imposed as part of this recommendation to ensure adequate stormwater management for the subject property and adjoining properties.

- **Landscaping**

Comment:

Concern was raised in regards to the level of landscaping proposed across the site. The proposed level of landscaping is consistent with the numeric control under clause 4.1.5 of the the Manly DCP. As such, the proposed landscaping is supported.

## REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	The proposed development for a new pool does not require removal of existing trees, and will not result in a significant impact to the environment.
NECC (Development Engineering)	The proposed development does not require OSD and overflow from the pool will be directed to the sewer. The recommendations of the Geotechnical report must be complied with during the works. Planning is to ensure an appropriate condition is included for this requirement.  No objection to approval, subject to conditions as recommended.
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 (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 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.

#### **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:	8.50m	4.8m	-	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

#### Mainly Development Control Plan

##### Built Form Controls

Built Form Controls - Site Area: 531sqm	Requirement	Proposed	% Variation*	Complies
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (292.05sqm)	66% (295.4sqm)	-	Yes
	Open space above ground 25% of total open space (73.85sqm)	25.3% (74.9sqm)	1.2%	No
4.1.5.2 Landscaped Area	Landscaped area 35% (103.39sqm) of open space	65.97% (194.9sqm)	-	Yes
	2	2 trees	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	3.94m	100%	No
	1m curtilage/1.5m water side/rear setback	2.9m (Curtilage) 3.1m (waters edge)	-	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 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
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.8 Development on Sloping Sites	No	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

#### Detailed Assessment

##### **3.4.1 Sunlight Access and Overshadowing**

#### Merit consideration:

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

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

#### Comment:

The proposed works provide equitable access to light and sunshine for the subject site, adjoining properties and public open space.

*Objective 2) To allow adequate sunlight to penetrate:*

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

Comment:

The proposed works allows for adequate solar access private open space and living rooms to the adjoining properties (No. 127 Upper Clontarf Street, Seaforth).

Clause 3.4.1.1 a) of the Manly DCP requires new development to not eliminate more than one third of existing sunlight accessing the private open space of adjacent properties between 9am and 3pm throughout the winter solstice. Clause 3.4.1.2 a) of the Manly DCP requires at least 2 hours of solar access be retained to living room windows that presently enjoy solar sunlight between 9am and 3pm on the winter solstice. The certified shadow diagrams submitted with the application reveal that the proposed swimming pool will not result in a material increase in shadowing to the private open space and living room windows of the adjoining southern property. As such, the adjoining southern property will retain adequate sunlight access. The proposal is consistent with this objective.

Certified shadow diagrams for the equinox also indicate that there is no indicate that the proposed swimming pool will not result in a material increase in shadowing to the private open space and living room windows of the adjoining southern property.

*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 swimming pool proposes a compliant side and rear setback which ensures that high levels of sunlight still access the outdoor living areas and of the adjoining southern property.

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.

#### 4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5 of the Manly DCP 2013 requires Total Open Space above ground be no more than 25% of Total Open Space equal to (73.85m<sup>2</sup>). The proposed new dwelling has a Total Open Space above ground measured to 25.3% (74.9m<sup>2</sup>), non-compliant with the numerical control.

This results in a 1.2% variation to the numeric control.

Merit consideration:

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

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



Comment:

No important remnant population of native flora and fauna are proposed for removal.

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

Comment:

The proposed development is consistent with the numeric requirement for landscaped open space. No Trees are proposed for removal as part of this application.

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

Comment:

The proposed works will not unreasonably impact upon the amenity of adjoining properties. A reasonable level of solar access, privacy and views are all retained to adjoining properties as part of this proposal. The proposed swimming pool which causes the variation to this control is appropriately sited and setback to maintain suitable levels of privacy, solar access and views to adjoining properties.

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

Comment:

The proposal retains significant levels of landscaped open space at ground level to the front and rear of the dwelling to minimise the stormwater runoff. Stormwater runoff is minimised by the proposed landscaped open space. The landscaped open space reduces the impermeable surface, which increases the potential for water infiltration on the site and minimises stormwater runoff.

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

Comment:

The proposed works will not lead to an unreasonable spread of weeds across the site, adjoining properties or nearby public open space.

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

Comment:

The application was referred to Council's Natural Environment Unit officers to consider the likely potential environmental impacts. No objection was raised to the proposal. The development was recommended for approval, subject to conditions.

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

##### Merit consideration:

The swimming pool is proposed above an existing natural outcrop on site and will be constructed with piers secured into the existing rock outcrop. A geotechnical report has been submitted with the application, assessing the potential impact of the swimming pool being constructed over the rock outcrop/cliff face. While it is noted as potential hazard, the level of risk as noted in the geotechnical report is acceptable in this residential setting. The recommendations within the geotechnical report (prepared by White Geotechnical Group, dated 22 July 2020) have been imposed as part of this application.

##### Requirements

- a) *The design of development must respond to the slope of the site, to minimise loss of views and amenity from public and private spaces.*
- b) *Developments on sloping sites must be designed to:*
  - i) *generally step with the topography of the site; and*
  - ii) *avoid large undercroft spaces and minimise supporting undercroft structures by integrating the building into the slope whether to the foreshore or a street.*

##### Comment:

The proposed development does not compromise any significant views to and from public and private space. The impact of the proposal on amenity (privacy and overshadowing) is not unreasonable and has been addressed in detail within this report. The amended swimming pool proposal will still result in an undercroft area under the proposed swimming pool. However, this area has been significantly reduced from the previous proposal. This application has also incorporated screen planting along the southern side of the swimming pool to offset the visual impact of the undercroft area when viewed from neighbouring properties.

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.

#### 4.1.9 Swimming Pools, Spas and Water Features

##### Description of non-compliance

Clause 4.1.9 of the Manly DCP 2013 requires pools be no higher than 1m above natural ground level. The proposed pool is elevated 3.94m above ground.

This results in failure to comply with Part 4.1.9.1 of this clause which states swimming pools and spas must be built on or in the ground and not elevated more than 1m above natural ground level.

##### 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:

Despite the pool does not achieving numerical compliance with the height aspect of this control, reasonable privacy (visually and acoustic) will be retained. The application proposes a 3m side setback between the pool and adjoining properties, adequate physical separation to ensure reasonable acoustic privacy between residential properties and consistent with the numeric control. Further, the deck to the eastern side of the swimming pool has been significantly reduced to 2.5sqm (previously 14sqm) to ensure the this aspect of the deck is only utilised for access and not as an additional living space above ground. The proposed physical separation between the swimming pool and adjoining southern property in conjunction with a reduction of useable deck area will allow for sufficient visual and aural privacy for the subject site and surrounding properties. A condition of consent has also been imposed to mitigate the acoustic impacts of the swimming pool mechanical equipment.

Furthermore, the proposal includes screen planting adjacent to the structure which will assist to offset the built form of the swimming pool and undercroft area.



**Photo 1 - Existing deck (Viewing east)**





**Photo 2 - View from existing deck (viewing south)**

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

Comment:

The location of the proposed swimming pool is deemed to be reasonable given that the structure will not be readily visible from Upper Clontarf Street and the existing sloping topography of the site.

*Objective 3) To integrate landscaping; and*

Comment:

Landscaping is proposed to the southern side of the swimming pool and associated decking. Sufficient landscaping is provided across the site, compliant with the numeric control requirement under clause 4.1.5 of the Manly DCP. The existing and proposed landscaping may further offset the visual impact of the swimming pool from surrounding properties.

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

Comment:

The subject site is not located in a bush fire asset protection zone, however 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 MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the

proposal is supported, in this particular circumstance.

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly 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

The development is found to be reasonable in the residential context of the site and will not result in any unreasonable environmental impact for neighbouring properties. The height of the proposed swimming pool is deemed appropriate given the constraints of the site and noting that the pool will not have a adverse impact upon the existing bedrock.

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 DA2020/0884 for Alteration and additions to a dwelling house including a swimming pool on land at Lot 189 DP 11162, 129 Upper Clontarf Street, 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
DA-01/ Revision B	22 July 2020	White Geotechnical Group
DA-02/ Revision B	22 July 2020	White Geotechnical Group
DA-03/ Revision B	22 July 2020	White Geotechnical Group

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report	22 July 2020	White Geotechnical Group

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
DA-04/ Revision B	27 July 2020	Space Landscape Designs

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	28 July 2020	Justin Caruana

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	Response Ausgrid Referral	N/A

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

##### 6. Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group dated 22 July 2020 are to be incorporated into the construction plans. Details demonstrating compliance are to be submitted

to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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. **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.

10. **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](http://www.sydneywater.com.au) for:



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

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

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

**11. Structural certification**

The structural adequacy and capability of the structural components of the dwelling to be retained to withstand the additional load of the proposed additions is to be confirmed by a suitably qualified structural engineer on site.

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

Reason: To ensure the structural adequacy of the existing structures.

**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. 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.

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

**14. Geotechnical Requirements**

A suitably qualified geotechnical engineer is to confirm that the as-built works have been undertaken in accordance with the recommendations listed within the Approved Geotechnical referenced in Condition 1 of this consent.

Certification is to be provided to the Principal Certifying Authority prior to the issuance of the occupation certificate.

Reason: To ensure that geotechnical risks are appropriately mitigated.

15. **Swimming Pool Requirements**

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

1. 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
2. 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.
3. 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.
4. A warning sign stating 'YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL' has been installed.
5. Signage showing resuscitation methods and emergency contact.
6. All signage shall be located in a prominent position within the pool area.
7. 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 occupation certificate.

Reason: To protect human life.

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

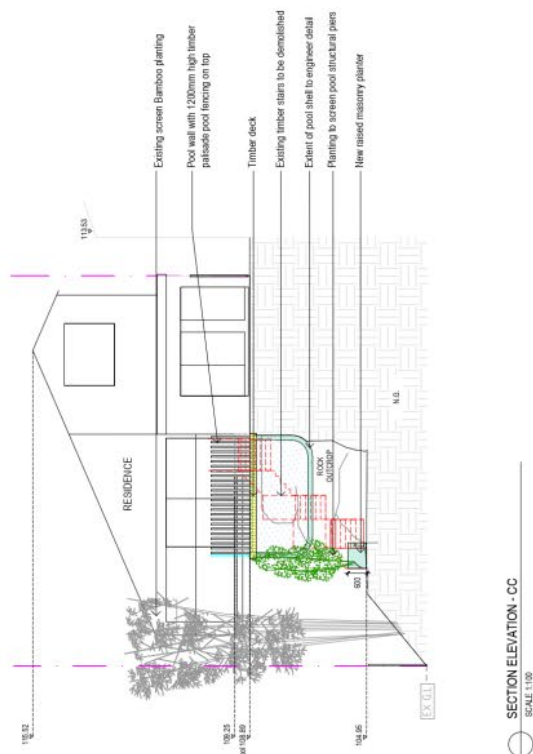
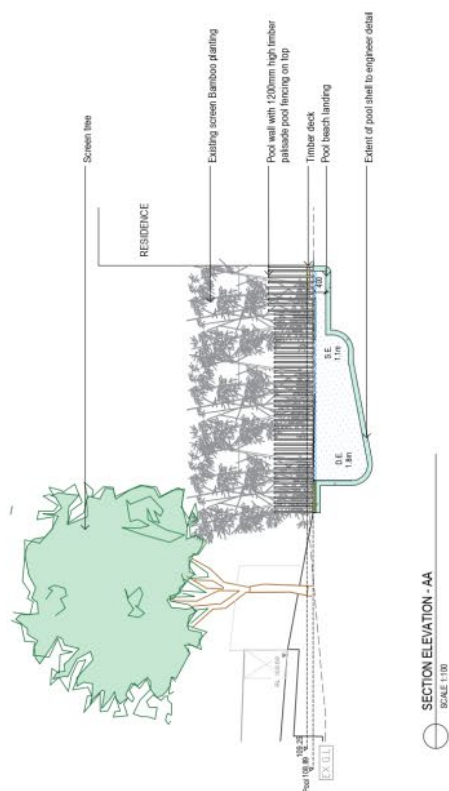
16. **Swimming Pool Mechanical Plant**

Any mechanical plant associated with the swimming pool shall be centrally located within the site, away from the boundaries and acoustically treated so the pool filter does not emit any noise of 5dB(a) above background noise at the nearest residential receiver.

Reason: To ensure the acoustic amenity of the neighbouring residents.





[illegible]

<b>ITEM 3.2</b>	<b>DA2020/1359 - 12 EMMA STREET, MONA VALE - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE</b>
<b>REPORTING MANAGER</b>	<b>Rodney Piggott</b>
<b>TRIM FILE REF</b>	<b>2020/752822</b>
<b>ATTACHMENTS</b>	<b>1 Assessment Report</b> <b>2 Site Plan &amp; Elevations</b> <b>3 Clause 4.6</b>

## **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.

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## **RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **approve** Development Consent to DA2020/1359 for alterations and additions to a dwelling house on land at Lot 5 DP 230566, 12 Emma Street, Mona Vale, subject to the conditions outlined in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/1359
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<b>Responsible Officer:</b>	Megan Surtees
<b>Land to be developed (Address):</b>	Lot 5 DP 230566, 12 Emma Street MONA VALE NSW 2103
<b>Proposed Development:</b>	Alterations and additions to a dwelling house
<b>Zoning:</b>	R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Steven Joseph Raic Michelle Maria Raic
<b>Applicant:</b>	Michelle Maria Raic

<b>Application Lodged:</b>	26/10/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	02/11/2020 to 16/11/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 14.7%
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 280,000.00
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### PROPOSED DEVELOPMENT IN DETAIL

This application seeks consent for alterations and additions to a residential dwelling, pursuant to the Pittwater Local Environmental Plan (PLEP) 2014, including the following:

- Construction of a two (2) vehicle carport.
- First floor addition to accommodate a master bedroom with en-suite and walk-in-robe, lounge room, main bathroom, and two (2) bedrooms.
- Minor alterations to the ground floor to eliminate one (1) bedroom to facilitate an open-plan living room, dining room and kitchen space and an internal staircase.
- Alterations and additions to window schedule.

## 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

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards  
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils  
Pittwater 21 Development Control Plan - B8.2 Construction and Demolition - Erosion and Sediment Management  
Pittwater 21 Development Control Plan - B8.3 Construction and Demolition - Waste Minimisation  
Pittwater 21 Development Control Plan - C1.5 Visual Privacy  
Pittwater 21 Development Control Plan - D9.3 Building colours and materials  
Pittwater 21 Development Control Plan - D9.9 Building envelope  
Pittwater 21 Development Control Plan - D9.10 Landscaped Area - General

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 5 DP 230566 , 12 Emma Street MONA VALE NSW 2103
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the northern side of Emma Street.</p> <p>The site is regular in shape with a frontage of 19.85m along Emma Street and a depth of 35.09m. The site has a surveyed area of 696.5m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a single storey residential dwelling.</p> <p>The site has a southerly orientation and is located on a slope of approximately 11.5% (4.52m), with a cross fall from the rear north-western corner toward the south-eastern front</p>



	<p>corner.</p> <p>The site is not known to have any significant threatened species. There are established gardens within the front setback, and the rear yard is generally hardstand surface, including a swimming pool, with a small area of garden in the north-eastern rear corner.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by single and double storey residential dwellings.</p>
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Map:



#### **SITE HISTORY**

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

#### **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

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

<b>Section 4.15 Matters for Consideration'</b>	<b>Comments</b>
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	Draft State Environmental Planning Policy (Remediation of Land)



Section 4.15 Matters for Consideration'	Comments
of any draft environmental planning instrument	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	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A 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 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&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> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely	(i) <b>Environmental Impact</b>

Section 4.15 Matters for Consideration'	Comments
impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 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 impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 02/11/2020 to 16/11/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

## REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	<p>The proposed development does not require OSD and connection to the existing system is satisfactory. The grade of the parking area is to comply with AS/NZS2890.1:2004 which is conditioned.</p> <p>No objection to approval, subject to conditions as recommended.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response

External Referral Body	Comments
	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. A383203 dated 23 July 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 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.

**Pittwater Local Environmental Plan 2014**

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	9.7m	14.1%	Yes

Compliance Assessment

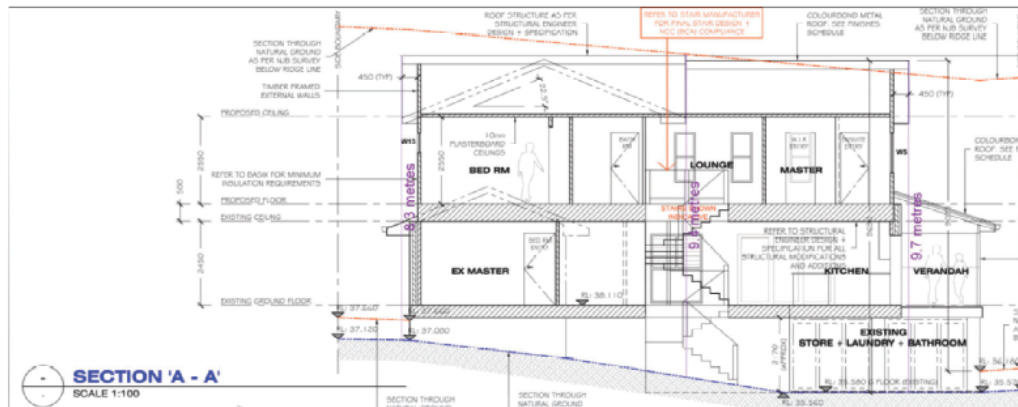
Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
7.1 Acid sulfate soils	Yes
7.10 Essential services	Yes

Detailed Assessment

**4.6 Exceptions to development standards**

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.7m
Percentage variation to requirement:	14.1%



#### Assessment of request to vary a development standard:

The following assessment of the variation to 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 proposal provides for additions to the existing dwelling. The proposed additions provide for a new upper floor level. The non-compliance with the height is a direct result of the slope of the site and floor levels of the existing dwelling. The resultant dwelling provides for two levels with a part lower level for storage and amenities. This is compatible with the existing surrounding development in terms of height and bulk, particularly having regard to the dwelling immediately to the west, No. 14 Emma Street.
- Given the north-south orientation of the allotment, the shadow cast is predominantly over the street and front yards of adjoining properties.
- The subject site and adjoining properties do not enjoy any significant views. The minor non-compliance with the height controls does not obstruct any views.
- The proposal provides for a new upper level over the existing footprint which does not alter the existing topography [of the site].
- The subject site is not a heritage item, nor within a heritage conservation area. Further, no heritage items [are] in close proximity to the site."

