

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 7 MAY 2025

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 7 May 2025
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 30 APRIL 2025

RECOMMENDATION

The Panel notes that the minutes of the Development Determination Panel Meeting held on 30 April 2025 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	MOD2024/0577 - 1 OGILVY ROAD CLONTARF - MODIFICATION OF DEVELOPMENT CONSENT DA2023/0302 GRANTED FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL
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PURPOSE

- A) To refer the attached application for determination as required under adopted delegations of the Charter.
- B) To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the floor space ratio.

RECOMMENDATION

- A. That Council as the consent authority, vary the Floor Space Ratio 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 Mod2024/0577 for Modification of Development Consent DA2023/0302 granted for Alterations and additions to a dwelling house including a swimming pool on land at Lot 11 DP 2610, 1 Ogilvy Road CLONTARF, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2025/291446
Attachments	↓1 Assessment Report ↓2 Site Plan and Elevations

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0577
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Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 11 DP 2610, 1 Ogilvy Road CLONTARF NSW 2093
Proposed Development:	Modification of Development Consent DA2023/0302 granted for Alterations and additions to a dwelling house including a swimming pool
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:	Joseph Panetta

Application Lodged:	29/10/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	06/11/2024 to 20/11/2024
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	4.4 Floor space ratio: 52.5%
Recommendation:	Approval

EXECUTIVE SUMMARY

This application seeks consent for modification of an approved development (DA2023/0302) for 'Alterations and additions to a dwelling house including a swimming pool', at the site known as 1 Ogilvy Road, Clontarf (Lot 11, DP 2610).

This modification (MOD2024/0577) is lodged pursuant to Section 4.55(2) 'other modifications' of the *Environmental Planning and Assessment Act 1979*. The application seeks to make changes to the approved built form.

The application is referred to the Development Determination Panel (**DDP**) as the application was previously determined by the DDP and increases a non-compliance with the Floor Space Ratio (**FSR**) development standard under clause 4.4 of the Manly Local Environmental Plan (**MLEP**) 2013

from 0.58:1 (275.38sqm) to 0.61:1 (289.80sqm). The additional gross floor is as result of the proposed extension of level 1 and 2 (lower and middle level).

4 submissions were received following the notification of the modification application.

Concerns raised in the objections predominantly relate to building height, FSR, privacy and view loss. These issues form the the critical assessment considerations of this application.

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

PROPOSED DEVELOPMENT IN DETAIL

Development Consent was granted on the 13 December 2023 under Development Application DA2023/0302 for *“alterations and additions to a dwelling house including a swimming pool”*.

The development proposed under MOD2024/0667 is lodged pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*. The proposed modification seeks to amend the built form of the dwelling house approved and amend the conditions issued by the NSW Rural Fire Service (RFS) under DA2023/0302.

The amendments proposed include:

- Level 1 and 2 balcony extensions
- New internal lift
- Deletion of the approved swimming pool and replaced with a spa
- Internal alterations
- Minor external alterations including changes to windows
- Front fence alterations

Additionally, **Condition 10. Amendments to the approval plans** is proposed to be deleted. The condition was imposed by the assessing officer and amended by the DDP as part of the assessment of DA2023/0302.

Condition 10 reads as follows:

10. **Amendments to the approved plans**

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

- a. Window number W5 on the western elevation is to have obscure glazing for the bottom glass panel.
- b. Window number W16 on the western elevation is to be a fully obscured window.
- c. 1.5 metre high privacy screens (measured from finished floor level) are to be erected for half the length (as measured from the southern most wall on each level) of the outermost western edges of the following balconies/decks/terraces: the terrace on the upper level plan, the balcony on the entry level plan, the balcony on the middle level plan.

The privacy screens shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

Reason: To ensure reasonable amenity.

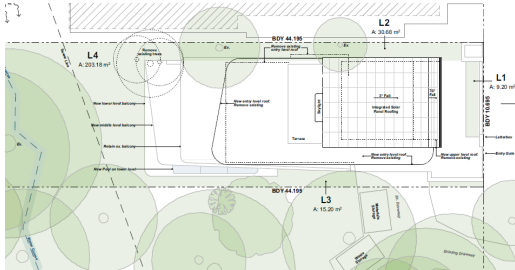


Image 1 - Approved site plan

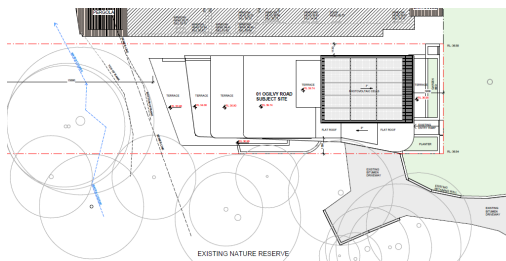


Image 2 - Proposed modified site plan

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 - 6.5 Terrestrial biodiversity

Manly Local Environmental Plan 2013 - 6.12 Essential services
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
 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 - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features
 Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 11 DP 2610 , 1 Ogilvy Road CLONTARF NSW 2093
Detailed Site Description:	The site is located on the southern, lower side of Ogilvy Road, at its intersection with an unmade public road (House Street). The site is rectangular in shape, with a 10.695 metres (m) wide frontage to Ogilvy Road to the north, a 44.195m wide frontage to the unmade road to the east, and a total area of 472.6 square metres (sqm). A two-three storey dwelling is situated on the site, with an attached double garage below street level. Vehicular access to the site is gained via a driveway across the unmade public road to the east that connects to Ogilvy Road. The site is bisected by a watercourse, that runs across the site (east-west) approximately 10m from the southern boundary. The site falls from the street towards the watercourse, the rises again towards the southern boundary. The site is surrounded by low density residential development of varying age, architectural style and character. The site does not contain any items of heritage significance and is not located in the vicinity of any. Existing canopy trees are present on the site and in the adjacent road reserves. The site is bushfire prone and surrounding properties along Ogilvy Road have views toward Middle Harbour.

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:

DA2023/0720 – Approved by DDP

Development is described as “*alterations and additions to a dwelling house including a swimming pool*”, determined by way of approval on the 13th December 2023.

The proposed modification (MOD2024/0667) is to DA2023/0720.

Application History

Following a preliminary assessment of the application, Council wrote to the applicant on 20 February 2025 raising issues with a number of aspect of the proposal including privacy and insufficient information in relation to bushfire management. In response to to the letter, the applicant lodged amended plans and additional information on 5 March 2025.

The amended plans reduced the scale of the balcony extensions to the rear of the site.

