

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 14 AUGUST 2024

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 14 August 2024
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 pay respect to Elders past and present.

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF THE DEVELOPMENT DETERMINATION PANEL MEETING HELD ON 24 JULY 2024

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel Meeting held on 24 July 2024 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	REV2024/0019 - 38 FRANCIS STREET FAIRLIGHT - REVIEW OF DETERMINATION OF DA2023/1583 FOR DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE
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PURPOSE

1. To refer the attached application for determination as required under adopted delegations of the Charter.
2. To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the building height standard.

RECOMMENDATION

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to REV2024/0019 for Review of Determination of DA2023/1583 for Demolition works and construction of a dwelling house on land at Lot 18 Sec B DP 978391, 38 Francis Street FAIRLIGHT, subject to the conditions set out in the Assessment Report.

Reporting manager	Steve Findlay
TRIM file ref	2024/544570
Attachments	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2024/0019
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Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 18 DP 978391, 38 Francis Street FAIRLIGHT NSW 2094
Proposed Development:	Review of Determination of DA2023/1583 for Demolition works and construction of a dwelling house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Abigail Larkin Architects Pty Ltd

Application Lodged:	01/07/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	12/07/2024 to 26/07/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 17.6%
Recommendation:	Approval

Estimated Cost of Works:	\$ 937,800.00
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EXECUTIVE SUMMARY

This application is referred to the Development Determination Panel (the DDP) for consideration of a Review of Determination REV2024/0019 for demolition works and the construction of a dwelling house.

The application is a review of Development Application DA2023/1583, which was approved by the DDP on 27 March 2024. The DA was reported to the DDP due to the application involving a >10% variation to clause 4.3 "Height of Buildings" of the *Manly Local Environmental Plan 2013* (MLEP). Condition 12 of this consent required the approved master bedroom north-facing balcony to be reduced in depth from 1.3m (normal balcony) to 300mm (Juliet balcony) to alleviate visual and acoustical privacy impacts to the adjoining property to the north (40 Francis Street).

Under this review application, the applicant has requested that Condition 12 be removed and the proposed master bedroom balcony be approved without any privacy measures. It is noted that no design amendments to the development, as proposed under DA2023/1583, are made under this review of determination application.

The assessing officer has assessed the application in accordance with section 8.3 of the Environmental Planning and Assessment Act 1979 (EP&A Act) and has concluded that an equitable privacy outcome for the occupants of the development and 40 Francis Street can be achieved, subject to a condition that requires a 1.2m high solid balustrade to be erected on all elevations on the master bedroom balcony, in lieu of reducing the balcony to a Juliet style and only 300mm. This has been discussed in further detail throughout this report.

The application was exhibited for 14 days and did not receive any submissions.

Accordingly, it is recommended that the DDP change the determination of DA2023/1583 and approve the application with the amended version of Condition 12, now referred to as Condition 8 in the draft set of conditions.

Additionally, as Conditions 10 and 13 'Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans' imposed under DA2023/1583 were duplicated conditions, the consent has been amended to consolidate these conditions into one condition, now referred to as Condition 16 in the draft set of conditions.

PROPOSED DEVELOPMENT IN DETAIL

Proposed Development under Development Application DA2023/1583

The applicant sought approval for demolition works and the construction of a three storey dwelling house. The application was reported to the DDP for determination due to the development involving a 17.6% variation to clause 4.3 of the MLEP.

The DDP approved the development application; however, included a bespoke condition of consent that required a reduction to the size of the first floor north-facing balcony adjacent to the master bedroom (Condition 12). Condition 12 reads as follows:

12. Amendments to the approved plans

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

- *The first floor balcony of the master bedroom is to be reduced to a juliet style balcony with a maximum width, when measured from the D14 sliding doors, of 300mm.*

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

The assessing officer of the subject application (REV2024/0019) notes that this condition was not included in the assessment report for DA2023/1583; however, was included by the DDP to alleviate privacy impacts to the northern adjoining property (40 Francis Street). It is also important to note that

the assessing officer of the subject review of determination application is not the same assessing officer that assessed DA2023/1583.

Proposed Development under this Review of Determination REV2024/0019

The applicant seeks a review of Development Application DA2023/1583. The applicant has requested that Condition 12 of DA2023/1583 be deleted.

The works proposed under this application involve the demolition of existing on-site structures and the construction of a three storey dwelling house. The applicant has not made any design amendments to the development that was proposed under DA2023/1583.

This application is being referred back to the DDP for determination in accordance with Council's delegation protocols, due to the application constituting a review of determination made under section 8.3 of the EP&A Act.

Important Note:

Due to the time constraints of the review of determination process, which required review of determinations to be determined within six (6) months of the Development Application determination date, the application has not been referred to Council's Development Engineers for comment. Noting that the scope of works are the same as what was proposed under DA2023/1583 and that Council's Engineers were supportive of the application. Council's assessing officer has included the same conditions recommended by the Development Engineers for DA2023/1583 under this recommendation.

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
Assessment - SEPP (Sustainable Buildings) 2022

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 18 DP 978391 , 38 Francis Street FAIRLIGHT NSW 2094
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Francis Street. The site is regular in shape with a frontage of 12.19 metres (m) along Francis Street and a depth of 32.155m. The site has a surveyed area of 392.0 square metres (sqm) The site is located within the R1 General Residential zone pursuant to the <i>Manly Local Environmental Plan 2013</i> (MLEP 2013) and accommodates a part 1-2 dwelling house within a landscaped setting. The site has a westerly orientation and is located on a slope of approximately 3.53m (or 12.2%), falling from the rear south-eastern corner toward the front north-western corner. The site is not known to have any threatened species. Adjoining and surrounding development is characterised by residential developments, ranging in height from one (1) to three (3) storeys within landscaped settings.

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:

- **Development Application DA265/09** for alterations and additions to a residential dwelling approved by Council on 16 November 2009.
- **Development Application DA2023/1583** for demolition works and construction of a dwelling house approved by Council (the DDP) on 27 March 2024.

APPLICATION HISTORY

A site inspection was carried out on 24 July 2024.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

In accordance with Section 8.3 of the EP&A 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 27 March 2024 and the notice of determination was issued on 3 April 2024. The review was lodged on 1 July 2024 and is to be considered by the Northern Beaches Development Determination Panel on 14 August 2024, which is within 6 months of the date of determination.

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

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

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

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

Assessment of Condition imposed under DA2023/1583 that is the subject of this Review

12. Amendments to the approved plans

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

- *The first floor balcony of the master bedroom is to be reduced to a juliet style balcony with a maximum width, when measured from the D14 sliding doors, of 300mm.*

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

The applicant has requested that this condition be deleted. In support of this request, the applicant has provided the following justification:

- *"The proposed balcony on the first floor level along the northern elevation is located off the master bedroom. This balcony is 1.3 metres in depth, and 3.34 metres in width (with a floor area of 4.4m²). These dimensions do not allow for entertaining purposes and is expected to be used only by the occupants of the master bedroom. Furthermore, the balcony is sited opposite one (1) window along the southern elevation of 40 Francis Street. Council's records indicate that this window is sited to the walk-in robe of the master bedroom. For these reasons, and those reasons as detailed above, this balcony is considered to be acceptable with no unreasonable privacy impacts upon the occupants of 40 Francis Street".*

Planner Comment

It is understood that the DDP imposed Condition 12 to alleviate visual and acoustical privacy impacts to the adjoining property to the north (40 Francis Street).

In considering the applicant's request for a review, the assessing officer concurs with the applicant's

justification that the proposed balcony would not represent unreasonable acoustical privacy impacts due to the balcony being only 1.3m in depth and 3.34m in width. The limited size of the balcony, coupled with the fact that the balcony is sited adjacent to a bedroom (which is a low trafficable area), will preclude the balcony from occupying large gatherings of people. As such, the acoustical privacy impacts will be acceptable.

Notwithstanding, the assessing officer does not concur with the applicant's justification that the proposed balcony would not represent unreasonable visual privacy impacts. While the balcony is small in area, it is noted that the balcony is setback approximately 3.0m from a walk-in robe (bedroom) window on the northern adjacent property. As such, due to the minimal separation, there would be opportunities for downward overlooking into the adjoining bedroom window. While there is existing screen planting, which is being retained, along the northern side boundary, Council has not given significant weight to this landscaping as a privacy mitigation measure, as the use of landscaping as a privacy attenuation measure is contingent on continued maintenance and good climatic conditions. This notion was outlined in the *NSW Land and Environment Court Case of Super Studio v Waverley [2004] NSWLEC 91*.

To mitigate opportunities for overlooking, a condition is recommended to require all elevations (i.e. north, east and west) of the balcony adjacent to the master bedroom to be affixed with a 1.2m high solid balustrade. It is noted that the proposed balcony is elevated slightly higher than the adjacent bedroom window due to the topography of the land. As such, taller privacy screen is not required as the solid balustrade will restrict downward overlooking from seated positions or when the occupants are not standing directly on the edge of the balcony. The 1.2m high solid balustrade will also not preclude northern sunlight onto the balcony and master bedroom and will deliver a balanced outcome for both the occupants of the development and northern adjoining property (40 Francis Street). It is noted that the proposed condition will also safeguard the amenity of the adjoining property to the north should it be redeveloped.

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 application has been publicly exhibited from 12/07/2024 to 26/07/2024 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Note: An alternate Landscape Officer is used to assess the Review Application. The application is for review of the determination under DA2023/1583, and specifically the application request is to address condition of consent 12, that have been imposed regarding the first

Internal Referral Body	Comments
	floor balcony associated with the master bedroom. There are no changes to the landscape outcome as determined in the Landscape Referral under the development application, and the imposed conditions are justified and shall remain.

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 (Sustainable Buildings) 2022

A valid BASIX Certificate was lodged with this application. It is noted that this is the same BASIX Certificate as what was approved under DA2023/1583 and still remains valid as there have been no amendments to the proposed development.

The BASIX Certificate meets the requirements of *State Environmental Planning Policy (Sustainable Buildings) 2022*.

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:

Ausgrid have reviewed DA2023/1583 and raised no objections, subject to conditions. Council have included these conditions as part of the recommended conditions under REV2024/0019.

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	10m	17.6%	No
Floor Space Ratio	FSR: 0.6:1 (235.2sqm)	FSR: 0.51:1 (202.6sqm)	-	Yes

Note: The proposed building height and FSR is consistent with the development approved under Development Consent DA2023/1583.

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

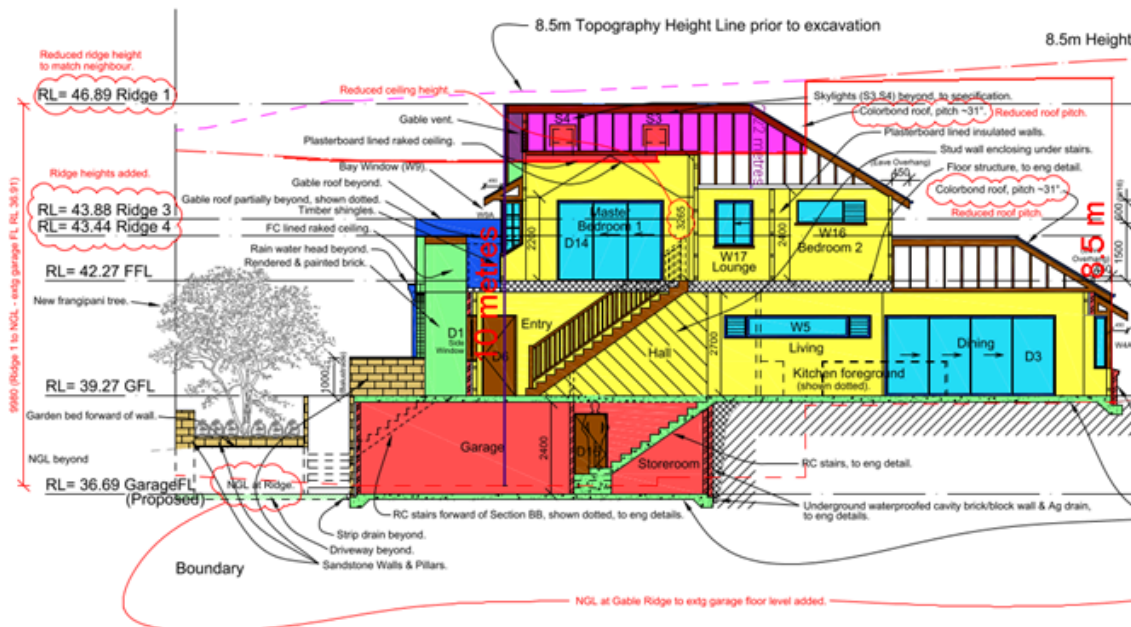
The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.3 - Height of Buildings

Requirement: 8.5m

Proposed: 10.0m

Percentage of variation: 17.6%



With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is/is not accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

(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.

Comment:

The objectives of this clause have been considered pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979*.

Subclause (2) of this clause provides that:

(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 is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 is unreasonable or unnecessary in the circumstances of this application as the applicant has demonstrated that the objectives of Clause 4.3 of the MLEP are achieved, notwithstanding the non-compliance. The objectives of Clause 4.3 of the MLEP are assessed below as follows:

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

Comment:

The proposed maximum building height and amended roof form will be appropriate with the topographic landscape of the subject site, commensurate with the prevailing building heights of adjoining and nearby residential developments, and achieve consistency with the desired future streetscape character of the Fairlight locality.

b) to control the bulk and scale of buildings,

Comment:

Having regard to the portion of the building that extends beyond the prescribed maximum building height (being the roof form to the first floor level), the proposal in its entirety is contextually appropriate to the subject site and commensurate with nearby and adjoining residential developments. The development is sufficiently articulated and stepped in from lower floors to negate the bulk and scale of the built form.

c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Comment:

An examination of the subject site and the surrounds has concluded that the non-compliant building height will not give rise to adverse view loss. No submissions were received in relation to view loss.

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

Comment:

Detailed shadow diagrams and elevational hourly shadow diagrams accompany the application. A detailed assessment of the proposed development against the solar access requirements has been undertaken within this report under section 3.4.1 Sunlight Access and Overshadowing. The proposal is considered to provide a reasonable level of solar access to the subject site and adjoining properties.

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

Comment:

The subject site is located within the R1 General Residential zone within the MLEP 2013, which is not a recreation or environmental protection zone. Therefore, this underlying objective of Clause 4.3 is not for consideration for this assessment.

(b) 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.'

The Clause 4.6 Request argues, in part:

- The development proposal has been designed in accordance with the existing 'natural' ground levels across the site that have existed prior to the excavation and construction of the existing dwelling. The historically excavated driveway and garage of the existing dwelling creates an anomaly in the height plane overlaid above the site which does not reflect the true topography of the site prior to development.*
- The technical measurement of building height for the purpose of Clause 4.3 of the LEP is from the existing ground level, being the excavated ground level beneath the driveway and garage to the highest point of the building. The proposed building exceeds the height of building*

development standard only in those locations where there has been historical excavation.

- *The proposed development achieves the objectives of Clause 4.3(1) of the Manly LEP 2013 based on the following assessment:*
 - *The subject site is located within the R1 – General Residential Zone and has been designed to wholly comply with the 8.5m height of buildings development standard but for the artificial topographical anomaly. The variation to the standard is the result of the historically excavated driveway and garage of the existing dwelling creating an anomaly in the height plane overlaid above the site. The development proposal has been designed with a stepped roof form with the upper ridge of the development positioned to align with the ridge height of 36 Francis Street, Fairlight facilitating a stepped built form across the streetscape as the slope falls from south to north along Francis Street.*
 - *Objective (b) is met by the standard itself. The objective is not an end in itself see Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61 at [49]. There is no need to demonstrate that this objective is met because this standard achieves the objective and clause 4.6 of the allows a variation in appropriate circumstances. Regardless, the development proposal has been designed to wholly comply with the 8.5m height limit albeit the portion of the building which technically varies the standard due to the historically excavated levels on the site.*
 - *There are no significant view corridors from the road reserve across the subject site, notwithstanding the existing subject site currently contains an existing dwelling house and the development proposal is for a new dwelling house that is consistent with the bulk and scale envisaged for the R1 - General Residential Zone.*
 - *The development proposal has been designed to wholly comply with the height of buildings development standard with the portion of the building technically varying the standard a result of historical excavation on the site and an anomaly in the natural topography rather than additional building height. The ridge of the development has been designed to align with the ridge of 36 Francis Street at RL46.89 to ensure that side windows of 34 Francis Street which benefit from an outlook over the subject site will not be impacted by the development proposal. The additional building height does not correlate with a taller building but rather an anomaly within the existing topography on the site.*
 - *The additional building height is the result of a historically excavated lower ground level rather than the ridge height of the development. As addressed in the shadow diagrams submitted with the development application the first floor addition has been located on the site to maximise the solar access to adjoining residences. The principle private open space of the subject site maintains sunlight for approximately 4 hours at mid-winter achieving the solar access controls. The principle living room associated with number 36 Francis Street maintains sunlight access from 11.00am – 3.00pm being 4 hours which meets solar access controls. The rear window of number 36 Francis Street will maintain sunlight for 2 hours, being a good design outcome for these east-west oriented allotments.*
- *In line with the decisions in Wehbe v Pittwater Council [2007] NSWLEC 827, the proposal meets the first test as the objectives of the development standard are achieved notwithstanding the non-compliance with the standard. Furthermore it is unreasonable to require compliance with the height of building development standard due to the following reasons:*
 - *The development proposal has been designed in accordance with the existing “natural” ground levels across the site that existed prior to the excavation and construction of the existing building. The historically excavated driveway and garage of the existing dwelling, creates an anomaly in the height plane overlaid above the site which does not reflect the topography of the site prior to its development. The technical measurement of building height for the purposes of clause 4.3 of the LEP is from the existing ground level, being the excavated ground level beneath the driveway and garage, to the highest point of the building. The proposed building height exceeds the height of buildings development standard only in those*

locations where there has been historical excavation. *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582.*

- The portions of the building which vary the height standard do not preclude the development proposal from achieving the objectives of the standard. The upper ridge of the development proposal presents a consistent building height with 36 Francis Street maintaining a stepped building presentation to the street as the street slopes from the south to the north. The development proposal will not set a precedent for increased densities within the locality beyond that envisaged for the R1 – General Residential Zone.

- The public benefit of maintaining the development standard is not considered significant because the development proposal has been designed to align with the 8.5m height limit. The portions of the building which vary the development standard are specific to the site circumstances being the existing excavated lower ground level.

- The development proposal is in the public interest because it is consistent with the objectives of the standard and the objectives of the R1 – General Residential Zone which are addressed with the Statement of Environmental Effects submitted with the development application.