The proposed development includes the addition of a first floor level which will result in compliant front, side and rear setbacks. The proposal also includes the construction of a two (2) vehicle carport, which achieves compliance with the front setback, and western side setback, but results in a minor numeric non-compliance to the eastern side setback (0.7m). The proposed development has been designed in a way so as to be thoughtful of the existing dwelling on the site, thus positively contributing to the aesthetic of the streetscape, and remaining compatible with other developments within the wider locality of Mona Vale. The proposal includes two windows along both the eastern and western side elevations. These windows result in sill heights of 1.0m (W5) and 1.5m (W6, W11 and W12). These windows cater to the bedrooms, master bedroom and master bathroom. These windows are off-set from, and located a reasonable distance to, windows of the adjoining property. As a result of the north-south orientation of the lot, the shadows created as a result of the first floor addition are generally located over the front yards of the subject site and adjoining property, as well as Emma Street. In this instance, the proposal is unlikely to create any unreasonable amenity impact upon the occupants of the adjoining property. In this instance, the proposal is considered to maintain a consistent height and appearance with surrounding developments along Emma Street, Mona Vale.

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 PLEP 2014 are:

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

*a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*

Comment:

Despite the departure from the 8.5m maximum building height development standard, which occurs as a result of the existing slope of the site and maintenance of the existing dwelling floor levels, the proposed works are considered to be in keeping with the desired character of the Mona Vale locality. The design, colour scheme and external material finishes are in keeping with contemporary and modern designs implemented in new developments within the Mona Vale locality.

*b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Comment:

As discussed, the dwelling to the west, being 14 Emma Street, presents a similar design to that which is proposed under this application. In this instance, the proposal is compatible with the height and scale of surrounding and nearby development.

*c) to minimise any overshadowing of neighbouring properties,*

Comment:

Shadow diagrams have been provided with this application. As a result of the north-south orientation of the allotment, the additional shadows cast are expected to encroach in the front yards of adjoining properties and Emma Street. As such, no unreasonable overshadowing to adjoining properties will arise as a result of the proposed development.

*d) to allow for the reasonable sharing of views,*

Comment:

The proposals compatibility with surrounding developments is further enhanced by the fact that there are no unreasonable impacts upon the amenity of adjacent, and nearby, properties as a consequence of the departure from the maximum building height development standard. In this instance, the proposal will allow for the reasonable sharing of views.

*e) to encourage buildings that are designed to respond sensitively to the natural topography,*

Comment:

The proposal has been designed to respond sensitively to the natural topography of the site.

*f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items,*

Comment:

The proposal maintains a visual aesthetic that is compatible with adjoining, and nearby, properties. Therefore, the proposal will not result in an adverse visual impact upon the natural environment of the site. The subject site is not listed as a heritage item, located within a heritage conservation area, or in the vicinity of a heritage item.

## 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 for modest alterations and additions to a residential dwelling, including a detached two (2) vehicle carport, in a manner which will retain the single dwelling character of the site and developments in the immediate vicinity. The articulation, modulation and compliant setbacks of the first floor addition will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

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

Comment:

The proposal achieves a land use that is compatible within the R2 Low Density Residential zone, providing additional internal living space for the occupants of the subject site. In this instance, the proposal provides appropriate facilities and services that will meet the day to day needs of the residents of the subject site.

- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*



Comment:

The proposal seeks consent for alterations and additions to a residential dwelling, maintaining the existing low density residential nature of the subject site. Thus, resulting in a low intensity and scale that is, as discussed, compatible with surrounding land uses.

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).

**7.1 Acid sulfate soils**

The subject site is located within Acid Sulfate Soils Class 5 and is located more than 500m from Class 1, 2, 3 and 4 Acid Sulfate Soils. As such, Council, as the consent authority, can be satisfied that the proposed development is unlikely to disturb acid sulfate soils nor will it impact upon the water table.

**Pittwater 21 Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	<i>Carport:</i> 6.5m <i>Dwelling:</i> 17.9m - 19.8m	N/A N/A	Yes Yes
Rear building line	6.5m	<i>Dwelling:</i> 8.3m - 9.4m	N/A	Yes
Side building line	2.5m (Eastern boundary)	<i>Carport:</i> 0.7m <i>Dwelling:</i> 3.9m - 4.4m	72% N/A	No Yes
	1m (Western boundary)	<i>Carport:</i> 13.3m <i>Dwelling:</i> 1.6m - 2.2m	N/A N/A	Yes Yes
Building envelope	3.5m (Eastern elevation)	Outside envelope (nil - 0.3m for a distance of 1.6m)	8.5%	No
	3.5m (Western elevation)	Outside envelope (0.5m - 0.9m for a distance of	25.7%	No



		7.8m)		
Landscaped area	50% (347.8m <sup>2</sup> )	35.3% (245.6m <sup>2</sup> )	29.4%	No

**\*Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for Landscaped area - 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
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.8 Stormwater Management - Water Quality - Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	No	Yes
B8.3 Construction and Demolition - Waste Minimisation	No	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.23 Eaves	Yes	Yes
D9.1 Character as viewed from a public place	Yes	Yes
D9.2 Scenic protection - General	Yes	Yes
D9.3 Building colours and materials	Yes	Yes
D9.6 Front building line	Yes	Yes
D9.7 Side and rear building line	Yes	Yes
D9.9 Building envelope	No	Yes
D9.10 Landscaped Area - General	No	Yes

#### Detailed Assessment

## **B8.2 Construction and Demolition - Erosion and Sediment Management**

An erosion and sediment control plan was not provided with this application. As such, a condition of consent will be recommended within this report to ensure appropriate sediment and erosion control measures are installed prior to the commencement of, and during, construction works.

## **B8.3 Construction and Demolition - Waste Minimisation**

A waste management plan has not been provided with this application. As such, conditions of consent will be included within this report to ensure an appropriate waste management plan is provided to the Principal Certifying Authority (PCA) prior to the issue of the Construction Certificate, is maintained during works, and is confirmed by the PCA prior to the issue of the Occupation Certificate.

## **C1.5 Visual Privacy**

### Detailed description of non-compliance

The proposed development involves the construction of a first floor level, inclusive of four (4) windows - two (2) windows along both the eastern and western elevations. The windows service two (2) bedrooms and the master bedroom, including the en-suite. The windows are off-set from adjoining property windows, and are generally located outside of the 9m parametre as listed under this control. However, the window (being W12) for one of the bedrooms along the western elevation is located approximately 7.7m from the adjoining property's window and balcony.

As such, a merit assessment is conducted below.

### Merit consideration

*Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.*

### Comment:

Within the case law established by the Land and Environment Court within *Meriton v Sydney City Council [2004] NSWLEC 313* the planning principle is applied whereby overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time. In this instance, due to the usage of the rooms, and the maximum sill height of 1.5m for W10, potential privacy impacts are considered reasonable and no additional mitigation measures are required.

*A sense of territory and safety is provided for residents.*

### Comment:

The proposal will maintain the sense of territory and safety currently obtained by the occupants of the subject site and those of adjoining properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21 DCP 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.

## **D9.3 Building colours and materials**

The Statement of Environmental Effects (prepared by Nolan Planning Consulting, dated October 2020) states the proposed first floor addition will result in a colour schedule that complements the existing dwelling. The existing dwelling comprises a light orange/brown brick and off-white timber cladding. Under this control, developments should generally result in dark and earthy tones so as to appear secondary within the surrounding natural environment.

In this instance, it would be unreasonable for Council to request the home owners repaint the dwelling in dark and earthy tones. As such, retaining the existing colour schedule for the first floor addition may be permitted and supported on merit.

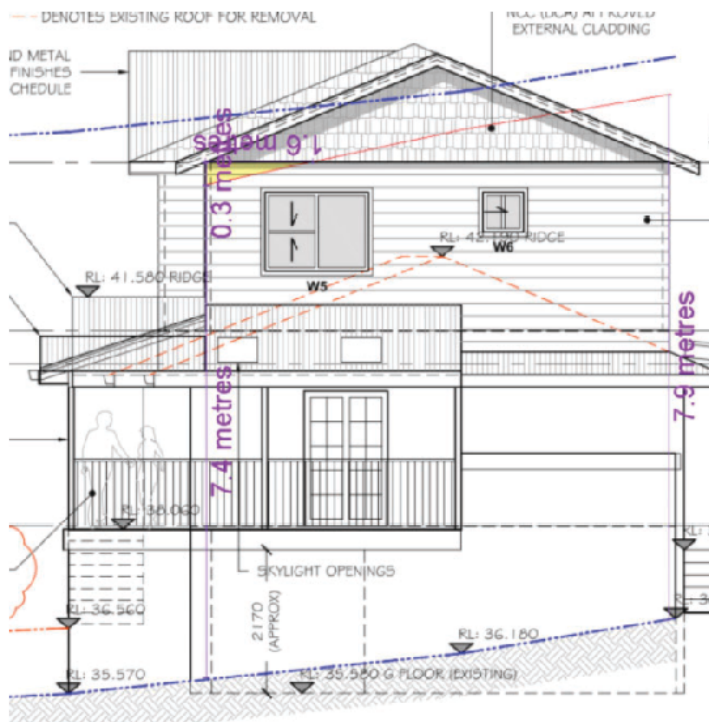
### D9.9 Building envelope

#### Detailed description of non-compliance

The proposed first floor addition includes a breach to both the eastern and western elevations. The encroachments are minor, and are as follows:

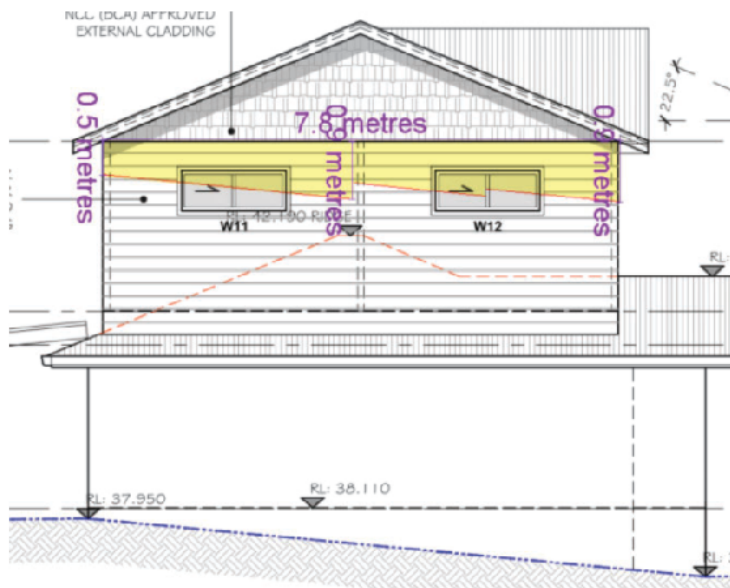
#### *Eastern elevation:*

Nil - 0.3m for a distance of 1.6m.



#### *Western elevation:*

0.5m - 0.9m for a distance of 7.8m.



As outlined within this control, Council may consider a variation for the addition of a secondary storey where the existing dwelling is retained. In this instance, the non-compliance will be considered against the variation of this control. As such, a merit assessment is conducted below.

#### Merit Consideration

*To achieve the desired future character of the Locality.*

#### Comment:

The proposal will positively contribute to the desired future character of Mona Vale through good design and maintaining the standards for low-density residential development. Notwithstanding the numeric departure from Clause 4.3 Height of Building of PLEP 2014, the proposed development will achieve a bulk and scale that is in keeping with surrounding developments, thus achieving compliance with this outcome of the control.

*To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*

#### Comment:

The proposal achieves a compliant front setback distance, therefore enhancing the existing streetscape and promoting a scale and density that is below the height of the surrounding natural environment.

*To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.*

#### Comment:

The proposed development is constrained in that its siting is dictated by the existing building footprint and slope of the site. The proposal generally achieves compliance with the side, rear and front setbacks. As such, the new development positively responds to, reinforces and sensitively relates to the spatial characteristics of the site and surrounding existing natural environment.

*The bulk and scale of the built form is minimised.*

Comment:

Notwithstanding the numeric non-compliance to the requirements of this control, the bulk and scale of the built form is minimised in that it achieves compliance with the relevant setback requirements. Further, the proposed first floor addition will be in keeping with surrounding developments, such as 14 Emma Street (which is directly to the west of the subject site).

*Equitable preservation of views and vistas to and/or from public/private places.*

Comment:

The proposed development is unlikely to create an unreasonable impact of views and vistas to and/or from public/private places.

*To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*

Comment:

As discussed elsewhere in this report, the proposal includes two (2) windows along the western elevation, and two (2) windows along the eastern elevation, all of which are off-set to neighbouring windows. As a result of the north-south orientation of the allotment, the proposal is unlikely to cause any unreasonable solar impacts upon adjoining properties. In this instance, a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.

*Vegetation is retained and enhanced to visually reduce the built form.*

Comment:

The proposal is generally located over the existing building footprint, and in the instance of the carport, is generally located over the existing hardstand surface, although this does require the removal of a small area of grass to facilitate the proposed carport. However, no trees or other vegetation is proposed to be removed as a result of the proposal. In this instance, the existing vegetation will reasonably reduce the built form.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21 DCP 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.

## **D9.10 Landscaped Area - General**

Detailed description of non-compliance

The subject site is located within Area 3 of the Landscaped Area Map, therefore the site requires a minimum of 50% landscaped area. The proposed development results in a numerically non-compliant landscaped area of 35.3% (or 245.6m<sup>2</sup>); this represents a variation of 29.4%.

Provided the outcomes of the control can be achieved, a variation may be permitted which allows pathways (and the like) of 1m width or less, and 6% of the total site to be included in the overall landscaped proportion of the site. With the variations applied, the proposed landscaped area is increased to 41.3% (or 287.3m<sup>2</sup>), thus remaining numerically non-compliant.



As such, a merit assessment is conducted below.

#### Merit Consideration

*Achieve the desired future character of the Locality.*

##### Comment:

Under A4.9 of P21 DCP, the proposal is consistent with the objectives of the desired future character of Mona Vale. Notwithstanding the maximum building height non-compliance, the proposal will result in a height and bulk and scale that is in keeping with surrounding developments, thus unlikely to unreasonably impact upon these dwellings. Furthermore, no native vegetation is proposed to be removed as a result of the development.

*The bulk and scale of the built form is minimised.*

##### Comment:

The proposed development is generally located over the existing building footprint, and in the instance of the carport, is generally located over the existing hardstand surface, although the construction of the carport does require the removal of a small area of grass. No trees or vegetation are proposed for removal. In this instance, the existing vegetation (which lines the western elevation of the driveway) and canopy tree in the south-western corner of the site will continue to ensure the bulk and scale of the built form is minimised.

*A reasonable level of amenity and solar access is provided and maintained.*

##### Comment:

As discussed elsewhere in this report, the proposal includes two (2) windows along the western elevation, and two (2) windows along the eastern elevation, all of which are off-set to neighbouring windows, thereby resulting in a reasonable level of privacy. As a result of the north-south orientation of the allotment, the proposal is unlikely to cause any unreasonable solar impacts upon adjoining properties. In this instance, a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.

*Vegetation is retained and enhanced to visually reduce the built form.*

##### Comment:

As discussed, no significant vegetation is required to be removed to facilitate the proposed development. The retention of existing vegetation will continue to visually reduce the built form.

*Conservation of natural vegetation and biodiversity.*

##### Comment:

As discussed, the natural vegetation and biodiversity of the site will be conserved as a result of the proposed development generally being located over the existing building footprint, and in the instance of the carport, over the existing hardstand surface.

*Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.*

##### Comment:

As discussed, the proposed first floor addition is located over the existing building footprint and the proposed carport is generally located over the existing hardstand surface. A small portion of turf is required to be removed to facilitate the construction of the carport. However, this is minor and the overall development retains the bulk of the soft surface on the site. Council's Development Engineer

has reviewed this application in regards to the stormwater management provisions, they have raised no concern with the proposed development, subject to conditions. As such, Council is satisfied that the stormwater runoff will be appropriately managed so as to prevent soil erosion and siltation of natural drainage channels.

*To preserve and enhance the rural and bushland character of the area.*

Comment:

The site is not located within a rural or bushland area of Northern Beaches.

*Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.*

Comment:

As discussed above, the proposal has been reviewed by Council's Development Engineer who raised no objection to the proposal, subject to conditions. In this instance, the soft surface of the site will provide for water infiltration into the water table, minimise run-off and assist with the management of stormwater.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21 DCP 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**

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

A monetary contribution of \$2,800 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$280,000.

