

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a meeting of the Development Determination Panel will be held via teleconference on

THURSDAY 31 AUGUST 2023

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Thursday 31 August 2023
via teleconference
Commencing at 10:00 AM**

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ACKNOWLEDGEMENT OF COUNTRY

As a sign of respect, the Northern Beaches Development Determination Panel acknowledges the traditional custodians of these lands on which we gather and pays respect to Elders past and present.

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 9 AUGUST 2023

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 9 August 2023 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1 **REV2023/0013 - 15 BARINGA AVENUE SEAFORTH - REVIEW OF DETERMINATION OF DEVELOPMENT APPLICATION NO. DA2022/1821 FOR DEMOLITION WORKS AND CONSTRUCTION OF A DUAL OCCUPANCY, TWO SWIMMING POOLS, TREE REMOVAL AND ASSOCIATED STRATA SUBDIVISION**

REPORTING MANAGER **Steve Findlay**

TRIM FILE REF **2023/539601**

ATTACHMENTS **1** [↓](#) **Assessment Report**
 2 [↓](#) **Site Plans and Elevations**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to REV2023/0013 for Review of Determination of Development Application No. DA2022/1821 for demolition works and construction of a dual occupancy, two swimming pools, tree removal and associated strata subdivision on land at Lot 155 DP 35319, 15 BARINGA AVENUE SEAFORTH, subject to the conditions set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2023/0013
Responsible Officer:	Dean Pattalis
Land to be developed (Address):	Lot 155 DP 35319, 15 Baringa Avenue SEAFORTH NSW 2092
Proposed Development:	Review of Determination of Development Application No. DA2022/1821 for demolition works and construction of a dual occupancy, two swimming pools, tree removal and associated strata subdivision
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Roberto Domenico Orlando Paweena Orlando
Applicant:	Strategic Approvals
Application Lodged:	14/06/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	22/06/2023 to 06/07/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 950,000.00

EXECUTIVE SUMMARY

This is a review of determination of a development application, which was refused for demolition works and construction of a dual occupancy, two swimming pools, tree removal and associated strata subdivision.

This application is a 'Review of Determination' pursuant to Division 8.2 of the EP&A Act 1979. The application being reviewed is DA2022/1821 which was refused by Council on 1 March 2023.

The application is referred to the Development Determination Panel (DDP) in accordance with Council's adopted charter which requires any Review of Determination under Section 8.2 for a development application previously determined by the DDP, its previous equivalent panel, or by a Manager, to be referred to the DDP.

The applicant has provided amendments to the application as part of the review application in order to address the original reasons for refusal. These changes include a reduction in gross floor area and a reduction in size of the proposed garage door.

Critical assessment issues under this review include; numerical non-compliances with the residential density control, street front setback and vehicle parking requirements.

One (1) submission was received during the notification period and the concerns raised in the submission relate to residential density and front setback, as well as amenity impacts including; visual privacy, acoustic privacy and overshadowing.

This report concludes with a recommendation that the DDP should alter the original decision to refuse the development application to approval, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

This application is a 'Review of Determination' pursuant to Division 8.2 of the EP&A Act 1979.

The application being reviewed is DA2022/1821, which was refused by Council on 1 March 2023.

Proposal

The proposed development comprises of the following works:

- Demolition of existing building on the site.
- Construction of a dual occupancy, with each dwelling comprising of ground floor kitchen, living spaces and single garage. Upper floor comprising of three bedrooms, bathroom and ensuite.
- New driveway and landscaping planting around the building
- 25,000L swimming pool for each dwelling
- Strata subdivision of each dwelling.