- There are sufficient environmental planning grounds to justify contravening the development standard. Pursuant to clause 4.6(3)(b) of the LEP, there are sufficient environmental planning grounds to justify the variation to the height of buildings development standard because:
 - The variation to the 8.5m height standard under the LEP is the result of the historically excavated driveway and garage of the existing dwelling. The historical excavation creates an anomaly in the height plane overlaid above the site and does not reflect the topography of the site prior to its development. Disregarding the anomaly, the proposal is within 8.5m above the natural topography of the site. The historical excavation is a recognised environmental planning ground. *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582.*
 - There are no adverse amenity impacts arising from the breach of the height of buildings development standard (with regard to overshadowing, visual privacy, view loss). Noting the variation is a result of a historically lower excavated ground level rather than building height. The lack of adverse amenity impacts arising from a variation is a recognised environmental planning ground. *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 at 34.*
 - The development proposal has been designed consistent with the intent of the height standard being a two storey form. The development is compatible with the scale of residential development within the R1 – General Residential Zone and aligns with the character of development within the vicinity of the site fronting Francis Street. The pitch of the roof form has been designed to be compatible with the established architecture within the vicinity of the site.
- The proposed development meets the relevant aims of the MLEP 2013 as follows:
 - 1.2(2)(a)(i) – The development proposal has been designed to wholly comply with the 8.5m height limit. The roof form includes an upper and a lower ridge, stepping with the topography of the site. The upper ridge height of the development aligns with the ridge of 36 Francis Street ensuring the proposal presents a stepped built form. The roof pitch of the development has been designed to align with the pitch of roofs in the vicinity of the site ensuring the dwelling presents a good streetscape outcome for the site.
 - 1.2(2)(a)(iv) – The portion of the building which varies the height limit is a result of an anomaly in the natural ground line as it is overlaid over the site. The proposed development has been designed to comply with an extrapolated ground line being an appropriate design response ensuring the building is comfortably positioned on the site with regard to the existing topography and its relationship with adjoining residential buildings. The front and rear setbacks of the development proposal have been positioned on site to maximise solar access of the adjoining dwelling to the south and whilst also preserving the outlook of 34 Francis Street which overlooks the subject site.
 - 1.2(2)(b) – The development proposal accommodates an appropriate residential density on

the site within a form compatible with the planning controls. The dwelling has been designed with a considered architectural approach that aligns with streetscape precedence, and proposed landscape works will ensure that the dwelling is viewed within a landscape setting.

- *The proposed development meets the relevant objects of the Environmental Planning Assessment Act 1979 as follows:*
 - 1.3(c) – *The development proposal is an orderly and economic use of the site being the redevelopment of a residential dwelling to a form consistent with that envisaged by the planning controls. This Clause 4.6 request addresses an existing anomaly on the site – excavated garage being an appropriate environmental planning ground to warrant a variation to the 8.5m height standard which is otherwise wholly met by the development proposal.*
 - 1.3(g) – *The dwelling house has been designed to wholly comply with the 8.5m height limit albeit the component which technically varies the standard resulting from the historically excavated levels. The ridge height and roof pitch has been designed to align with that of the adjoining development and present appropriately to the public domain.*
 - 1.3(h) – *The variation to the height of buildings development standard is the result of the existing excavated levels creating an anomaly within the natural ground line over the site. The variation to the height of buildings development standard will not present as additional building height however will accommodate a built form on the site that appropriately relates to the natural ground levels across the site and adjoining development.*

It is considered the Applicant's written request to vary development standard Clause 4.3 Height of Buildings of the MLEP 2013 is acceptable given the proposed resultant built form will be commensurate with surrounding and nearby residential developments, the extent of previous excavation on the site which has altered the existing ground level. Thus establishing site constraints that make strict compliance with this requirement difficult. The site experiences a cross fall from the southern side boundary toward the northern side boundary. However, as indicated in Figure 1 above, the extent of breach is sited centrally to the proposed dwelling and only to the roof form, with the remainder of the built form sited comfortably beneath the 8.5m maximum height development standard.

Based on the existing excavation of the site, the maximum building height has been measured in accordance with *Merman Investments Pty Ltd Woollahra v Municipal Council [2021] NSWLEC 1582*, which is to the existing ground level. However, from an extrapolated measurement, as done within *Bettar v Council of City of Sydney [2014] NSWLEC 1070*, the proposed development would achieve compliance with the requirement prescribed within Clause 4.3. The existing excavation is a sufficient environmental planning ground to warrant contravention of this development standard.

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).

Public Interest:

Matters relevant to public interest in respect of the development are considered in the relevant sections of this report as per Section 4.15(1)(e) of the EPA Act.

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the MLEP 2013.

The submitted written Clause 4.6 variation request is considered to be well founded having regard to the circumstances of this particular development and it is therefore considered appropriate that, in this instance, flexibility in the application of the development standard Clause 4.3 Height of Buildings be applied. In this context the proposal meets the Objects of the Environmental Planning and Assessment Act 1979, contained in Section 1.3, having considered the relevant provisions under Section 4.15 of the EP&A Act.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 392.0sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	Northern Elevation 7.0m (based on gradient 1:12)	6.1m - 6.95m	-	Yes
	Southern Elevation 6.8m (based on gradient 1:20)	4.9m - 5.55m	-	Yes
4.1.2.2 Number of Storeys	2 storeys	Part 2-3 storeys	50%	No
4.1.2.3 Roof Height	Height: 2.5m	2.22m	-	Yes
	Pitch: maximum 35 degrees	29.5 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	4.5m, consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	Northern Boundary 2.3m (based on proposed maximum wall height)	Garage Level 1.63m	29.1%	No
		Ground Floor 1.2m - 3.0m	47.8% max.	No
		First Floor 1.65m - 3.0m	28.2% max.	No
	Southern Boundary 1.85m (based on proposed maximum wall height)	Garage Level 3.65m	-	Yes
		Ground Floor 1.65m	10.8%	No
		First Floor 1.7m	8.1%	No
4.1.4.4 Rear Setbacks	8m	Ground Floor 7.45m - 8.0m	6.85% max.	No
		First Floor 13.35m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements	Open space 55% (215.6sqm) of site area	36.7% (144.0sqm)	33.2%	No

Residential Open Space Area: OS3	Open space above ground 25% (53.9sqm) of total open space	8.7% (18.8sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% (50.4sqm) of open space	66.2% (142.8sqm)	-	Yes
	1 native tree	1 native tree	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	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	5.65m (46.3%)	-	Yes
Schedule 3 Parking and Access	2 spaces	2 spaces	-	Yes

Note: The proposed built form is the same quantitatively as the built form approved under Development Consent DA2023/1583.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	No	Yes
3.4.2 Privacy and Security	No	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

3.4.1.1 Overshadowing Adjoining Open Space

This control requires the following:

- a) *New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June) ; or*
- b) *Where there is no winter sunlight available to open space of adjacent properties from 9am to 3pm, the calculations for the purposes of sunlight will relate to the equinox in March and September from 9am to 3pm.*

Shadow diagrams have been provided with this application (see figure below). With regards to adjoining open space, the proposal achieves compliance with these requirements.

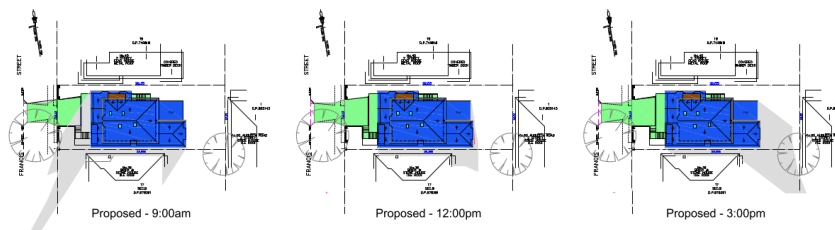


Figure 2. Proposed shadow diagrams (prepared by Abigail Larkin Architects).

3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties

This control requires the following in relation to sunlight to windows or glazed doors to living rooms of adjacent properties:

- a) *for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June);*
- b) *for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June);*
- c) *for all adjacent buildings (with either orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.*

Elevational shadow diagrams with hourly intervals have been provided with this application (see figure below). The subject site has an east to west orientation, therefore requirement (a) applies for this assessment. A floor plan for 36 Francis Street (the property to the south, and indicated in the figure below) is not available on Council's records. Notwithstanding, an assessment of the requirements of (a) above can be undertaken below.

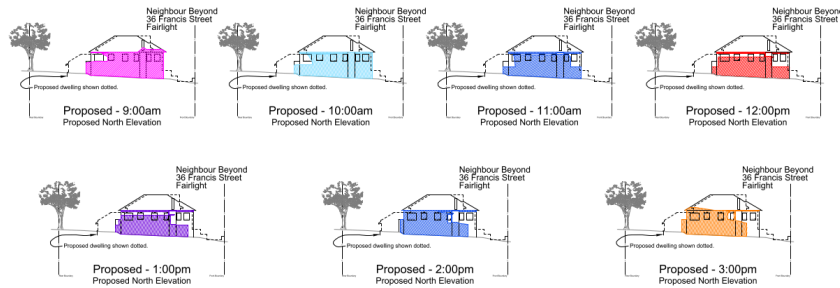


Figure 3. Proposed hourly elevational shadow diagrams to the northern elevation of 36 Francis Street, Fairlight.

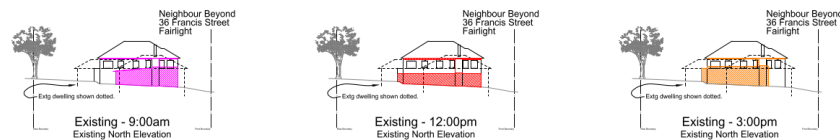


Figure 4. Existing elevational shadow diagrams to the northern elevation of 36 Francis Street, Fairlight.

Merit consideration:

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

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

Comment:

The proposed development will allow for adequate levels of light and sunshine to penetrate the subject site.

Objective 2) To allow adequate sunlight to penetrate:

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

Comment:

As detailed above, and as shown in Figure 2, the proposed development achieves compliance with the requirements of 3.4.1.1 Overshadowing Adjoining Open Space for the subject site and adjoining property to the south, being 36 Francis Street.

With regards to the solar access to internal living rooms of adjoining properties, the proposed works will increase shadowing to the existing windows along the northern elevation of 36 Francis Street at all hours between 9am-3pm throughout the winter solstice, as indicated in Figure 3. However, there is no confirmation as to whether these windows service an internal living room. The proposed dwelling house proposes a rear setback distance that is generally consistent with the existing rear setback distance while maintaining a single storey element of the proposed dwelling, and is consistent with adjoining properties and this allows for a reasonable level of sunlight to be retained to the northern

elevation windows to 36 Francis Street. The submitted solar access demonstrate that the side facing windows to the northern elevation will receive in excess of 3 hours solar access. Given that 36 Francis Street is located to the south of the subject site, it is more vulnerable to overshadowing, further it is noted that the windows impacted are on a side elevation and at ground level, this maintenance of sunlight to the internal areas of 36 Francis Street is equitable. It is noted, however, that a compliant building height is unlikely to comply with the requirements of 3.4.1.2(a), as detailed above, as the first floor level will not be able to maintain the existing solar access to the windows along the northern elevation of 36 Francis Street.

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

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

Comment:

The proposed first floor level has been increasingly setback from the side boundaries to minimise the shadowing impact to the internal windows of 36 Francis Street, notwithstanding the extent of proposed overshadowing.

Having regard to the above assessment, it is concluded that the development is consistent with the objectives of this control. Therefore, flexibility to this DCP control has been afforded, consistent with the requirements set out within section 4.15(3A)(b) of the EP&A Act.

3.4.2 Privacy and Security

3.4.2.1 Window Design and Orientation

This control requires the following:

- a) Use narrow, translucent or obscured glass windows to maximise privacy where necessary.*
- b) When building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.*

Comment:

Multiple windows are proposed along the northern and southern elevations on both the ground and first floor levels. It is noted that the proposed windows are sited at different elevations to opposing side-facing windows on adjoining properties and therefore, will not give rise to adverse privacy impacts.

3.4.4.2 Balconies and Terraces

This control requires the following:

- a) Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.*
- b) Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.*

Comment:

The applicant seeks to delete Condition 12 of DA2023/1583, which was imposed by the DDP. This condition requires the proposed north-facing balcony to be reduced to a depth of 300mm, so as to minimise visual and acoustical privacy impacts.

As previously discussed within the section of this report relating to Section 8.3 of the EP&A Act, the assessing officer does not support the deletion of privacy attenuation measures to the balcony, but considers that reasonable levels of visual privacy can be maintained to the northern adjoining property (40 Francis Street) through the provision of a solid 1.2m high solid balustrade in lieu of reducing the size of the balcony. The assessing officer considers that the size of the balcony is of a small depth and area and would not give rise to adverse acoustical privacy impacts and therefore, a reduction in the size of the balcony is not warranted in this instance. However, the assessing officer notes that a solid balustrade is necessary to prevent downward overlooking into windows on the northern adjoining property.

With this condition in place, it is considered that the development would satisfy the requirements of this control.

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

Description of non-compliance

4.1.2.2 Number of Storeys

This control stipulates the following requires:

- a) *Buildings must not exceed 2 storeys, except on land in areas 'L' and 'N1' on the LEP Height of Building Map and notwithstanding the wall and roof height controls in this plan.*
- b) *Buildings on land in areas 'L' and 'N1' on the LEP Height of Building Map Buildings must not exceed 3 storeys notwithstanding the wall and roof height controls in this plan.*
- c) *Variation to the maximum number of storeys may be considered:*
 - i) *where specific physical site constraints warrant an exception to this requirement. In these circumstances the development must still fully comply with other numeric height controls and development standards; and*
 - ii) *to allow an additional understorey where that storey satisfies the meaning of the basements in the LEP.*

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the MLEP 2013. The proposal has been assessed against these objectives under clause 4.6, above in this report. In summary, the proposed development, notwithstanding the numeric non-compliance to this control and Clause 4.3 of the MLEP 2013, is considered acceptable and can be supported on its merits.

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

Description of non-compliance

4.1.4.1 Street Front Setbacks

This control requires development to be setback 6.0 metres, or the prevailing front building line, from the front boundary line.

The proposed dwelling will have the following front setback distances:

- Garage level: 4.5m, consistent with prevailing building line (see figure below).
- Ground floor level: 4.6m, consistent with prevailing building line (see figure below).
- First floor level: 8.7m.

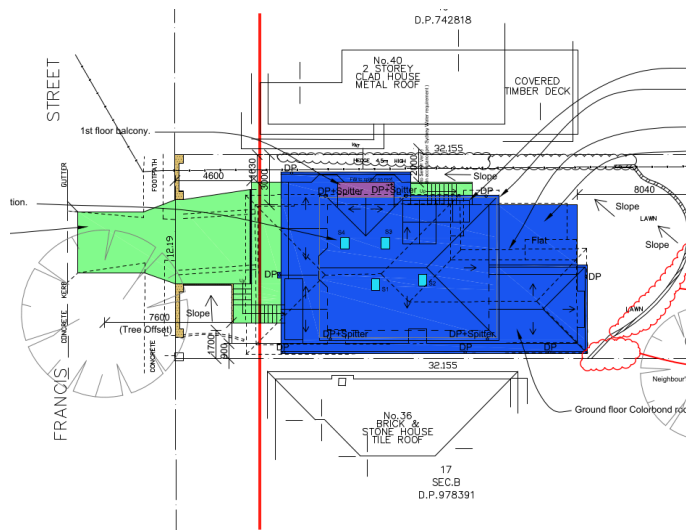


Figure 5. Established front boundary line (indicated by red line).

4.1.4.2 Side Setbacks and Secondary Street Frontages

This control requires development be setback from the side boundaries at a distance measured as one third of the proposed wall height.

The following are the *required* side setback distances:

- **Northern Boundary**: 2.3m (based on proposed maximum wall height).
- **Southern Boundary**: 1.85m (based on proposed maximum wall height).

The following are the *proposed* setback distances:

- **Northern Boundary**: 2.3m (based on proposed maximum wall height)
 - Garage level: 1.63m, which presents a variation of 29.1%.
 - Ground floor level: 1.2m - 3.0m, which presents a maximum variation of 47.8% max.
 - First floor level: 1.65m - 3.0m, which presents a maximum variation of 28.2% max.
- **Southern Boundary**: 1.85m (based on proposed maximum wall height)
 - Garage level: 3.65m.
 - Ground floor level: 1.65m, which presents a variation of 10.8%.
 - First floor level: 1.7m, which presents a variation of 8.1%.

This control also requires any additional windows to be setback 3.0 metres from the side boundaries.

The proposed development includes multiple windows on all levels of the dwelling. These windows are sited within 3.0 metres from the side boundaries.

4.1.4.4 Rear Setbacks

This control requires development to be setback 8.0 metres from the rear boundary line.

The proposed development results in the following rear setback distances:

- Ground Floor: 7.45m - 8.0m
- First Floor: 13.35m

Merit consideration:

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

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

Comment:

The proposed dwelling will be sited over a similar building envelope to the existing dwelling. In this instance, and notwithstanding the non-compliant setbacks, the proposed development will maintain and enhance the existing streetscape with consideration of the desired spatial proportions of the street and the street edge. Additionally, the proposed landscape planting within the front setback area will enhance the landscape character of the street.

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:

Detailed assessments of the proposal against the requirements and outcomes of Section 3.2 'Amenity' of the MDCP have been undertaken within this assessment report. These assessments found that, notwithstanding the numeric non-compliant setback distances and maximum building height, the proposal can provide a reasonable level of solar access, privacy and view sharing between properties. The proposed development will provide articulation to the front facade that creates visual interest in the built form when viewed from nearby properties and public spaces, thus adding character to the existing streetscape. The site is not a corner allotment, notwithstanding, the vehicle manoeuvring of the site does not change from the existing ingress and egress to the site.

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

Comment:

Notwithstanding the proposed numeric non-compliant side setbacks on the garage and ground levels, the proposal promotes flexibility in the siting of buildings, allowing for external pedestrian maneuvering throughout the site.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed development does not seek to remove the site's natural features. The proposal does, however, seek additional to plant additional trees and vegetation throughout the site, as indicated on the proposed Landscape Plan. In this instance, the proposal will enhance and maintain the site's natural features.

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

Comment:

The subject site is not located within bush fire prone land.

Having regard to the above assessment, it is concluded that the objectives of this DCP control are achieved. Therefore, flexibility to this DCP control has been provided, consistent with section 4.15(3A) (b) of the EP&A Act.

4.1.5 Open Space and Landscaping

Description of non-compliance

The subject site is located within the total open space area 3, which requires 55% (215.6sqm) of the total site area to be open space, with 35% (50.4) of this to be dedicated as landscaped area.

The proposed development provides a total open space area of 36.7% (or 144.0sqm), which presents a variation of 33.2%. The proposal does, however, achieve compliance with the minimum requirements for landscaped area on the site, including the planting of multiple native trees, where only one (1) is required by the MDCP.

Further, this control stipulates that any open space above ground must not exceed 25% (53.9sqm) of total open space. The proposal provides 8.7% (or 18.8sqm) of open space above ground, which achieves compliance with this requirement.

Notwithstanding, the proposal has been assessed against the outcomes of this control below.

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:

As detailed above, the proposed development provides a compliant landscaped area. The proposed development seeks to retain the significant Lilly Pilly hedging along a portion of the northern side boundary and eastern rear boundary. The proposal seeks to plant additional Lilly Pilly's and Magnolias within the front setback area to match the existing hedging along the northern side boundary and southern side boundary within the rear setback area.

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 numerically non-compliant total open space has not impacted upon the site's ability to ensure the proposed development achieves compliance with the minimum requirement of landscaped area. In this instance, the proposal seeks to maximise soft landscaped areas throughout the site at ground level. The proposal, as detailed above, includes additional, and appropriate, tree planting throughout the site.

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

Comment:

As discussed earlier within this report, the residential amenity impacts of the development (with regards to view sharing, solar access and privacy) are assessed as being satisfactory, subject to the recommended conditions that require a solid balustrade to be affixed to the master bedroom north-facing balcony.

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

Comment:

The proposed development achieves compliance with the minimum requirement for landscaped area. As such, the proposal can maximise water infiltration on-site through the proposed landscaped area, thus minimising stormwater runoff.

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

Comment:

The proposed landscape plan does not indicate the planting of weeds, nor will the proposal degrade private and public open spaces. Notwithstanding, a condition will be recommended to ensure that weeds are not planted on the site.

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

Comment:

As detailed above, the proposed landscape plan indicates additional planting of trees and vegetation throughout the site. As such, the proposal will maximise wildlife habitat and provide potential for wildlife corridors.

Having regard to the above assessment, it is concluded that the objectives of this DCP control are achieved. Therefore, flexibility to this DCP control has been provided, consistent with section 4.15(3A) (b) of the EP&A Act.

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 \$9,378 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$937,800.