The proposed amendments will have a reduced environmental impact on the adjoining properties and public open space than the original proposal, and as such renotification was not required in accordance with the Community Participation Plan (CPP).

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 DA2023/0302, 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 DA2023/0302 for the following reasons: • The application retains its single residential use. • The application remains as alterations and additions to a dwelling house.
(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 DA2023/0302 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(i) the regulations, if the regulations so require,	

Section 4.55 (2) - Other Modifications	Comments
or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

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	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and	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.

Section 4.15 'Matters for Consideration'	Comments
Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested to address privacy and bush fire impacts. <u>Clause 61</u> 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. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The proposal was submitted with a Bushfire Assessment by a qualified bushfire expert and referral was made to the NSW Rural Fire Service (RFS). The RFS provided a detailed referral response dated 19.3.2025 to address asset protection, landscaping, construction, water and utility services, including general fire safety advice. RFS requirements are included with the recommended conditions.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 06/11/2024 to 20/11/2024 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 process council is in receipt of 4 submission/s from:

Name:	Address:
Mingguo Li	C/- Clarke & Humel PO Box 1009 MANLY NSW 1655
Mr David Gerrard Oswell	3 Ogilvy Road CLONTARF NSW 2093
Mr David John Bridgford	29 Barrabooka Street CLONTARF NSW 2093
Mr Warwick Rowland Waddell	8 Ogilvy Road CLONTARF NSW 2093

The following issues were raised in the submissions:

- **Privacy**
- **View Loss**
- **Height of building and FSR non-compliance**
- **Bulk and scale**
- **Solar access**
- **Land encroachment**
- **DCP built form non-compliance**

The above issues are addressed as follows:

- **Privacy**

Concern has been raised that the proposed modification, particularly the extensions to the rear of the site, will lead to unreasonable privacy impacts to adjoining properties.

Comment:

Amended plans were provided by the applicant to address the privacy concerns raised. An assessment of the amended plans against Clause 3.4.2 (Privacy and Security) of the MDCP

2013 has been included within this report, in summary the impacts are not unreasonable in this residential setting, subject to conditions.

- **View Loss**

Concern was raised in regard to loss of water views from private open space from the adjoining properties to the north (No. 8 and 10 Ogilvy Road, Clontarf), as well as bushland views from the adjoining property to the west (3 Ogilvy Road, Clontarf).

Comment:

The proposal was previously assessed against the view loss provisions under Clause 3.4.3 of the MDCP 2013 and the Land and Environment Court Planning Principle '*Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC 140*' as part of the assessment of the DA2023/0302. The maximum height of the dwelling house is maintained. The impact of the modifications on existing harbour views when viewed from the properties to the north will be negligible.

Regarding loss of bushland views from, the views of bushland that will be compromised are across a side boundary and not the primary view from this property.

In summary, the proposed development does not cause unreasonable view loss to and from public and private open spaces.

- **Height of building and FSR non-compliance and the resulting bulk and scale.**

The submissions raised concerns regarding the building height and FSR non-compliances with the proposed development.

Comment:

This matter is discussed in detail throughout the report. In summary, the bulk and scale of the proposed development is satisfactory given the constraints of the site, the level of impact on adjoining properties and size and scale of neighbouring properties. The proposed built form non-compliance and resultant bulk and scale are appropriate in this residential context and satisfy the requirements and objectives of the MDCP 2013. All relevant provisions of MDCP 2013 have been assessed in this report, with the bulk and scale of the proposed dwelling house deemed satisfactory.

- **Solar access**

Concern is raised regarding the impact of the modification on solar access for adjoining properties.

Comment:

The modifications proposed maintain appropriate solar access to adjoining properties and public open space.

- **Land encroachment**

Concern is raised regarding the existing encroachment to the eastern side of the house of the reserve.

Comment:

There is no change to the existing encroachment proposed under this modification application.

- **DCP built form non-compliance**

Concern is raised in regard to general non-compliance with MDCP 2013 controls including setbacks and FSR.

Comment:

This matter is addressed in detail elsewhere within this report (refer to the respective assessments in relation to MLEP 2013 and 4.1 of Manly DCP 2013 section of this report). With specific regard to the MDCP 2013, Clause 4.15(3A) of the EP&A Act requires Council to be flexible in the application of DCP provisions and allow reasonable alternative solutions that achieve the objects of those standards dealing with that aspect of the development. As such, where the proposal does not achieve strict compliance with an aspect of the DCP, an assessment of the proposal against the objectives of the control has been undertaken.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<i>Supported, without conditions</i> The plans and SEE indicate that no additional landscape features are impacted by the proposed modification. No objections are raised regarding landscape issues. Existing conditions are considered still relevant and adequate.
NECC (Bushland and Biodiversity)	<i>Supported, without conditions</i> The modification proposal seeks reconfiguration of internal elements of the approved for alterations and additions to a dwelling house. The comments in this referral relate to the following applicable controls and provisions: • Planning for Bushfire Protection 2019 • NSW Biodiversity Conservation Act 2016 • SEPP (Resilience and Hazards) 2021 - Littoral Rainforest and Proximity Area • Manly LEP Clause 6.5 Biodiversity Protection. The modification application does not involve the removal of any additional significant, native vegetation.
NECC (Coast and Catchments)	<i>Supported, without conditions</i> The proposed modifications are minor in nature and do impact the assessment of coastal matters considered for DA2023/0302

Internal Referral Body	Comments
	All previous conditions still apply.
NECC (Development Engineering)	Supported, without conditions No objections to approval and no changes to conditions of Consent DA2023/0302.
NECC (Flooding)	Supported, without conditions This proposal is for the modification of Development Consent DA2023/0302. It involves the removal of the previously approved pool, and inclusion of a spa and lift, among other alterations and additions. The proposed works are outside the Low, Medium or High Flood Risk precincts. Subject to the retention of controls on DA2023/0302 the proposal generally complies with Section 5.4.3 of the Manly DCP and Clause 5.21 of the Manly LEP.

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 (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 Development Engineer and Parks, reserves beaches and foreshores Officer who have raised no objection to the works and their impacts to the adjoining waterway (subject to conditions).