## **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;
- Pittwater Local Environment Plan;

- Pittwater 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 Pittwater Local Environmental Plan 2014 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 PLEP 2014 as the applicant's written request has adequately addressed the merits required to be demonstrated by sub-clause (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 DA2020/1359 for Alterations and additions to a dwelling house on land at Lot 5 DP 230566, 12 Emma Street, MONA VALE, 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

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
1/16 Site Plan	19 October 2020	Design House + Drafting Studio
5/16 Ground Floor Existing and Proposed	19 October 2020	Design House + Drafting Studio
6/16 First Floor Plan - Proposed	19 October 2020	Design House + Drafting Studio
9/16 Proposed South & East Elevation	19 October 2020	Design House + Drafting Studio
10/16 Proposed North & West Elevation	19 October 2020	Design House + Drafting Studio
11/16 Section A-A & Section B-B	19 October 2020	Design House + Drafting Studio
12/16 Proposed Carport Elevations	19 October 2020	Design House + Drafting Studio

<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
3/16 Sediment + erosion + material storage plan	19 October 2020	Design House + Drafting Studio

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
BASIX Certificate A383203	23 July 2020	Design House + Drafting Studio

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

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

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

2. **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:

<b>Other Department, Authority or Service</b>	<b>EDMS Reference</b>	<b>Dated</b>
Ausgrid	Response Ausgrid Referral	Not Dated



(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://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 \$2,800.00 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 \$280,000.00.

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](http://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 \$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](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

**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. Vehicle Driveway and Parking Gradients**

The internal driveway and parking area gradients including transitions are to comply with the requirements of AS/NZS2890.1:2004. A suitably qualified Civil Engineer is to provide a design and certification for compliance with this requirement.

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 vehicular access to private property.

**9. 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.



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.

11. **External Finishes to Roof**

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

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

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

**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. **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.

14. **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.

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 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.

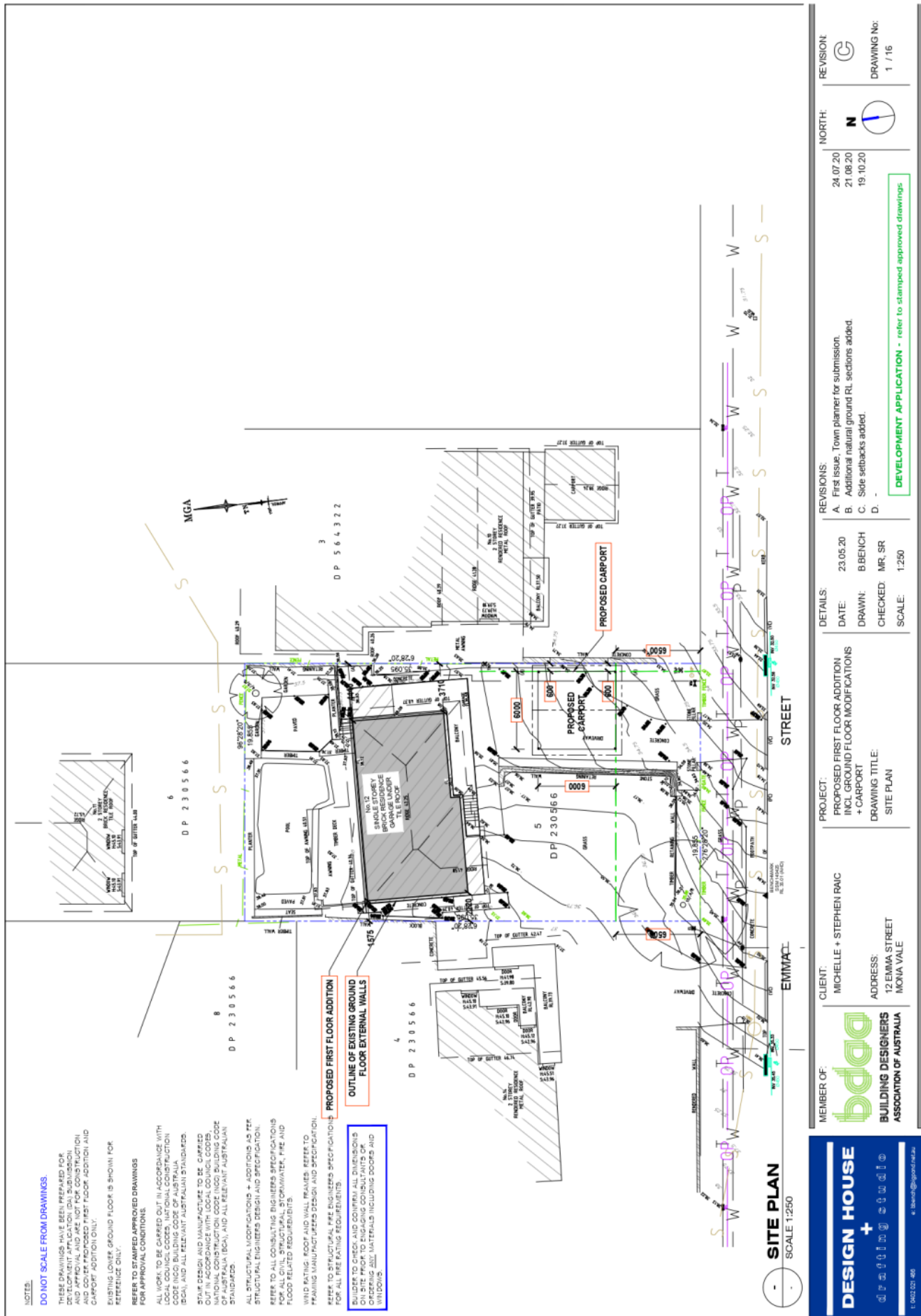
Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site.

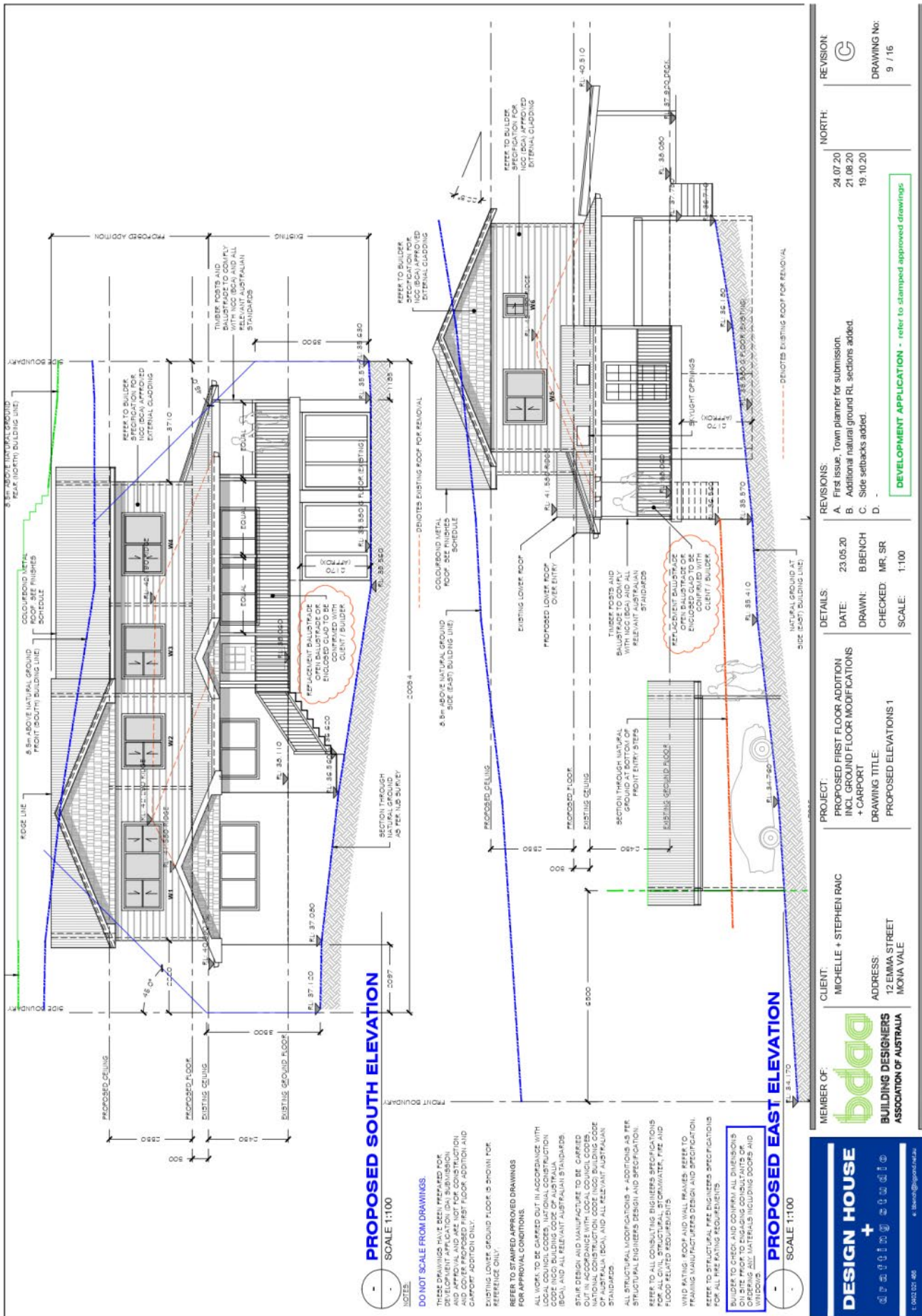
**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE  
OCCUPATION CERTIFICATE**

17. **Stormwater Disposal**

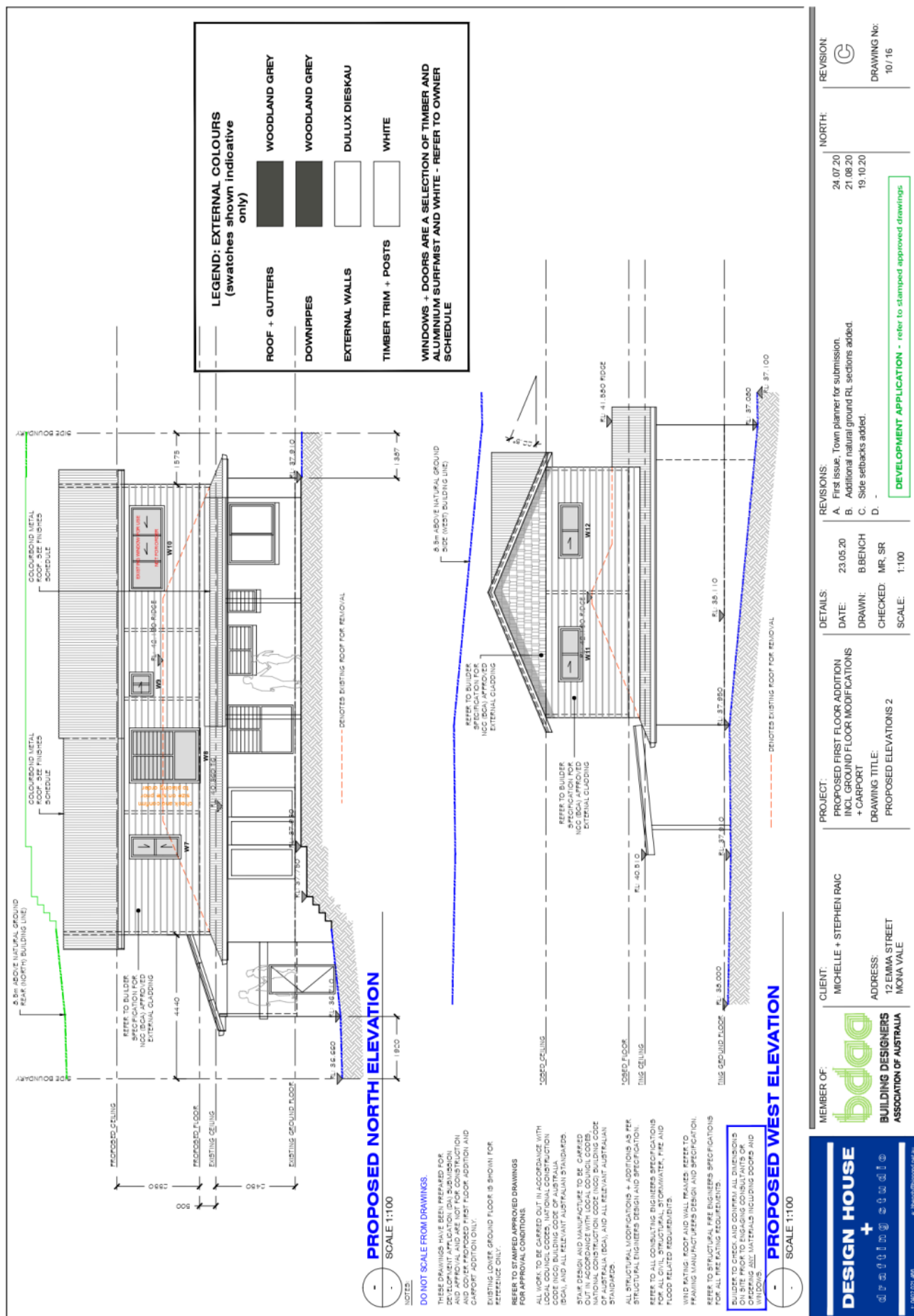
The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

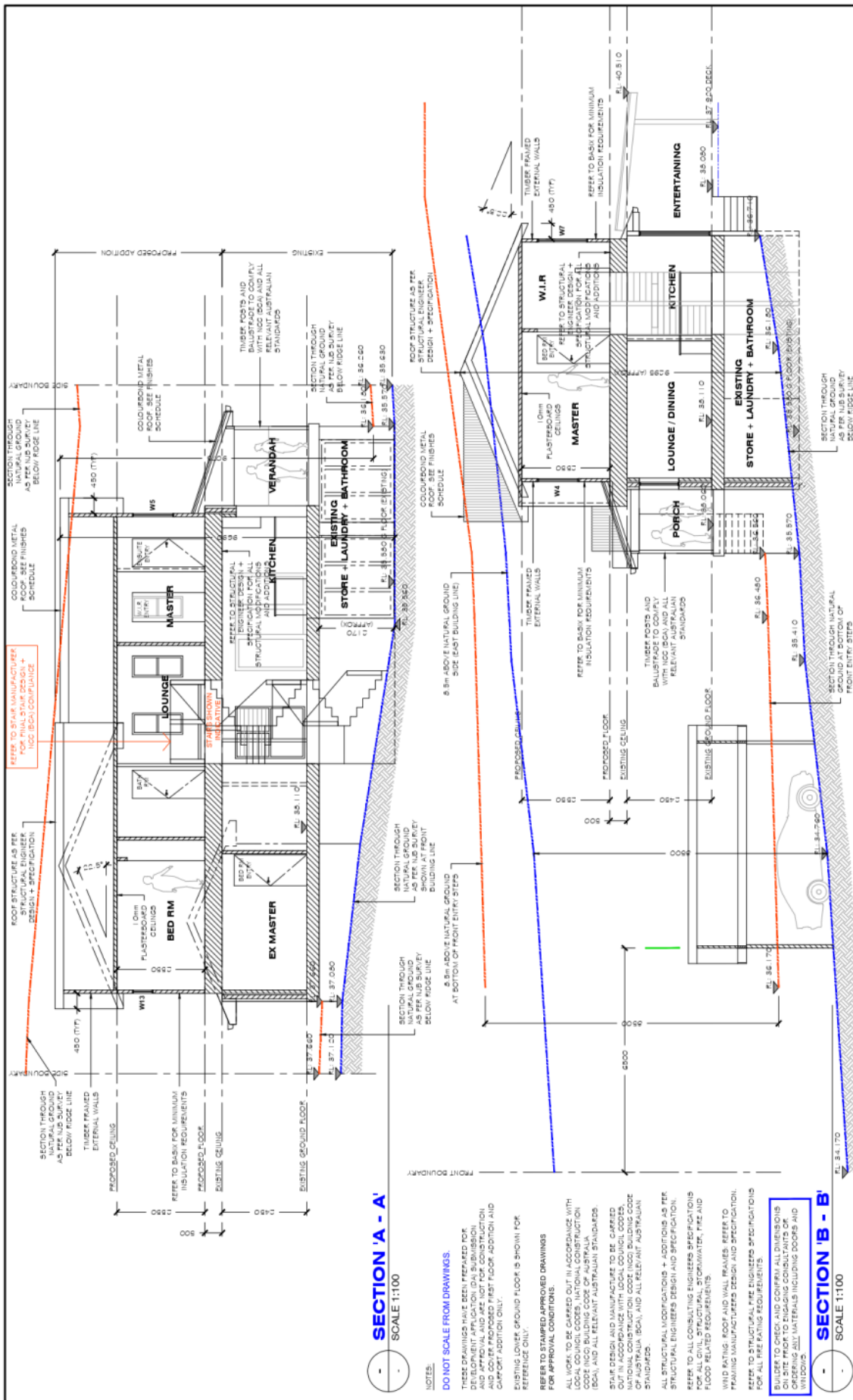
Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.