Changes from original DA2022/1821

This application is a review of determination of DA2022/1821 and the following changes have been made from the previous proposal:

- Reduced building footprint and gross floor area as a result of enlarging the external patio area on the southern elevation of Unit 2 and removal of the front living room, in order to bring development into compliance with FSR standard.
- Reduced garage door width in order to comply with 4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas MDCP 2013.
- Delineated access pathway to Unit 2

Further Information

Further information was requested during the assessment process of the review application in relation to Floor Space Ratio, as a storage room on the ground floor plan had been excluded from the gross floor area calculation, but however does not meet the exclusion provisions under the definition for GFA under MLEP 2013. Amended plans were subsequently submitted by the applicant which deleted the storage room from the plans.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles

SITE DESCRIPTION

Property Description:	Lot 155 DP 35319 , 15 Baringa Avenue SEAFORTH NSW 2092
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Baringa Avenue.</p> <p>The site is regular in shape with a frontage of 15.2m along Baringa Avenue and a depth of 36.575m. The site has a surveyed area of 556.4m².</p>

The site is located within the R2 Low Density Residential zone and accommodates a single storey dwelling house.

The site has a slight fall from the western (rear) boundary to the eastern (front) boundary. The overall fall is 3m across the highest to lowest point of the site.

The site has two trees in the front setback (5m and 8m high) and a palm tree in the rear setback.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached residential dwellings of one and two stories.

Immediately to the north is a two storey dwelling and to the south a single storey dwelling. Adjoining the site to the rear is a two storey dwelling. Across the road to the east is a single storey dwelling.

Map:



SITE HISTORY

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

Pre-lodgement Meeting **PLM2022/0005** was held on 03/03/2022 for Construction of a Dual Occupancy.

Development Application No. **DA2022/1821** for Demolition works and construction of a dual

occupancy, two swimming pools, tree removal and associated strata subdivision (Refused 01/03/2023)

- *Original application to which this review application relates was refused by Council for the following reasons:*

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Manly Local Environmental Plan 2013.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.4 Floor Space Ratio of the Manly Local Environmental Plan 2013.

3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Manly Local Environmental Plan 2013. In this regard, Council is not satisfied that the written request has demonstrated there are sufficient environmental planning grounds to warrant departure from the control. Council is not satisfied the proposal will be consistent with the aims of the development standard.

4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.1.1 Streetscape (Residential areas), Clause 4.1.4.1 Street Front Setbacks and Clause 4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas of the Manly Development Control Plan.

In particular, the combination of the front building setback being forward of the predominant building line, the garage door width and hardstand parking spaces forward building line results a design that is inconsistent with the predominant street character and spatial proportions of the street.

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	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning	None applicable.

Section 4.15 Matters for Consideration	Comments
agreement	
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>Part 4, Division 2 of the EP&A Regulation 2021 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 29</u> of the EP&A Regulation 2021 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 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to non-compliances with the Floor Space Ratio development standard as well as residential density and streetscape character under MDCP 2013. Amended information was formally accepted by Council on 21 August 2023 and resulted in a reduction in environmental impact which does not require re-notification in accordance with Council's Community Participation Plan.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 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 62 and/or 64</u> of the EP&A Regulation 2021 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 69</u> of the EP&A Regulation 2021 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 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>

Section 4.15 Matters for Consideration	Comments
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.

Section 8.3 of the EPA Act, 1979

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

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 1 March 2023 and the notice of determination was issued on 2 March 2023. The review was lodged on 14 June 2023 and is to be considered by 1 September 2023, which is within 6 months of the date of determination.

The application is scheduled to go to the DDP on Thursday 31 August, which is within 6 months.

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

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

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same.

Therefore, it is concluded that the amended scheme is substantially the same as the original proposal.

Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act.

Assessment of Reasons for Refusal DA2022/1821

How has the 8.2 Application Responded to The Reasons for Refusal?

The applicant has amended the proposal and has provided additional information. Consequently, the Reasons for Refusal of DA2022/1821 that are stipulated in the Notice of Determination are examined

below to determine if they remain applicable or should be overturned:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Manly Local Environmental Plan 2013.

Comment:

The applicant has amended the proposal to reduce the gross floor area of the development and bring the Floor Space Ratio development standard into compliance. As a result, the development is numerically compliant with all principal development standards and provisions of MLEP 2013 and is considered to be consistent with the aims of the plan outlined specifically under subclause 2(a) for all land in Manly and 2(b) in relation to residential development.