6.7 Aquatic ecology

(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 direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation,*
- (b) *whether the development involves the clearing of riparian vegetation and, if so, whether the development will require—*
 - (i) *a controlled activity approval under the Water Management Act 2000, or*
 - (ii) *a permit under the Fisheries Management Act 1994,*
- (c) *whether the development will minimise or avoid—*
 - (i) *the erosion of land abutting a natural waterbody, or*
 - (ii) *the sedimentation of a natural waterbody,*
- (d) *whether the development will have an adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area,*
- (e) *whether the development includes adequate safeguards and rehabilitation measures to protect aquatic ecology,*
- (f) *if the development site adjoins a natural waterbody—whether additional measures are required to ensure a neutral or beneficial effect on the water quality of the waterbody.*

(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 direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation will be kept to the minimum necessary for the carrying out of the development,*
- (b) *the development will not have a direct, indirect or cumulative adverse impact on aquatic reserves,*
- (c) *if a controlled activity approval under the Water Management Act 2000 or a permit under the Fisheries Management Act 1994 is required in relation to the clearing of riparian vegetation—the approval or permit has been obtained,*
- (d) *the erosion of land abutting a natural waterbody or the sedimentation of a natural waterbody will be minimised,*

(e) the adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area will be minimised.

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.

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 proposal has been reviewed by Council's Flood engineer, who raised no concern with the proposed development.

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 proposal is consistent with considerations to maintain appropriate protection of the foreshore area, landscaping, water quality and natural features of the site. No known aboriginal relics are recorded on the site.

- 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:

The proposal will not create unreasonable impacts on the coastal environment in terms of runoff, coastal processes, ecology, landform, or scenic amenity. Suitable conditions are recommended to address the coastal location and environmental considerations.

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:

The proposal will not create unreasonable impacts on the coastal environment in terms of runoff, coastal processes, hazards and geotechnical safety for excavation and building works. Suitable conditions are recommended to address the coastal location and environmental considerations.

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:

The proposal will not create unreasonable impacts on the coastal environment in terms of runoff, coastal processes, ecology, landform, or scenic amenity. Suitable conditions are recommended to address the coastal location and environmental considerations.

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
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Height of Buildings:	8.5m	8.97m	Level 3 balcony balustrade: 8.5m	-	Yes
Floor Space Ratio	FSR:0.4:1 (189.04sqm)	FSR: 0.58:1 (275.38sqm)	FSR: 0.61:1 (289.80sqm)	52.5%	No

Compliance Assessment

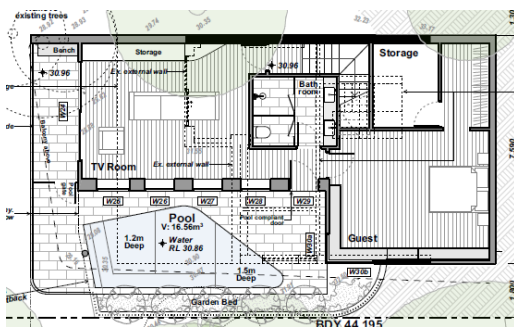
Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

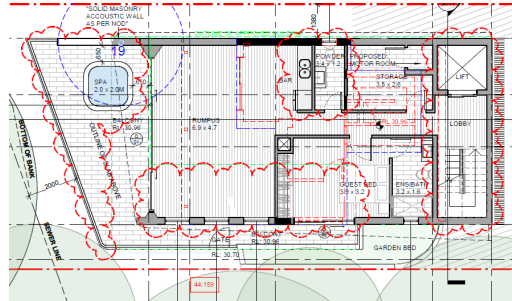
Detailed Assessment

4.4 Floor space ratio

Description of non-compliance:

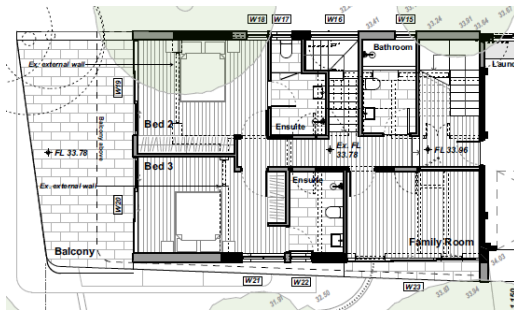
Development standard:	Floor space ratio
Requirement:	0.4:1 (189.04sqm)
Proposed:	Approved 0.58:1 (275.38sqm) Proposed 0.61:1 (289.80sqm)
Percentage variation to requirement:	52.5%



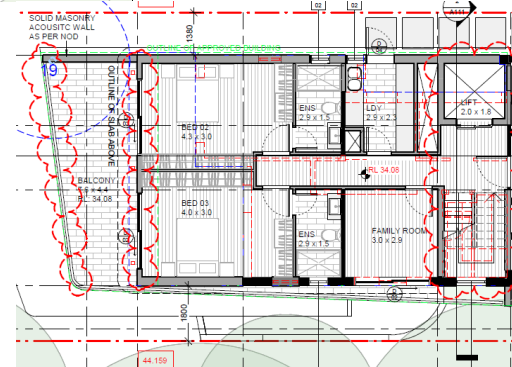


Approved level 1

Proposed level 1



Approved level 2



Proposed level 2

Assessment of request to vary a development standard:

Whilst the modification application will result in a floor space ratio that exceeds the maximum permitted by Clause 4.4 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 floor space ratio development standard and the underlying objectives of the C3 Environmental Living 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.

With regard to the increased non-compliance with the floor space ratio development standard, the underlying objectives of Clause 4.4 Floor Space Ratio are addressed as follows:

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

Comment:

The proposal will not significantly alter the existing bulk and scale of the development, with the increase in gross floor area contained mostly within the approved footprint of the building and to the rear section of the existing dwelling. The increased bulk will not impact upon the appearance of the existing dwelling as viewed from the street. The dwelling house remains consistent with the desired character of the streetscape.

b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

Comment:

The proposed works will not obscure important landscape and townscape features. Important existing landscape features both to the front and rear of the site will be retained. No other important landscape features are proposed for removal as part of these works.

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

Comment:

The proposed new works maintain a built form consistent with the identified streetscape. The increase to floor space does not unreasonably impact on the visual relationship between new development and the existing character and landscape of the area.

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

Comment:

The increase in gross floor area will not significantly increase visual and acoustic impacts on adjoining development, nor will it lead to unreasonable levels of overshadowing to adjoining properties. No significant views to or from the harbour or foreshores and neighbouring properties will be unreasonably impacted by the proposed development.

e) to provide for the viability of business zones and encourage the development, expansion and

diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres,

Comment:

Not applicable.

Zone objectives

The underlying objectives of the C3 Environmental Living zone are:

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

Comment:

The proposed development is acceptable in terms of its impacts on the ecological and aesthetic values.

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

Comment:

The proposed works would not have an adverse effect on those values.

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

Comment:

The proposed modification will not have unreasonable impact on tree canopies.

- *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 proposed between the subject site and the foreshore will ensure that the development does not cause any unreasonable impact upon the harbour.