<p>MEMBER OF:</p>  <p><b>BUILDING DESIGNERS ASSOCIATION OF AUSTRALIA</b></p>	<p>CLIENT:</p> <p>MICHELLE + STEPHEN RAIC</p>	<p>PROJECT:</p> <p>PROPOSED FIRST FLOOR ADDITION INCL. GROUND FLOOR MODIFICATIONS + CARPORT</p>	<p>DATE:</p> <p>23.05.20</p>	<p>DRAWN:</p> <p>B BENCH</p>	<p>CHECKED:</p> <p>MR. SR</p>	<p>SCALE:</p> <p>1:100</p>	<p>DETAILS:</p>	<p>REVISIONS:</p>	<p>NORTH</p>	<p>REVISION:</p>
	<p>ADDRESS:</p> <p>12 EMMA STREET MONA VALE</p>						<p>A. First Issue, Town planner for submission. B. Additional natural ground RL sections added. C. Side setbacks added. D.</p>	<p>24.07.20 21.08.20 19.10.20</p>	<p>DRAWING No: 11 / 16</p>	

DEVELOPMENT APPLICATION - refer to stamped approved drawings

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BUILDER TO CHECK AND CONFIRM ALL DIMENSIONS ON SITE PRIOR TO ENGAGING CONSULTANTS OR ORDERING ANY MATERIALS INCLUDING DOORS AND WINDOWS.



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ASSOCIATION OF AUSTRALIA**

**CLIENT:**  
MICHELLE • STEPHEN RAIC

**ADDRESS:**  
12 EMMA STREET  
MONA VALE

PROJECT: PROPOSED FIRST FLOOR ADDITION  
INCL GROUND FLOOR MODIFICATIONS  
+ CARPORT

DRAWING TITLE: PROPOSED CARPORT  
ELEVATIONS

REVISIONS:

A. First issue  
B. Additional  
C. Side setba  
D. -

DEVEL

NORTH:

**DEVELOPMENT APPLICATION - refer to stamped approved drawings**

## NOLAN PLANNING CONSULTANTS

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### APPENDIX 1 – CLAUSE 4.6 VARIATION HEIGHT

#### SUBMISSION PURSUANT TO CLAUSE 4.6 OF THE PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

#### VARIATION OF DEVELOPMENT STANDARD REGARDING THE MAXIMUM BUILDING HEIGHT PRESCRIBED BY CLAUSE 4.3 OF THE PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

**For:** Dwelling Alterations/Additions  
**At:** 12 Emma Street, Mona Vale  
**Applicant:** Mr & Mrs Raic

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#### Introduction

This Clause 4.6 variation is a written request to vary a development standard to support a development application for construction of dwelling alterations and additions at **12 Emma Street, Mona Vale**.

The specified maximum building height under Clause 4.3 of the Pittwater Local Environmental Plan 2014 (the LEP) is 8.5m. The development proposes a departure from this numerical standard and proposes a maximum height of 9.075m. The non-compliance is a direct result of the slope of the site and design of the existing dwelling.

This building height requirement is identified as a development standard which requires a variation under Clause 4.6 of the Pittwater Local Environmental Plan 2014 (the LEP) to enable the granting of consent to the development application.

#### PURPOSE OF CLAUSE 4.6

The Standard Instrument LEP contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the Standard Instrument is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the Standard Instrument should be assessed. These cases are taken into consideration in this request for variation.

#### OBJECTIVES OF CLAUSE 4.6

The objectives of Clause 4.6 are as follows: -

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Email: [natalie@nolanplanning.com.au](mailto:natalie@nolanplanning.com.au)

- (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.*

#### **ONUS ON APPLICANT**

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.*

#### **JUSTIFICATION OF PROPOSED VARIANCE**

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Samadi v Council of the City of Sydney* [2014] NSWLEC 1199.

Paragraph 27 of the judgement states:-

*Clause 4.6 of LEP 2013 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 land is located in the R2 Low Density Residential Zone. The objectives of the R2 zone are:-

- *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 provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

**Comments**

The development proposal includes the construction of alterations and additions to an existing dwelling. The proposal is considered to meet the objectives of the R2 zone for the following reasons:

- The proposal provides for additions/alterations to an existing single detached dwelling. The proposal provides for additional floor area by incorporating a new upper level. The dwelling presents as a two storey dwelling with lower level amenities which retains the low-density residential environment.

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

The objectives of Clause 4.3 are articulated at Clause 4.3(1):-

- (a) *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*  
*and*  
(b) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

**Comments**

The proposal provides for additions to the existing dwelling. The proposed additions provide for a new upper floor level. The non-compliance with the height is a direct result of the slope of the site and floor levels of the existing dwelling. The resultant dwelling provides for two levels with a part lower level for storage and amenities. This is compatible with the existing surrounding development in terms of height and bulk, particularly having regard to the dwelling immediately to the west, No. 14 Emma Street which is depicted below. The proposal achieves compliance with objectives (a) and (b).

12 Emma Street, Mona Vale



*View of No. 14 Emma Street*

(c) *to minimise overshadowing of neighbouring properties,*

**Comments**

Shadow diagrams have been submitted with the application. Given the north-south orientation of the allotment, the shadow is cast predominantly over the street and front yards of the adjoining properties. The shadow does not extend to private open space or north facing living areas of the adjoining properties.

The proposal thereby achieves this objective.

(d) *to allow for the reasonable sharing of views,*

**Comments**

The subject and adjoining sites do not enjoy any significant views. The minor non-compliance with the height controls does not obstruct any views. The proposal complies with this clause.

(e) *to encourage buildings that are designed to respond sensitively to the natural topography,*

**Comments**

The proposal provides for a new upper level over the existing footprint which does not alter the existing topography. The proposal achieves this objective.



- (f) *to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

**Comments**

The subject site is not a heritage item, nor within a heritage conservation area. Further there are no heritage items in close proximity to the site.

**Precondition 3 - To consider 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 given the design of the existing dwelling and the topography of the site. The proposed additions do not result in any detrimental impact to the surrounding properties and the proposal fits well within the streetscape.

For the above reasons, it would therefore be unreasonable and unnecessary to cause strict compliance with the standard.

**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 primary issue is whether or not there are sufficient environmental planning grounds particular to the site to allow the variation to the building height development standard.

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

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

The recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February of this year the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the *Four2Five v Ashfield* decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means:

*"the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".*

Accordingly in regards to the proposed development at 12 Emma Street, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:-

In this regard the following has been considered: -

- The non-compliance is a direct result of the slope of the site and design of the existing dwelling.
- The proposal could be amended to provide a lower pitch/flat roof, however this would not be aesthetically pleasing and would not complement the predominant roof form in this locality. Further such an amendment would not serve any benefit.

When having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for maximum building height.

The existing surrounding development and the desired architectural outcome combine to produce a meritorious development despite the numerical variation to the building height standard.

In the *Wehbe* judgment (*Wehbe v Pittwater 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 Variance' 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.

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12 Emma Street, Mona Vale

## CONCLUSION

The development proposes a departure from the maximum building height control. This is a precautionary clause 4.6 variation request.

The proposal produces an appropriate development outcome. The variation to the building height is a result of the topography of the site and height of the existing dwelling. Furthermore, the additions provide for a development that satisfies the zone objectives and the objectives of the development standard.

As there is no material impact on adjoining properties or the public domain arising from the variation to the building height development standard and the objectives of the control are satisfied, it is considered that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

Therefore, we request that council support the variation on the basis that there are sufficient environmental planning grounds to justify a variance to the development standard.

**Natalie Nolan**  
**Nolan Planning Consultants**

**ITEM 3.3**                      **DA2020/0770 - 16 MCDONALD STREET, FRESHWATER -  
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE  
INCLUDING SWIMMING POOL**

**REPORTING MANAGER**      **Anna Williams**  
**TRIM FILE REF**              **2020/752844**  
**ATTACHMENTS**              **1 Assessment Report**  
   **2 Site Plan & Elevations**

**PURPOSE**

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

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**RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **approve** Development Consent to DA2020/0842 for alterations and additions to a dwelling house including swimming pool on land at Lot 15 DP 22640, 16 McDonald Street, Freshwater, subject to the conditions outlined in the Assessment Report.





## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/0842
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<b>Responsible Officer:</b>	Sarah McNeilly (Consultant Planner)
<b>Land to be developed (Address):</b>	Lot 15 DP 22640 16 McDonald Street, Freshwater
<b>Proposed Development:</b>	Alterations and additions to a dwelling house including swimming pool and carport.
<b>Zoning:</b>	R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Richard and Mary Guerin
<b>Applicant:</b>	JJ Drafting

<b>Application Lodged</b>	29/07/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential (alterations and additions)
<b>Notified:</b>	6/8/2020 to 20/8/2020
<b>Advertised:</b>	No
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	No
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$450,750
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### EXECUTIVE SUMMARY

The proposal seeks Development Consent for alterations and additions to a dwelling house including swimming pool at Lot 15 DP22640, 16 McDonald Street, Freshwater. The works include extensions at the rear of the property to achieve a more open plan living space on the ground and first floors. Also proposed is the re-purposing of the existing garage to a storage space, a double carport at the front, and the development of a pool and cabana at the rear of the site.

The public notification of the application resulted in 3 submissions (from one neighbour) of concern which raised numerous issues including privacy, loss of sunlight and siting of the addition, particularly with regard to impacts on substantial existing trees on the neighbouring site (no. 14 McDonald Street).

The proposal is recommended for approval with specific conditions that will improve privacy and improve compliance within the rear setback.



## PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks Development Consent for alterations and additions to a dwelling house including swimming pool. The works to be included as part of this application are as follows:

### Lower Ground Floor

- Existing garage to be converted to storage area, laundry and pantry
- Existing sub-floor utilised and extended to the rear comprising a new WC, open plan living room / dining room and kitchen opening onto new covered rear deck
- New internal stair access
- Rainwater tank on southern boundary

### Ground Floor

- Extension of bedroom 2 to the front of the site
- Conversion of existing office to entry with front porch and access stair
- Living area to be converted to bedroom 4 and ensuite (for master)
- Extension of dwelling to the rear to create bedroom 5; lounge room; Master bedroom with WIR
- Covered deck

### Pool and Cabana

- 24,500 litre pool (3.5 x 7m) located in southern corner of rear of the site
- Decking and covered cabana

### Carport

- New level double carport on northern side of site partly within front setback
- Widened driveway and crossover

We note that a revised set of plans was received by Council 30 September 2020 which deleted fill within the rear yard to create a level lawn; removed a retaining wall and some decking associated with the pool which had been proposed to extend to the southern boundary; and added improved privacy screens to southern elevation.

## 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 – B3 Building Envelope  
Warringah Development Control Plan – B7 Front Setback  
Warringah Development Control Plan – B9 Rear Boundary  
Warringah Development Control Plan – D8 Privacy

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 15 DP 22640 16 McDonald Street, Freshwater
<b>Detailed Site Description:</b>	<p>The subject site comprises a rectangular lot with front and rear boundaries of 14.935 metres and side boundaries of 43.585 metres. The area of the site is 651.3 m<sup>2</sup>. The site is located within the R2 low density residential zone as mapped within the Warringah LEP and is legally identified as Lot 15 DP 22640.</p> <p>Currently the site is occupied by a one and two storey dwelling which incorporates a lower ground floor single garage accessible via McDonald Street. The site falls to the rear, with the rear yard being made up of informal landscaped gardens.</p> <p>The site is surrounded by detached dwellings and residential units to the north east of the site.</p>





## SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant development applications for this site.

The land has been used for residential purposes for an extended period of time.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)

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	Not Applicable
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. Should the Development Application be approved, these matters will be addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000: No additional information was requested however an amended set of plans was received from the applicant which addressed some of the matters raised by the objector.</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. Should the Development Application be approved, these matters will be 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 the provisions of the Building Code of Australia (BCA). Should the Development Application be approved, this matter will be addressed via a condition of consent.</p>





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

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of three submissions from one individual including a specialist report.:

Name:	Address:
Joseph Tramonte	McDonald Street, Freshwater
Footprint Green (arborist on behalf of Mr Jospeh Tramonte)	5 Watkins Road, Avalon Beach

**Note: The Northern Beaches Community Participation plan (Pg. 16) states that all submissions received from the same person will be considered as a single submission.**

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





- Inaccurate information
- Detrimental impacts on trees at 14 McDonald Street including a Lemon Scented Gum located at rear of site near proposed pool and a Silky Oak located centrally near the dwelling addition
- Wall Heights
- Side Boundary envelope
- Side boundary setbacks
- Front boundary
- Side setback
- Stormwater
- Excavation and fill
- Privacy
- Loss of solar access

The matters raised within the submissions are addressed as follows:

#### **Inaccurate information**

- Lack of ground levels on survey
- No sections or elevations with regard to view for neighbouring site
- Incomplete representation of existing building
- Survey discrepancy with existing side boundary
- Shadows misrepresented
- No stormwater management provisions included

#### Planners Comments

The documentation provided is adequate to allow for a complete assessment of the proposal. In particular, we are satisfied with the elevations provided, the survey has ample levels for the works proposed and solar access is compliant with no additional information required. Conditions of consent are provided to ensure compliance with stormwater requirements of Council.

#### **Detrimental impacts on trees at 14 McDonald Street including a Lemon Scented Gum located at rear of site near proposed pool and a Silky Oak located centrally near the dwelling addition**

- Excessive landfill to create level lawn will be to detriment of trees
- Earth works associated with development will be to the detriment of structural root zone and tree protection zone of the trees
- Works are within Tree protection zones (impact over 10% major according to Australian Standards)
- Error in identifying Lemon scented gum in Applicants arborists' report
- Re-alignment of building to reduce impact resulting from excavation under deck

#### Planners Comments

The proposed fill and retaining wall to the southern boundary have been deleted in the set of plans submitted to Council on 30 September by the applicant.

An external landscape assessment has been completed and the development found to be appropriate and compliant with Australian Standards, subject to recommendations of the report. The report, provided as Appendix 1 to this report, includes recommendations which will be included as conditions of development consent.

While this is the case, a condition of consent to extend the southern setback for the pool is proposed due to an additional breach with the setback requirements of the DCP.

#### **Wall Heights**

- Southern elevations large and bulky



#### Planners Comments

The side wall heights are compliant, and the façade is broken up by a combination of materials when viewed from the neighbouring site.

#### **Side Building envelope**

- Objective to ensure building not visually dominant fails to be achieved

#### Planners Comments

The building envelope is compliant with only eaves sitting outside. The bulk of the building is considered appropriate to the site and consistent with neighbouring sites.

#### **Side Boundary setbacks**

- Side boundary setback is inadequate resulting in increased external noise and overlooking into main living area of 14 McDonald Street, with 16 McDonald Street elevated.
- No privacy screening on ground floor of 16 McDonald Street, which will directly overlook into private open space of 14 McDonald Street.
- Solid masonry screening is preferred to alleviate privacy concerns.
- Discrepancy in survey details for existing dwelling setbacks

#### Planners Comments:

While the side setbacks to the southern boundary are compliant with Council controls, it is agreed that privacy is impeded with the current design to a degree due to the rear deck. Accordingly, a condition of consent to requiring a masonry privacy wall, on the new first floor deck on the southern elevation, is proposed which will ensure no immediate overlooking and improved acoustic privacy. The full height screen on the ground floor is considered adequate to ensure no overlooking.

The built form and view to the neighbouring site is considered reasonable and consistent with the surrounding neighbourhood. It is noted that the building form will be broken up with the use of different building elements.

The existing survey is accepted as having been provided by a registered surveyor. We note that all new works provide compliant setbacks which are detailed on plans and will form part of the consent.

#### **Front Boundary**

- Area available to be utilised in this area

#### Planners Comments

While it is agreed that there would be area to develop at the front of the site, the development as proposed is compliant and utilisation of the rear yard is considered to be a reasonable and appropriate means to develop the site.

#### **Side setback**

- Visually dominant

#### Planners Comments

Side setbacks for new works are compliant. The dwelling is broken up by varying materials and elements and is not considered to be excessive in scale or bulk.

#### **Stormwater**

- Details plans required to ensure appropriate impacts on neighbours, particularly considering altered ground levels

#### Planners Comments



The plans have been amended to remove the excessive filling of the rear yard alleviating this concern. Council's engineers have imposed appropriate conditions of consent to ensure compliance with stormwater requirements. Further details will be required at the Construction Certificate stage.

#### Excavation and Fill

- Is to the detriment of neighbouring large mature trees at 14 McDonald Street
- Height of retaining wall at 1.5m, plus fence is excessive when viewed from 14 McDonald Street
- Dilapidation report required for neighbouring site

#### Planners comments

The applicant amended their plans on 30 September 2020 to remove the 1.5 metre retaining wall on the boundary and delete the extensive fill which was proposed initially. Accordingly, the pool retaining wall is now proposed to be setback 2 metres from the shared boundary. A condition of consent to further set this pool back (3m) from side boundary and require appropriate screen planting in this buffer zone is required as the applicant can't rely on the neighbour's planting to provide appropriate screen. Additionally, two dilapidation report conditions are required one prior to pre and post construction.

#### Privacy

- can't rely on neighbouring trees
- Private open space of no 14 impacted

#### Planners Comments

The degree of privacy impacts from the pool and elevated decking are reduced in the amended plans. A condition to require a further setback and planting will ensure impacts are further reduced.

The screen provided on the ground floor deck is ample to ensure privacy at this level. An increased level of screening is to be conditioned for the upper level deck on the southern elevation,

#### Loss of Solar Access

- Shadowing hasn't been properly represented, missing windows and inappropriate projection of shadows to 14 McDonald Street.

#### Planners Comments:

Adequate details is provided with the application to be comfortable that compliant solar access is achieved for the neighbouring site as they benefit from extensive windows across the rear of their dwelling into living areas which will retain ample solar access.