Consequently, it is recommended that this reason for refusal should not be maintained following the detailed assessment of the amended plans and documentation submitted with the application.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.4 Floor Space Ratio of the Manly Local Environmental Plan 2013.

Comment:

As stated above, the gross floor area of the development has been reduced under the review application and the development now complies numerically with the Floor Space Ratio development standard.

Consequently, it is recommended that this reason for refusal should not be maintained following the detailed assessment of the amended plans and documentation submitted with the application.

3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Manly Local Environmental Plan 2013. In this regard, Council is not satisfied that the written request has demonstrated there are sufficient environmental planning grounds to warrant departure from the control. Council is not satisfied the proposal will be consistent with the aims of the development standard.

Comment:

The amended plans now comply with the Floor Space Ratio development standard and therefore no Clause 4.6 request is required under this application.

Consequently, it is recommended that this reason for refusal should not be maintained following the detailed assessment of the amended plans and documentation submitted with the application.

4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.1.1 Streetscape (Residential areas), Clause 4.1.4.1 Street Front Setbacks and Clause 4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas of the Manly Development Control Plan.

In particular, the combination of the front building setback being forward of the predominant building line, the garage door width and hardstand parking spaces forward building line results a design that is inconsistent with the predominant street character and spatial proportions of

the street.

Comment:

The original application did not comply with Clause 3.1.1 Streetscape (Residential areas), specifically in regards to any necessary hardstand parking being located forward of the prevailing building line. Further, written justification regarding this non-compliance has been provided by the applicant with this review application, and is discussed within this report under the discussion for the relevant DCP control. It is considered that the temporary placement of an additional vehicle in the hardstand area of the site forward of the prevailing building line will not result in an unreasonably adverse visual or amenity impact upon the streetscape. It is also considered that the design of the garage in this manner is necessary to result in a design outcome that presents as a single dwelling to the streetscape. There is also considered to be suitable availability of on-street parking to offset the shortfall in off-street parking.

The applicant has also provided written justification of the non-compliance with the predominant building line under Clause 4.1.4.1 including a case study analysis and this is discussed under the relevant section within this report. It is considered that the minimum front setback distance of 8.28m is not out of character with similar approvals in the immediate locality and is sufficient in order to maintain landscaped area in the front setback area and a sense of openness, as well as maintain compatibility with the streetscape.

In addition, the garage door width has been reduced to 6.2m under this review in order to comply with Clause 4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas.

It is considered the above non-compliances under MDCP 2013 were exacerbated by the initially proposed non-compliance with the floor space ratio development standard which has now been corrected to result in an outcome that is no longer considered to be an overdevelopment of the site.

Consequently, it is recommended that this reason for refusal should not be maintained following the detailed assessment of the amended plans and documentation submitted with the application.

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 22/06/2023 to 06/07/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Chipchase Planning	5/39 Spofforth Street MOSMAN NSW 2088

One (1) submission was received during the notification period. The concerns raised are addressed as follows:

- **Non-compliance with 4.1.1.1 Residential Density and Dwelling Size MDCP 2013**

Comment:

The objector raised concern regarding the numerical non-compliance with the residential density control under MDCP 2013. As addressed within this report under the discussion for Clause 4.1.1.1, the proposal is not considered to result in an overdevelopment of the site, due to compliance being maintained with the FSR development standard as well as the total open space and landscaped area controls under MDCP 2013. The development also results in a visual presentation of a single dwelling when viewed from the street and is not inconsistent with similar approvals granted by Council in the immediate locality.

- **Garage door width and numerical non-compliance with car parking requirements**

Comment:

The objector raised concern regarding the garage door width as well as the non-compliant off-street parking spaces. As mentioned within this report, the proposed garage door width has been reduced to 6.2m under this review application in order to comply with Part 4.1.6 MDCP 2013. A discussion has also been included under Part 3.1.1 MDCP 2013 which addresses the off-street parking non-compliance and its acceptability based on merit, given that the temporary presence of vehicles forward of the front building line will not create an unreasonable visual presence as well as adequate on-street parking opportunities being available to offset the non-compliance.