- *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 is not considered to have any negative impacts on the foreshore, subject to existing conditions.

- *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 height and bulk of the proposed building has had regard to the adjoining development and the existing landscaping and topography of the adjoining sites.

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 application proposes a FSR that contravenes the maximum permitted by Clause 4.4 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.

6.5 Terrestrial biodiversity

The objective of this clause is to maintain terrestrial biodiversity by:

- (a) protecting native fauna and flora, and*
- (b) protecting the ecological processes necessary for their continued existence, and*
- (c) encouraging the conservation and recovery of native fauna and flora and their habitats.*

In this regard, before determining a development application for development on land to which this clause applies, the consent authority must consider:

- (a) whether the development is likely to have:*
 - (i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
 - (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
 - (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
 - (iv) any adverse impact on the habitat elements providing connectivity on the land, and*

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

Comment:

The application was referred to Council's Bushland & Biodiversity team, who are supportive of the proposed works, subject to existing conditions of consent. The development will not have adverse impact on the matters above and appropriate measures have been taken to avoid, minimise and mitigate the impacts of the development.

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 any significant adverse environmental impact, or

(b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or

(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The application was referred to Council's Bushland & Biodiversity team, who are supportive of the proposed works, subject to existing conditions of consent being retained. The development is designed, sited and will be managed to avoid any significant adverse environmental impact.

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 proposed development retains and relies upon these services.

Manly Development Control Plan

Built Form Controls

Built Form Controls	Requirement	Approved	Proposed	Complies
4.1.1.1 Residential Density and Dwelling Size	Density D9: 1 dwelling per 950sqm	1 dwelling per 472.6sqm (Existing lot)	No change	N/A
4.1.2.1 Wall Height	West: 8.0m wall (based on gradient 1:4+)	5.0m to 8.8m	8.5m	No

4.1.2.2 Number of Storeys	2	4	No change	N/A
4.1.2.3 Roof Height	Height: 2.5m	0.7m	N/A	Yes
	Pitch: maximum 35 degrees	3 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line or 6m	3.7 to 3.3m (Existing wall line)	Prevailing building line	No (Existing roof edge 2.4m setback)
4.1.4.2 Side Setbacks* and Secondary Street Frontages	East: 2.8 (Upper storey)	East 3.1m	1.8m	No
	West 2.9m (Upper storey)	West: 1.3m	1.38m	No
	Windows: 3.0m	1.38m	1.38m	No
4.1.4.4 Rear Setbacks	8.0 metres	South: 19m to property boundary	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area (OS4): Site area 472.6sqm	Total Open Space 60% of site area 283.5sqm	75% (356sqm proposed)	N/A	Yes
	Open space above ground max. 25% of total open space 70.9sqm (89sqm as per proposal)	21.6% (79sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space 113.4sqm (142sqm as per proposal)	73% (260sqm) (natural landscaping)	N/A	Yes
4.1.5.3 Private Open Space	18sqm	26.3sqm (main alfresco off living / dining)	N/A	Yes

4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	Side access to garage (not visible from street)	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 car spaces	N/A	Yes
4.1.9 Swimming Pools	Max 1m above ground 1.5m to boundary	1.9m 1.0m	0.9m+ 0.5m	No No
4.1.10 Fencing	<1.0m at front boundary / transparent up to 1.5m	0.9-1.1m (part open style)	1.9m	No
4.4.5 Earthworks	1m in depth	2.2m (subfloor area)	no change	N/A
5.4.4 Setback to riparian watercourse	APZ / detention / POS	On merit (creekline passes though centre of property / current APZ)	N/A	Yes (no works in creek bank)

* Refer to detailed merit assessment under the relevant DCP section heading within this report.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	No	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4 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
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

Description of non-compliance

Clause 4.1.10 of the Manly DCP requires front fences be a maximum height of 1m or 1.5m with 30 percent transparency.

The proposed front fence has a maximum height of 1.9m, non-compliant with the relevant 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 minimise any negative visual impact of walls, fences and carparking on the street frontage.

Comment:

The proposed development will have an unreasonable visual impact upon the streetscape. The proposed height of the front fence across the Ogilvy Road frontage is inconsistent with neighbouring development within the street, and will be create a unreasonable visual impact when viewed from the street. A condition of consent have been included in this report to mitigate the visual impact of this development. The condition is as follows:

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

- The maximum fence height is not to exceed 1.65m from ground level on the street side of the fence.

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.

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

Comment:

Subject to condition of consent included above, the proposal will complement other development within the streetscape.

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

Comment:

Sufficient planting is provided in the front setback to offset the visual impact of the front fence.

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.

3.4.2 Privacy and Security

Merit consideration:

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

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

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

Comment:

The modification application seeks to extend the rear balconies (Level 1 and 2) of the approved dwelling house.

The amended plans proposed as part of this modification reduce the scale of the balconies and incorporate screening between the subject site and adjoining western property (No. 3 Ogilvy Road).



Image 1 - Kitchen window of 3 Ogilvy Road, Clontarf looking east.

From a view of what is visible from the existing dwelling house it is evident there are some sight lines into the windows of the adjoining western property, when viewed from existing outdoor areas. However, the sight lines are not the dominant views from the balconies (which is directly to the rear of the subject site to the south) and inevitable given the sloping topography and residential use of the area. The expectation of complete privacy is not reasonable in this circumstance. Reasonable visual privacy is maintained between the subject site and neighbouring properties.

As noted previously within the report, condition 10 is proposed to be deleted. The condition imposed the following amendments to the plan to maintain visual privacy:

a. Window number W5 on the western elevation is to have obscure glazing for the bottom glass panel.

b. Window number W16 on the western elevation is to be a fully obscured window.

Comment: Windows W5 and W16 have been deleted, and therefore not required to be conditioned as above.

c. 1.5 metre high privacy screens (measured from finished floor level) are to be erected for half the length (as measured from the southern most wall on each level) of the outermost western edges of the following balconies/decks/terraces: the terrace on the upper level plan, the balcony on the entry level plan, the balcony on the middle level plan. The privacy screens shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

Comment: Level 02 (formerly labelled as middle level) has incorporated solid screen for the whole extent of the western edge of the balcony. Level 3 and 4 (formerly labelled as upper level and entry level) balconies will not directly overlook the private open space or windows of the adjoining properties to the west. The balconies at both levels (Level 3 RL 36.90) and (Level 4 RL 39.74) would have sightlines over the top of the adjoining western dwelling house and not of windows or balconies.