#### REFERRALS

Internal Referral Body	Comments
Engineering Referral	<p>Council's Environmental Health officer has provided the following comments:</p> <p><i>"The application includes a proposed double carport over the existing driveway leading to the existing garage under the dwelling. The levels of the driveway where the carport is proposed exceeds the maximum allowable grade of 1 in 20 for a parking area i accordance with AS/NZS 2890.1:2004 which is not acceptable. In order to comply with the grade requirements a revised design for the carport slab is required using one of Council's standard profiles which are available on Council's website."</i></p>

Internal Referral Body	Comments
	<p><i>Development Engineers cannot support the application due to insufficient information to address parking in accordance with Clause C3 of Warringah DCP 2011.</i></p> <p><b>Amended plans received 4/09/2020</b></p> <p><i>The amended carport design is satisfactory.</i></p> <p><i>No objection to approval, subject to conditions as recommended.</i></p> <p><i>The proposal is therefore supported.</i></p> <p><i>Note: Should you have any concerns with the referral comments above, please discuss these with the Responsible Officer."</i></p> <p><b>Recommendation:</b> Approval – subject to conditions</p>
Landscape	<p>A detailed report has been provided by the external assessing consultant, Raintree Consulting dated 22 October 2020. In addition, a response to the objector's further comments was provided dated 14 November 2020.</p> <p>The landscape consultant is supportive of the application subject to recommendations to ensure protection and supervision during works. The report including all recommendations is provided as Appendix A to this report.</p> <p>The assessing report comments as follows in the discussion of Development Impacts:</p> <p><b>Council verge trees</b> 1.4.1 Trees 1 &amp; 2 receive negligible impact by the design proposal where T1 requires timber beam trunk protection to mitigate the risk of trunk damage during construction activities.</p> <p><b>Site trees</b> 1.4.2 Trees 6 &amp; 7 receive negligible to low level (&lt;10%) occupancy by the proposed swimming pool and Cabana footprint. Given their low retention values and short remaining site usefulness tree removal and replacement should be considered. Under tree retention protecting the trees with 1.8m high tree protection fencing should occur with the trees managed in accordance with Section 2.3 of this report.</p> <p><b>Neighbouring trees</b> 1.4.3 Tree 9: the southwest side of the tree is visually in decline. The proposed pool footprint occupies &lt;10% of the TPZ radius indicating a low level impact by the proposal. Tree management is to consist of appropriate arboricultural root management within the TPZ primarily during excavation for the pool footprint. Over excavation to</p>



Internal Referral Body	Comments
	<p>accommodate construction is recommended to be limited to 0.2m (200mm) beyond the line of the design footprint as shown within construction drawings.</p> <p>1.4.4 Tree 10: proposed occupancy within the TPZ by the swimming pool and dwelling footprint is considered at a moderate to low level of impact (10 - &lt;15%) TPZ disturbance, with no works proposed within the SRZ. Tree management should consist of the following recommendations:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> On site arborist supervision is required to manage (clean cut and treat) any encountered roots in accordance with AS4970 – 2009 Section 4.5.4 Root protection during works within the TPZ, and as indicated within Section 2.3 e) of this report.</li> <li><input type="checkbox"/> To allow for construction ground and root protection mats are to be installed spanning over the 3.1m SRZ to avoid damage to critical underlying tree roots.</li> <li><input type="checkbox"/> All inground pool and dwelling hydraulics are recommended to be located to the north of the property (away from the tree) to avoid additional excavation within the 10.2m tree protection zone.</li> </ul> <p>1.4.5 Palm 11 receives negligible design occupancy within the 3m tree protection zone indicating a low level impact by design.</p> <p>1.4.6 Tree 12: proposed development encroachment within the TPZ is considered at a medium to high level (20 - &lt;25%) occupancy within the 7.2m tree protection zone, with the footprint of design located within the Structural Root Zone (SRZ) the area required for tree stability (AS4970). In accordance with AS4970 as the design footprint is located within the 2.8m SRZ further information by tree root investigation is required to identify the location, distribution and potential impacts to critical underlying roots by the proposal. In specific the following recommendations are provided for the management of the tree:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The extent of excavation to accommodate the proposed partly suspended slab Finished Floor Level (FFL) RL of 60.21 within the 2.8m SRZ shall be clearly marked on site.</li> <li><input type="checkbox"/> Professional arboricultural tree root investigations by non tree root destructive techniques are to be conducted to provide further information on the location and potential impacts to critical underlying tree roots by the proposal.</li> <li><input type="checkbox"/> The management of the tree should then be based on the outcome of the service being clearly detailed within an exploratory tree root investigation report.</li> </ul>



Internal Referral Body	Comments
	<p>□ Ensuring that the decking slab is suspended well above ground level will likely mitigate overall disturbance within the SRZ &amp; TPZ.</p> <p>□ Given the building setback from the boundary no additional trench excavation for hydraulics (ie: potable water, sewer &amp; SW) should be located along the southern boundary within the 7.2m TPZ.</p> <p><b>Recommendation:</b> Approval – subject to conditions</p>

External Referral Body	Comments
Ausgrid	<p>"This letter is Ausgrid's response under clause 45(2) of the State Environmental planning Policy (Infrastructure) 2007.</p> <p>Ausgrid has no objection to this development application, however the design submission must comply with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice for construction works near existing electrical assets.</p> <p>The "as constructed" minimum clearances to Ausgrid's infrastructure must not be encroached by the building development. It also remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.</p> <p>Ausgrid's Network Standards can be sourced from Ausgrid's website, <a href="http://www.ausgrid.com.au">www.ausgrid.com.au</a></p> <p>Should you have any enquiries, please contact Ausgrid at <a href="mailto:Development@ausgrid.com.au">Development@ausgrid.com.au</a>"</p>

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

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

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

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

#### STATE ENVIRONMENTAL PLANNING POLICIES (SEPPS) AND STATE REGIONAL ENVIRONMENTAL PLANS (SREPS)

##### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A381084 dated 8<sup>th</sup> July 2020).



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

### **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.

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**

#### Ausgrid

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

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

#### Comment:

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

### **Warringah Local Environmental Plan 2011**

Is the development permissible under WLEP 2011?	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	Dwelling – 8m	-	Yes
		Cabana – 3.7m		
		Pool – 3m		

#### **Compliance Assessment**

Clause	Compliance with Requirements
4.3 Height of buildings	Yes

#### Detailed Assessment



## R2 Low Density Residential

The objectives of the R2 zone are fulfilled as is detailed below

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

The development retains a low-density dwelling.

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

N/A

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

The development retains a well landscaped environment.

The development is appropriate when considered against the value of the zone and can be supported subject to conditions of consent.

## Warringah Development Control Plan 2011

### Built Form Controls

Built Form Controls	Requirement	Proposed	% Variation	Complies
B1 Wall Heights	7.2m	North elevation – 6m	-	Yes
		South Elevation – 5.8m		Yes
B3 Side Boundary Envelope	5m with a 45° projection	North elevation – encroachment of eaves South elevation – encroachment of eaves	-	Yes
B5 Side Boundary Setbacks	0.9m	Lower Ground Floor North - 955mm South – 1.027m	-	Yes
		Ground Floor North – 955mm South – 1.027m		
B7 Front Setback	6.5m	Proposed additions – 11.22m	-	Yes
		Carport setback – 4.67m	28.1%	No
B9 Rear Boundary	6m	Setback to proposed addition – 16.5m	-	Yes
		Setback to Cabana and Pool – 1.1m	-	No
D1 Landscaped Open Space	40%	43% (281m <sup>2</sup> )	-	Yes
D2 Private Open Space	60m <sup>2</sup>	165m <sup>2</sup>	-	Yes

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes



B9 Rear Boundary Setbacks	No	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	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	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
D16 Swimming Pools and Spas	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

### B3 Side Boundary Envelope

#### Description of non-compliance

The eaves at the rear of the dwelling sit outside the building envelope.

#### Merit Considerations

The DCP permits a variation for structures including eaves outside the building envelope in the R2 zone. The proposed development fits this variation and fulfils the objectives with the development not being visually dominant, allowing for adequate solar access, adequate building separation and responding to the topography of the site.

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

The development is of appropriate scale.

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

Solar access is compliant and adequate separation is provided.

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

The development responds to the topography and the siting of the existing dwelling.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s1.3 of the Environmental  
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Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

### **B7 Front Setback**

#### Description of non-compliance

The proposed carport has a front setback of 4.67 metres, where 6.5 metres is required.

#### Merit Considerations

The noncompliance is supported in this instance as the structure is minimal in scale, open and no other location is available on the site. The objectives of the control are addressed below;

- *To create a sense of openness.*

The structure is minimal in scale, open, only partly outside the setback and dwarfed by the dwelling. All of these factors aid in creating an open frontage.

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

The carport is not at odds with the streetscape, and diminished in impact due to the fall of the site.

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

The carport will retain a 4.67 metres setback and will ensure retention of a quality streetscape.

- *To achieve reasonable view sharing.*

No views are impacted by the carport variation.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and 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.

### **B9 Rear Boundary Setback**

#### Description of non-compliance

The proposed pool and cabana sit entirely the 6-metre rear set back requirement.

#### Merit Considerations

The site is constrained by the location of the sewer which restricts possible development opportunities in the central area of the rear yard. The topography of the site results in the setback area of the rear yard being fairly private, with the exception of the southern boundary, which is elevated above the neighbouring site.

The placement of the pool and the cabana close to the rear setback is not considered to be to the detriment of the neighbours to the north or east. However, the development is to the detriment of the southern neighbour as the land on this side is at a lower level and overlooked by the elevated above-ground pool.

Dropping the pool further in-ground would assist in resolving this issue. However, this does not appear to be feasible due to the location of tree roots for tree 9 (Silky Ash). As this is not feasible, the best alternative is to require a larger setback to the southern boundary, which will result in reducing the width of the pool and cabana development. This will allow for closer compliance with the 50% within the rear boundary and assist in reducing the impact of privacy and provide greater distance to the neighbouring tree. A condition of consent to require a greater setback to the south of 3 metres, and more extensive



landscape screening to a height of 2-3 metres, will ensure privacy for the southern neighbour and the subject site, thus allowing for the objectives of the rear setback control to be achieved.

The objectives of the control are addressed below:

- *To ensure opportunities for deep soil landscape areas are maintained.*

This is enhanced through the additional setback to be conditioned.

- *To create a sense of openness in rear yards.*

The central area of the yard remains untouched ensuring the open character is retained.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

The northern side of the rear is at a lower level than neighbours' and accordingly, it not to the detriment of their amenity. An increased setback is to be conditioned for the southern side to ensure there is no detrimental impact to the neighbours on this boundary, where the land falls away.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

The proposed pool will not be out of character based on the development to the north (pool) and east (dwelling close to boundary).

- *To provide opportunities to maintain privacy between dwellings.*

Ample area will be provided for privacy, with the additional setback proposed by condition.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and 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.

#### **D8 Privacy**

Privacy to the neighbouring deck of 14 McDonald Street has been raised as an issue as there is the potential for overlooking and acoustic privacy intrusions.

#### Merit Considerations

The development plans include full height screening on both the northern and southern elevations and the ground floor deck. The first-floor deck extends completely only to the southern side and a privacy screen is proposed. A condition requiring a greater level of screening of the southern elevation of the first floor upper deck is proposed to enhance both visual and acoustic privacy in this area with privacy implications otherwise a concern.

The objectives of the control are addressed below;

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

This is achieved with screening appropriately located and windows appropriately placed.

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

The design is reasonable, and privacy is appropriate to the urban environment.

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

This is achieved.

Having regard to the above issues, it is concluded that the proposed development is consistent with the relevant objectives of the WDCP and the objectives specified in Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.



## 7.12 CONTRIBUTIONS

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

A monetary contribution of \$4508 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$450,750.

## 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 Environmental Planning Instruments and draft EPI's;*
- *Warringah Local Environment Plan 2011;*
- *Warringah Development Control Plan 2011; and*
- *Codes and Policies of Council*

*The proposal has been assessed against the relevant matters for consideration under Section 4.15 of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application, 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 proposal is considered to be reasonable and appropriate for the subject site subject to small changes required by condition, to ensure privacy is achieved for the neighbour and the rear setback is adequately open and landscaped.

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

## RECOMMENDATION

That Council as the consent authority grant Development Consent to DA2020/0842 for Alterations and additions to a dwelling house on land at Lot 15 DP 22640, 16 McDonald Street, Freshwater, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

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

#### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA.01/ Revision E	28 September 2020	JJ Drafting
DA.04/ Revision E	28 September 2020	JJ Drafting
DA.05/ Revision E	28 September 2020	JJ Drafting
DA.06/ Revision E	28 September 2020	JJ Drafting
DA.07/ Revision E	28 September 2020	JJ Drafting
DA.08/ Revision E	28 September 2020	JJ Drafting
DA.09/ Revision E	28 September 2020	JJ Drafting
DA.10/ Revision E	28 September 2020	JJ Drafting
DA.11/ Revision E	28 September 2020	JJ Drafting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A381084	8 July 2020	JJ Drafting
Arboricultural Impact Assessment (AIA) Report	22 October 2020	Raintree Consulting

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
DA.13/ Revision E	28 September 2020	JJ drafting

Waste Management Plan		
Drawing No./Title.	Dated	Prepared By
DA.14/ Revision E	28 September 2020	JJ Drafting

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	Response Ausgrid Referral	N/A

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://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. Landscape and Retention of Trees

Compliance with all of the recommendations of Arboricultural Impact Assessment report prepared by Raintree Consulting dated 22 October 2020 are required.

Reason: To ensure the work is carried out in accordance with Arboricultural recommendations and valuable trees are retained.

## 4. Prescribed Conditions

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



- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

## 5. General Requirements

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:
- 1 7.00 am to 5.00 pm inclusive Monday to Friday,
  - 1 8.00 am to 1.00pm inclusive on Saturday,
  - 1 No work on Sundays and Public Holidays.



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Demolition and excavation works are restricted to:

- 1 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 \$4,507.50 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$450,750.00.

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](http://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](http://www.northernbeaches.nsw.gov.au)).

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

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION  
CERTIFICATE****8. Southern privacy screen**

The plans are to be revised to include a full height solid privacy screen on the southern elevation of the proposed first floor deck.

Reason: To ensure no visual and acoustic privacy for the neighbour.

**9. Southern pool setback**

The southern side setback of the pool is to be increased to 3 metres.

Reason: To improve compliance with rear setback requirements and allow ample area for screen planting

**10. Landscape Screening**

Details of landscape screen planting on the southern boundary, adjacent the pool is to be provided. Species that will grow to a height of 2-3 metres are to be chosen to allow for a landscape screen.

Reason: To ensure privacy for the southern neighbour and the subject site.

**11. Stormwater Disposal from Low Level Property**

The applicant is to demonstrate how stormwater from the new development within this consent shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's "Warringah Water Management Policy" in particular Clause 5.5 Stormwater Drainage from Low Level Properties. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Northern Beaches Council's "Warringah Water Management Policy" 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 the development.

**12. 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.

**13. Vehicle Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property do not exceed a

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gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a parking facility with a maximum grade of 1 in 20 (5%). Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

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 vehicular access to private property.

#### 14. **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.

#### 15. **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.

#### 16. **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.

#### 17. **External Finishes to Roof**

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

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

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

**18. 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](http://www.sydneywater.com.au) for:

- i "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- i 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.

**19. 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.

**CONDITIONS WHICH MUST BE ADDRESSED PRIOR TO ANY  
COMMENCEMENT****20. 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 : No. 14 McDonald Street, Freshwater

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.

#### CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

**21. 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.

**22. 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.

**23. Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3.5 metres wide at the kerb to 4.5 metres wide at the boundary in accordance with Northern Beaches Council Drawing No A4-3330/5 extra low 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.

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

**24. 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 the Occupation Certificate.

northern  
beaches

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

**25. 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:

- i Compare the post-construction report with the pre-construction report,
- i Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- i 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.

**26. Certification Elevated Parking Facility Work**

The Applicant shall submit a Consulting Engineers' certificate certifying that the elevated parking facility was constructed in accordance within this development consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical controls. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Compliance with this consent.



TRUE NORTH:



**NOTES (E & O.E.)**

All structures including stormwater & drainage to engineers' details.

All dimensions are to be checked on site prior to starting work.

Specific drawings are to be read in conjunction with all other consultants' drawings and specifications.

Engineering is to be carried out in accordance with the requirements of current editions of the National Construction Code, relevant Australian Standards & local council requirements.

New materials are to be used throughout unless otherwise noted.

Structural elements of any other structural members are to be designed to suit the proposed structure.