- **Front setback non-compliance**

Comment:

The objector raised concern regarding the front setback non-compliance of the proposed development. A discussion has been included within this report under Part 4.1.4 MDCP 2013 which concludes that the proposed non-compliance will not create an unreasonable adverse visual or amenity impact upon the streetscape.

- **Overshadowing**

Comment:

The objector raised concern regarding the overshadowing impacts of the proposed development. Suitable shadow diagrams have been provided with the application which demonstrate the proposed shadow compared to the existing solar access arrangement and it is considered that the areas of proposed new shadows will not impact the ability of adjoining sites to retain a compliant amount of solar access in accordance with Part 3.4.1 Sunlight Access and Overshadowing MDCP 2013. The objector's property to the south-west at No.4 Baranbali Avenue only receives additional shadowing at 9am and is entirely unaffected by the new development at 12pm and 3pm.

- **Visual Privacy**

Comment:

The objector raised concern regarding visual privacy impacts from the rear-facing first floor areas of the proposed development. The first floor of the development consists of bedroom and bathroom

areas only which are considered low-traffic areas and not conducive to high volumes of pedestrian traffic or unreasonable opportunities for overlooking. A substantial spatial separation is also maintained between the proposed dwelling and the private open space/living areas of No.4 Baranbali Avenue which shall also limit visual privacy impacts.

- **Acoustic Privacy**

Comment:

The objector raised concern regarding the acoustic impacts of the proposed pool equipment as well as dilapidation impacts to the adjoining property resulting from the excavation and construction works. Suitable conditions of consent have been included to limit the acoustic volume of any pool equipment and motors as well as pre and post dilapidation reporting being conducted to the objector's property.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The Landscape Referral Response in review of DA2022/1821 is attended to by an alternative Landscape Officer. The following documents are reviewed and assessed as part of the Landscape Referral Response: Arboricultural Impact Assessment and Landscape Plan, and no landscape related concerns are raised with the development proposal. Conditions of consent shall be imposed for tree protection measures and the completion of landscape works should the application be approved.
NECC (Development Engineering)	The proposal is for demolition works and construction of the dual occupancy. No objections to approval subject to conditions as recommended.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	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 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 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.1336980M_02 dated 31 May 2023).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 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 raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

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	7.6m	-	Yes
Floor Space Ratio	FSR: 0.45:1 (250.34m ²)	FSR: 0.446:1 (248.54m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	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: 556.4m ²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 500m ²	1 dwelling per 278.2m ²	44%	No
	Dwelling Size: 90sqm (3 bedroom)	248.54gfa	-	Yes
4.1.2.1 Wall Height	N: 6.8m (based on gradient 1:20)	6.5m	-	Yes
	S: 6.8m (based on gradient 1:20)	6.3m	-	Yes
4.1.2.2 Number of Storeys	2	2	-	Yes
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.6m	-	Yes
	Pitch: maximum 35 degrees	0 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line = 13m	8.28m	36.31%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: Ground 0.86m to 1.16m	1.1m	2%	No
	N: First 1.8m to 2.16m	2.1m	3%	No
	S: Ground 0.73m to 1.06m	1.1m	-	Yes
	S: First 1.6m to 2.1m	2.1m	-	Yes

	(Setback based on wall height)			
	Windows: 3m	1.1m Ground 2.1m Upper	63.4% 30%	No No
4.1.4.4 Rear Setbacks	8m	8m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (306m ²)	58.45% (325.22m ²)	-	Yes
	Open space above ground 25% of total open space	Complies	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	62.30% (202.6m ²)	-	Yes
	3 native trees	3 trees	-	Yes
4.1.5.3 Private Open Space	18sqm	Complies	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6.2m	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	>1m	-	Yes
	1m curtilage/1.5m water side/rear setback	1.8m rear 4m side	-	Yes
Schedule 3 Parking and Access	2 spaces per dwelling	1 space per dwelling	50%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	No	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.1.1 Residential Density and Dwelling Size	No	Yes
4.1.1.2 Residential Land Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.8 Subdivision	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles	No	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

Control 3.1.1.4 states that garages, carports and hardstand areas must be designed and sited in a manner that does not dominate the street frontage by being compatible with the streetscape and the location in relation to front setback criteria.