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 EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

PLANNING CONCLUSION

In summary, a detailed assessment has been required to delete Condition 12 of Development Application DA2023/1583, which requires the master bedroom north-facing balcony to be reduced from 1.3m in depth to 300mm in depth so as to alleviate visual and acoustical privacy impacts to the northern adjoining property (40 Francis Street).

Council's assessing officer has concluded that an alternative condition, which requires all elevations of the north-facing master bedroom balcony to have a 1.2m high solid balustrade, would deliver a similar privacy outcome for the occupants of 40 Francis Street, while not significantly reducing the internal amenity for the occupants of the development.

When considered on its merits, the proposed development, as amended via recommended condition, is found to be consistent with the aims and objectives of relevant state and local planning controls and therefore, is worthy of support.

Therefore, the DDP should change the determination of DA2023/1583 by approving the development as amended by the changes to the original Condition 12, now referred to as Condition 8 in the draft set of conditions, in addition to consolidating Conditions 10 and 13 into one condition, now referred to as Condition 16 in the draft set of conditions.

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 permits a contravention of clause 4.3 Height of Building development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3).

Accordingly Council as the consent authority grant Development Consent to REV2024/0019 for Review of Determination of DA2023/1583 for Demolition works and construction of a dwelling house on land at Lot 18 DP 978391, 38 Francis Street, FAIRLIGHT, 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
236/501/D	D	Demolition Plan	Abigail Larkin Architects Pty Ltd	28 January 2024
236/501/D	D	Landscape Plan	Abigail Larkin Architects Pty Ltd	28 January 2024
236/501/D	D	Site and Roof Plan	Abigail Larkin Architects Pty Ltd	28 January 2024
236/501/D	D	Ground Floor Plan	Abigail Larkin Architects Pty Ltd	28 January 2024
236/501/D	D	First Floor Plan	Abigail Larkin Architects Pty Ltd	28 January 2024
236/501/D	D	Garage Floor Plan	Abigail Larkin Architects Pty Ltd	28 January 2024
236/501/D	D	North Elevation (Elevation A)	Abigail Larkin Architects Pty Ltd	28 January 2024
236/501/D	D	South Elevation (Elevation B)	Abigail Larkin Architects Pty Ltd	28 January 2024
236/501/D	D	East Elevation (Elevation C)	Abigail Larkin Architects Pty Ltd	28 January 2024
236/501/D	D	West Elevation (Elevation D)	Abigail Larkin Architects Pty Ltd	28 January 2024
236/501/D	D	Section AA	Abigail Larkin Architects Pty Ltd	28 January 2024
236/501/D	D	Section BB	Abigail Larkin Architects Pty Ltd	28 January 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document

BASIX Certificate 1421325S	n/a	Abigail Larkin Architects Pty Ltd	28 September 2023
Geotechnical Investigation & Slope Risk Assessment reference: P3045_01	1	Morrow	27 September 2023
Waste Management Plan	N/A	Not signed	Not dated
236/104/D - Erosion and Sediment Control Plan	D	Abigail Larkin Architects Pty Ltd	28 January 2024
236/105/D - Stormwater Management Plan	D	Abigail Larkin Architects Pty Ltd	28 January 2024

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

In the event of any inconsistency between 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	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)

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

3. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a Dwelling House, in accordance with the Dictionary of the *Manly Local Environmental Plan 2013*, as follows:

- ***dwelling house*** means a building containing only one dwelling.

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

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 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.

5. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) 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.
- (d) At all times after the submission of 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.
- (e) 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.
- (f) 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.
- (g) Prior to the release of the Construction Certificate, payment of the following is required:
- i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. 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.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that

applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.

- iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (i) 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.
- (j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (k) 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.
- (l) 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.
- (m) 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.
- (n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (o) 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

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$9,378.00 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 \$937,800.00.

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.

7. 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

8. Amendments to the approved plans

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

- The northern, eastern and western elevations of the first floor master bedroom balcony must be affixed with a solid balustrade that is 1.2 metres above the finished floor level of the balcony. The solid balustrade must comprise of a non-transparent solid screen or comprise of a louvre style construction with openings no greater than 20 millimetres that are affixed at a 45 degree angle.

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

9. Boundary Identification Survey

A boundary identification survey, prepared by a Registered Surveyor, shall be provided 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 Certifier prior to the issue of any Construction Certificate.

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

10. 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.

11. **Compliance with Standards**

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

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

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

12. **External Finishes to Roof**

The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.46 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a metallic steel or reflective finish is not permitted.

Green roofs and areas where solar panels (PV) are installed are excluded from conforming to the SA range.

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.

13. **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 Certifier demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website 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.

14. **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. 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.

The drainage plans must address the following:

- i. On site detention is to be designed in accordance with Section 9.3.3 Onsite Stormwater Disposal for Region 3 – Southern Catchments of the Northern Beaches Council Water Management for Development Policy Version 2, 26 February 2021
- ii. On site detention is to be designed in accordance with all other requirements of the Northern Beaches Council Water Management for Development Policy Version 2, 26 February 2021.
- iii. The top water level and any overflow level from the system is to be a minimum of 300 mm above habitable floor levels and 150 mm above garage levels.

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

15. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil or Hydraulic Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) , indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the street.

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

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

16. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

17. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3.0 metres wide in accordance with Northern Beaches Council Standard Drawing A4 3330/1 N 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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

18. **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:** 40 Francis Street, Fairlight

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

19. **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 AS 4970-2009 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 AS 4970-2009 Protection of trees on development sites,
 - ix) the activities listed in section 4.2 of AS 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 AS 4373-2007 Pruning of amenity trees,
 - xi) the tree protection measures specified in this clause must: be in place before work commences on the site, be maintained in good condition during the construction period, and remain in place for the duration of the construction works.
- c) the Principal Certifier must ensure that:
- i) If activated, the arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as compliant to AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

20. **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.

21. **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.

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 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.

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 Certifier.

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

24. **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.

25. **Road Reserve**

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

Reason: Public safety.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

26. Landscape Completion

a) landscape works are to be implemented in accordance with the approved Landscape Plan (drawing 236/106/D by Abigail Larkin Architects dated 28/01/24), and inclusive of the following conditions:

- i) landscape works are to be contained within the legal property boundaries,
 - ii) planting shall be installed as indicated on the approved Landscape Plan(s) unless otherwise imposed by any conditions,
 - iii) one locally native tree shall be installed within the property boundaries and be a minimum pre-ordered planting size of 75 litres; generally selected from Northern Beaches Council's Native Plant Species Guide, or Council's Tree Guide; to achieve at least 6 metres height at maturity; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth generally, 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 and other trees or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
 - iv) mass planting shall be installed at minimum 1 metre intervals (or less) for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at minimum 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,
 - v) 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.
- b) prior to the issue of an Occupation Certificate, details 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.

27. 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.

28. 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.

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 Certifier prior to the issue of an Occupation Certificate.

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

30. **Reinstatement of Kerb**

The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

Reason: To facilitate the preservation of on street parking spaces.

31. **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.

32. **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.

33. **Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

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

34. **Landscape Maintenance**

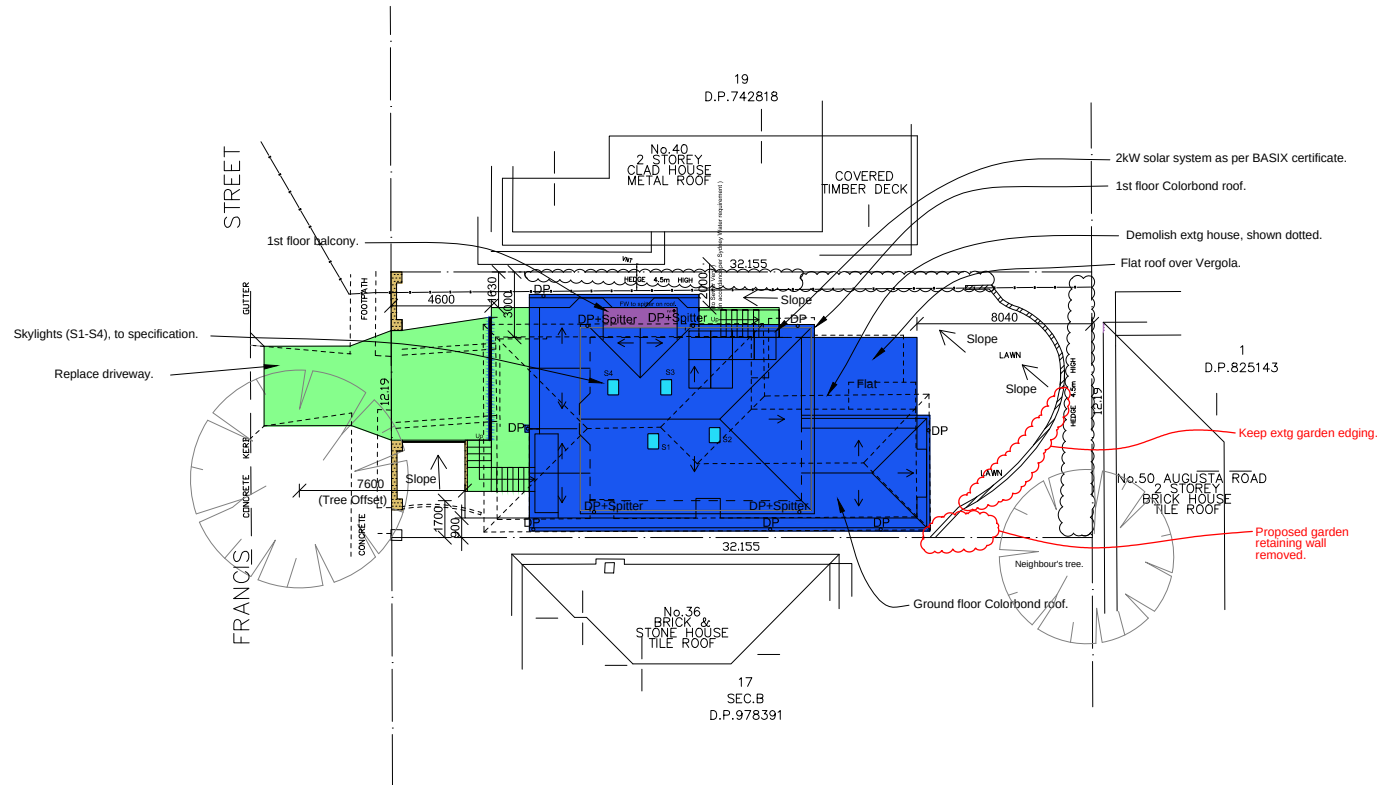
- a) if any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components.
- b) trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.
- c) 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 and any conditions of consent.
- d) the approved landscape planted areas, whether containing lawn, gardens or planters 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.

35. **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.



Total Site Area:	391.97m ²	by calculation (392.0m ² by Survey)
Existing Open Space:	292.08m ²	(74.5% of site area)
Proposed Open Space:	260.90m ²	(66.6% of site area)
Existing Landscaped Area:	193.00m ²	(66.1% of open space)
Proposed Landscaped Area:	166.22m ²	(63.7% of open space)
Existing Floor Space Ratio:	134.24m ²	(34.3% of site area)
Proposed Floor Space Ratio:	182.66m ²	(46.6% of site area)

Site & Roof Plan

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Issue	Amendment	Date
0	DA Submission - Extra Shadows, using ground lines, height lines & dimensions	20/07/2024
1	DA Submission - Ridge height lowered	17/07/2024
2	DA Submission - North Point direction corrected	30/08/2024
3	DA Submission	29/09/2024
4	Pre DA	31/08/2024
5	Section Drawing	06/07/2024

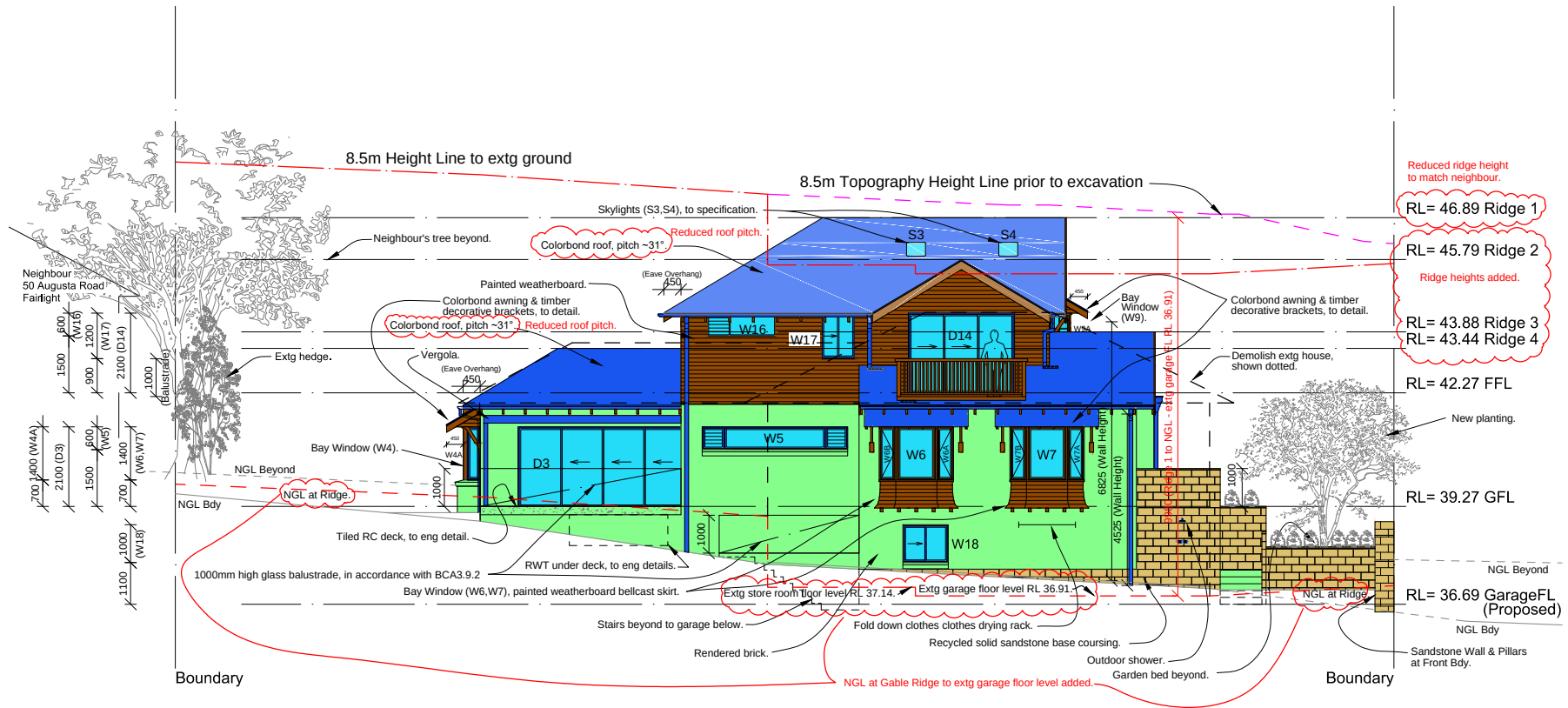
PROJECT: Alterations and Additions
 38 Francis Street, Fairlight, NSW 2094
 Lot 18 Sec. B, DP978391
FOR: Dr Nathan Abrahams & Ms Tanya Schindler