Based on the above, the proposed deletion of condition 10 is supported.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

The provision of a privacy screen on the western elevation of the rear balconies will not compromise significant view lines from the subject site or adjacent properties, nor will the screen exacerbate overshadowing towards the adjacent development.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development will allow for the passive surveillance of the street.

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.

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

Description of non-compliance

Clause 4.1.2 Height of Buildings stipulates that walls are not to exceed 8m based on the slope of land. The proposed balcony extensions compromise this control by 0.5m.

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 of clause 4.3 in the Manly LEP 2013. The proposal has been assessed against these objectives under clause 4.3, above in this report. In summary, the variation is deemed to be reasonable and supported in this circumstance.

4.1.3 Floor Space Ratio (FSR)

A detailed assessment of the FSR variation has been undertaken within the section of this report relating to Clause 4.4 of the MLEP 2013.

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

Description of non-compliance

The level 1 and level 2 balcony extensions fail to comply with the setback for both the east and west side of the proposed dwelling house. A 2.8m setback is required for the eastern side and 2.9m for the west side. Additionally, the proposed windows alterations results in a setback of 1.38m, non-compliant with the 3m 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 works adequately maintain the existing character of the streetscape and are not considered to unreasonably increase the bulk and scale of built form on site.

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 modifications will result in no unreasonable impacts in relation to privacy, sunlight access, views, streetscape character or traffic conditions

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

Comment:

Flexibility is afforded in this circumstance, as the siting of the buildings is considered appropriate, and will not result in any unacceptable 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:

The proposed alterations and additions are largely within the existing footprint of the built form. The proposal does not unduly detract from the context of the site.

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

Comment:

The proposal complies, subject to conditions imposed by the RFS.

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

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

Clause 4.1.9 of the Manly DCP requires swimming pools be no higher than 1m above ground. The proposed relocation of the swimming pool, results in the pool being 3m above ground. Non-compliant with the numeric control.

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, there will not be opportunities for overlooking into the adjoining properties to the east or west.

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

Comment:

The swimming pool will not be readily visible from the street. The resulting impact on the streetscape is negligible.

Objective 3) To integrate landscaping.

Comment:

Adequate landscaping is proposed to help offset the visual impact of the swimming pool.

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

Comment:

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

Conclusion

Based on the above assessment, it is concluded that the objectives of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

4.1.10 Fencing

This clause relies upon the objectives of clause 3.1 under Manly DCP 2013. An assessment of the proposal against the objectives under clause 3.1 has been provided within this report. The assessment found the proposal to be consistent with the objectives of clause 3.1, subject to conditions reducing the height of the fence.

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 2024

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

PLANNING CONCLUSION

This proposal, for modification of Development Consent DA2023/0302 granted for Alterations and additions to a dwelling house including a swimming pool has been referred to the Development Determination Panel (DDP) due to the extent of the breach to the FSR development standard.

Issues raised from 4 submissions from neighbouring properties included privacy, view loss, height of building and FSR non-compliance, bulk and scale, solar access, land encroachment and DCP built form non-compliance. These issues have been considered in detail within the assessment report.

The concerns raised in the objections relating to privacy have been addressed and resolved by way of amended plans. The amended plans reduced the extent of the built form to the rear boundary.

A new condition has been imposed to reduce the height of the proposed front fence to a maximum of 1.65m, and the updated conditions from RFS have been imposed.

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. Mod2024/0577 for Modification of Development Consent DA2023/0302 granted for Alterations and additions to a dwelling house including a swimming pool on land at Lot 11 DP 2610,1 Ogilvy Road, CLONTARF, 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- 479402 MOD2024/0577	The date of this notice of determination	Modification of Development Consent DA2023/0302 granted for Alterations and additions to a dwelling house including a swimming pool • Add Condition 1A - Modification of Consent - Approved Plans and supporting documentation • Modify Condition 2 - Compliance with Other Department, Authority or Service Requirements • Modify Condition 10 - Amendments to the approved plans

Modified conditions**A. Add Condition No.1A - 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
A103	A	Site Plan	Habitation	5 March 2025
A104	A	Level 1 Floor Plan	Habitation	5 March 2025
A105	A	Level 2 Floor Plan	Habitation	5 March 2025
A106	A	Level 3 Floor Plan	Habitation	5 March 2025
A107	A	Level 4 Floor Plan	Habitation	5 March 2025
A108	A	Roof Plan	Habitation	5 March 2025
A109	A	Elevations	Habitation	5 March 2025
A110	A	Elevations	Habitation	5 March 2025
A111	A	Section	Habitation	5 March 2025
V241369 - SW100	B	Level 1 Drainage Plan	Vanguard Consulting Engineers	15 October 2024
V241369 - SW101	B	Level 2 Drainage Plan	Vanguard Consulting Engineers	15 October 2024
V241369 - SW102	B	Level 2 Drainage Plan	Vanguard Consulting Engineers	15 October 2024
V241369 -	B	Level 2 Drainage Plan	Vanguard Consulting Engineers	15 October 2024

SW103				
V241369 - SW104	B	Roof Drainage Plan	Vanguard Consulting Engineers	15 October 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No A1768682	-	Manali Rana	14 October 2024

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. Modify Condition 10 Amendments to the approval plans to read as follows:

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

- The maximum fence height/wall is not to exceed 1.65m from ground level on the street side of the fence.

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.

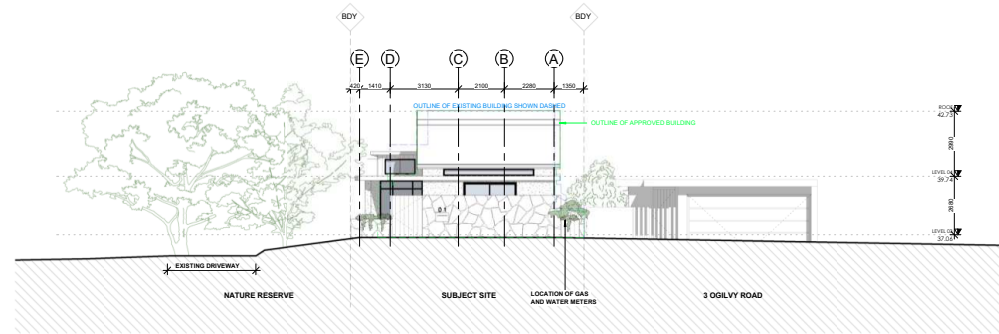
C. Modify Condition 2 Compliance with Other Department, Authority or Service Requirements to read as follows:

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

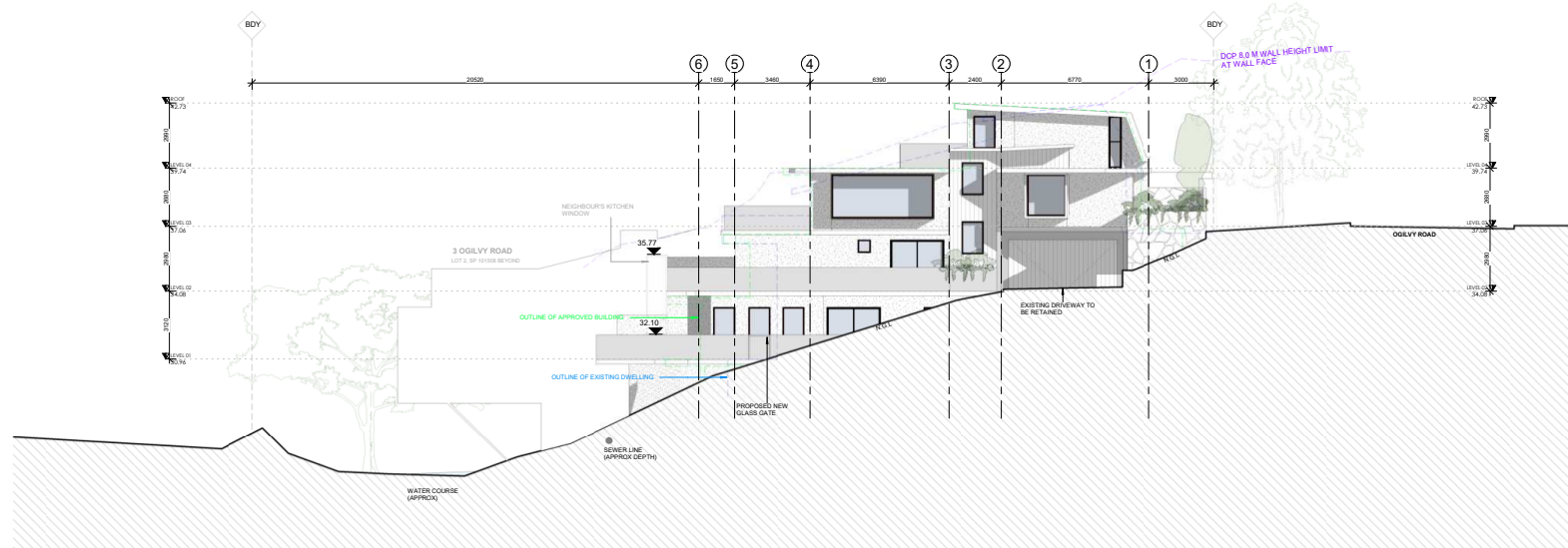
Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	14.4.23
NSW Rural Fire Service	NSW RFS Referral Response	19.3.25
Aboriginal Heritage Office	AHO Referral Response	29.3.2023

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

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



NORTH ELEVATION
SCALE 1:100



EAST ELEVATION
SCALE 1:100



REVISION					
ISSUE	DATE	DESCRIPTION	AUTHOR	ISSUED BY	
A	05-03-2025	SECTION 4.55 AMENDMENT	F.H	J.P	

ELEVATIONS

PRELIMINARY
NOT FOR CONSTRUCTION

CLAUSE 4.55 MODIFICATION

ALTS + ADDS TO AN EXISTING DWELLING HOUSE

CLIENT: Mr R + Mrs Z. LAW

ADDRESS: 01 OGILVY ROAD, CLONTARF

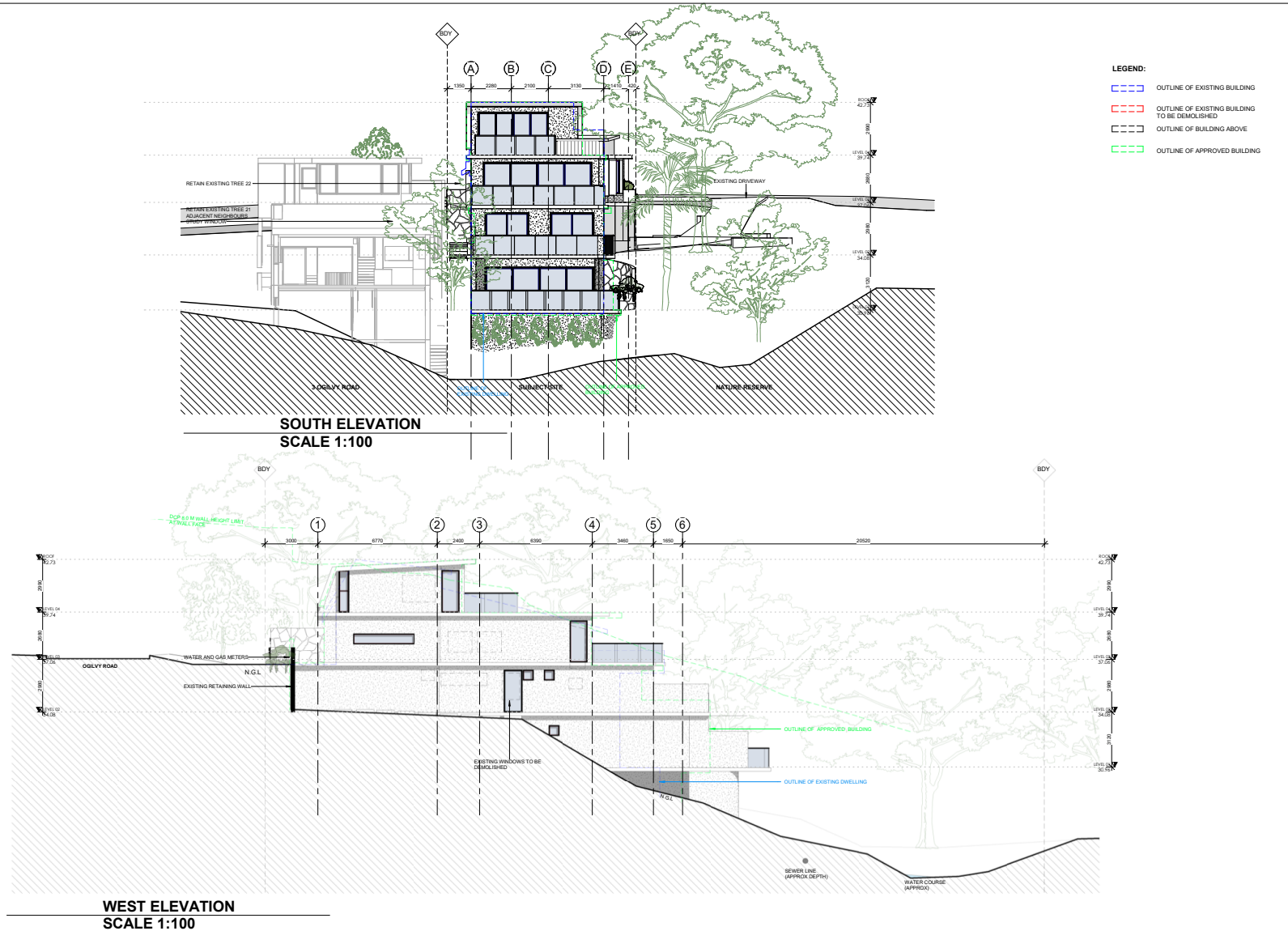
SCALE @ A1: As indicated

SCALE @ A3: 1:200

DRAWN BY: F.H DATE: 05/03/25

CHECKED BY: J.P SHEET NUMBER:

PROJECT NUMBER: 24344 A109



habitation Design + Interiors 08 9420 1111 100 GLENVIEW RD CLONTARF VIC 3072 www.habitationdesign.com.au	Member Australian Institute of Architects Notified Architect Joseph Fornetto NSW Architects Registration Board No. 1985	<table border="1"> <thead> <tr> <th>REVISION</th> <th>ISSUE</th> <th>DATE</th> <th>SECTION</th> <th>DESCRIPTION</th> <th>AUTHOR</th> <th>ISSUED BY</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>05-03-2025</td> <td></td> <td>SECTION 4.55 AMENDMENT</td> <td></td> <td>F.H.</td> <td>J.P.</td> </tr> </tbody> </table>	REVISION	ISSUE	DATE	SECTION	DESCRIPTION	AUTHOR	ISSUED BY	A	05-03-2025		SECTION 4.55 AMENDMENT		F.H.	J.P.	ELEVATIONS PRELIMINARY NOT FOR CONSTRUCTION	CLAUSE 4.55 MODIFICATION ALTS + ADDS TO AN EXISTING DWELLING HOUSE CLIENT: Mr R + Mrs Z. LAW ADDRESS: 01 OGILVY ROAD, CLONTARF	SCALE @ A1: As indicated SCALE @ A3: 1:200 DRAWN BY: F.H. CHECKED BY: J.P. PROJECT NUMBER: 24344	DATE: 05/03/25 SHEET NUMBER: A110
		REVISION	ISSUE	DATE	SECTION	DESCRIPTION	AUTHOR	ISSUED BY												
A	05-03-2025		SECTION 4.55 AMENDMENT		F.H.	J.P.														
NOTES: 1. ALL DIMENSIONS ARE IN METERS UNLESS OTHERWISE SPECIFIED. 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED. 3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED. 4. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED. 5. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED. 6. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED. 7. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED. 8. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED. 9. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED. 10. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.																				

ITEM 3.2	DA2024/1769 - 13 BALTIC STREET FAIRLIGHT - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
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PURPOSE

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

RECOMMENDATION

- 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 DA2024/1769 for alterations and additions to a dwelling house on land at Lot 15 DP 4449, 13 Baltic Street FAIRLIGHT, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2025/253989
Attachments	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6 - HOB 4 Clause 4.6 - FSR

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1769
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Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot 15 DP 4449, 13 Baltic Street FAIRLIGHT NSW 2094
Proposed Development:	Alterations and additions to 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:	Lachlan Charles Hudson Baker

Application Lodged:	15/01/2025
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	27/01/2025 to 10/02/2025
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 12.9% 4.4 Floor space ratio: 12.73%
Recommendation:	Approval

Estimated Cost of Works:	\$ 737,326.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house.

The application is referred to the Development Determination Panel (DDP) due to a greater than 10% variation to both the Height of Buildings and Floor Space Ratio development standards.

No submissions were received.

Critical assessment issues included height of buildings, FSR, setbacks, landscaping open space, parking and fencing. These issues have been addressed within the assessment report.

The 4.6 request for the non-compliance with FSR standard arises from a 27.5m² increase in floorspace. The site is required to have a maximum FSR of 0.6:1 (201m²). The proposed development

exceeds this by 26m² or 0.676:1. The additional floorspace does not increase the bulk or scale of the building as the additional gross floor space is located in the sub-floor area and on level 2 with the enclosure of a entry and slight increase to the living room area.

The Clause 4.6 request for the non-compliance with height standard arises from the alteration to the roof over the north facing level 2 terrace, which results in a 12.35% variation. The proposal maintains the height of the existing roof.

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 approval for alterations and additions to a dwelling house. The works include the following:

- Demolition Works.

Lower Ground Floor/Garage (Alterations and Additions):

- Double car garage with bin and bicycle storage areas,
- Rumpus with under stair storage area,
- Stairs,
- Existing subterranean space.

Ground Floor (Alterations and Additions):

- Entry,
- Living,
- Dining,
- Stairs,
- Kitchen and pantry,
- Family room,
- Powder room,
- Laundry.

First Floor (Alterations and Additions):

- Hallway,
- WC,
- Study,
- Bath,
- Stairs,
- Bed 1 with ensuite,
- Bed 2 with WIR,
- Bed 3.

External Works:

- New driveway and crossover,
- New front entrance and stairwell,
- Covered ground floor terrace at the front of the property addressing Baltic Street,
- New awning over rear ground floor deck area,
- First floor terrace area,
- New front boundary fencing,
- Planters, retaining walls and associated landscaping works.

A Development Application has also been lodged and is currently under assessment for the adjoining property at no. 15 Baltic Street, Fairlight for Demolition and the construction of a new dwelling. No. 15 Baltic Street is owned by the same owner as the subject site and has been lodged with Council by the same applicant.

Planner's Note:

The application, as lodged, was inconsistent with the requirement of the MLEP and MDCP in regards to the setbacks to front and side boundary. The applicant was requested to provide amended plans and information that satisfied Council's concerns.

The applicant submitted amended plans that addressed Council's concerns.

In accordance with Council's Community Participating Plan, the application was not re-notified as it was reducing the environmental impact.

The application was assessed based on the amended plans by Mont Architects submitted to Council in April 2025.