It is noted that each dwelling of the proposed dual occupancy contains 1 off-street parking space, whereas Schedule 3 MDCP 2013 requires two spaces per dwelling. Any use of the hardstand area in front of the garage for a second vehicle parking space would therefore be located within the front setback area.

The shortfall in off-street parking is a result of the proposed garage which has been intentionally designed to present as a double garage to the street and appear visually as a single dwelling, so as to maintain compatibility with the pervading character of the streetscape.

Notwithstanding the non-compliance, it is not considered that the temporary presence of an additional vehicle forward of the prevailing front setback distance would not unreasonably impact the visual character of the streetscape. It is also considered that there are reasonable on-street parking opportunities to offset the shortfall in off-street parking.

Merit Assessment

Relevant DCP objectives to be met include the following:

Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street

frontage.

Comment: An adequate amount of landscaped area is maintained in the front setback area to ensure built form and car parking structures do not dominate the street frontage.

Objective 2) To ensure development generally viewed from the street complements the identified streetscape.

Comment: As stated above, the numerical off-street car parking non-compliance is a direct result of the design of the development aiming to maintain the appearance of a single dwelling and adequately integrate into the existing character of the streetscape.

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

Comment: Not applicable, no fence is proposed.

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

4.1.1.1 Residential Density and Dwelling Size

Description of Non-compliance

The maximum permissible residential density control at Figure 24 - Minimum Residential Density applies to land identified in Residential Density Areas on the Minimum Residential Density Map at Schedule 1 - Map A in this plan.

The land is identified as being in Residential Density Area D5, which requires 500m² of site area per dwelling.

The proposed development comprises of two (2) new dwellings, and has a site area of 556.4m². The site therefore falls short by 443.6m² or a variation of **44%** to meet the density control.

Despite the non-compliance, the proposed development is compliant with the Floor Space Ratio development standard pursuant to MLEP 2013 whilst also retaining compliance with the relevant total open space and landscaped area controls under MDCP 2013. As a result, the proposed development is not considered to be an overdevelopment of the site or a development that is out of character with the visual pattern of the streetscape, particularly as it retains the visual appearance and presentation of a single dwelling.

Furthermore, as part of further information provided by the applicant, several examples have been identified of similar dual occupancy developments having been approved by Council in the Seaforth locality that are also mapped under the D5 Residential Density Area and result in a similar numerical variation to the control. A prominent example is the nearby 1 Montauban Avenue under DA2020/1614 for demolition works and the construction of a dual occupancy including strata subdivision.

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 promote a variety of dwelling types, allotment sizes and residential environments in Manly.

Comment:

The proposed development is considered to contribute to the residential environment of Manly.

Objective 2) To limit the impact of residential development on existing vegetation, waterways, riparian land and the topography.

Comment:

No adverse impact to existing vegetation, waterways, riparian land or topography is anticipated.

Objective 3) To promote housing diversity and a variety of dwelling sizes to provide an acceptable level of internal amenity for new dwellings.

Comment:

The proposal is compliant with the control for minimum internal areas under Clause 4.1.1.1(d). This ensures there would be an acceptable level of internal amenity.

Objective 4) To maintain the character of the locality and streetscape.

Comment:

As per above, the proposal is not considered to have a detrimental impact upon the streetscape character.

Objective 5) To maximise the use of existing infrastructure.

Comment:

The proposal will maintain the use of existing infrastructure where appropriate.