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DRAWING: Site and Roof Plan

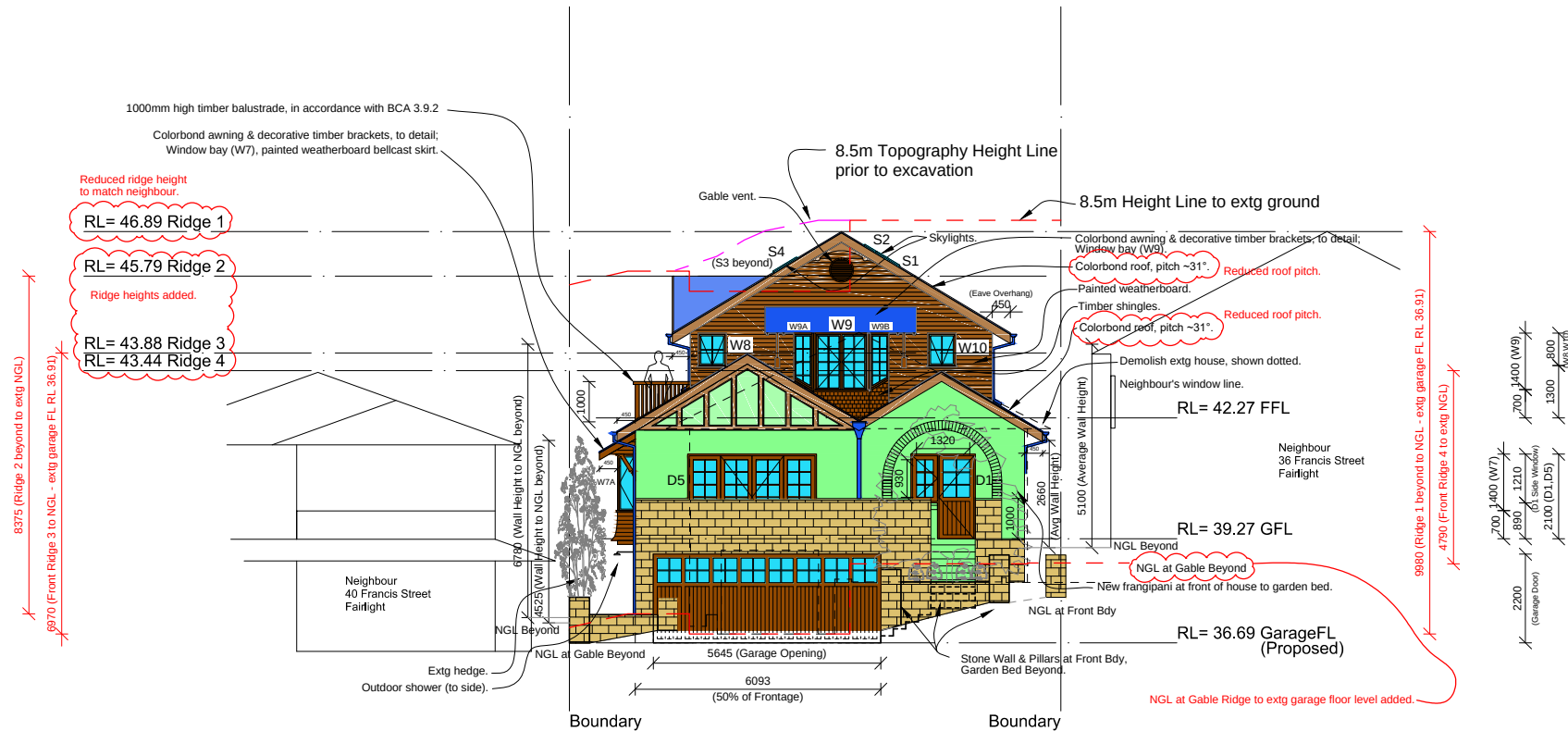
SCALE: 1:200 @ A3

DRAWING No: 236/103/D



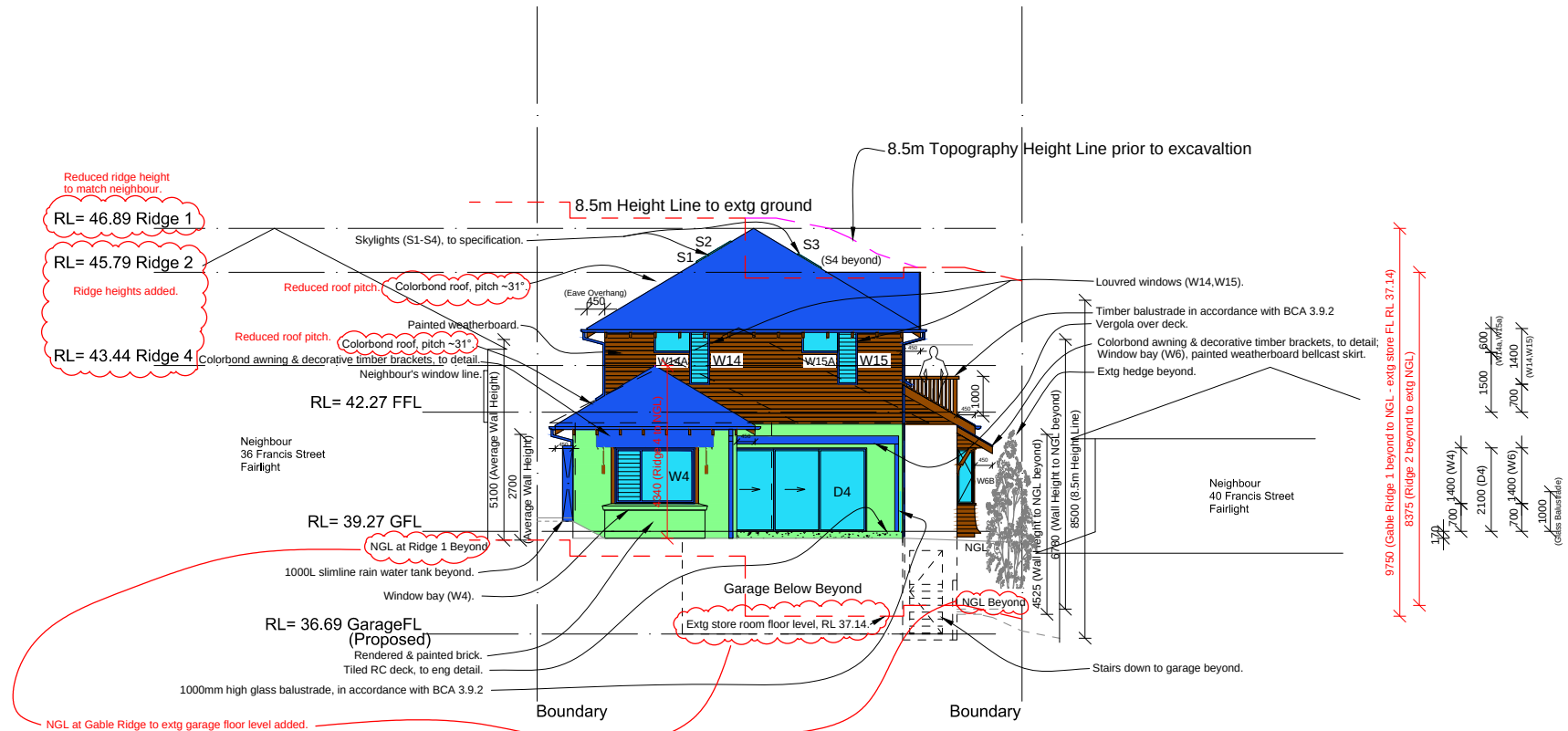
North Elevation

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	0	DA Submission - Extra shadows, extra ground lines, height lines & dimensions	28/07/2024				
	1	DA Submission - Ridge height lowered	17/07/2024				
	2	DA Submission - North Point direction corrected	30/08/2024				
	3	DA Submission	29/09/2024				
	4	Pre DA	31/08/2024				
	5	Section Drawing	05/07/2024				
	Issue	Amendment	Date				



West Elevation

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East Elevation

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	<table border="1"> <thead> <tr> <th>Issue</th> <th>Amendment</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>DA Submission - Extra Shadows, extg ground lines, height lines & dimensions</td> <td>28/07/2024</td> </tr> <tr> <td>2</td> <td>DA Submission - Ridge height lowered</td> <td>10/07/2024</td> </tr> <tr> <td>3</td> <td>DA Submission - North Point direction corrected</td> <td>30/08/2024</td> </tr> <tr> <td>4</td> <td>DA Submission</td> <td>28/09/2024</td> </tr> <tr> <td>5</td> <td>Pre DA</td> <td>31/08/2023</td> </tr> <tr> <td>6</td> <td>Section Drawing</td> <td>05/07/2022</td> </tr> </tbody> </table>	Issue	Amendment	Date	1	DA Submission - Extra Shadows, extg ground lines, height lines & dimensions	28/07/2024	2	DA Submission - Ridge height lowered	10/07/2024	3	DA Submission - North Point direction corrected	30/08/2024	4	DA Submission	28/09/2024	5	Pre DA	31/08/2023	6	Section Drawing	05/07/2022		
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PROJECT: Alterations and Additions
 38 Francis Street, Fairlight, NSW 2094
 Lot 18 Sec. B, DP978391
FOR: Dr Nathan Abrahams & Ms Tanya Schindler

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DRAWING: South Elevation
 (Elevation B)
SCALE: 1:100 @ A3
DRAWING No: 236/302/D

Issue	Amendment	Date
0	BA Submission - Extra shadows, with ground line, height lines & dimensions	28/07/2024
1	BA Submission - Extra height increased	28/07/2024
2	BA Submission - North Point direction corrected	30/10/2023
3	BA Submission	28/07/2023
4	Pre BA	21/08/2023
1	Existing Dwelling	06/05/2023

Chapman Planning Pty Ltd

Suite 8/ 88 Mountain Street
ULTIMO NSW 2007

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14 March 2024

Clause 4.6 Request to Contravene a Development Standard

Property Description: 38 Francis Street, Fairlight
Development: Dwelling House
Development Standard: Clause 4.3 Height of Buildings

Introduction

This is a clause 4.6 written request to support the development proposal for the construction of a dwelling house located at 38 Francis Street, Fairlight.

This Clause 4.6 request seeks to justify the contravention to the 8.5m Building Height Development Standard contained in Clause 4.3 – Height of Buildings of the Manly Local Environmental Plan 2013.

The development proposal has been designed in accordance with the existing ‘natural’ ground levels across the site that have existed prior to the excavation and construction of the existing dwelling. The historically excavated driveway and garage of the existing dwelling creates an anomaly in the height plane overlaid above the site which does not reflect the true topography of the site prior to development.

The technical measurement of building height for the purpose of Clause 4.3 of the LEP is from the existing ground level, being the excavated ground level beneath the driveway and garage to the highest point of the building. The proposed building exceeds the height of building development standard only in those locations where there has been historical excavation. The maximum height of buildings is 9.98m which presents a variation of 1.48m and 17.4% to the 8.5 height limit. As shown in the following diagram the highest point of the development is at R46.89 measured from the existing excavated ground level at RL36.91.

The extent of the variation to the Height of Buildings Development Standard is shown in Section AA and Section BB as extracted below.

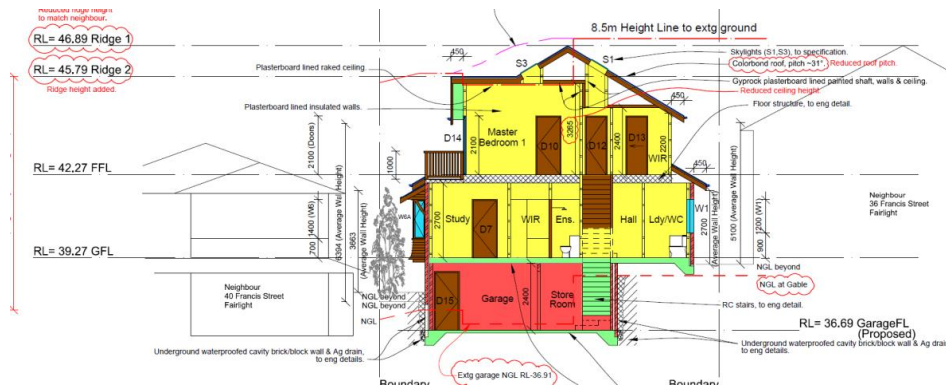


Figure 1 Section AA prepared by Abigail Larkin Architect Pty Ltd.

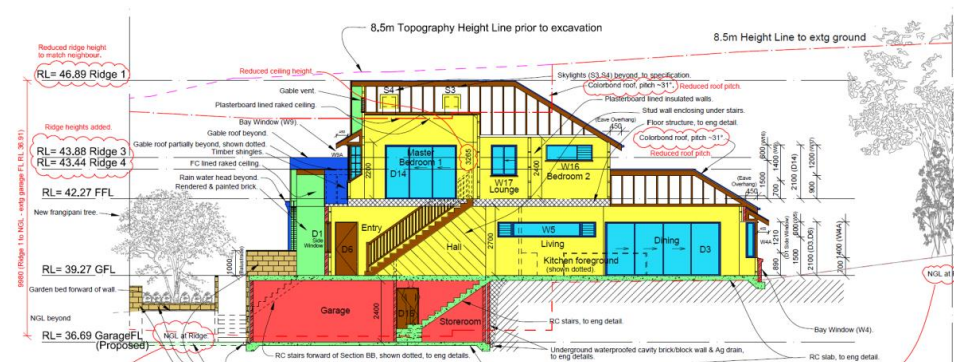


Figure 2 Section BB prepared by Abigail Larkin Architect Pty Ltd.

The fundamental role of clause 4.6 in any local environmental plan is reflected in the recent decision of Commissioner Clay in *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112. In particular, Commissioner Clay notes at [73] of his decision that:

“First, it should be noted cl 4.6 of WLEP is as much a part of WLEP as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome.”

The objectives of clause 4.6 facilitate the flexible application of development standards to particular development in order to achieve an improved environmental planning outcome. This request has been prepared having regard to the Department of Planning and Environment’s Guidelines to Varying Development Standards (November 2023) and various relevant decisions in the Land and Environment Court and Court of Appeal of NSW.

The request to contravene the height of buildings development standard has been prepared in accordance with the principles applied in the relevant case law including:

1. *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79;
2. *Wehbe v Pittwater Council* (2007) 156 LGERA 446;

3. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
4. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
5. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; and
6. *RebelMH Neutral Bay Pty Limited v North Sydney Council* (2019) NSWCA 130
7. *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7
8. *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582

This Clause 4.6 variation request is set out in accordance with the relevant principles established by the Court including:

1. Is the proposed development consistent with the objectives of the development standard which is not met?
2. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (cl 4.6(3)(a))
3. Are there sufficient environmental planning grounds to justify contravening the development standard and therefore the Applicant's written request to vary the development standard is well founded? (cl 4.6(3)(b))

The public interest test has been removed from Clause 4.6. Consistency with the objectives of the land use zone are a consideration under section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act and has been addressed within the Statement of Environmental Effects submitted with the development application.

Matters required to be demonstrated under clause 4.6(3) of the LEP**Compliance with the development standard is unreasonable or unnecessary in this particular case**

Pursuant to clause 4.6(3)(a), of the LEP the variation to the height of buildings development standard is acceptable in the circumstances of the case and compliance with the development standard is considered unnecessary because the proposed dwelling house development achieves the objectives of the Height of Buildings Standard, notwithstanding the numerical variation to the standard.

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

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

- (1) *The objectives of this clause are as follows—*
 - (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
 - (b) *to control the bulk and scale of buildings,*
 - (c) *to minimise disruption to the following—*
 - (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) *views between public spaces (including the harbour and foreshores),*
 - (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
 - (e) *to ensure the height and bulk of any proposed building or structure in a recreation or conservation zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

The proposed development achieves the objectives of Clause 4.3(1) of the Manly LEP 2013 based on the following assessment:

Objective (a): The subject site is located within the R1 – General Residential Zone and has been designed to wholly comply with the 8.5m height of buildings development standard but for the artificial topographical anomaly. The variation to the standard is the result of the historically excavated driveway and garage of the existing dwelling creating an anomaly in the height plane overlaid above the site.

The development proposal has been designed with a stepped roof form with the upper ridge of the development positioned to align with the ridge height of 36 Francis Street, Fairlight facilitating a stepped built form across the streetscape as the slope falls from south to north along Francis Street.

Objective (b): Objective (b) is met by the standard itself. The objective is not an end in itself see *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 at [49]. There is no need to demonstrate that this objective is met because this standard achieves the objective and clause 4.6 of the allows a variation in appropriate circumstances. Regardless, the development proposal has been designed to wholly

comply with the 8.5m height limit albeit the portion of the building which technically varies the standard due to the historically excavated levels on the site.

Objective (c)(i): There are no significant view corridors from the road reserve across the subject site, notwithstanding the existing subject site currently contains an existing dwelling house and the development proposal is for a new dwelling house that is consistent with the bulk and scale envisaged for the R1 - General Residential Zone.

Objective (c)(ii): The development proposal has been designed to wholly comply with the height of buildings development standard with the portion of the building technically varying the standard a result of historical excavation on the site and an anomaly in the natural topography rather than additional building height.

The ridge of the development has been designed to align with the ridge of 36 Francis Street at RL46.89 to ensure that side windows of 34 Francis Street which benefit from an outlook over the subject site will not be impacted by the development proposal. The additional building height does not correlate with a taller building but rather an anomaly within the existing topography on the site.

Objective (c)(iii): Not applicable.

Objective (d): The additional building height is the result of a historically excavated lower ground level rather than the ridge height of the development. As addressed in the shadow diagrams submitted with the development application the first floor addition has been located on the site to maximise the solar access to adjoining residences. The principle private open space of the subject site maintains sunlight for approximately 4 hours at mid-winter achieving the solar access controls. The principle living room associated with number 36 Francis Street maintains sunlight access from 11.00am – 3.00pm being 4 hours which meets solar access controls. The rear window of number 36 Francis Street will maintain sunlight for 2 hours, being a good design outcome for these east-west oriented allotments.

Objective (e): Not applicable.

In line with the decisions in *Wehbe v Pittwater Council* [2007] NSWLEC 827, the proposal meets the first test as the objectives of the development standard are achieved notwithstanding the non-compliance with the standard.

Furthermore it is unreasonable to require compliance with the height of building development standard due to the following reasons:

- The development proposal has been designed in accordance with the existing “natural” ground levels across the site that existed prior to the excavation and construction of the existing building. The historically excavated driveway and garage of the existing dwelling, creates an anomaly in the height plane overlaid above the site which does not reflect the topography of the site prior to its development. The technical measurement of building height for the purposes of clause 4.3 of the LEP is from the existing ground level, being the excavated ground level beneath the driveway and garage, to the highest point of the building. The proposed building height exceeds the height of buildings development standard only in those locations where there has been

historical excavation. *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582

- The portions of the building which vary the height standard do not preclude the development proposal from achieving the objectives of the standard. The upper ridge of the development proposal presents a consistent building height with 36 Francis Street maintaining a stepped building presentation to the street as the street slopes from the south to the north. The development proposal will not set a precedent for increased densities within the locality beyond that envisaged for the R1 – General Residential Zone.
- The public benefit of maintaining the development standard is not considered significant because the development proposal has been designed to align with the 8.5m height limit. The portions of the building which vary the development standard are specific to the site circumstances being the existing excavated lower ground level.
- The development proposal is in the public interest because it is consistent with the objectives of the standard and the objectives of the R1 – General Residential Zone which are addressed with the Statement of Environmental Effects submitted with the development application.

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

Pearson C held in *Four2Five vs Ashfield Council* [2015] NSWLEC 1009 that to satisfy clause 4.6(3)(b), a clause 4.6 variation must identify environmental planning grounds that are particular to the circumstances of the proposed development on the particular site. That decision was upheld on appeal by Pain J ([2015] NSWLEC 90) and the Court of Appeal ([2015] NSWCA 248).

Preston CJ noted in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, that in order for there to be ‘sufficient’ environmental planning grounds to justify a written request under clause 4.6, the aspect of the development that contravenes the development standard should be the focus (as opposed to the development as a whole) of any analysis.

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

- The variation to the 8.5m height standard under the LEP is the result of the historically excavated driveway and garage of the existing dwelling. The historical excavation creates an anomaly in the height plane overlaid above the site and does not reflect the topography of the site prior to its development. Disregarding the anomaly, the proposal is within 8.5m above the natural topography of the site. The historical excavation is a recognised environmental planning ground. *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582
- There are no adverse amenity impacts arising from the breach of the height of buildings development standard (with regard to overshadowing, visual privacy, view loss). Noting the variation is a result of a historically lower excavated ground

level rather than building height. The lack of adverse amenity impacts arising from a variation is a recognised environmental planning ground. *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 at 34.*

- The development proposal has been designed consistent with the intent of the height standard being a two storey form. The development is compatible with the scale of residential development within the R1 – General Residential Zone and aligns with the character of development within the vicinity of the site fronting Francis Street. The pitch of the roof form has been designed to be compatible with the established architecture within the vicinity of the site.
- The proposed development meets the relevant aims of the MLEP 2013 as follows:
 - 1.2(2)(a)(i) – The development proposal has been designed to wholly comply with the 8.5m height limit. The roof form includes an upper and a lower ridge, stepping with the topography of the site. The upper ridge height of the development aligns with the ridge of 36 Francis Street ensuring the proposal presents a stepped built form. The roof pitch of the development has been designed to align with the pitch of roofs in the vicinity of the site ensuring the dwelling presents a good streetscape outcome for the site.
 - 1.2(2)(a)(iv) – The portion of the building which varies the height limit is a result of an anomaly in the natural ground line as it is overlaid over the site. The proposed development has been designed to comply with an extrapolated ground line being an appropriate design response ensuring the building is comfortably positioned on the site with regard to the existing topography and its relationship with adjoining residential buildings.

The front and rear setbacks of the development proposal have been positioned on site to maximise solar access of the adjoining dwelling to the south and whilst also preserving the outlook of 34 Francis Street which overlooks the subject site.

- 1.2(2)(b) – The development proposal accommodates an appropriate residential density on the site within a form compatible with the planning controls. The dwelling has been designed with a considered architectural approach that aligns with streetscape precedence, and proposed landscape works will ensure that the dwelling is viewed within a landscape setting.

The proposed development meets the relevant objects of the Environmental Planning Assessment Act 1979 as follows;

- 1.3(c) – The development proposal is an orderly and economic use of the site being the redevelopment of a residential dwelling to a form consistent with that envisaged by the planning controls. This Clause 4.6 request addresses an existing anomaly on the site – excavated garage being an appropriate environmental planning ground to warrant a variation to the 8.5m height standard which is otherwise wholly met by the development proposal.

- 1.3(g) - The dwelling house has been designed to wholly comply with the 8.5m height limit albeit the component which technically varies the standard resulting from the historically excavated levels. The ridge height and roof pitch has been designed to align with that of the adjoining development and present appropriately to the public domain.
- 1.3(h) – The variation to the height of buildings development standard is the result of the existing excavated levels creating an anomaly within the natural ground line over the site. The variation to the height of buildings development standard will not present as additional building height however will accommodate a built form on the site that appropriately relates to the natural ground levels across the site and adjoining development.

Conclusion

The development proposal has a variation to the height of building development standard contained within Clause 4.3 of the Manly LEP 2013. Notwithstanding the variation the proposal has been designed with a built form that is consistent with the intent of the height standard and is suitable for the subject site.

The development proposal has been designed in accordance with the existing 'natural' ground levels across the site that existed prior to the excavation and construction of the existing building. This is an appropriate design response allowing a good transition between the adjoining development and a good relationship with the natural topography of the site. The historically excavated driveway and garage from the existing dwelling presents an anomaly in the height plane overlaid above the site which does not reflect the true topography of the site prior to development.

The technical measuring of building height for the purposes of Clause 4.3 of the LEP is from the existing ground level being the excavated ground level beneath the drive way and garage to the highest point of the building. The proposed dwelling height exceeds the height of buildings development standard only in those locations where there has been historical excavation.