JJ Drafting

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PO Box 687, Dee Why, NSW, 2099  
Mob. 0414 717 541  
Email: [jjdraft@big.com.au](mailto:jjdraft@big.com.au)  
[www.jjdrafting.com.au](http://www.jjdrafting.com.au)

REV.	DATE	DESCRIPTION
A	01/07/20	DRAWING UPDATE: CARPORT ROOF - FLAT; DELETING KITCHEN WINDOW
B	20/07/20	DRAWINGS UPDATE
C	17/08/20	AMENDMENTS
D	28/09/20	AMENDMENTS
E	28/09/20	AMENDMENTS

PROJECT DETAILS:  
PROPOSED ALTERATIONS AND ADDITIONS  
16 Mc DONALD STREET - FRESHWATER

DRAWING TITLE:  
SITE ANALYSIS PLAN

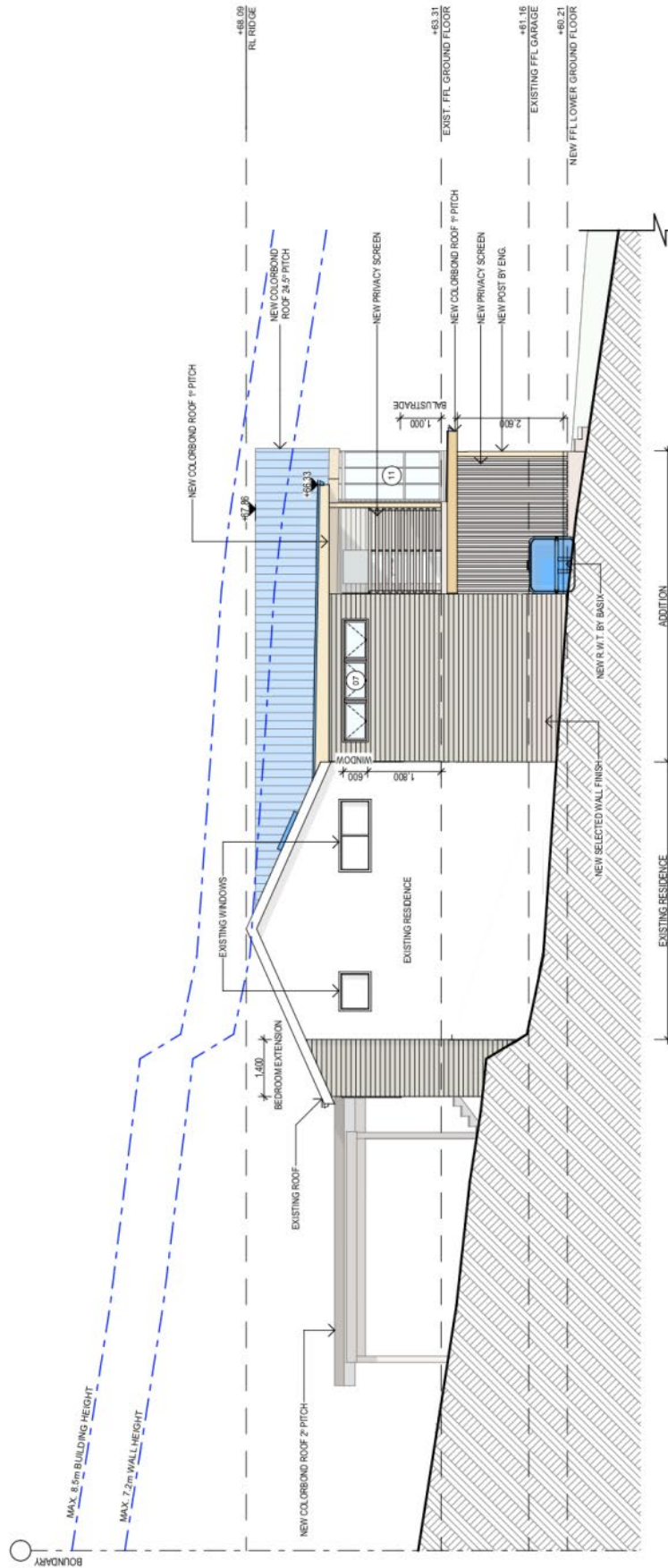
DATE: MAY/20	DRAWN BY: LB	SCALE: 1:200 @ A3
JOB No: 799/20	CHECKED BY: JJ	DRAWING No: DA.01



**NOTES (R.O.E.)**

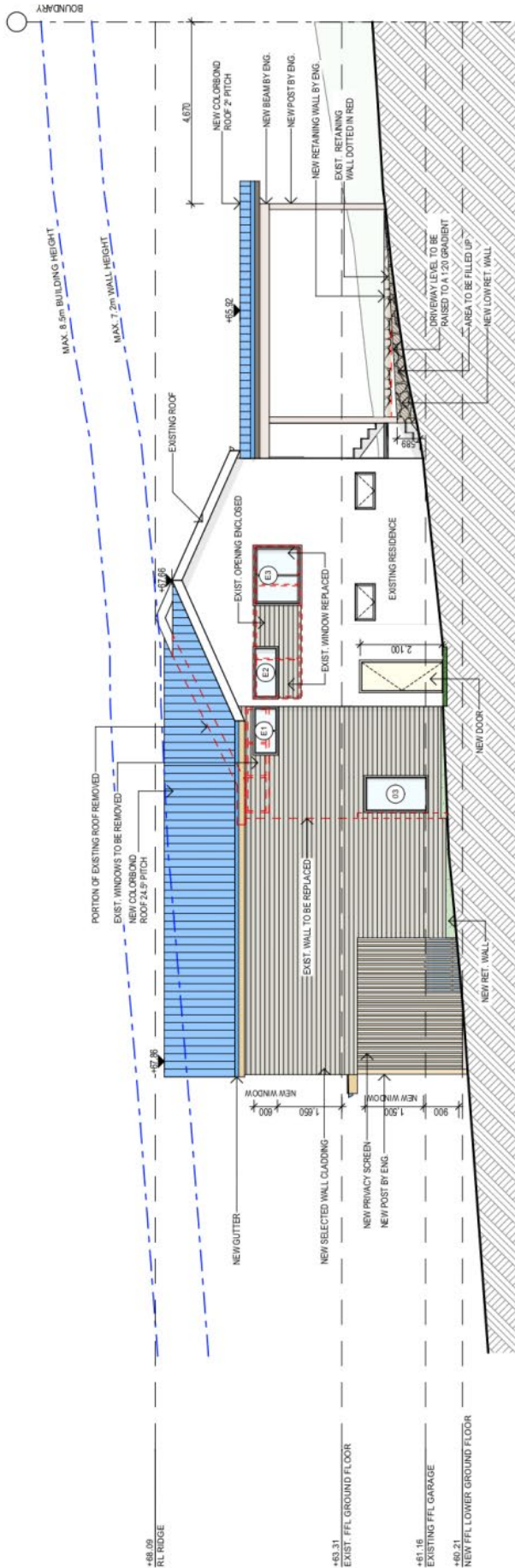
All structures including skimming & drainage to engineer's details.  
Do not detail dimensions by scaling drawings.  
All dimensions are to be checked on site prior to casting work.  
The drawings are to be made in conjunction with all other consultant's drawings and specifications.  
All workmanship & materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards & local government requirements.  
New materials are to be used throughout unless otherwise noted.  
Concrete footings, walls, structural beams and any other structural members are to be designed



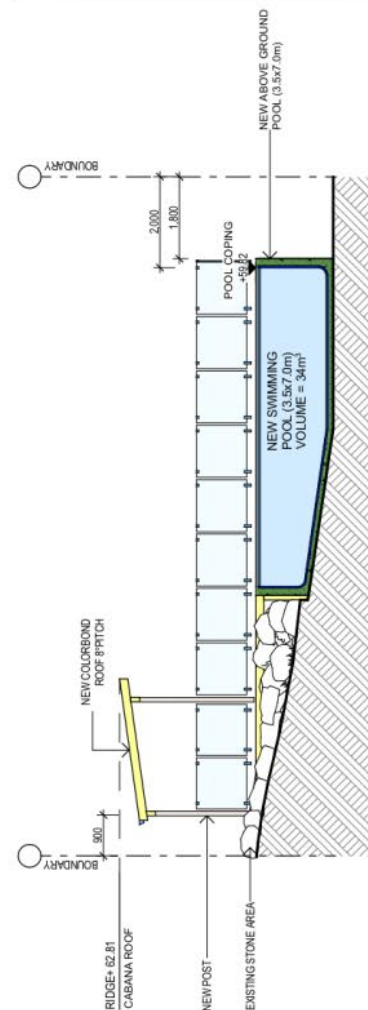


**SOUTH ELEVATION**

<p><b>NOTES (E &amp; O.E.)</b></p> <ul style="list-style-type: none"><li>All structures including alterations &amp; additions to be designed in accordance with the requirements of current editions of the National Construction Code, relevant Australian Standards &amp; local council requirements.</li><li>Revised drawings are to be used throughout unless otherwise noted.</li><li>Revised drawings are to be used throughout unless otherwise noted.</li><li>Revised drawings are to be used throughout unless otherwise noted.</li><li>Revised drawings are to be used throughout unless otherwise noted.</li></ul>	<p><b>JJ Drafting</b></p> <p>114 Garden St, North Manly, NSW, 2101 PO Box 687, One Way, NSW, 2099 Mob: 0414 717 541 Email: jjdrafting@gmail.com.au www.jjdrafting.com.au</p>	REV	DATE	DESCRIPTION		
		A	01/07/20	DRAWING UPDATE: CARPORT ROOF - FLAT; DELETING KITCHEN WINDOW		
		B	20/07/20	DRAWINGS UPDATE		
		C	17/08/20	AMENDMENTS		
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		E	28/08/20	AMENDMENTS		
<p><b>PROJECT DETAILS:</b></p> <p>PROPOSED ALTERATIONS AND ADDITIONS 16 Mc DONALD STREET - FRESHWATER</p>					DATE	MAY/20
					DRAWN BY:	LB
					CHECKED BY:	JJ
					JOB No:	799/20
					DRAWING TITLE:	SOUTH ELEVATION
					Scale:	1:100 @ A3
					DRAWING NO:	DA.07



NORTH ELEVATION



POOL SECTION BB

BASIX REQUIREMENTS	
BASIX INCLUSIONS FOR 16 McDONALD STREET - FRESHWATER	
<b>LIGHTING</b>	40% OF NEW OR ALTERED LIGHT FIXTURES TO BE FITTED WITH FLUORESCENT, COMPACT FLUORESCENT, OR LIGHT-EMITTING-DIODE (LED) LAMPS.
<b>WATER</b>	MIN. 3 STARS MIN. 3 STARS MIN. 3 STARS
<b>INSULATION</b>	ADDITIONAL INSULATION REQUIRED (R-VALUE) Concrete slab on ground floor: - R0.00 down (or R1.30 including construction) Suspended floor with enclosed subfloor: Framed (R0.70) - R1.30 (or R1.70 including construction) External wall: Framed (Weatherboard, flim, Metal clad) - R1.30 (or R1.70 including construction) Raked ceiling, phreoskation roof, framed - Ceiling R2.24 (up), roof foil backed blanket (55mm)
<b>RAINWATER TANK</b>	
THE APPLICANT MUST INSTALL A RAINWATER TANK OF AT LEAST 1214 LITRES ON THE SITE. THIS RAINWATER TANK MUST BE INSTALLED IN ACCORDANCE WITH THE REQUIREMENTS OF ALL APPLICABLE REGULATORY AUTHORITIES.	
THE APPLICANT MUST CONNECT THE RAINWATER TANK TO A TAP LOCATED 1METER OF THE EDGE OF THE POOL.	
<b>GLAZING DOORS / WINDOWS</b>	
W1 - Standard aluminium, SINGLE CLEAR (U-value: 7.03, SHGC: 0.75) W2 - Standard aluminium, SINGLE CLEAR (U-value: 7.03, SHGC: 0.75) W3 - Standard aluminium, SINGLE CLEAR (U-value: 7.03, SHGC: 0.75) W4 - Standard aluminium, SINGLE CLEAR (U-value: 7.03, SHGC: 0.75) W5 - Standard aluminium, SINGLE CLEAR (U-value: 7.03, SHGC: 0.75) W6 - Standard aluminium, SINGLE CLEAR (U-value: 7.03, SHGC: 0.75) W7 - Standard aluminium, SINGLE CLEAR (U-value: 7.03, SHGC: 0.75) W8 - Standard aluminium, SINGLE CLEAR (U-value: 7.03, SHGC: 0.75) W9 - Standard aluminium, SINGLE CLEAR (U-value: 7.03, SHGC: 0.75) W10 - Standard aluminium, SINGLE CLEAR (U-value: 7.03, SHGC: 0.75) W11 - Standard aluminium, SINGLE CLEAR (U-value: 7.03, SHGC: 0.75) W12 - Standard aluminium, SINGLE CLEAR (U-value: 7.03, SHGC: 0.75) W13 - Standard aluminium, SINGLE CLEAR (U-value: 7.03, SHGC: 0.75)	

NOTES (E & O E.)		PROJECT DETAILS:		SCALE:	
<ul style="list-style-type: none"> <li>All structures including sewerage &amp; drainage for engineer's details.</li> <li>All dimensions are to be checked on the prior to starting work.</li> <li>These drawings are to be used in conjunction with all other consultants' drawings and specifications.</li> <li>All workmanship &amp; materials shall be in accordance with the requirements of current editions of the Australian Standards &amp; local council requirements.</li> <li>Revisions are to be used throughout unless otherwise noted.</li> <li>Revisions are to be used throughout unless otherwise noted.</li> <li>Revisions are to be used throughout unless otherwise noted.</li> <li>Revisions are to be used throughout unless otherwise noted.</li> </ul>		<b>DESCRIPTION:</b> DRAWING UPDATE: CARPORT ROOF - FLAT; DELETING KITCHEN WINDOW DRAWINGS UPDATE AMENDMENTS AMENDMENTS AMENDMENTS		DRAWN BY: LB DATE: MAY/20 CHECKED BY: JJ JOB No: 799/20 DRAWING No: DA.08	
<b>JJ Drafting</b> 1174 Garden St, North Hamam, NSW, 2101 PO Box 687, One Why, NSW, 2099 Mob: 0414 717 541 Email: jjdrafting@gmail.com.au www.jjdrafting.com.au		<b>PROPOSED ALTERATIONS AND ADDITIONS</b> 16 Mc DONALD STREET - FRESHWATER		<b>DRAWING TITLE:</b> NORTH ELEVATION & BASIX REQUIREMENTS	

**ITEM 3.4**                      **DA2020/0936 - 11 BAREENA DRIVE, BALGOWLAH HEIGHTS -  
DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING  
HOUSE INCLUDING A SWIMMING POOL**

**REPORTING MANAGER**      Rodney Piggott

**TRIM FILE REF**              2020/752889

**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.

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**RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **approve** Development Consent to DA2020/0936 for demolition works and construction of a dwelling house including a swimming pool on land at Lot 7 Sec 56 DP 758044, 11 Bareena Drive, Balgowlah Heights, subject to the conditions outlined in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/0936
<b>Responsible Officer:</b>	Phil Lane
<b>Land to be developed (Address):</b>	Lot 7 DP 758044, 11 Bareena Drive BALGOWLAH HEIGHTS NSW 2093
<b>Proposed Development:</b>	Demolition works and construction of a dwelling house including a swimming pool
<b>Zoning:</b>	Manly LEP2013 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Craig Bernard O'Neill Rosa O'Neill
<b>Applicant:</b>	Craig Bernard O'Neill
<b>Application Lodged:</b>	18/08/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Single new detached dwelling
<b>Notified:</b>	24/08/2020 to 07/09/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.4 Floor space ratio: 11.5%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 1,820,000.00

### EXECUTIVE SUMMARY

The proposal is for the demolition of the existing dwelling and construction of a new dwelling with a swimming pool and involves a variation to the Floor Space Ratio development standard of the Manly Local Environmental Plan 2013 (MLEP 2013) of 11.5%. Despite the non-compliance, the proposal is not considered to result in unreasonable bulk, scale or amenity impacts from street frontage or adjoining and surrounding properties.

As a result of the public exhibition of the application there were no submissions.

The proposed development is generally compliant with the numeric controls under the Manly



Development Control Plan (MDCP).

The application is referred to the Northern Beaches Development Determination Panel for determination due to the contravention of the Floor Space Ratio development standard exceeding 10%.

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

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

### **PROPOSED DEVELOPMENT IN DETAIL**

The proposal is for the demolition works (existing dwelling and associated structures) and the construction of a dwelling house including a swimming pool.

The dwelling house consists of: -

The ground floor includes:-

- Double Garage+ Storage
- Open plan living / dining and kitchen
- Outdoor covered living space
- Pool

The first floor includes: -

- 4 Bedrooms
- Bathrooms

### **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 - 4.1.3 Floor Space Ratio (FSR)

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

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 7 DP 758044 , 11 Bareena Drive BALGOWLAH HEIGHTS NSW 2093
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the southern side of Bareena Drive.</p> <p>The site is regular in shape with a frontage of 16.46m along Bareena Drive and a depth of 38.175m. The site has a surveyed area of 645.8m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a single storey brick dwelling with landscaped gardens.</p> <p>The site slopes from the rear boundary down to the front boundary with a slope of 7% fall.</p> <p>The site consists of native and exotic species of plants, shrubs and trees.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by one and two storey dwellings with associated outbuildings/structures and landscaped gardens. Additionally, Nolan Place Reserve is located on the northern side of Bareena Drive.</p>

Map:



#### SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

#### ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any 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.

Section 4.15 Matters for Consideration'	Comments
	<p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&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 impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

#### EXISTING USE RIGHTS



Existing Use Rights are not applicable to this application.

### BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bush Fire Planning Services, dated 4 June 2020) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 24/08/2020 to 07/09/2020 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	<p>The proposal is for the demolition of an existing dwelling and the construction of a new house and pool and associated works.</p> <p>Council's Landscape Referral section have assessed the application against the Manly Local Environment Plan E3 Environmental Management zone, and against the following landscape controls of Manly DCP 2013:</p> <ul style="list-style-type: none"> <li>• section 3: General Principles of Development, including but not limited to clauses 3.3.1 Landscape Design, and 3.3.2 Preservation of Trees and Bushland Vegetation,</li> <li>• section 4: Development Controls and Development Types, including but not limited to clauses 4.1.5 Open Space and Landscaping.</li> </ul> <p>The existing landscape character of the site is a typical suburban garden with one existing trees at the rear, scattered gardens, lawn and a rock outcrop. The existing Paperbark tree at the rear has declined rapidly as evidenced in aerial images, with canopy density and health reduced in a short period.</p> <p>A Landscape Plan and a Arboricultural Impact Assessment report are provided with the application, and the proposals and recommendations are supported, subject to conditions of consent including the requirement to satisfy clause 4.1.5.2 (c) minimum number of trees to be supported within the site, that is a total of three, as well as street tree planting in accordance with Manly Council's Street Tree Master Plan, and the protection of trees and vegetation within adjoining properties.</p>

Internal Referral Body	Comments
	<p>The Tree Impact Assessment Report has assessed the existing Paperbark as "dying" and an "imminent failure" risk, and Council accepts that an imminent risk as assessed by a AQF Level 5 Arborist is grounds for removal of the Paperbark.</p> <p>Landscape Referral raise no objection to the development proposal, subject to conditions of consent.</p>
NECC (Coast and Catchments)	<p>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.</p> <p>The application has also been assessed using Northern Beaches SREP assessment template.</p> <p><b>Coastal Management Act 2016</b> 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.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p><b>State Environmental Planning Policy (Coastal Management) 2018</b> As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Clauses 13 (coastal environment area) and 14 (coastal use area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment, the DA satisfies requirements under Clause 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal</p>

Internal Referral Body	Comments
	<p>Management) 2018.</p> <p><b>Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005</b></p> <p><b>Harbour Foreshores &amp; Waterways Area</b></p> <p>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.</p> <p>On internal assessment, it is determined that the Planning Principles and Matters for Consideration of the Area have been met.</p> <p><b>Manly LEP 2013 and Manly DCP</b></p> <p><b>Foreshores Scenic Protection Area Management</b></p> <p>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.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Gartener Architects Pty. Ltd. [dated July 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.</p> <p>As such, it is considered that the application does comply with the requirements of the Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p>

Internal Referral Body	Comments
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following condition of consent.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid 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**

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.

##### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. 1107058 dated 15 July 2020). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0005016993 dated 15 July 2020).

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

Commitment	Required Target	Proposed
Water	40	47
Thermal Comfort	Pass	Pass
Energy	50	52

A condition has been included in the recommendation of this report requiring compliance with the



commitments indicated in the BASIX Certificate.

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

The proposal was referred to Ausgrid 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.

### **SEPP (Coastal Management) 2018**

The site is located within the Coastal Use Area and Coastal Environment Area as identified by State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP) and the provisions of this policy are applicable in relation to the proposal. Following detailed assessment of the proposed development, the consent authority can be satisfied of the following:

- The proposal is not likely to cause an adverse impact upon the matters listed in clause 13(1) of the CM SEPP
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 13(1) of the CM SEPP
- The proposal is not likely to cause an adverse impact upon the matters listed in clause 14(1) of the CM SEPP
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 14(1) of the CM SEPP
- The proposal is not likely to cause increased risk of coastal hazards on the site or other land as listed in clause 15 of the CM SEPP

As such, the proposal is considered to be consistent with the provisions of the CM SEPP, including the matters prescribed by clauses 13, 14 and 15 of this policy.

### **Coastal Management Act 2016**

The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development.

The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.

### **Manly Local Environmental Plan 2013**

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

### **Principal Development Standards**

Standard	Requirement	Proposed	% Variation	Complies

Height of Buildings:	8.5m	7.2m	N/A	Yes
Floor Space Ratio	FSR: 0.4:1 (258sqm)	FSR: 0.44:1 (287.7sqm)	11.5%	No

#### 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	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
Part 6 Additional local provisions	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

#### Detailed Assessment

#### 4.6 Exceptions to development standards

##### Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 (258m <sup>2</sup> )
Proposed:	0.44:1 (287.7m <sup>2</sup> )
Percentage variation to requirement:	11.5%

##### 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:

- As the proposed GFA/ FSR complies with clause 4.1.3.1 MDCP numerical provision it is also "deemed to comply" with the associated objectives as outlined which, if complied with, demonstrate the maintenance of an appropriate visual relationships between new development and the existing character and landscape of an area.
- The proposed represents a building that is compliant in height and has a 2 storey presentation to Bareena Drive.
- The predominate built form along Bareena Drive consists of 1 and 2 storey residential dwellings and in this regard the proposal is considered to be consistent within the streetscape.
- The proposal will provide for an enhanced landscaping regime above the existing circumstance.
- In relation to landscape character, the application proposes the implementation of an enhanced site landscape regime and provides for a building footprint which is compliant with the total open space and landscaped area MDCP controls.
- There will be no impact on any view corridors as a result of this development.
- The spatial relationship, coupled with appropriate setbacks, prevents direct overlooking between the living areas of these properties with a degree of mutual overlooking of private open space



- areas anticipated where all properties are orientated to take advantage of views.
- The building, although non-compliant with the FSR standard, will not give rise to any unacceptable shadowing impacts to neighbouring properties.
- The bulk and scale of the building is contextually appropriate with the floor space appropriately distributed across the site to achieve acceptable streetscape and residential amenity outcomes.

It is accepted that despite the variation to the floor space ratio development standard, that the proposed built form maintains a level of consistency with recent developments within the area. Recognition is also given that the proposal with its low profile roof assists with minimising the visual bulk, in particular with reference to the desired streetscape character from the Bareena Drive frontage. In considering the site constraints, the proposal is largely seen to not result in unreasonable adverse impacts for neighbouring properties. It is further accepted that the proposed development promotes good design.

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 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 cl 4.6 (3)(b).

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor Space Ratio development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

**Objectives of development standard**

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

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

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

Comment:

The proposed dwelling being 7.2m when measured from ground level (existing) to the highest point of the building is compliant with the height of buildings development standard (maximum 8.5m building height). The height of buildings development standard is designed to control building height ensuring the development is consistent with that of the surrounding area. In this regard, the proposed development is seen to have a relatively consistent height compared with the adjoining dwellings, with a maximum reduced level (RL) of RL89.910 which is lower in height than No. 12 Bareena Drive (RL90.86) and No 10 Bareena Drive (RL90.07). The proposed development also largely incorporates setbacks that are consistent with neighbouring dwellings to also ensure that the bulk and scale of the development does not result in any unreasonable impact on the existing and desired streetscape character of the locality.

*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 discussed above, it is not considered that the proposal will result in any unreasonable bulk or scale within the locality. Furthermore, the proposal is not considered likely to obscure any important landscape or townscape features.

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

Comment:

With the proposal being bookended by the existing dwellings of No. 10 and No. 12 Bareena Drive, the proposed development will not be visually prominent from the Bareena Drive frontage. As such, the proposed dwelling are of a contemporary design are not seen to dominate or challenge the details or character of the existing housing stock within the area. The proposed landscaping will be a marked improvement on the existing landscaping on the subject site and ensure consistency with this merit consideration. In this regard, the proposal seen to enhance the site with vegetation and provide for infiltration of water thereby minimising stormwater run-off.

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

Comment:

The proposal has been assessed with regard to amenity impacts and has been found to maintain a reasonable level of amenity within the locality. The proposal will not result in any unreasonable adverse 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:

Not applicable.

## Zone objectives

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

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

Comment: The proposed dwelling will provide sufficient amenity and function for the residents whilst in keeping with a low density environment.

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

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

Conclusion:

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

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

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

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

**Manly Development Control Plan**

Built Form Controls

Built Form Controls - Site Area: 645.8sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	E: 7m (based on gradient 1:12)	6.2m	N/A	Yes
	W: 7m (based on gradient 1:12)	6.3m	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.2m	N/A	Yes
	Parapet Height: 0.6m	0.3m	N/A	Yes
	Pitch: maximum 35 degrees	6.5 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 8.4m	8.92m, consistent with prevailing setback	N/A	Yes

4.1.4.2 Side Setbacks and Secondary Street Frontages	2.1m (based on wall height)	Basement - 1.52m (W) & 2.2m (E) Ground Floor - 2.38m (W) & 1.8m (E) First Floor - 2.045m (W) & 1.8m (E)	Nil - 27.6% Nil - 14.3% 2.6% - 14.3%	No No No
	Windows: 3m	Ground Floor - 2.38m (W) & 2.2m (E) First Floor - 2.045m (W) & 1.8m (E)	20.7% - 26.7% 31.8% - 40%	No No
4.1.4.4 Rear Setbacks	8m	9.6m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (387sqm) of site area	64% (425.9sqm)	N/A	Yes
	Open space above ground 25% (161.4sqm) of total open space	25.3% (163.7sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% (258sqm) of open space	42% (273sqm)	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	109.97sqm	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	6m	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	Nil (Pool is level with the ground)	N/A	Yes
	1m curtilage/1.5m water side/rear setback	1.1m curtilage/2.5m water side	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part 3	Yes	Yes
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	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
3.4.4 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
3.9 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	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)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.4 Other Development (all LEP Zones)	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
Part 5	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

#### 4.1.3 Floor Space Ratio (FSR)

Whilst the proposed floor area does not exceed the maximum variation to FSR for undersized lots as described under this clause, the development is technically non-compliant with the FSR requirement as prescribed under Clause 4.4 of the Manly LEP 2013. Refer to the discussion under Clause 4.6 of this report for the relevant considerations concerning the varying of this development standard.

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

##### Description of non-compliance

Clause 4.1.4.2a) of the MDCP 2013 requires buildings to be setback at least 1/3 of the adjacent wall height. In considering this requirement, the following setbacks are prescribed:

- Eastern elevation: 2.1m.
- Western elevation: 2.1m.

The development proposes a 1.52m - 2.38m setbacks on the western elevation and a 1.8m - 2.2m setbacks on the eastern elevation, which fails to satisfy the prerequisite.

Moreover, Clause 4.1.4.2 (c) of the MDCP 2013 requires new windows to be setback at least 3m from side boundaries. The proposal includes a new windows on the western elevation with setbacks 2.045m - 2.38m from the western side boundary and on the eastern elevation 1.8m - 2.2m from the eastern side boundary, which fails to comply with the 3m requirement.

##### Merit consideration:

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

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

##### Comment:

Whilst technically non-compliant with the setback requirements, the new works adhere to the established side building lines. The existing side setbacks are deemed to be sufficient within a low-density residential environment. Therefore, the proposal will not have an adverse impact upon the existing streetscape character. Conditions included with this consent will ensure the proposal achieves a high quality landscape outcome.

*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:

As discussed within earlier within this report, the amenity impacts associated with the development will be acceptable. It is considered that the dwelling will allow for reasonable levels of privacy, solar access and air movement given the proposed varying setbacks along the western and eastern elevations of the building. The proposal is also considered to be consistent with the streetscape of Bareena Drive.

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

Comment:

Flexibly is afforded in this circumstance as the proposed development will not have an unacceptable impact upon the natural and built environment.

*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:

As noted above, conditions of consent (requiring the planting of native trees) will ensure the proposal achieves a high quality landscape outcome for the site.

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

Comment:

The site is bushfire prone and adequate measures via recommendations of the accompany bushfire consultants report will be included within the conditions included within the consent.

Concluding Remarks

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, subject to conditions.

## **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 \$18,200 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,820,000.

## CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

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

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



- The variation to Clause 4.4 - Floor space Ratio of the Manly Local Environmental Plan 2013;
- Consideration of the Clause 4.6 - Exceptions to development standards; and
- The variation to Clause 4.1.4.2 Side setbacks and secondary street frontages.

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

## RECOMMENDATION

That Development Determination Panel 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 DA2020/0936 for Demolition works and construction of a dwelling house including a swimming pool on land at Lot 7 DP 758044, 11 Bareena Drive, BALGOWLAH HEIGHTS, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

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

#### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA-01	7 August 2020	Gartner Trovato Architects
DA-02	7 August 2020	Gartner Trovato Architects
DA-03	7 August 2020	Gartner Trovato Architects
DA-04	7 August 2020	Gartner Trovato Architects
DA-05	7 August 2020	Gartner Trovato Architects
DA-06	17 July 2020	Gartner Trovato Architects
DA-07	17 July 2020	Gartner Trovato Architects
DA-08	17 July 2020	Gartner Trovato Architects
DA-09	17 July 2020	Gartner Trovato

		Architects
DA-10	17 July 2020	Gartner Trovato Architects

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Bushfire Risk Assessment	4 June 2020	Bush Fire Planning Services
Tree Impact Assessment Report	7 May 2020	Mark Bury Consulting
Geotechnical Investigation	16 July 2020	White Geotechnical Group

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

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

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Landscape Plan (99/2020)	30 May 2020	Cabarita Landscapes

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:

<b>Other Department, Authority or Service</b>	<b>EDMS Reference</b>	<b>Dated</b>
Ausgrid	Response Ausgrid Referral	8 September 2020

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://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 2018
      - (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 \$18,200.00 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 \$1,820,000.00.

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](http://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](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**

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 WATER MANAGEMENT POLICY FOR DEVELOPMENT.

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. **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.

9. **Vehicle Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility.

Access levels across the road reserve are to comply with the relevant Australian Standard.

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 vehicular access to private property.

10. **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.

11. **Amended Landscape Plan**

An Amended Landscape Plan shall be issued to the Certifying Authority prior to the issue of a Construction Certificate to include the following details:

- i) inclusion of three (3) different native trees within the site in accordance with Schedule 4 - Part B - Native Tree Selection, to the rear and front yards, with each tree installed at a minimum 75 litre container size, located within a minimum 9m<sup>2</sup> deep soil area (ideally 3m x 3m) and be located a minimum of 3 metres from existing and proposed buildings, and located to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree location may impact upon significant views,
- ii) all other tree planting within the site shall be located at least 1.5m from common boundaries, and shall be located a minimum of 3 metres from existing and proposed buildings, and located to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree location may impact upon significant views,
- iii) inclusion of one (1) street tree planting of *Callistemon viminalis* installed at a minimum 75 litre container size, with a 1m x 1m x 700mm depth tree pit, backfilled with suitable planting medium, supported by four stakes (minimum 50mm x 50mm) with hessian ties and shade cloth wrapping, and located at least 1.2 m from the back of the kerb.

Certification shall be provided to the Certifying Authority that these amendments have been documented.

Reason: landscape amenity.

12. **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:

- o Site Boundaries and contours
- o Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- o Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities);
- o Existing and proposed drainage patterns with stormwater discharge points
- o Locations and methods of all erosion and sediment controls;
- o 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.

13. **Swimming Pools**

The backwash of Swimming Pool water must be discharged to Sydney Water's sewer in accordance with Australian/New Zealand Standard AS/NZS 3500. Detailed plans and specification must be submitted prior to the issue of the Construction Certificate. The drawings must show the location of Sydney Water's sewer, the yard gully or any new connection to the sewer system including a detailed cross section of the connection complying with Australian/New Zealand Standard AS/NZS 3500.



Reason: To ensure compliance with legislation and Australian Standards and to protect public health, amenity and to ensure the protection and preservation of receiving waters.

14. **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.

15. **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)

16. **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](http://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.

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

17. **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. 10 & 12 Bareena Drive, Balgowlah Heights (Dwellings and associated structures)**

**Property / Properties: Nos. 12 & 16 Willawa Street, Balgowlah Heights (Swimming pools)**

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.

18. **Tree removal within the property**

This consent approves the removal of the following tree within the property, as recommended in the Arboricultural Impact Assessment:

- Paperbark (*Melaleuca quinquenervia*)

Reason: an "imminent failure" risk.

19. **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

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. **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.

22. **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.

23. **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.

24. **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.

25. **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.

26. **Tree and vegetation protection**

a) Existing trees and vegetation shall be protected, including:

- i) all trees and vegetation located on adjoining properties,
- ii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) 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) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) 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 Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees.
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection for existing trees within adjoining properties shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment prepared by Mark Bury Consulting, as listed:

- i) section 5 - Discussion,
- ii) appendix 6 - Tree Management Plan.



The Certifying Authority must ensure that:

d) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree (s) is prohibited.

Reason: tree and vegetation protection.

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

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.

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**

28. **Landscape completion**

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

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

Reason: environmental amenity.

29. **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.

30. **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.

31. **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.

32. **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

33. **Landscape maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Amended Landscape Plan.

Reason: to maintain local environmental amenity.

34. **Swimming pool filter (noise)**

The swimming pool filter is not create any noise which exceeds over 5dB(A) above the ambient background noise levels when measured from any property boundary.