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

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

Description of Non-compliance

4.1.4.1 Street Front Setbacks requires front setbacks to relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity. The proposed development is setback 8.28m from the front boundary which does not comply with the prevailing building line of 13m.

Despite the non-compliance, the proposal is considered to maintain compatibility with the visual character of the streetscape and retains a sufficient amount of landscaped area in the front setback area to retain a sense of openness.

4.1.4.2 Side Setbacks requires setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building, whilst all new windows from habitable dwellings of dwellings that face the side boundary are to be setback at least 3m from side boundaries.

There is a minor non-compliance to the side setbacks on the north elevation, being non-compliant by 0.06m or 3%. It is noted that the side setback comply on average and the minor departure from the control is due to the gentle slope of the site which is not considered to result in an unreasonable built form or amenity impact.

The side elevation windows are less than 3m, however, all have raised sill heights to 1.7m which is considered to protect the amenity and visual privacy of the occupants and adjoining properties.

Merit Consideration

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

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

Comment:

The proposal will continue to maintain an appropriate visual relationship with the surrounding built environment.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The works will not result in unreasonable additional overshadowing of adjoining properties or privacy concerns. The works are adequately screened from the street frontage and therefore, will not reduce road visibility. Overall, the proposal achieves this objective.

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

Comment:

Flexibility is afforded in this circumstance as the non-compliance shall not result in an incompatible visual presence with the streetscape.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal results in a satisfactory landscape outcome and provides adequate areas for deep soil vegetation.

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

Comment:

The site is not bushfire prone.

Having regard to the above assessment, it is concluded that the 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.

Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles

For dual occupancies, this schedule requires the provision of two (2) off-street parking spaces per 3 bedroom dwelling. The proposed development will result in one (1) off-street parking space per dwelling. As discussed within this report under control 3.1.1.4, the proposed vehicle parking arrangement is considered to be acceptable on merit and the request for a reduced off-street parking space can be supported, in this instance.

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 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$9,500 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$950,000.

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 2021;
- 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 EPs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

PLANNING CONCLUSION

This proposal, for review of determination of a refusal for demolition works and construction of a dual occupancy, two swimming pools, tree removal and associated strata subdivision has been referred to the Development Determination Panel (DDP) due to Council's adopted charter which requires any Review of Determination under Section 8.2 for a development application previously determined by the DDP, its previous equivalent panel, or by a Manager, to be referred to the DDP.

The concerns raised in the objections have been addressed and suitable conditions of consent have been included to protect acoustic amenity and any dilapidation impacts resulting from the proposed construction works.

The critical assessment issues including residential density, streetscape character and street front setback have been addressed within this report.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment.

The proposal has satisfactorily addressed the Reasons for Refusal as outlined in this report and the original decision to refuse the application should be altered to an approval.

Therefore, the application is recommended for APPROVAL.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to REV2023/0013 for Review of Determination of Development Application No. DA2022/1821 for demolition works and construction of a dual occupancy, two swimming pools, tree removal and associated strata subdivision on land at Lot 155 DP 35319, 15 Baringa Avenue, SEAFORTH, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA001	B	Site and Roof Plan	Dalgliesh Ward	16 March 2023
DA002	B	Draft Subdivision Plan	Dalgliesh Ward	16 March 2023
DA100	A	Demolition Plan	Dalgliesh Ward	7 September 2022
DA100	C	Ground Floor Plan	Dalgliesh Ward	28 July 2023
DA101	A	First Floor Plan	Dalgliesh Ward	7 September 2022
DA200	B	East Elevation	Dalgliesh Ward	16 March 2023
DA201	A	North Elevation	Dalgliesh Ward	7 September 2022
DA202	A	West Elevation	Dalgliesh Ward	7 September 2022
DA203	C	South Elevation	Dalgliesh Ward	28 July 2023
DA300	A	Long Section 1	Dalgliesh Ward	7 September 2022
DA301	B	Long Section 2	Dalgliesh Ward	16 March 2023
DA302	C	Short Section 1	Dalgliesh Ward	28 July 2023
DA303	A	Short Section 2	Dalgliesh Ward	7 September 2022