Consistency with the objectives of the land use zone are a consideration under section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, demonstrating the development is in the public interest and has been addressed within the Statement of Environmental Effects. Notwithstanding, the variation to the height of buildings development standard facilitates a good planning outcome for the site that is consistent with the desired future character for the R1 – General Residential Zone.

The application to vary the height of buildings development standard is well founded and as addressed is the result of the historically excavated levels on the subject site. The proposed building meets the objectives of the height development standard notwithstanding the numerical variation. The proposal achieves a good design outcome for the site that does not result in loss of views from adjoining development, unreasonable building bulk to the public domain, and a good visual outcome from the site that aligns with the established height of adjoining residential properties. The proposed building is a desirable outcome in terms of built form for the site and the locality and will contribute to an uplift in housing stock within the Northern Beaches Local Government Area.

In accordance with the environmental planning grounds addressed in this Clause 4.6
Request the proposed building height can be supported.

Chapman Planning Pty Ltd
Member PIA

**ITEM 3.2 MOD2024/0281 - 149A SEAFORTH CRESCENT SEAFORTH -
MODIFICATION OF DEVELOPMENT CONSENT DA2018/0832
GRANTED FOR CONSTRUCTION OF A DWELLING HOUSE**

PURPOSE

1. To refer the attached application for determination as required under adopted delegations of the Charter.
2. To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the building height standard.

RECOMMENDATION

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- 1.
- B. THAT Council as the consent authority **approves** Development Consent to Mod2024/0281 for modification of Development Consent DA2018/0832 granted for Construction of a dwelling house on land at Lot 2 DP 565073, 149A Seaforth Crescent SEAFORTH, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/544581
Attachments	1 Assessment Report 2 Site Plan and Elevations

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0281
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Responsible Officer:	Lachlan Rose
Land to be developed (Address):	Lot 2 DP 565073, 149 A Seaforth Crescent SEAFORTH NSW 2092
Proposed Development:	Modification of Development Consent DA2018/0832 granted for Construction of a dwelling house
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Tone Wheeler

Application Lodged:	17/06/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	25/06/2024 to 09/07/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 23.53%
Recommendation:	Approval

Executive Summary

This modification application is lodged pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979 which seeks to modify the Development Consent DA2018/0832 granted for Construction of a dwelling house.

The application is referred to the Development Determination Panel (DDP) due to this application for modification of consent under section 4.55(2) (formerly S96(2)) in relation to a development application previously determined by the DDP. Specifically, the application exceeds a non-compliance with a Local Environmental Plan development standard relating to Building height.

Critical assessment issues relate to height of buildings, setbacks and the swimming pool. These have been addressed within the assessment report.

The overall height of the building has been reduced from the previously approved from 11.1m to 10.5m (23.53% variation). Although, a minor addition to the rear results in an RL of 35.365 compared to a maximum RL of 35.20 that was approved under Mod2022/0731. The roof height remains less than the maximum of RL35.5 that was permitted by Condition 22 of the consent under DA2018/0832. The changes to the building height do not unreasonably increase the bulk or scale of the building and the proposed development as been reduced as a whole.

This report concludes with a recommendation that the DDP grant approval to the development application.

PROPOSED DEVELOPMENT IN DETAIL

This modification application lodged pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979 seeks to modify the built form approved under Development Consent DA2018/0832.

The modifications proposed include:

Level 4

- The splayed wall on the north-east side of the dwelling has been replaced with a regular wall alignment.
- The entry and void design have been modified.
- The floor layout has been amended, including changes to the location of the lift and stairs.
- The deck has been removed

Level 3

- The splayed wall on the north-east side of the dwelling has been replaced with a regular wall alignment, and the entry, stair and lift arrangement has been modified.
- The entry has been relocated from the south-east to the north-east side of the dwelling.
- The kitchen length has been increased by 1.15 metres.
- The toilet has been relocated.
- The living area NW-SE dimension has been reduced by 1.8 metres.

Level 2

- The splayed wall on the north-east side of the dwelling has been replaced with a regular wall alignment, and the entry, stair and lift arrangement has been modified.
- The floor layout has been modified and the laundry has been added to this floor.
- The extent of floor plan and deck area has been reduced.
- A door and external stairs to pool have been added.

Level 1

- No floor space is now proposed on Level 1.
- Level 1 now only consists of the swimming pool and cabana.
- The pool equipment store is now provided under new external stairs.

Level 0

- Level 0 has been deleted.

Roof Plan

- The extent of the roof has been changed to reflect changes to the floor plans.

Elevations and Sections

- Changes to window configurations
- Altered entry design and location.
- Changes to the overall height (increase of 0.165m) and extent of the building.
- A privacy wall has been added on the north-east side of the swimming pool.

General

- The Gross Floor Area (GFA) of the building has been reduced by 63.2 square metres when compared to the originally approved scheme.
- The building footprint has been reduced.
- The bulk of the building has been reduced through the number of floor levels being reduced from 5 to 4 levels, the footprint of each floor has been reduced, the pool has been moved closer to the dwelling and the pool RL has been raised to RL23.2 from RL20.1.
- Minor adjustments to floor level heights and floor layouts.

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 - 4.3 Height of buildings
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 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

Property Description:	Lot 2 DP 565073 , 149 A Seaforth Crescent SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Seaforth Crescent. The site is irregular in shape with a frontage of 7.16m along Seaforth and a average depth of 86mm. The site has a surveyed area of 1141m². The site is located within the C3 Environmental Management zone and accommodates vehicular access via an existing driveway from Seaforth Crescent to an existing hardstand car space to the front of the property. The surrounding area includes the harbour foreshore and in particular, Peach Tree Bay. The properties in the area are characterised by multi-storey dwellings on a hillside which slopes steeply down to the Middle harbour foreshore area. On the harbour side of Seaforth Crescent the area has a variety of garages to the front of the allotments and at street level. The site is currently under construction. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by multi-storey dwellings.

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:

- **Mod2022/0731**- Modification of Development Consent DA2018/0832 granted for Construction of a dwelling house was approved on 06/04/2023.
- **DA2018.0832** - Construction of a dwelling house was Approved by DDP on 5 October 2018.
- **DA2017/1339** Construction of a new dwelling house was Withdrawn by the applicant on 13/02/2018
- **DA35/2003**- Part 2 New Building Dwelling was on Approved on 10/12/2003
- **DA35/2003**- New Building Dwelling was on Approved on 19/06/2003.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2018/0832, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2018/0832 for the following reasons: • The proposed changes does not alter the fundamental nature of the approved development. • The modified development does not alter the approved uses or general location and building form as that for which consent was granted. • The modified development does not result in any environmental impacts or environmental risks that would result in the development being categorised as radically different from the original proposal • The proposed modifications will not result in any discernible increased amenity impact to adjoining properties or the streetscape. • The additional modifications reduce the environmental impacts of the proposal in that these changes reduce the extent of cut and fill proposed and reduced the footprint of the development.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2018/0832 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 (2) the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning	None applicable.

Section 4.15 'Matters for Consideration'	Comments
agreement	
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	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. Clause 29 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. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This clause is not relevant to this application. Clauses 62 and/or 64 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. Clause 69 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. Clause 69 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.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.

Section 4.15 'Matters for Consideration'	Comments
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 application has been publicly exhibited from 25/06/2024 to 09/07/2024 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	The proposed modification involves relocation of the approved pool deck closer to the approved house, which will result in a slightly reduced development footprint compared to the approved proposal and is therefore unlikely to result in additional impacts to native vegetation or wildlife habitat.
NECC (Coast and Catchments)	Supported without conditions. No additional new conditions are required. The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience & Hazards) 2021, Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP. 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.

Internal Referral Body	Comments
	State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Sydney Harbour catchment area. Hence, only Clause 2.12 of the SEPP R & H apply for this DA. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Sutherland and Associates Planning dated 22 May 2024, the DA satisfies requirements under clause 2.12 of the SEPP R&H. As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 Foreshores & Waterways Area The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 6.3 of the Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 will apply in assessing this DA. Development consent, among others, must consider clause 6.28. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Sutherland and Associates Planning dated 22 May 2024, it is determined that the relevant clauses of the Part 6.3 including the clause 6.28 have been followed. Zoning of Foreshores & Waterways Area The subject site is located adjacent to the Zone 8 (Scenic Waters – Passive Use). On internal assessment, it is determined that the objectives and assessment criteria of the zone have been met. Rocky Foreshores & Significant Seagrasses Area The subject site is located adjacent to the land identified as a rocky foreshore or significant seagrass area on the Rocky Foreshores and Significant Seagrasses Map. On internal assessment, it is determined that the assessment criteria specified in clause 6.32 of the Part 6.3 have been met. Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005 The subject site is located within a foreshore area identified on the map and therefore the DCP applies to the proposed development. On internal assessment, the proposed development satisfies the requirements of the DCP.

Internal Referral Body	Comments		
	Manly LEP 2013 and Manly DCP Foreshores Scenic Protection Area Management The subject site is also shown to be as “Manly Foreshores Scenic Protection Area” on Council’s Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Sutherland and Associates Planning dated 22 May 2024, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013. As such, it is considered that the application complies 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.		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	The proposal has been referred as the subject property adjoins a heritage item, being: <i>Item I1 Harbour Foreshores</i>		
	Details of heritage items affected		
	Details of the heritage item as contained within the Heritage inventory are: <i>Item I1 Harbour Foreshores</i> <u>Statement of Significance</u> Natural landscape type - Aesthetic. <u>Physical Description</u> Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	Comment if applicable
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	

Internal Referral Body	Comments
	Consideration of Application This modification proposes internal and external modifications to the development approved under the original consent DA2018/0832. The approved dwelling and associated structures are significantly set back from the foreshore and this application does not propose any new structures closer to the foreshore.. As no changes are located within the vicinity of the foreshore heritage item, this modification will have no impact upon the heritage significance of this heritage item. Therefore, no objections are raised on heritage grounds and no conditions required. <u>Consider against the provisions of CL5.10 of MLEP 2013:</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A

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 (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No.1750484S_02 dated 05 June 2024).

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 (Biodiversity and Conservation) 2021

Chapter 6 – Water catchments

The subject property is located within the Sydney Harbour Catchment and Sydney Harbour Foreshores and Waterways Area therefore the provisions of Chapter 6 Water catchments of State Environmental Planning Policy (Biodiversity and Conservation) 2021 apply to this development. Accordingly, an assessment under Chapter 6 has been carried out as follows:

Part 6.2 Development in regulated catchments - Division 2 Controls on development generally

6.6 Water quality and quantity

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following-

- (a) whether the development will have a neutral or beneficial effect on the quality of water entering a waterway,*
- (b) whether the development will have an adverse impact on water flow in a natural waterbody,*
- (c) whether the development will increase the amount of stormwater run-off from a site,*
- (d) whether the development will incorporate on-site stormwater retention, infiltration or reuse,*
- (e) the impact of the development on the level and quality of the water table,*
- (f) the cumulative environmental impact of the development on the regulated catchment,*
- (g) whether the development makes adequate provision to protect the quality and quantity of ground water.*

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied the development ensures-

- (a) the effect on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial, and*
- (b) the impact on water flow in a natural waterbody will be minimised.*

Comment:

The proposal has been reviewed by Council's Coastal Officer, Heritage Officer and Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the adjoining waterway (subject to conditions).

6.8 Flooding

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the likely impact of the development on periodic flooding that benefits wetlands and other riverine ecosystems.

(2) Development consent must not be granted to development on flood liable land in a regulated catchment unless the consent authority is satisfied the development will not—

- (a) if there is a flood, result in a release of pollutants that may have an adverse impact on the water quality of a natural waterbody, or*
- (b) have an adverse impact on the natural recession of floodwaters into wetlands and other riverine ecosystems*

Comment:

The site is not located within a flood prone area.

6.9 Recreation and public access

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider-

- (a) the likely impact of the development on recreational land uses in the regulated catchment, and*
- (b) whether the development will maintain or improve public access to and around foreshores without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation.*

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following-

- (a) the development will maintain or improve public access to and from natural waterbodies for recreational purposes, including fishing, swimming and boating, without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation,*
- (b) new or existing points of public access between natural waterbodies and the site of the development will be stable and safe,*
- (c) if land forming part of the foreshore of a natural waterbody will be made available for public access as a result of the development but is not in public ownership—public access to and use of the land will be safeguarded.*

Comment:

The development is not expected to have any impacts on access.

6.10 Total catchment management

In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consult with the council of each adjacent or downstream local government area on which the development is likely to have an adverse environmental impact.

Comment:

The proposal has been reviewed by Council's Coastal Officer and Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the surrounding natural environment. Based on the expert advice provided and conditions imposed, the proposed works are not considered to have an adverse environmental impact. As such consultation with adjoining local government areas was not undertaken in this instance.

Division 3 Controls on development in specific areas

6.11 Land within 100m of natural waterbody

In deciding whether to grant development consent to development on land within 100m of a natural waterbody in a regulated catchment, the consent authority must consider whether-
(a) the land uses proposed for land abutting the natural waterbody are water-dependent uses, and
(b) conflicts between land uses are minimised.

Comment:

The proposed works will meet these requirements.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
 - b) coastal environmental values and natural coastal processes,
 - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

- d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
- e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- f) Aboriginal cultural heritage, practices and places,
- g) the use of the surf zone.

Comment:

The proposed development is not expected to cause adverse impact to the coastal environment area.

- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
 - a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
 - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

Council is satisfied that the proposed development is appropriately designed and sited to ensure adverse impact to the items referred to in subsection (1) is avoided.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

Council is satisfied the proposed development is appropriately designed and sited in a manner that avoids adverse impact to the coastal use area.

Division 5 General

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

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

Comment:

Council is satisfied the proposed development will not cause an increased risk of coastal hazards on the site or surrounding land.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

All relevant provisions of applicable certified coastal management programs have been considered as part of the assessment of the application.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (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	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	11.1m	10.5m	23.53% (2m)	No
Special height provisions	RL59.40	RL.59.40	No change	N/A	Yes

Floor Space Ratio	FSR: 0.4:1 (456.4sqm)	FSR: 0.33:1 (387.5sqm)	FSR: 0.247:1 (281.8sqm)	N/A	Yes
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Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.3A Special height provisions	Yes
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.5m
Percentage variation to requirement:	23.53%

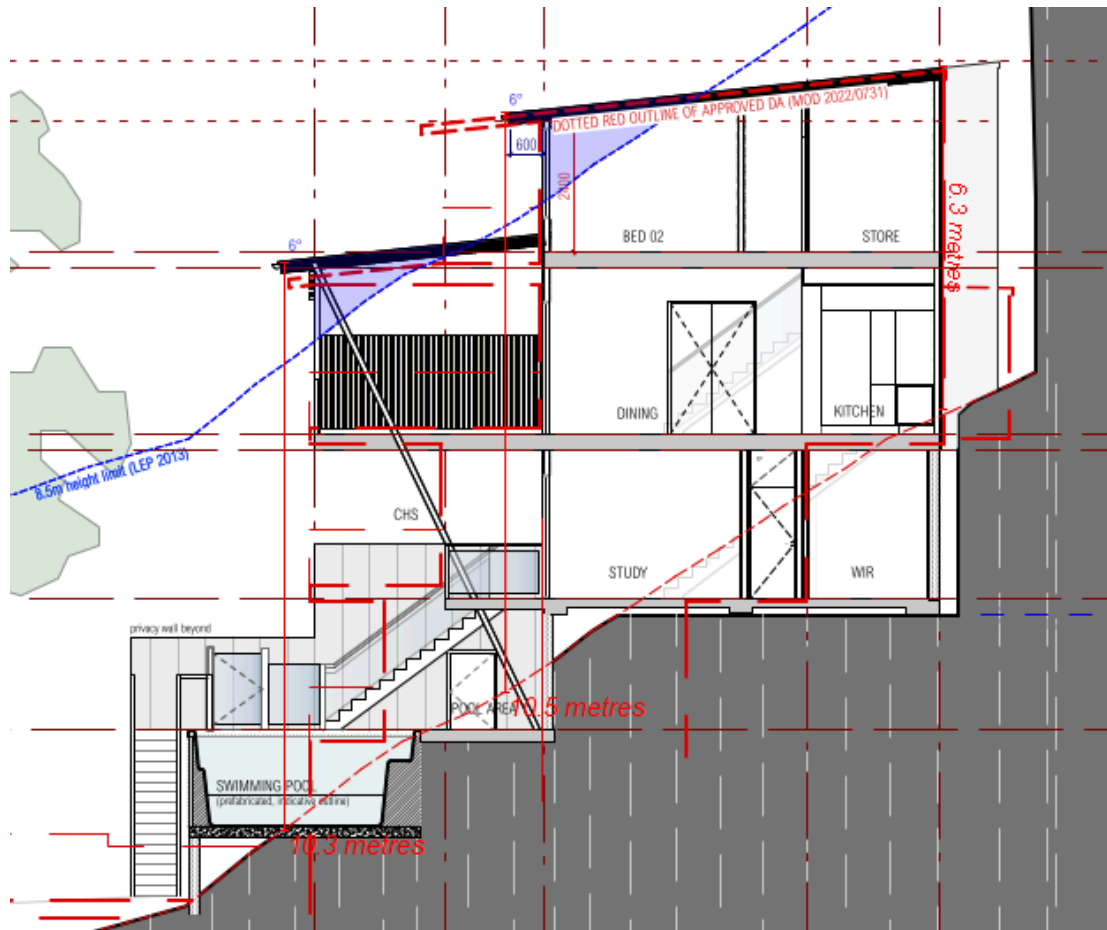


Figure 1: Building height non-compliance.

Assessment of request to vary a development standard:

Whilst the modification application will result in a building height that exceeds the maximum permitted by Clause 4.3 of the Manly LEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of

the variation have been assessed with regard to the objectives of the height of buildings development standard and the underlying objectives of the C3 Environmental Management zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

Comment:

The Applicant's written request under DA2018/0832 has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case

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.'

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.

4.3 Height of buildings

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

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

Comment:

The proposed building height is reasonable given the topography of the land. The dwelling house will not be clearly visible from the streetscape and as such, will not impact the streetscape. The dwelling house footprint allows for sufficient landscaping on the subject site and maintains consistency with the existing landscape character.

b) to control the bulk and scale of buildings,

Comment:

The perceived bulk and scale of the building is reduced in this application from the previously approved. Additionally, the building is set back behind the existing bulk to the south and will not result in unreasonable bulk and scale.

c) to minimise disruption to the following—

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

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

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

Comment:

The impacts on views from the proposed development are considered acceptable, having regards to *Tenacity Consulting V Warringah* [2004] NSWLEC 140.

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

Comment:

The solar impact from the proposed development are minimal and is considered acceptable in regards to the impacts on habitable rooms to the adjacent dwellings and public open space.

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

Comment:

The height non-compliance in recreation or environmental protection zones does not create conflicts to bushland and surrounding land uses.

Zone objectives

The underlying objectives of the C3 Environmental Management zone are:

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

Comment:

The proposal has reasonable measures to ensure ecological, scientific, cultural and aesthetic prot

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

Comment:

The proposal for a new dwelling house is compliant with the numerical requirement for Floor Space Ratio under the Manly, LEP, 2013. As a result, the proposed development is limited to a reasonable extent so as to ensure there is no adverse effect on the above values.

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

Comment:

The proposed dwelling would not have an unreasonable impact on existing tree canopies.

The size and scale of the proposal means that it would not dominate scenic qualities of the foreshore.

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

Comment:

The compliant rear setback between the dwelling house and foreshore, ensures the development

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

Comment:

The proposal involves appropriate landscaping and is compliant with the landscaped open space

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

Comment:

The slope of the land, proposed vegetation and existing vegetation provides a situation in which the

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C3 Environmental Management zone.