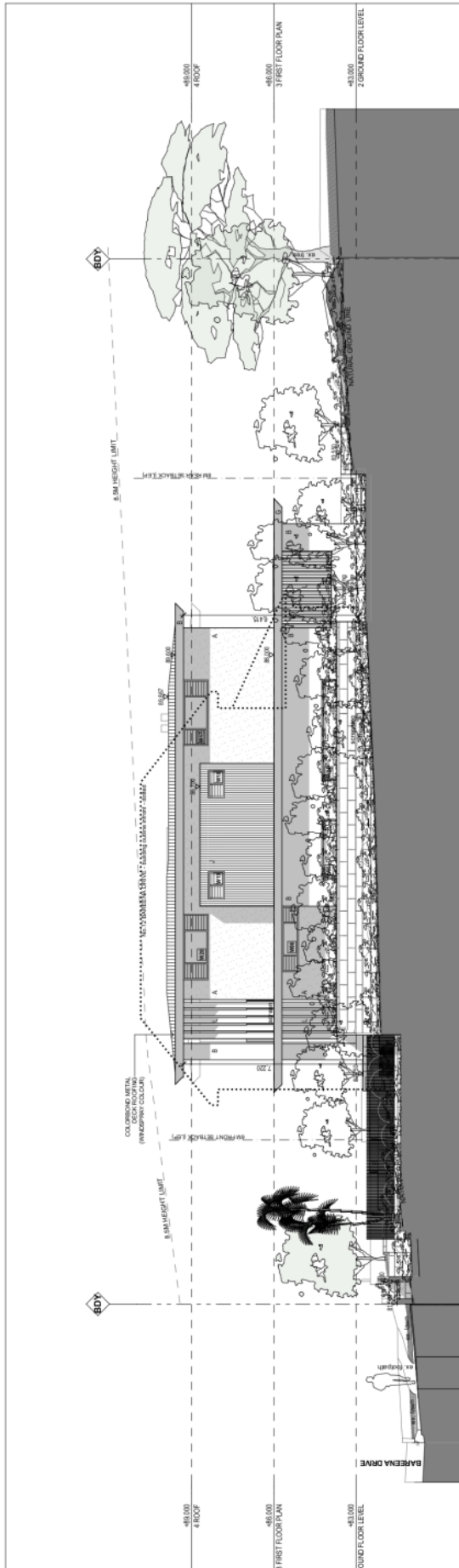
Reason: Ensure reasonable acoustic amenity.



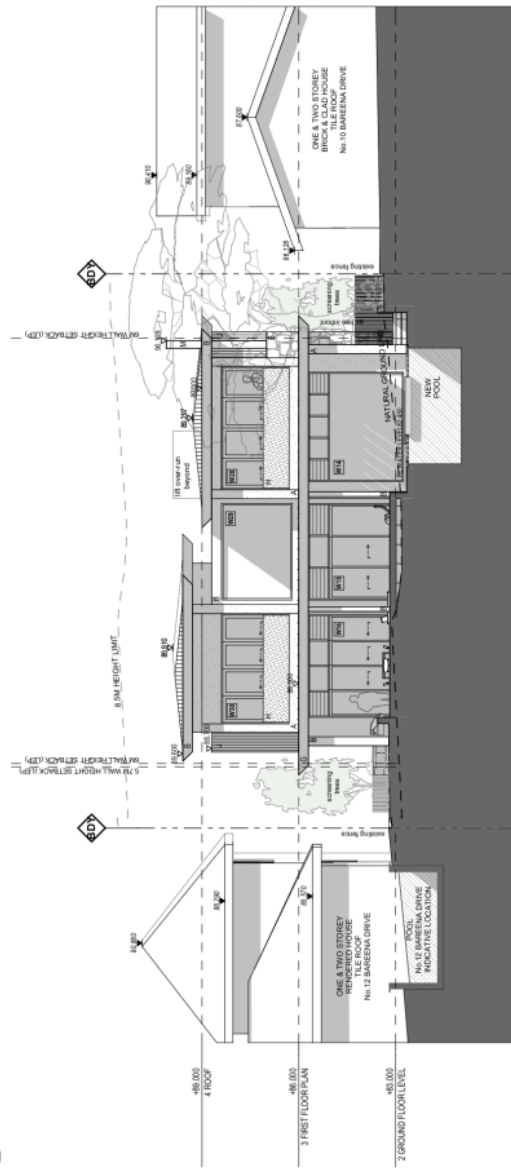








**A WEST ELEVATION**  
Scale 1:100



**B SOUTH ELEVATION**  
Scale 1:100

WINDOW SCHEDULE				
Window No.	Width	Height	Window Type	Area
W01	5.000	2.400	GARAGE DOOR	12.000
W02	1.000	2.400	SEALIGHT / HINGE GLAZED DOOR	2.400
W03	4.300	600	FIXED WINDOW	2.580
W04	3.700	750	FIXED WINDOW	2.775
W05	2.300	750	FIXED WINDOW	1.725
W06	2.400	600	FIXED WINDOW / LOUVER 10 BLADE	1.440
W07	4.000	2.700	SLIDING DOOR	10.800
W08	600	2.700	LOUVER 10 BLADE	1.620
W09	1.600	2.600	SLIDING DOOR	4.160
W10	1.600	2.600	SLIDING DOOR	4.160
W11	2.400	600	FIXED WINDOW / LOUVER 10 BLADE	1.440
W12	3.000	600	FIXED WINDOW / LOUVER 10 BLADE	1.800
W13	3.000	600	FIXED WINDOW / LOUVER 10 BLADE	1.800
W14	2.400	2.600	FIXED WINDOW / LOUVER 10 BLADE	6.240
W15	3.000	2.600	SLIDING WINDOW WITH LOUVER ABOVE	7.800
W16	3.000	2.600	SLIDING WINDOW WITH LOUVER ABOVE	7.800
W17	2.400	600	FIXED WINDOW / LOUVER 10 BLADE	1.440
W18	1.600	600	FIXED WINDOW / LOUVER 10 BLADE	0.960
W19	1.600	600	FIXED WINDOW / LOUVER 10 BLADE	0.960
W20	2.400	600	FIXED WINDOW / LOUVER 10 BLADE	1.440
W21	4.000	3.000	SLIDING DOOR	12.000
W22	2.300	2.600	SLIDING DOOR	5.980
W23	3.800	2.700	SLIDING DOOR	10.350
W24	2.400	600	FIXED WINDOW / LOUVER 10 BLADE	1.440
W25	1.200	500	FIXED WINDOW / LOUVER 10 BLADE	0.600
W26	1.200	500	FIXED WINDOW / LOUVER 10 BLADE	0.600
W27	2.400	600	FIXED WINDOW / LOUVER 10 BLADE	1.440
W28	3.000	2.200	SLIDING DOOR	6.600
W29	3.000	2.200	SLIDING DOOR	6.600
W30	3.400	2.400	SLIDING DOOR	8.160
W31	3.400	2.400	SLIDING DOOR	8.160

**NEW HOUSE & POOL**  
No 11 BAREENA DRIVE BALCONIAH  
HEIGHTS 2003  
Site Lot No. 7 Site DP No. 750044  
FOR M. C. & M. R. O'NEILL

**ELEVATIONS B**  
No 11 BAREENA DRIVE BALCONIAH  
HEIGHTS 2003  
Site Lot No. 7 Site DP No. 750044  
FOR M. C. & M. R. O'NEILL

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12 August 2020

The General Manager  
Northern Beaches Council  
Belgrave Street  
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**Clause 4.6 variation requests – FSR**  
**Demolition and construction of a new dwelling house with**  
**swimming pool**  
**11 Bareena Drive, Balgowlah Heights**

### **Floor Space Ratio**

#### **1.0 Introduction**

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

#### **2.0 Manly Local Environmental Plan 2013 (“MLEP”)**

##### **2.1 Clause 4.4 – Floor space ratio**

Pursuant to Clause 4.4 MLEP 2013 the maximum FSR for development on the site is 0.4:1 representing a gross floor area of 258m<sup>2</sup>. The stated objectives of this clause are:

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

- (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

It has been determined that the proposal result in a total gross floor area on the site of 287.7m<sup>2</sup>. This represents a floor space ratio of 0.44:1 and therefore non-compliant with the FSR standard by 29.7m<sup>2</sup> or 11.5%.

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

The Lot size map identifies the subject site as being in sub zone "R" in which a minimum Lot area of 750m<sup>2</sup> is required. The site having an area of only 645.8m<sup>2</sup> is significantly below the minimum Lot area provision and accordingly the clause 4.1.3 Manly DCP FSR variation provisions apply.

Clause 4.1.3.1 states that the extent of any exception to the LEP FSR development standard pursuant to clause 4.6 of the LEP is to be no greater than the achievable gross floor area for the lot indicated in Figure 30 of the DCP. We confirm that pursuant to Figure 30 the calculation of FSR is to be based on a site area of 750m<sup>2</sup> with an achievable gross floor area of 300m<sup>2</sup>.

In this regard, the 287.7m<sup>2</sup> of gross floor area proposed, representing an FSR of 0.38:1 (based on 750m<sup>2</sup>), is below the maximum prescribed gross floor area of 300m<sup>2</sup> and as such complies with the DCP variation provision. We note that such provision contains the following note:

*Note: FSR is a development standard contained in the LEP and LEP objectives at clause 4.4(1) apply. In particular, Objectives in this plan support the purposes of the LEP in relation to maintaining appropriate visual relationships between new development and the existing character and landscape of an area as follows:*

*Objective 1) To ensure the scale of development does not obscure important landscape features.*



*Objective 2) To minimise disruption to views to adjacent and nearby development.*

*Objective 3) To allow adequate 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.*

As the proposed GFA/ FSR complies with clause 4.1.3.1 MDCP numerical provision it is also “deemed to comply” with the associated objectives as outlined which, if complied with, demonstrate the maintenance of an *appropriate visual relationships between new development and the existing character and landscape of an area.*

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

Clause 4.6(1) of MLEP provides:

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

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

*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(2) of MLEP provides:

- (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.*

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

Clause 4.6(3) of MLEP provides:

- (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.*

The proposed development does not comply with the floor space ratio provision at 4.4 of MLEP which specifies a maximum FSR however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP provides:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) *the concurrence of the Director-General has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 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 cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP provides:

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

As these proceedings are the subject of an appeal to the Land & Environment Court, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) 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; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of MLEP from the operation of clause 4.6.

### 3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*



18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that 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].*
20. *A fourth way is to establish that 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 standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.3 of MLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:

- (a) compliance is unreasonable or unnecessary; and
  - (b) there are sufficient environmental planning grounds to justify contravening the development standard
- 3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the zone?
  - 4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
  - 5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of MLEP?

#### **4.0 Request for variation**

##### **4.1 Is clause 4.3 of MLEP a development standard?**

The definition of “development standard” at clause 1.4 of the EP&A Act includes:

- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

Clause 4.3 MLEP prescribes a height provision that relates to certain development. Accordingly, clause 4.3 MLEP is a development standard.

##### **4.2A Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary**

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

##### Consistency with objectives of the floor space ratio standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

Response: This objective relates to streetscape character and in this regard the proposed represents a building that is compliant in height and has a 2 storey presentation to Bareena Drive. Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the bulk and scale of the proposed development, as viewed from Bareena Drive, to be offensive, jarring or unsympathetic in a streetscape context. The predominate built form along Bareena Drive consists of 1 and 2 storey residential dwellings and in this regard the proposal is considered to be consistent within the streetscape.

This objective is satisfied as 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,*

Response: Having regard to clause 4.1.3.1 Manly DCP FSR provisions, which inform the 287.7m<sup>2</sup> of gross floor area proposed, representing an FSR of 0.38:1 (based on 750m<sup>2</sup>), is below the maximum prescribed gross floor area of 300m<sup>2</sup> and as such complies with the DCP variation provision applicable to undersized allotments. We note that Objective 1 of the DCP provision, which relates to establishing building density and bulk, as reflected by FSR, in relation to site area (undersized allotments) is similar to this LEP objective namely:

- Objective 1) To ensure the scale of development does not obscure important landscape features.*

As previously indicated the proposed FSR complies with the DCP numerical FSR control applicable to undersized allotments and is therefore deemed to comply with this objective.

That said, neither the LEP or DCP identify and important landscape or townscape features either on or within proximity of the subject site. My own observations did not identify and landscape or townscape features that I would consider important in terms of their visual significance. The proposal will provide for an enhanced landscaping regime above the existing circumstance.

I am satisfied that the proposal, notwithstanding the FSR non-compliance, achieves this objective as the building density and bulk, in relation to a site area, satisfies Objective 1 of the clause 4.1.3.1 DCP provision applicable to undersized allotments, with the development not obscuring any important landscape and townscape features.

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

Response: This objective is the same as the primary purpose/ objective outlined at clause 4.1.3 of the DCP as confirmed in the note such provision namely:

*Note: FSR is a development standard contained in the LEP and LEP objectives at clause 4.4(1) apply. In particular, Objectives in this plan support the purposes of the LEP in relation to maintaining appropriate visual relationships between new development and the existing character and landscape of an area as follows:*

*Objective 1) To ensure the scale of development does not obscure important landscape features.*

*Objective 2) To minimise disruption to views to adjacent and nearby development.*

*Objective 3) To allow adequate 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.*

As the proposed GFA/ FSR complies with clause 4.1.3.1 MDCP numerical provision it is also “deemed to comply” with the associated objectives as outlined which, if complied with, demonstrate the maintenance of an *appropriate visual relationships between new development and the existing character and landscape of an area* .

That said, it has previously been determined that the proposal achieves objective (a) of the clause 4.4 MLEP FSR standard namely to *ensure the bulk and scale of development is consistent with the existing and desired streetscape character*. Accordingly, I am satisfied that the development, notwithstanding the FSR non-compliance, maintains an appropriate visual relationship between new development and the existing built form character of the area.



In relation to landscape character, the application proposes the implementation of an enhanced site landscape regime and provides for a building footprint which is compliant with the total open space and landscaped area MDCP controls. The building will sit within a landscaped setting.

An appropriate visual relationship between new development and the existing landscape of the area is maintained.

I am satisfied that the development, notwithstanding its FSR non-compliance, achieves the objective as it maintains 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,*

Response: In responding to this objective. I have adopted views, privacy, solar access and visual amenity as environmental factors which contribute to the use and enjoyment of adjoining public and private land.

### **Views**

There will be no impact on any view corridors as a result of this development, as assessed against the planning principal for view sharing known as *Tenacity Consulting v Warringah Council (2004) NSWLEC 140*.

### **Privacy**

Having regard to clause 4.1.3.1 Manly DCP FSR provisions, which inform the 290.14m<sup>2</sup> of gross floor area proposed, representing an FSR of 0.38:1 (based on 750m<sup>2</sup>), is below the maximum prescribed gross floor area of 300m<sup>2</sup> and as such complies with the DCP variation provision applicable to undersized allotments. We note that the privacy objectives at clause 3.4.2 are also referenced in relation to these provisions namely:

*See also objectives for privacy at paragraph 3.4.2 of this plan.*

#### **3.4.2 Privacy and Security**

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

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

As previously indicated the proposed FSR complies with the DCP numerical FSR control applicable to undersized allotments and is therefore deemed to comply with the clause 3.4.2 privacy objectives to the extent that it can be demonstrated that the development *minimises loss of privacy to adjacent and nearby development*.

Notwithstanding, the spatial relationship, coupled with appropriate setbacks, prevents direct overlooking between the living areas of these properties with a degree of mutual overlooking of private open space areas anticipated where all properties are orientated to take advantage of views. Appropriate fenestration is proposed to the east and west side boundary facing elevations to mitigate any risk to privacy to neighbouring dwellings. Private open space areas are predominately located at ground floor level with smaller balconies with privacy screening located off the first floor bedrooms. In this regard, it is considered that the appropriate measures have been included in the design to limit the impact to the privacy of neighbouring dwellings.

Given the spatial separation maintained between the balance of surrounding properties I am satisfied that the design, although non-compliant with the FSR standard, minimises adverse environmental impacts in terms of privacy and therefore achieves this objective.

### **Solar access**

The accompanying shadow diagrams (Attachment 1) demonstrate that the building, although non-compliant with the FSR standard, will not give rise to any unacceptable shadowing impacts to neighbouring properties. The works will not create any unreasonable additional overshadowing as shown on the shadow diagrams prepared by Gartner Trovato Architects. The majority of the overshadowing is a result of existing development. In this regard, it is considered that the proposal is consistent with the DCP control.

The objective is achieved in this regard.

### Visual amenity/ building bulk and scale

As indicated in response to objective (a) I have formed the considered opinion that the bulk and scale of the building is contextually appropriate with the floor space appropriately distributed across the site to achieve acceptable streetscape and residential amenity outcomes.

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

I have formed the considered opinion that the building, notwithstanding the FSR non-compliance, achieves the objective through skilful design that minimises adverse environmental impacts on the use and 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.*

Response: This objective is not applicable.

Having regard to the above, the proposed building form which is non-compliant with the FSR standard will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the FSR standard. Given the developments consistency with the objectives of the FSR standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

### Consistency with zone objectives

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

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

Response: The development seeks to reinstate a dwelling house on the site which will provide for the housing needs of the community within a low density residential environment. The proposal is consistent with this objective.

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

Response: N/A

The proposed works are permissible and consistent with the stated objectives of the zone.

The non-compliant development, as it relates to FSR, demonstrates consistency with objectives of the R2 Low Density Residential zone and the FSR standard objectives. Adopting the first option in *Wehbe* strict compliance with the FSR standard has been demonstrated to be is unreasonable and unnecessary.

**4.2B Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?**

In Initial Action the Court found at [23]-[24] that:

23. *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.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”.*

*The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*



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

In this regard, I have formed the considered opinion that sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the site's visual catchment.

Further, the variation provisions contained at clause 4.1.3.1 of Manly DCP reflect an acceptance that the FSR standard on undersized allotments does not provide for the orderly and economic use and development of the land and in my opinion represents an abandonment of the FSR standard on undersized allotments. The proposal satisfies such provisions.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The development represents good design (1.3(g)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. 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.*

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

**4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3A and the objectives of the R2 Low Density Residential zone**

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

*"The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii)."*

As demonstrated in this request, the proposed development it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

#### 4.4 Secretary's concurrence

By Planning Circular dated 21<sup>st</sup> February 2018, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case.

#### 5.0 Conclusion

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

- (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.*

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of an FSR variation in this instance.

**Boston Blyth Fleming Pty Limited**



**Greg Boston**  
B Urb & Reg Plan (UNE) MPIA  
Director