Approved Reports and Documentation

Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	1336980M_02	SDS Engineering	31 May 2023
Arboricultural Impact Assessment	1	Horticultural Management Services	19 September 2022
Geotechnical Investigation Report	220972	SDS Engineering	29 August 2022
Waste Management Plan	-	Strategic Approvals	20 October 2022

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	20 June 2023

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

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

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifier 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 Certifier 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 Certifier 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 an 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 \$250,000. The Long Service Levy is calculated on 0.25% 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.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or 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 Section 7.12 Contributions Plan 2022

A monetary contribution of \$9,500.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning &

Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$950,000.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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 \$5,000 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 Certifier prior to the issue of the Construction Certificate.

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. **On-Site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by SDS Engineering, job number 220972, drawing number C000 to C0003, dated 12/9/2022. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

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

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

8. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 5.0 metres wide in accordance with Northern Beaches Council Standard Drawing Normal High in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

A Council approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

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

Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

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 ensure no substance other than rainwater enters the stormwater system and waterways.

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 Certifier 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 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 Certifier 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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

12. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:

- a) any demolition, excavation or construction activity within the tree protection zone of the existing street tree identified as tree number 1,
- b) tree protection measures under section 9 -Tree Management Plan, and 12 - Recommendations,
- c) any other supervision as determined by the Project Arborist during demolition, excavation and construction stages of the proposed works.

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifier that all tree protection measures under AS4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:

Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

13. **Tree Removal Within the Property**

This consent approves the removal of existing trees on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:

- a) tree 5 - Glochidion ferdinandi,
- b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

14. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must

be provided to the Principal Certifier 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: 4 Baranbali Avenue, Seaforth

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier 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 Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

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 Certifier prior to the commencement of any works on site.

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

DURING BUILDING WORK

15. Protection of Existing Street Trees

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree(s) fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of AS4970-2009 Protection of trees on development sites. As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

All street trees within the road verge 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. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Reason: Street tree protection.

16. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project 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/Project 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/Project 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/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project 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/Project Arborist to the Principal Certifier,
- 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 AS4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS4970-2009 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 AS4373-2007 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.

The Principal Certifier must ensure that:

- c) The arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as compliant to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

17. 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.

18. Removing, Handling and Disposing of Asbestos

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)];

- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

19. **Geotechnical Requirements**

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

20. **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 Certifier, 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.

21. **Survey Certificate**

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

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

Details demonstrating compliance are to be submitted to the Principal Certifier.

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

22. Waste Management During Development

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**23. Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plan(s), and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) one additional locally native tree shall be planted within the property boundary to achieve at least 6 metres height at maturity, and shall be selected from Northern Beaches Council's Native Plant Species Guide - Manly Ward, Manly DCP Schedule 4 - Part B - Native Tree Selection, or Council's Tree Guide,
- c) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- d) the nominated *Rhapiolepis* shall not be planted and shall be replaced with a non self-seeding species of similar size and form,
- e) mass planting shall be installed at minimum 1metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- f) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
- g) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

Prior to the issue of an Occupation Certificate, details (from a landscape architect, landscape designer or qualified horticulturalist) shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

24. Condition of Retained Vegetation

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,

c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

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:

- 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 Certifier prior to the issue of an Occupation Certificate.

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

26. **Geotechnical Certification Prior to Occupation Certificate**

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

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

operational standard.

28. **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 Certifier prior to the issue of an Occupation Certificate.

Reason: Proper identification of buildings.

29. **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 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

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifier, 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 Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To protect human life.

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

30. **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 fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan(s) and any conditions of consent.

The approved landscape planted areas consisting of lawn, planting at grade, planting on structure shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

31. **Geotechnical Recommendations**

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

32. **Swimming Pool/Spa Motor Noise**

The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.