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

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

Comment:

The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

4.6 Exceptions to development standards

Whilst the modification will result in a building height that contravenes the maximum permitted by Clause 4.3 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the *Environmental Planning and Assessment Act 1979*, which authorises the development for which consent was granted to be modified, notwithstanding any breach of development standards. As such, no document pursuant to Section 35B of the *Environmental Planning and Assessment Regulation 2021* or Clause 4.6 is required.

The matters set out in Section 4.55(3) are addressed in the relevant sections of this report.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1141m2	Requirement	Approved	Proposed	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling (per 1150m2)	1 dwelling (1141m2) (0.8% variation)	As approved	No (no change)
4.1.2.1 Wall Height	South-west: 8m (based on gradient 1:4 or steeper)	8.9m	8.4m	No (5% variation)
	North-east: 8m (based on gradient 1:4 or steeper)	10.4m	10m	No (25% variation)
4.1.2.2 Number of Storeys	2	4	As approved	No (no change)
4.1.2.3 Roof Height	Height: 2.5m	1m	As approved	Yes
	Pitch: maximum 35 degrees	10 degrees	As approved	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	0m, consistent with prevailing setback	0m, no change	No (no change)
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.8m (based on south-west wall height)	2.735m	2.7m	No (3.57% variation)
	3.33m (based on north-east wall height)	1.7m	1.1m	No (66.67% variation)

	Windows: 3m	2.5m (lift and south east elevation windows)	2.8m (level 3 & 4- south west elevation)	No 6.67% (0.2m)
			2.7m & 2.9m (level 3 living & level 4 bedroom and bathroom- south-east elevation)	No 10% & 3.34% (0.3m & 0.1m)
			>3m (North-east elevation)	Yes
4.1.4.4 Rear Setbacks	8m	24m from swimming pool and outbuilding	33m from swimming pool 38.8m from cabana	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (684.6m2) of site area	81% (925m2)	78.6% (897.2m2)	Yes
	Open space above ground 25% (231m2) of total open space	9.9% (92m2)	12.5% (112.2m2)	
4.1.5.2 Landscaped Area	Landscaped area 40% (370m2) of open space	86.4% (800m2)	93.5% (836.6m2)	Yes
	4 native trees	5 trees	As approved	Yes
4.1.5.3 Private Open Space	18m per dwelling	108.5sqm	>18sqm	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	3.2m	3m	No
	1m curtilage/1.5m water side/rear setback	4m from northern boundary (closest boundary)	4.9m	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	no change	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.5 Landscaping	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
4.1.1.1 Residential Density and Dwelling Size	No	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	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
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.2 Awning supported from the ground	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

The proposed development allows for reasonable levels of privacy to be maintained to adjoining properties as well as the subject property. The amended plans will not result in additional privacy impacts and the merit assessment under DA2018/0832 conducted against the objective of this control still stand.

3.4.3 Maintenance of Views

The proposed development will not result in additional impacts to the views of the adjacent properties and therefore, the merit assessment conducted under DA2018/0832 still stands.

4.1.1.1 Residential Density and Dwelling Size

Clause 4.1.1.1 of the Manly DCP requires 1150m² of site area per dwelling in residential area D9 which incorporates the subject site. The proposed site is 1141m², a 0.8% variation to the numeric control. There is no proposed change to the approved residential density under DA2018/0832, therefore there is no need for a merit assessment in this instance.

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

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

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

Description of non-compliance

Clause 4.1.4.1 of the Manly DCP requires dwelling be setback at least 6m from the front boundary or be consistent with the prevailing building line within the streetscape.

Clause 4.1.4.2 of the ManlyDCP requires development be setback at least one third of the adjoining wall height.

Additionally, Clause 4.1.4.2 requires windows be setback at least 3m from side boundaries.

The development proposed the following:

Front setback- 0m, 100% variation to the numeric control. No change to approved under DA2018/0832.

Windows- SE: 2.7m, 10% variation to the numeric control.

SW: 2.8m, 6.67% variation to the numeric control.

Side setbacks- SW: 2.7m, 3.57% variation to the numeric control.

NE: 1.1m, 66.67% variation to the numeric control.

Merit consideration:

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

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

Comment:

The proposed side setback and window setbacks non-compliance proposed under this modification application do not have any discernible impact on the street, street edge or landscape character of the street. The proposed changes are specifically to the dwelling house which is located away from the streetfront.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*

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

Comment:

The proposed development is not considered to adversely impact privacy to and from the subject site, and surrounding and adjacent sites. The development does not introduce excessive opportunity for overlooking, with the bulk and height of the development considered reasonable in its context. The windows within the 3m requirement are designed to a low scale and will not cause unreasonable privacy impacts.

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

Comment:

Notwithstanding the numerical non-compliances to the side setback requirements, adequate spatial separation and retention of landscaped areas on either side of the proposed dwelling at each level ensures that there is flexibility in the siting of the building. Flexibility is provided in this circumstance as the changes to the dwelling house will not cause any unreasonable amenity impacts.

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:

Additionally, this modification has resulted in a reduction in GFA from the previously approved, increasing the landscaped open space areas. Thus, the proposed development is consistent with the numeric control for landscaped open space with important landscape features on site and immediately adjoining the subject site are to be retained.

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

Comment:

The subject site is not located in a bush fire zone.

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

4.1.8 Development on Sloping Sites

A addendum geotechnical letter has been submitted from AssetGeoEnviro, reviewing the amendments proposed in this application. The addendum letter states that the proposed changes do not change the findings of the original geotechnical report and that it is still valid.

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

Clause 4.1.9 of the Manly DCP requires swimming pools be no higher than 1m above ground level. The proposed swimming pool is proposed 3m above ground level, non-compliant with the numeric control.

It is to be noted that the approved swimming pool under DA2018/0832 was 3.4m above ground level.

Merit consideration

With regard to the consideration of a variation, the proposed 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 numeric non-compliance, the proposed swimming pool is appropriately set back from the side and rear boundaries. While the pool does not meet numerical compliance in height, fencing and setbacks allow for sufficient visual and privacy of the subject site and surrounding properties. An existing condition applies to the original consent limiting the noise of sound producing plant to no more than 5dB(A) above the background level, which will minimise the impact of the filter noise on adjoining properties. Overall, the proposal meets this objective.

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

Comment:

The pool is located to the rear of the property. The height of the proposed swimming pool is deemed to be reasonable given that the proposed swimming pool is not visible from the Seaforth Crescent and the existing sloping topography of the site.

Objective 3) To integrate landscaping.

Comment:

Landscaping is proposed to the rear and sides of the swimming pool. The proposal will meet the numeric control for landscape open space across the site. The existing and proposed landscape 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 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 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 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 EPIs

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

PLANNING CONCLUSION

This proposal, for Modification of Development Consent DA2018/0832 granted for Construction of a dwelling house has been referred to the Development Determination Panel (DDP). The application for modification of consent under section 4.55(2) (formerly S96(2)) has been referred to DDP due to the previous development application being determined by the DDP, and the modification exceeds a non-compliance with a Local Environmental Plan development standard relating to Building height.

No objections have been raised.

The critical assessment issues relate to height of buildings, setbacks and the swimming pool. These have been addressed within the assessment 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 therefore been recommended for approval.

REASON FOR DETERMINATION

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2024/0281 for Modification of Development Consent DA2018/0832 granted for Construction of a dwelling house on land at Lot 2 DP 565073, 149 A Seaforth Crescent, SEAFORTH, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-437910 - MOD2024/0281	The date of this notice of determination	Modification of Development Consent DA2018/0832 granted for Construction of a dwelling house

		A. Add Condition No.1B - Modification of Consent - Approved Plans and supporting documentation
PAN-293870 - MOD2022/0731	06 April 2023	Modification of Development Consent DA2018/0832 granted for Construction of a dwelling house A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation B. Delete Condition 22 - Roof - to be deleted. C. Add Condition 24A - Estuarine Hazard Design Requirements

Modified conditions

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

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
030	2	Site Plan	Environa Studio	06/06/2024
031	2	North West Site Elevation	Environa Studio	06/06/2024
032	2	North East Site Elevation	Environa Studio	06/06/2024
033	2	South West Site Elevation	Environa Studio	06/06/2024
101	3	Plan – Level 4	Environa Studio	06/06/2024
102	4	Plan – Level 3	Environa Studio	06/06/2024
103	5	Plan – Level 2	Environa Studio	06/06/2024
104	3	Plan – Level 1	Environa Studio	06/06/2024
110	3	Plan – Roof	Environa Studio	06/06/2024
121	3	Section - AA	Environa Studio	06/06/2024
122	3	Section - BB	Environa Studio	06/06/2024
131	2	North West Elevation	Environa Studio	06/06/2024
132	2	North East Elevation	Environa Studio	06/06/2024
133	2	South West Elevation	Environa Studio	06/06/2024
134	2	South East Elevation	Environa Studio	06/06/2024

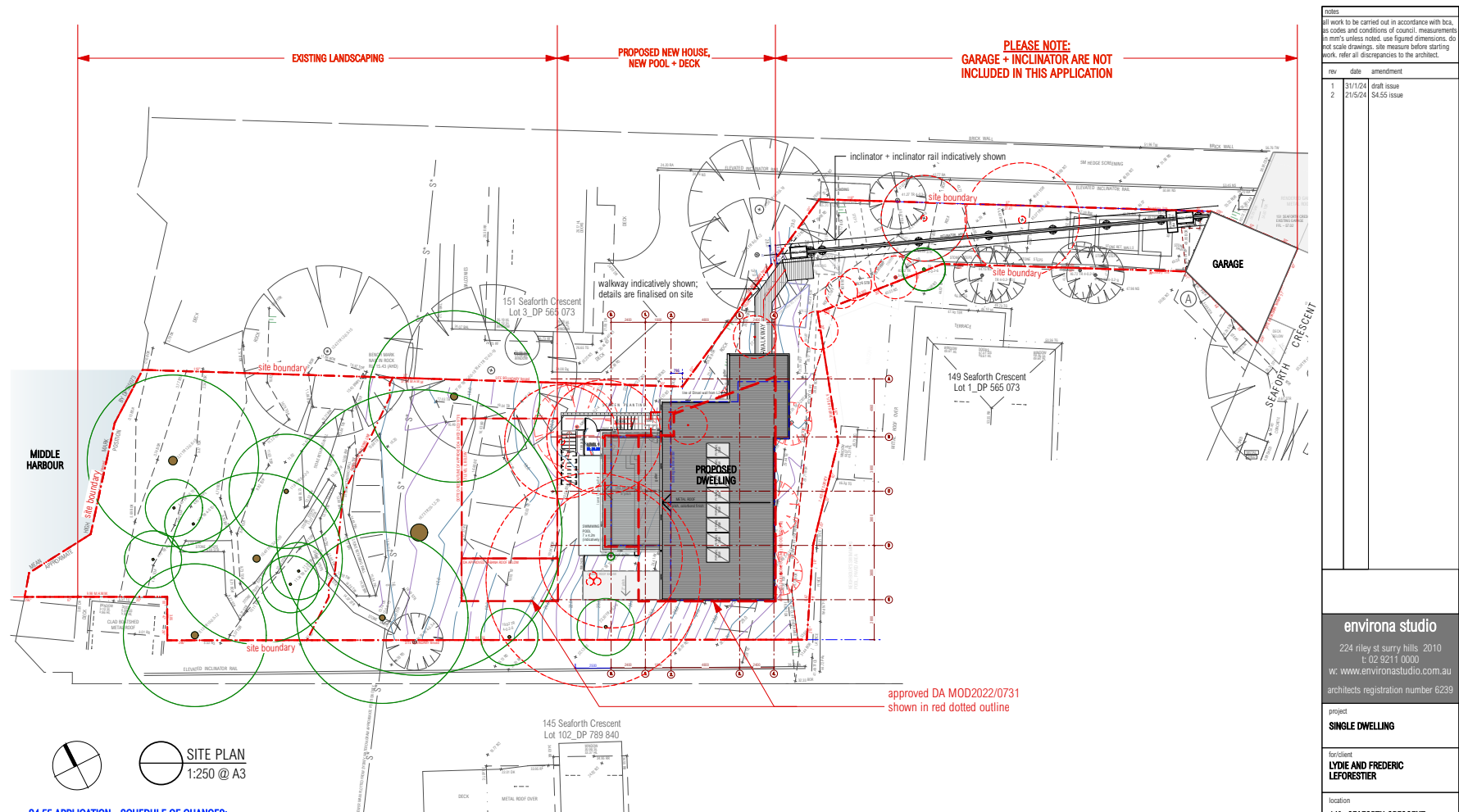
Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Geotechnical Letter	-	AssetGeoEnviro	05 June 2024

BASIX Certificate (1750484S_02)	-	OUTSOURCE IDEAS PTY LTD	05 June 2024
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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.

**\$4.55 APPLICATION - SCHEDULE OF CHANGES:****OVERVIEW:**

- Building footprint changed + GFA reduced
- Bulk of building reduced:
 - as number of floor levels reduced from 5 to 4 levels;
 - more compact floor plans;
 - Pool level raised + moved close to house
- Slight adjustments to floor level heights

LEVEL 4:

- NE splay wall removed; entry + void area amended
- Changed design + location of Stairs + Lift
- Deck removed
- Complete change of floor plan with Rumpus + Beds
- 2, 3 + 4 located on this level

LEVEL 3:

- NE splay wall removed; entry / void area re-designed;
- Changed design + location of Stairs + Lift
- Entry relocated from east to north side of house.

- Kitchen length increased by 1.15m
- Toilet relocated
- Living area NW-SE dimension reduced by 1.8m

LEVEL 2:

- NE splay wall removed;
- Changed design + location of Stairs + Lift
- Reduced extent of floor plan + deck area
- Complete change to floor plan - Bed 1, Ensuite, Study + Laundry located on this level
- Door + external stairs to pool added

LEVEL 1:

- Overall floor plan change - Level 1 amended to POS with swimming pool
- New design feature - angled CHS columns with base at L1 to support L2, L3 decks + deck roof over
- Wall + screen planting added to north for privacy

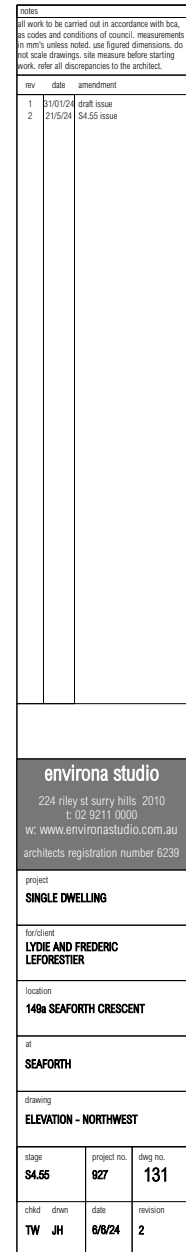
LEVEL 0 - is now redundant**ROOF PLAN:**

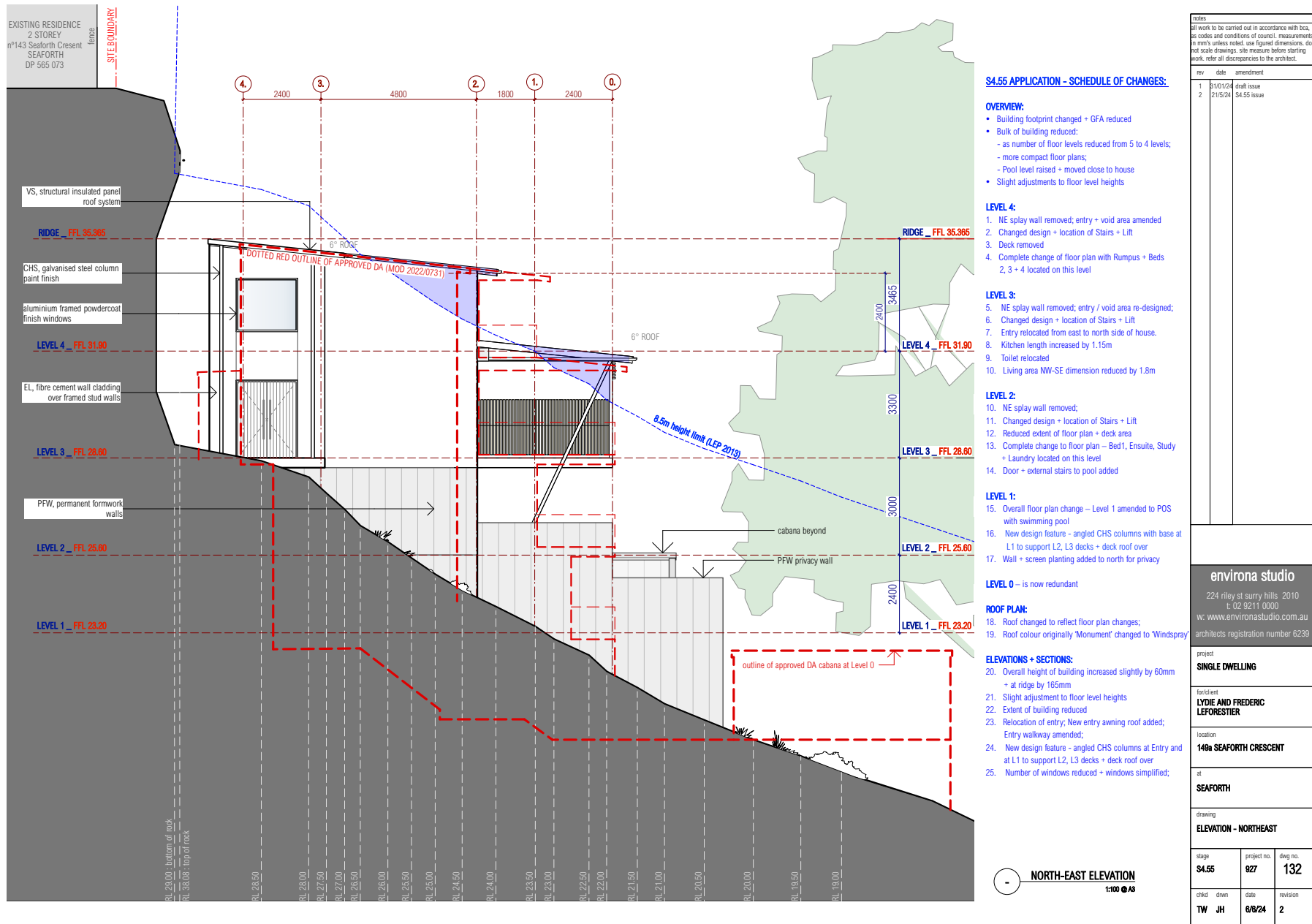
- Roof changed to reflect floor plan changes;
- Roof colour originally 'Monument' changed to 'Windspray'

ELEVATIONS + SECTIONS:

- Overall height of building increased slightly by 60mm + at ridge by 165mm
- Slight adjustment to floor level heights
- Extent of building reduced
- Relocation of entry; New entry awning roof added; Entry walkway amended;
- New design feature - angled CHS columns at Entry and at L1 to support L2, L3 decks + deck roof over
- Number of windows reduced + windows simplified;

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+ at ridge by 165mm
21. Slight adjustment to floor level heights
22. Extent of building reduced
23. Relocation of entry; New entry awning roof added;
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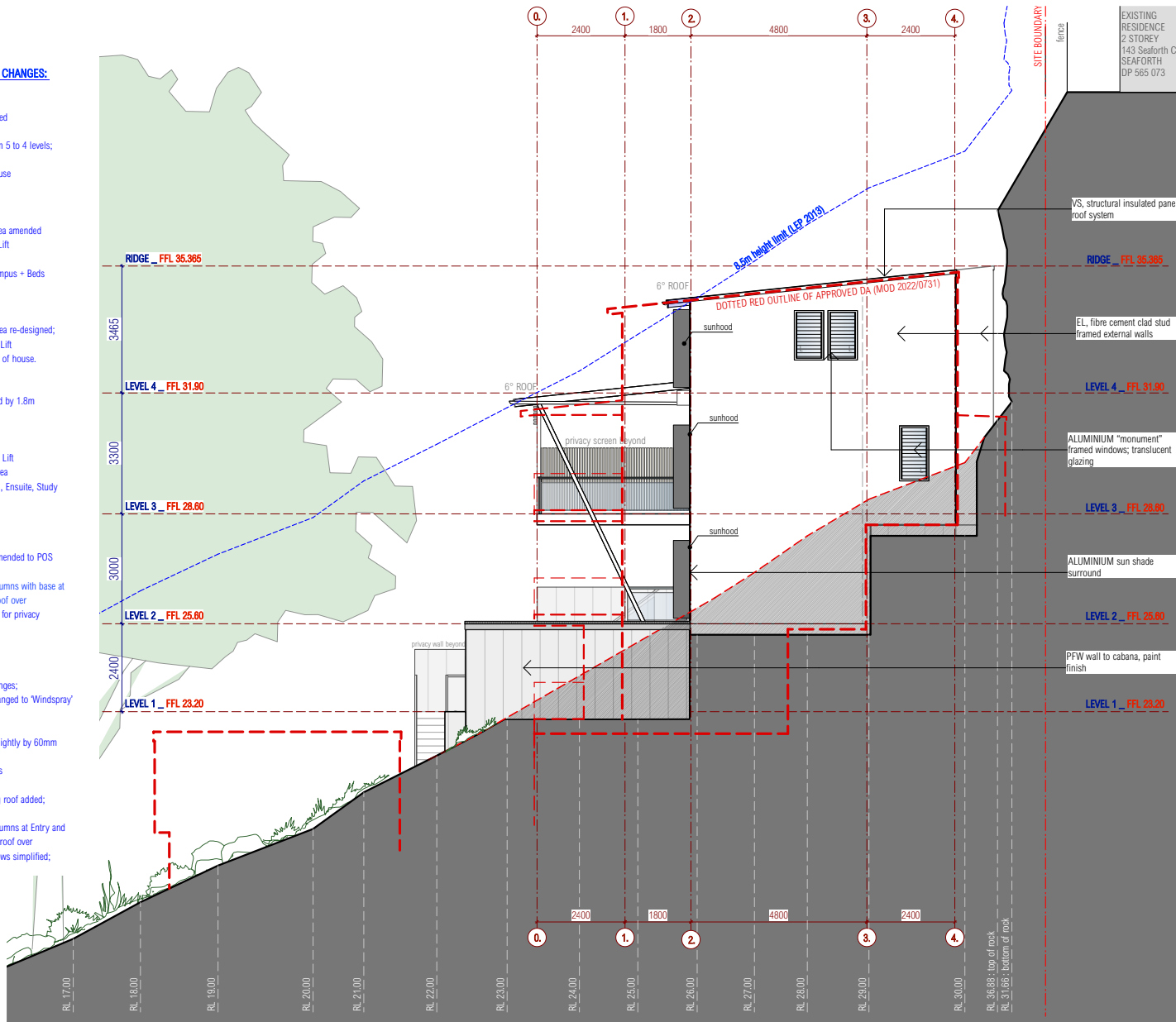
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SOUTH-WEST ELEVATION
1:100 @ AS



EXISTING
RESIDENCE
2 STOREY
143 Seaforth Cr
SEAFORTH
DP 565 073

Notes:
all work to be carried out in accordance with BCA, as codes and conditions of council. measurements in mm's unless noted. use figured dimensions. do not scale drawings. site measure before starting work. refer all discrepancies to the architect.

rev	date	amendment
1	31/01/24	draft issue
2	21/5/24	\$4.55 issue

environa studio
224 riley st surry hills 2010
t: 02 9211 0000
w: www.environastudio.com.au
architects registration number 6239

project
SINGLE DWELLING

for client
**LYDIE AND FREDERIC
LEFORESTIER**

location
148a SEAFORTH CRESCENT

at
SEAFORTH

drawing
ELEVATION - SOUTHWEST

stage \$4.55	project no. 927	dwg no. 133
chld TW	drwn JH	date 8/8/24
	revision 2	

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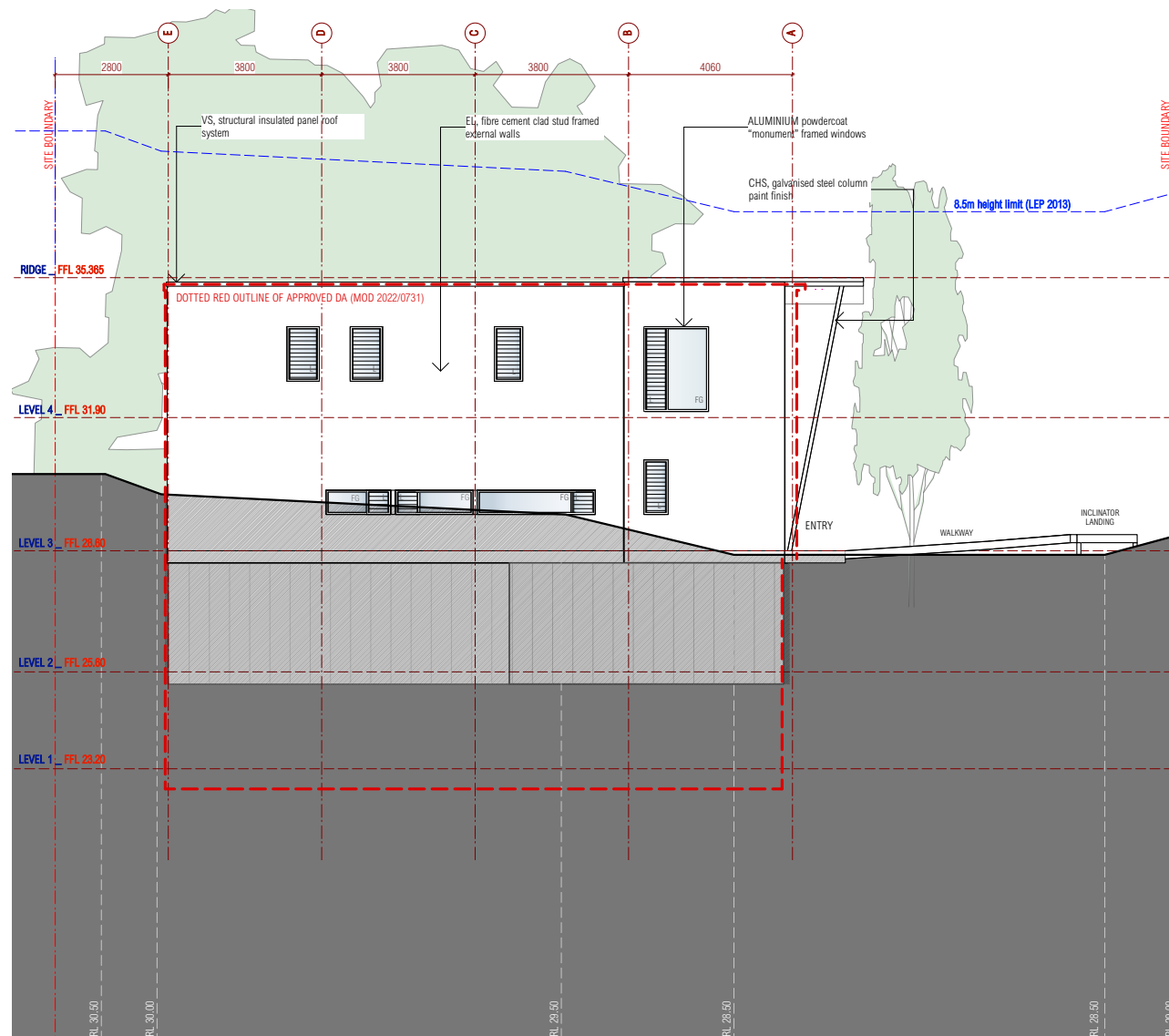
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22. Extent of building reduced
23. Relocation of entry; New entry awning roof added; Entry walkway amended;
24. New design feature - angled CHS columns at Entry and at L1 to support L2, L3 decks + deck roof over
25. Number of windows reduced + windows simplified;



SOUTH-EAST ELEVATION
1:100 @ A3

Notes
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project**SINGLE DWELLING****for client****LYDIE AND FREDERIC LEFORESTIER****location****148a SEAFORTH CRESCENT****at****SEAFORTH****drawing****ELEVATION - SOUTHEAST**

stage	project no.	dwg no.
\$4.55	927	134
chld	drwn	date
TW	JH	8/8/24
		revision
		2

ITEM 3.3	MOD2024/0173 - 59 FAIRLIGHT STREET FAIRLIGHT - MODIFICATION OF DEVELOPMENT CONSENT DA2018/1875 GRANTED FOR PARTIAL DEMOLITION AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING A SPA
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PURPOSE

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

RECOMMENDATION

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 and Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to Mod2024/0173 for Modification of Development Consent DA2018/1875 granted for Partial demolition and construction of a dwelling house including a spa on land at Lot 9 DP 3742, 59 Fairlight Street FAIRLIGHT, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2024/544633
Attachments	1 Assessment Report 2 Site Plan and Elevations

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0173
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Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 9 DP 3742, 59 Fairlight Street FAIRLIGHT NSW 2094
Proposed Development:	Modification of Development Consent DA2018/1875 granted for Partial demolition and construction of a dwelling house including a spa
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Rapid Plans Pty Ltd

Application Lodged:	22/05/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	30/05/2024 to 13/06/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 4.8% 4.4 Floor space ratio: 20%
Recommendation:	Approval

EXECUTIVE SUMMARY

This development application seeks consent for modification of Development Consent DA2018/1875 granted for partial demolition and construction of a dwelling house including a spa.

The application is referred to the Development Determination Panel (DDP) due to modified variations to the height of buildings and floor space ratio development standards, as follows:

- Height of Buildings: Consent granted for a 3.53% variation (8.8 metres) where the control is 8.5 metres - increased to 4.89% (8.916 metres) under this application, and
- Floor Space Ratio: Consent granted for a 21.95% variation (0.73:1) where the control is 0.6:1 - reduced to 19.22% (0.72:1).

The non-compliance with the height standard arises from reconfiguration of the approved building height and form (modified from mansard style as approved, to a skillion style roof under this application).

The non-compliance with the floor space ratio standard arises from a reconfiguration of the approved floor space, including retention of some existing floor space that was originally approved to be removed, and deletion of some approved floor space.

Critical assessment is given in this report with respect to wall height, setbacks and total open space, as well as to the potential impacts on surrounding amenity (solar access, privacy and view sharing) as a result of the modifications proposed. Overall, in consideration of the variations and non-compliant elements proposed, the development is acceptable on merit.

No submissions were received in relation to this application.

This report concludes with a recommendation that the DDP grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks to modify development consent DA2018/1875, granted was for partial demolition and construction of a dwelling house including a spa. The proposal seeks to modify the development as follows:

- Deletion of the front portion of the proposed works, resulting in the retention of the existing dwelling façade presenting to Fairlight Street,
- Removal of additional floor space within the lower ground floor plan,
- Extension of the lower ground floor deck and ground floor level towards the south,
- Amendment to the first floor by deleting approximately half of the upper floor plate, retaining the portion at the southern end of the footprint,
- Amendment to the first floor to remove mansard style roof on the eastern side.
- Increase to the first floor western setback on the western side from to 1.2 metres (approved at 900 millimetres), and
- Amendments to windows on the western and eastern elevation to consist of raised sill height windows and privacy screening.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;

- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Local Environmental Plan 2013 - 6.12 Essential services
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.7 First Floor and Roof Additions

SITE DESCRIPTION

Property Description:	Lot 9 DP 3742 , 59 Fairlight Street FAIRLIGHT NSW 2094
Detailed Site Description:	The subject site is commonly known as 59 Fairlight Street Fairlight and legally known as Lot 9 Section I in DP 3742. The site is located on the southern side of Fairlight Street. The property is rectangular in shape and has a frontage of 6.68 metres to Fairlight Street, an average depth of 40.235 metres, and an overall site area of 268.8m². The property currently contains a two-storey dwelling house with vehicular access via an existing driveway from Upper Clifford Avenue to an existing garage to the rear of the existing dwelling. The property slopes down from north to south and includes a crossfall of 2 metres. The site contains lawn areas and garden beds, but no significant vegetation. Adjoining and Surrounding Development The surrounding area includes multi-dwelling housing, one- and two-storey dwelling houses, and residential flat buildings.

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:

- DA143/2017 for alterations and additions to the existing dwelling house including a first floor addition was approved by Council on 8 September 2017.
- Pre-lodgement meeting PLM2018/0164 was held on 26 July 2018 to discuss alterations and additions to the existing dwelling house. It was advised in the meeting that the extent of works were more accurately described as demolition and construction of a dwelling house. It was also advised that the extent of non-compliance with the height of buildings, floor space ratio development standards of the Manly LEP 2013 and wall height and setback controls of the Manly DCP 2013 could not be supported and the proposal required amendments.
- DA2018/1875 for partial demolition and construction of a dwelling house including a spa was approved by the Development Determination Panel on 12 June 2019.
- DA2022/0628 for alterations and additions to the existing dwelling house was withdrawn by the Applicant on 8 July 2022.
- MOD2022/0709 for modification of Development Consent DA2018/1875 was approved by Council on 24 February 2023.

Works approved under DA2018/1875 have commenced, so the consent has been activated. The modifications proposed under this application have not commenced.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2018/1875, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2018/1875 for the following reasons: • The amendments result in an a comparable quantum of floor space area and building height. • The building footprint of the dwelling house will be generally the same as approved. • The amenity of adjoining dwellings will be generally maintained, particularly with respect to privacy and solar access. • The proposal will not result in any significant impacts on the streetscape.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the	Development Application DA2018/1875 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
modification of that consent, and	
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions have been received in relation to this application.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	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 in the original consent. Clause 29 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. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested with respect to stormwater management. Clause 61 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 in the original consent. Clauses 62 and/or 64 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. Clause 69 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 in the original consent. Clause 69 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 in the original consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.

Section 4.15 '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	No submissions have been received in relation to this application.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 30/05/2024 to 13/06/2024 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The application is for modification to development consent DA2018/1875 as described in reports and as illustrated on plans. It is noted that the extended deck at the lower ground floor results in reduced landscape area, and this matter of landscape area calculation shall be determined by the Assessing Planning Officer. The modification application documents include a Landscape Plan that does not provide adequate landscape outcomes in consideration of the Manly DCP landscape objectives, and it is Landscape Referral's opinion that the approved Landscape Plans under development consent DA2018/1875 and referenced in condition 1.c) shall remain applicable, adjusted as reviewed to suit the proposed modification layout, should the modification application be approved. It is noted that the Landscape Referral Response for DA2018/1875 required by recommended conditions the completion of the landscape works as documented by Serenscapes.

Internal Referral Body	Comments
NECC (Development Engineering)	Updated Comments (25 July 2024): Council's Development Engineer raises no objection to this proposal subject to the amendments to the condition 5 - On-site Stormwater Compliance of DA2018/1875 conditions set and adding an extra condition as detailed at the end of this referral letter. A copy of DRAINS model has been submitted to Council. The stormwater design is generally satisfactory subject to conditions. Original Comments (8 July 2024): <u>Stormwater</u> The site is located within Region 3 Zone 1. Council's Development Engineer requests the below additional information to be submitted to Council. A copy of DRAINS Model supporting the proposed stormwater design shall be submitted to Council. <u>Site Access and Parking</u> No proposed change to the existing site access and parking. <u>Geotechnical Investigation</u> A geotechnical report is provided by White Geotechnical Group, dated 16/05/2024, which is satisfactory.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	The proposal has been referred to Heritage as the site is within the vicinity of a heritage item, listed in Schedule 5 of Manly LEP 2013: Item I50 - Manly Reservoir - Fairlight Street (corner Ashley Parade and Fairlight Street), Fairlight
	Details of heritage items affected
	Item I50 - Manly Reservoir <u>Statement of significance</u> Manly Reservoir (WS 64) is a fine example of the 19th century below ground reservoirs, although originally unroofed (not covered). It is one of the 3 main structures of the Manly Water Supply Scheme, which was independent of the Sydney Water Supply, the other structures being Manly Dam and Bantry Bay Reservoir (WS8). <u>Physical description</u> Manly Reservoir (WS 64) is a rectangular rock cut reservoir, but due to the unevenness of the rock outcrop, the sides have been built up in a gravity section concrete wall to an even height. Standard features include: davit, access ladder, handrails

Internal Referral Body	Comments		
	and inlet and outlet valve chambers. A stone and concrete block wall forming the side of a platform is located on the east side of the reservoir and served as the footings of an elevated tank between 1916 and 1924. Full Service Level: 70 m. Capacity: 4.3 ML		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	The proposal seeks consent for modifications to the approved consent - DA2018/1875, including the retention of the front portion of the existing building, reduced floor area to the upper floor and internal reconfigurations. The proposed retention of the front portion of the existing Federation period building is greatly appreciated as it visually contributes to the existing streetscape. The proposed modifications related to the new additions are mainly within the approved building envelope. The overall proposal is considered to be an improvement to the development and its streetscape presentation. Therefore, no objections are raised on heritage grounds and no conditions required. <u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No		

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 (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A1742098 dated 2 April 2024). 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.

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	Approved (DA2018/1875)	Proposed	% Variation	Complies
Height of Buildings:	Max. 8.5m	Max. 8.8m	Max. 8.916m	4.89%	No
Floor Space Ratio	0.6:1 (161.3m ²)	0.73:1 (196.7m ²)	0.72:1 (192.31m ²)	19.22%	No (4.4m ² reduction)

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.4 Floor space ratio

The floor space ratio approved under DA2018/1875 was 0.73:1, based on a gross floor area of 196.7m².

This modification application results in a reduction from the original approved development. The proposal includes a floor space ratio of 0.72:1, based on a gross floor area of 192.3m². The variation to the floor space ratio development standard was addressed under the original assessment. Given the reduction under this modification application, no further consideration is required.

4.6 Exceptions to development standards

The maximum building height approved under the previous application was 8.8 metres. This modification seeks a maximum building height of 8.916 metres, resulting in a variation of 4.8%.



The application has been made under Section 4.55 of the *Environmental Planning and Assessment Act 1979*, which authorises the development for which consent was granted to be modified, notwithstanding any breach of development standards. As such, no document pursuant to Section 35B of the *Environmental Planning and Assessment Regulation 2021* or Clause 4.6 is required.

However, for completeness, when considering the merits of the variation an assessment is made against objectives of the height of buildings development standard and the R1 General Residential zone.

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

The upper floor of the building remains stepped with the site topography, despite the minor breach. The form of the development is generally consistent with the approval, with the front half of the upper floor removed to retain the existing building height at the street frontage to maintain the existing street character.

The building is generally consistent with the scale and the bulk has been reduced overall from the previous proposal, with a single-storey presentation to the street, instead of the previous 2 storey presentation. It is noted the modifications result in a reduced non-compliance with the applicable floor space ratio.

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

The proposed modifications and resultant development are designed and sited so as not to unreasonably obstruct view to or from public or private places.

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

Comment:

The approved solar access outcome to the rear yard of the adjoining sites is maintained via this modification, with an improvement to the side elevations of the adjoining properties due to the deletion of a large portion of the upper floor bulk.

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

Comment:

Not applicable. The subject site is located within the R1 General Residential zone.

Zone Objectives:

To provide for the housing needs of the community.

Comment:

The proposed modifications retain the residential use of the site.

To provide for a variety of housing types and densities.

Comment:

The proposed modifications retain the single residential use of the site.

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

Comment:

Not applicable. The proposed modifications retain the residential use of the site.

Overall, the minor additional building height breach is not considered to result in a building that is inconsistent with the zone objectives or objectives of the development standards. The development is considered to be generally consistent with the original approval and as such, is supported.

6.2 Earthworks

The objectives of Clause 6.2 Earthworks require development:

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

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

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

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

Comment:

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

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

Comment:

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

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

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition was included in the original consent requiring any fill to be of a suitable quality.

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

Comment:

The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions were included in the original consent to limit impacts during excavation/construction.

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

Comment:

The excavated material will be processed according to the approved Waste Management Plan for the development. A condition was included in the original consent requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

Comment:

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

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

Comment:

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

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

Comment:

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

6.4 Stormwater management

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

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

Comment:

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

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

Comment:

On-site stormwater retention has been incorporated into the development.

(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native

bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

Comment:

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

6.9 Foreshore scenic protection area

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

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) measures to protect and improve scenic qualities of the coastline,*
- (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
- (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Comment:

The subject site does not adjoin foreshore land, but is within the foreshore scenic protection area. The proposed modifications:

- do not unreasonably impact upon the visual amenity of the foreshore and surrounds, and do not result in view loss from a public place to the foreshore,
- are not visible from the coastline, so do not impact upon its scenic quality,
- are suitable in its site context, and
- do not result in conflict between land-based and water-based coastal activities.

6.12 Essential services

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

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

Comment:

The subject site is supplied with the above essential services. The approved development and proposed modifications retain and rely upon these services.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 268.8m²	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height (based on gradient)	East: 6.6m (gradient 1:60)	7.6m - 8.5m	7.9m - 8.3m	No - Reduced
	West: : 7m (gradient 1:12)	6.6m - 8.4m	7.5m - 8.6m	No - Improved
4.1.2.2 Number of Storeys	Max. 2 storeys	3 storeys	Unchanged	As approved
4.1.2.3 Roof Height	Max. 2.5m	400mm	Unchanged	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line (2.2m)	Balcony: 3.6m Dwelling: 4.8m	Original facade	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East Lower Ground: 0.5m - 0.8m	925mm	Unchanged	As approved
	East Ground: 1.6m - 1.9m	900mm	Unchanged	As approved
	East First Floor: 2.5m - 2.8m	900mm - 1.6m	900mm	No
	West Lower Ground: Nil - 0.7m	Nil	Unchanged	As approved
	West Ground: 1m - 1.8m	Nil	Unchanged	As approved
	West First Floor: 2.2m - 2.8m	0-900mm	1.2m	No - Improved
	Windows: 3m	900mm	Unchanged	As approved
4.1.4.4 Rear Setbacks	Min. 8m	Garage: 0.5m	Unchanged	Yes
		Dwelling: 13m	11.3m	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Total Open Space: Min. 55% of site area (147.8m ²)	63% (169.5m ²)	50% (135.4m ²)	No
	Above Ground: Max. 25% of TOS (33.85m ²)	11.44% of 169.5m ² (19.4m ²)	12.7% of TOS (17.2m ²)	Yes
4.1.5.2 Landscaped Area	Landscaped Area: Min. 35% of TOS (47.39m ²)	30.8% of 169.5m ² (52.2m ²)	38.85% of TOS (52.6m ²)	Yes
4.1.5.3 Private Open Space	Min. 18m ²	39.9m ²	Unchanged	Yes
4.1.9 Swimming Pools, Spas and Water Features	Max. 1m above ground	800mm	0m	Yes
	Min. 1m to coping	1m	1m	Yes
	Min. 1.5m to water	1.1m	1.2m	No -

				Improved
Schedule 3 Parking and Access	Min. 2 spaces	1 spaces	Unchanged	As approved

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.7 Building Construction and 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
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	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
4.4.2 Alterations and Additions	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

The proposed modifications result in an improvement to the solar access outcomes for the adjoining properties, due to the reduction at the first floor level. This will allow additional solar access to penetrate side-facing windows of the adjoining properties. The building protrudes 1.6 metres further to the south, though this is not considered to cause significant overshadowing due to the orientation and slope of the lots.

3.4.2 Privacy and Security

The privacy outcomes of the original development is maintained. The modifications maintain privacy screening to the western edge of the ground floor balcony and introduce a new privacy screen to the upper level deck on the western side to further reduce direct overlooking. No concerns have been raised with respect to view loss from adjoining or nearby properties, including with respect to the new privacy screening element. The modified side-facing windows include raised sill height windows and privacy screening to maintain privacy between sites. The resultant development remains acceptable with respect to privacy.

3.4.3 Maintenance of Views

The proposed modifications extend a further 1.6 metres at the ground floor, and 900 millimetres to the first floor. A privacy screen is also added to the south of the first floor, along the western elevation of the rear deck. No objections were raised with respect to view sharing in response to the original application (DA2018/1875), the first modification (Mod2022/0709), or this modification. The proposed modifications result in a development that remains designed and sited so as to suitably share views.

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

The proposed modifications result in modified wall heights, resulting in a 200-millimetre reduction to the eastern elevation, and a 200-millimetre increase to the western elevation. It should be noted that the overall bulk of the upper level has been reduced by approximately half at the first floor level.

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives of Clause 4.3 Height of Buildings of the Manly LEP 2013. The proposal has been assessed against these objectives in the section of this report relating to Clause 4.6 Exceptions to Development Standards. The proposed wall heights are generally consistent with the approved development and the minor increase on the western side will not result in any unreasonable impacts.

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

The first floor eastern has approved setbacks of between 900 millimetres and 1.6 metres to the

eastern elevation, and 900 millimetres to the western elevation. The proposed modifications reduce the eastern first floor setback to 900 millimetres, and increase the western first floor setback to 1.2 metres. It should be noted that the first floor has been reduced by approximately half by way of this modification, resulting in reduced overall bulk.

Clause 4.4.2 Alterations and Additions of the Manly DCP 2013 allows for an upper level addition to follow the alignment of an existing ground floor in the circumstances where there are no unreasonable impacts. This is addressed in the section of this report relating to that clause.

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 amended proposal maintains the existing single-storey cottage façade and front setback. The existing spatial proportions of the street are retained by the modified proposal.

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 modifications to the first floor setback on the eastern side are considered minor and do not result in any unreasonable impacts in terms of amenity on the adjoining site in relation to privacy, overshadowing or views. The reduction to the overall upper floor bulk results in a reasonable outcome on balance.

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

Comment:

In accordance with Clause 4.4.2, the proposal involves a first floor addition that maintains the existing setback on the eastern side, which is reasonable in the circumstance. Different materials and finishes are proposed for the first floor, in order to create visual interest and break up the bulk and mass.

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 provides appropriate planting in the front and rear setback areas, having regard to the character of the surrounding R1 General Residential Zone.

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

Comment:

Not applicable. The site is not classified as bushfire prone land.

4.1.5 Open Space and Landscaping

The proposed modifications result in a reduction in total open space from 169.5m² to 135.4m², due to the retention of the front facade, and the increased form to the rear. 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:

The site does not contain any significant or valuable landscape features that would be impacted by the development.

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 proposal provides for an appropriate area of landscape planting in the front setback (given the retained front facade) and rear setback, consistent with the surrounding area.

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

Comment:

The streetscape outcome is changed via this application to maintain the existing facade and planting in the front setback. As such, this maintains the outcome of the present dwelling. Reasonable amenity is maintained for the surrounding properties, consistent with the original approval and first modification.

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

Comment:

The development is supported by sufficient stormwater management measures, and includes an appropriate proportion of landscaped area to support infiltration.

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

Comment:

The proposal does not introduce weeds or invasive plants.

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

Comment:

The site is located in an urban environment and maintains the current site situation with regards to trees. The site is not within a wildlife corridor.

4.1.7 First Floor and Roof Additions

This clause provides that:

a) First floor additions must complement the architectural style of the ground floor and where possible

retain existing roof forms. Notwithstanding setback provisions, the addition may follow the existing ground floor wall setbacks providing adjoining properties are not adversely impacted by overshadowing, view loss or privacy issues.

b) The dwelling and the form of alterations and additions must retain the existing scale and character of the street and should not degrade the amenity of surrounding residences or the aesthetic quality of the former Manly Council area. In this regard, it may be preferable that the addition be confined to the rear of the premises or be contained within the roof structure.

Comment:

The modified development is an improvement by retaining the existing ground floor facade, thereby maintaining the existing street character, with the new works contained internally and at the rear. The modified development results in an increase to the western upper floor setback (from 900 millimetres to 1.2 metres) and removes the approved mansard-style roof on the eastern elevation. In accordance with a) above, matching the setback of the first floor to the existing ground floor in is acceptable in this circumstance, given the significant reduction in the first floor bulk, and that there will be no unreasonable impacts in relation to privacy, views or overshadowing as a result of the works.

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

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 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 EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

PLANNING CONCLUSION

This development application seeks consent for modification of Development Consent DA2018/1875 granted for partial demolition and construction of a dwelling house including a spa.

The application is referred to the Development Determination Panel (DDP) due to modified variations to the height of buildings and floor space ratio development standards.

The non-compliance with height standard arises from reconfiguration of the approved building height and form (modified from mansard-style as approved, to a skillion style roof under this application).

The non-compliance with the floor space ratio standard arises from a reconfiguration of the approved floor space, including retention of some existing floor space that was originally approved to be removed, and deletion of some approved floor space.

Critical assessment was given with respect to wall height, setbacks and total open space, as well as to the potential impacts on surrounding amenity (solar access, privacy and view sharing) as a result of the modifications proposed. Overall, in consideration of the variations and non-compliant elements proposed, the development is acceptable on merit.

No submissions were received in relation to this application.

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 therefore been recommended for approval.

REASON FOR DETERMINATION

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2024/0173 for Modification of Development Consent DA2018/1875 granted for Partial demolition and construction of a dwelling house including a spa on land at Lot 9 DP 3742,59 Fairlight Street, FAIRLIGHT, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-426041 Mod2024/0173	The date of this notice of determination	Reduction in bulk, retention of existing facade, reconfiguration of approved elements. Additional Conditions: - Condition 1B Modification of Consent - Approved Plans and Supporting Documentation - Condition 7A On-Site Stormwater Detention Details - Condition 7B Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans - Condition 11 Geotechnical Certification Prior to Occupation Certificate - Condition 12 Positive Covenant and Restriction as to User for On-site Stormwater Detention
PAN-292937 Mod2022/0709	23 February 2023	Internal and external reconfiguration. Additional Conditions: - Condition 1A Modification of Consent - Approved Plans and Supporting Documentation - Condition 2A No Approval for Secondary Dwelling

Modified Conditions

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

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
DAMOD1003	1	Site Plan	Rapid Plans	12 April 2024
DAMOD1007	1	Demolition Lower Ground Floor Plan	Rapid Plans	12 April 2024

DAMOD1008	1	Demolition Ground Floor Plan	Rapid Plans	12 April 2024
DAMOD1009	1	Demolition First Floor Plan	Rapid Plans	12 April 2024
DAMOD1010	1	Excavation & Fill Plan	Rapid Plans	12 April 2024
DAMOD1013	1	Landscape Plan	Rapid Plans	12 April 2024
DAMOD1014	1	Sediment & Erosion Plan	Rapid Plans	12 April 2024
DAMOD1015	1	Waste Management Plan	Rapid Plans	12 April 2024
DAMOD2001	1	Lower Ground Floor	Rapid Plans	12 April 2024
DAMOD2002	1	Ground Floor	Rapid Plans	12 April 2024
DAMOD2003	1	First Floor	Rapid Plans	12 April 2024
DAMOD2004	1	Roof	Rapid Plans	12 April 2024
DAMOD3000	1	Section 1	Rapid Plans	12 April 2024
DAMOD3001	1	Section Pool	Rapid Plans	12 April 2024
DAMOD4000	1	Elevations 1	Rapid Plans	12 April 2024
DAMOD4001	1	Elevations	Rapid Plans	12 April 2024
DAMOD5000	1	Material & Colour Sample Board	Rapid Plans	12 April 2024
STORM-1/A	-	Stormwater Management Plan	Taylor Consulting	20 March 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Preliminary Geotechnical Assessment J3982B	-	White Geotechnical Group	16 May 2024
BASIX Certificate A1742098	-	Rapid Plans	2 April 2024
Waste Management	-	Applicant	Undated

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.

B. Add Condition 7A On-Site Stormwater Detention Details to read as follows:

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 Taylor Consulting, drawing number Storm-1/A, dated 20 March 2024. 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.

The drainage plan must address the below.

- The OSD tank must provide storage volume of minimum 3.5 cubic metres.

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 disposal of stormwater management arising from the development.

C. Add Condition 7B Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans to read as follows:

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group dated 16/05/2024 are to be incorporated into the construction plans. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

D. Add Condition 11 Geotechnical Certification Prior to Occupation Certificate to read as follows:

The Applicant is to submit a final geotechnical certificate to the Principal Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

E. Add Condition 12 Positive Covenant and Restriction as to User for On-site Stormwater Detention to read as follows:

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) by a registered surveyor, 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 detention 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.

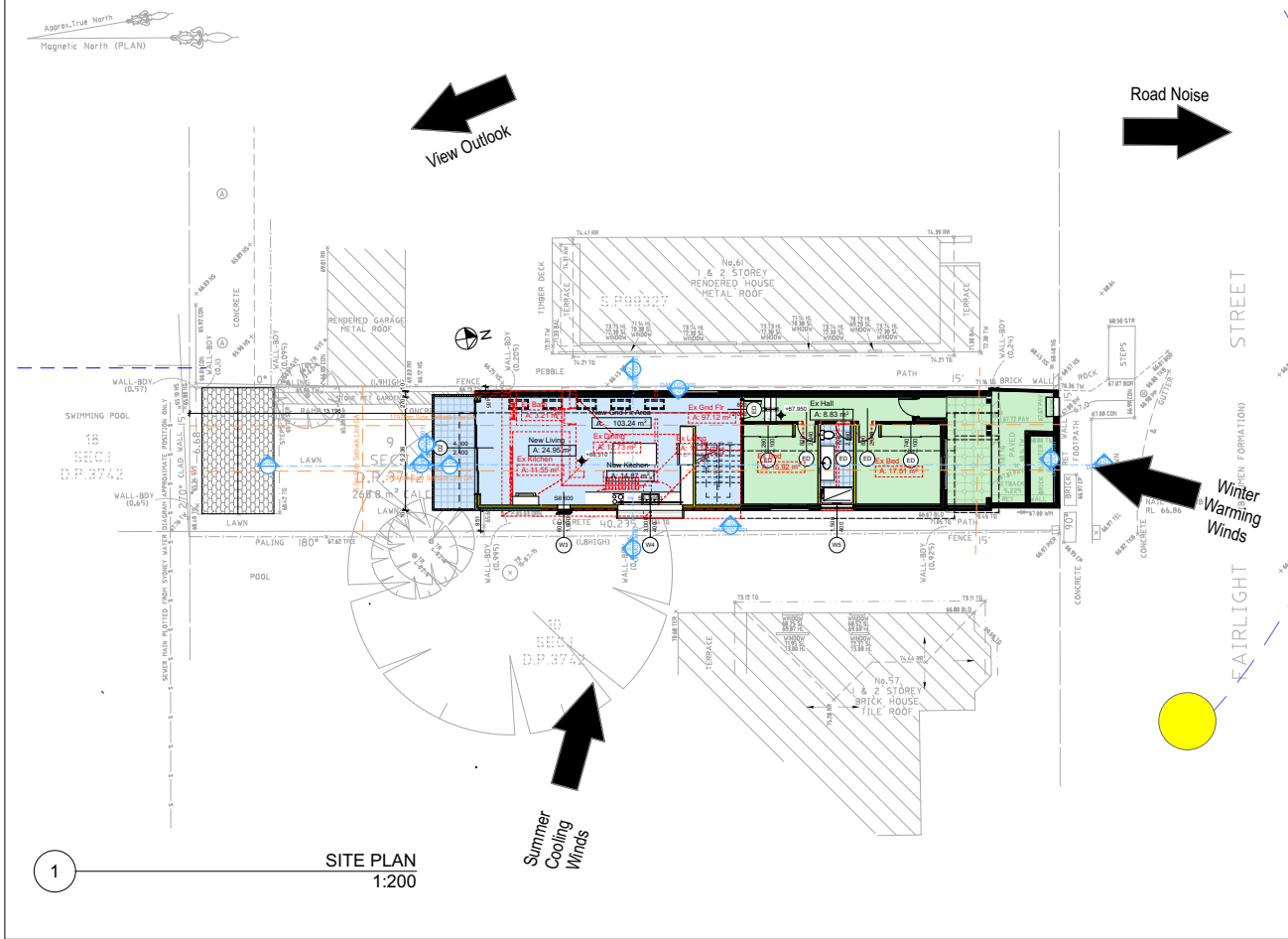
Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

BASIX[®] Certificate
Building Sustainability Index www.basix.nsw.gov.au
Alterations and Additions
Certificate number: A1742098
This certificate confirms that the proposed development will meet the NSW government's requirements for sustainability, if it is built in accordance with the commitments set out below. Terms used in this certificate, or in the commitments, have the meaning given by the document entitled "BASIX Definitions" dated 10/09/2020 published by the Department. This document is available at www.basix.nsw.gov.au

Secretary
Date of issue: Tuesday, 02 April 2024
To be valid, this certificate must be lodged within 3 months of the date of issue.



Project address	
Project name	Bruzzano - Ross
Street address	59 FAIRLIGHT Street FAIRLIGHT 2094
Local Government Area	Northern Beaches Council
Plan type and number	Deposited Plan DP9742
Lot number	9
Section number	1
Project type	
Dwelling type	Separate dwelling house
Type of alteration and addition	My renovation work is valued at \$50,000 or more, and includes a pool (and/or spa).
N/A	N/A
Certificate Prepared by	
Name / Company Name	RAPID PLANS PTY LTD
ABN (if applicable)	43150064592



- Denotes Modification Works**
- Denotes Approved Works**
- Wall Legend**
- Denotes New Timber Framed Wall
 - Denotes New Masonry Wall
 - Denotes New Concrete Block Wall
 - Denotes New Concrete
 - Denotes Existing Wall
 - Denotes Demolished Item

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BUILDING DESIGNERS ASSOCIATION OF AUSTRALIA

ACCREDITED BUILDING DESIGNER

Read these documents in conjunction with the BASIX Certificate. The BASIX Certificate is a statement of approval for the proposed development. It is issued by the NSW Government and is valid for the duration of the BASIX Certificate. The BASIX Certificate is issued by the NSW Government and is valid for the duration of the BASIX Certificate. The BASIX Certificate is issued by the NSW Government and is valid for the duration of the BASIX Certificate.

Site Information	Prop.	Comp.
Site Area	268.8m ²	Yes
Housing Density (dwelling/ha)	1	Yes
Max Ceiling Ht Above Nat. GL	N/A	Yes
Max Bldg Ht Above Nat. GL	8.5m	Yes
Front Setback (Min.)	Average	Yes
Rear Setback (Min.)	8.0m	Yes
Min. side body setback (Min.)	1/3 Wall Hts	Yes
Building envelope	N/A	Yes
% of landscape open space (40% min)	14%	Yes
Impervious area (m ²)	X%	Yes
Maximum cut into gnd (m)	2m	Yes
Maximum depth of fill (m)	6m	Yes
No. of car spaces provided	2	Yes

Builder to Check and Confirm all Measurements Prior to Commencement of any works. Immediately Report any Discrepancies to Rapid Plans

Project Name: Bruzzano - Ross

Site: 59 Fairlight Street Fairlight

DRAWING TITLE: SITE AND LOCATION SITE PLAN

PROJECT NAME: Section 4.55 Modification

REVISION NO.	DATE
Rev 1	25-3-2024

DAMOD1003

Print Date: Sheet Size: A3

DA APPLICATION ONLY
NOT FOR CONSTRUCTION