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

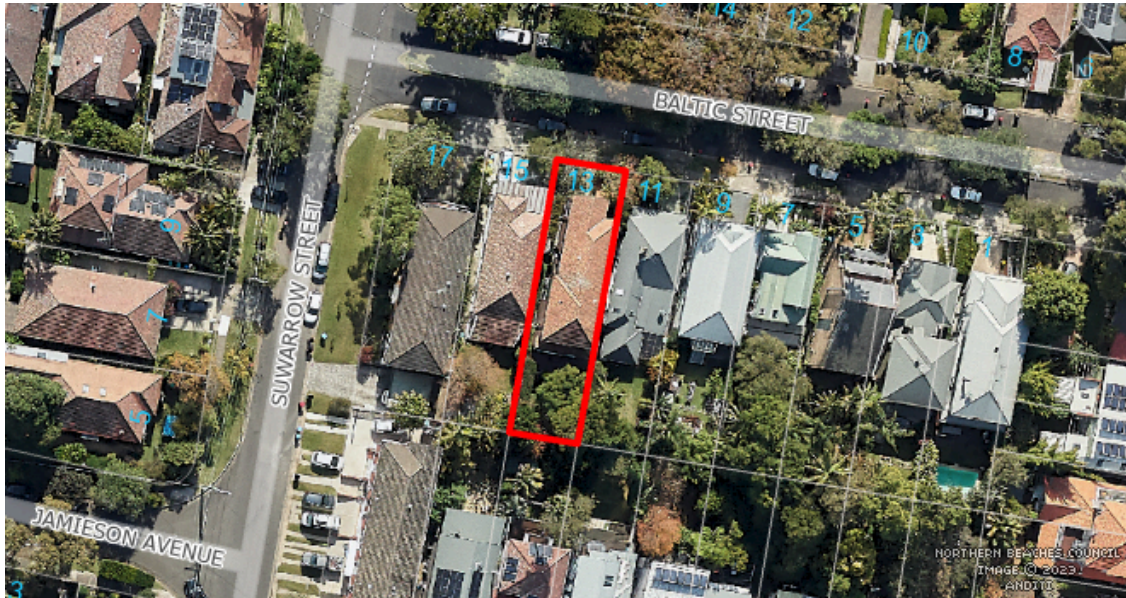
Manly Local Environmental Plan 2013 - Zone R1 General Residential

Manly Local Environmental Plan 2013 - 4.3 Height of buildings
 Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 15 DP 4449 , 13 Baltic Street FAIRLIGHT NSW 2094
Detailed Site Description:	The subject site consists of one allotment located on the southern side of Baltic Street, Fairlight. The site is regular in shape with a frontage of 9.1m along Baltic Street and a depth of 36.51m. The site has a surveyed area of 333.8m². The site is located within the R1 General Residential zone and accommodates a two/three storey dwelling with attached garage and sub floor below. The site slopes down from the rear boundary to the front boundary. The site has a slope of approximately 10 degrees. The site has lawn area and garden beds at the rear with trees and shrubs along the boundaries. There are no threatened species on the site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by variety of property types and sizes ranging from two-three storey dwelling houses and residential flat buildings. Site Inspection A site inspection was undertaken 19 February 2025.

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: 0445/00

Demolish existing and Construct New Dwelling
Determined - 20/12/2000

PLM2023/0058

Development Application Pre-Lodgement Meeting for a double carport within the front boundary setback.
Meeting held - 2 June 2023

PLM2022/0202

Development Application Pre-Lodgement Meeting for Alterations and additions to a dwelling house including a garage within the front boundary setback.
Meeting held - 28 November 2022

Both of the pre-lodgment meetings were for garages/carports within the front boundary setback. The current proposal is for a garage beneath the existing dwelling which retains the existing setback to the front boundary. This is considered a more desirable outcome to having carparking which takes up the whole frontage of the site.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 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. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to the built form controls. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
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	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 27/01/2025 to 10/02/2025 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 (Development Engineering)	<i>Supported, subject to conditions</i> The proposed development is for alteration and additions to the existing dwelling house with a new garage. A new vehicular access is to be constructed. No Development Engineering objection is raised to the proposed development subject to conditions.

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. A1777084 dated 11 December 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 (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	9.55m	12.35%	No
Floor Space Ratio	FSR: 0.6:41	FSR: 0.67:1	12.73%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment**Zone R1 General Residential**

The underlying objectives of the R1 General Residential zone:

- To provide for the housing needs of the community.*

Comment:

The proposed works retain the residential use of the site.

It is considered that the development satisfies this objective.

- To provide for a variety of housing types and densities.*

Comment:

The proposal provides additional rooms to accommodate varying housing needs of a residential dwelling.

It is considered that the development satisfies this objective.

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

Comment:

Not applicable. The proposed alterations and additions retains the residential use of the site.

It is considered that the development satisfies this objective.

4.3 Height of buildings

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.6m
Percentage variation to requirement:	12.9%

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 and roof form are consistent with the topography. the existing building height and streetscape character. The proposed alterations and additions will be retaining the established roof height of the building. The roof form will be generally consistent with the existing building and surrounding, development in the vicinity. The dwelling is appropriately articulated using recessed and modulated walls, fenestration, balconies and eaves to break up built form.

b) to control the bulk and scale of buildings,

Comment:

The proposed dwelling house is acceptable with respect to the proposed variation to the Height of buildings development standard and all built form controls under the MDCP, including setbacks and wall heights. Additionally, the proposed development includes acceptable total open space and landscaped area. This demonstrates the dwelling is of a bulk and scale anticipated for the subject site by the controls, and that the footprint of the dwelling is not excessive.

c) to minimise disruption to the following—

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

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

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

Comment:

The proposed development is designed and sited so as not to result in any unreasonable view loss to or from public or private land.

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 proposed development is acceptable with respect to the requirements of Clauses 3.4.1 Sunlight Access and Overshadowing and 3.4.2 Privacy and Security of the MDCP, as detailed in the relevant sections of this report.

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 development is not within a recreation or environmental protection zone.

4.4 Floor space ratio

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.676 to 1
Proposed:	0.6 to 1
Percentage variation to requirement:	12.73%

4.4 Floor space ratio

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

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

Comment:

The proposed development, despite its non-compliance with a number of built form controls, is of a bulk and scale consistent and compatible with surrounding developments.

b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

Comment:

The proposed development is designed and sited so as not to obscure any important landscape and townscape features.

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

Comment:

The works demonstrate a suitable balance between the existing built form and landscape character of the locality.

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

Comment:

The proposed works do not result in any unreasonable environmental impact, and do not impact

upon enjoyment or use of adjoining land.

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

Comment:

Not applicable. The subject site is zoned as R1 General Residential.

4.6 Exceptions to development standards

(i) BUILDING HEIGHT

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

Development standard: 4.3 Height of Buildings

Requirement: 8.5m

Proposed: 9.6m

Percentage of variation: 12.35%

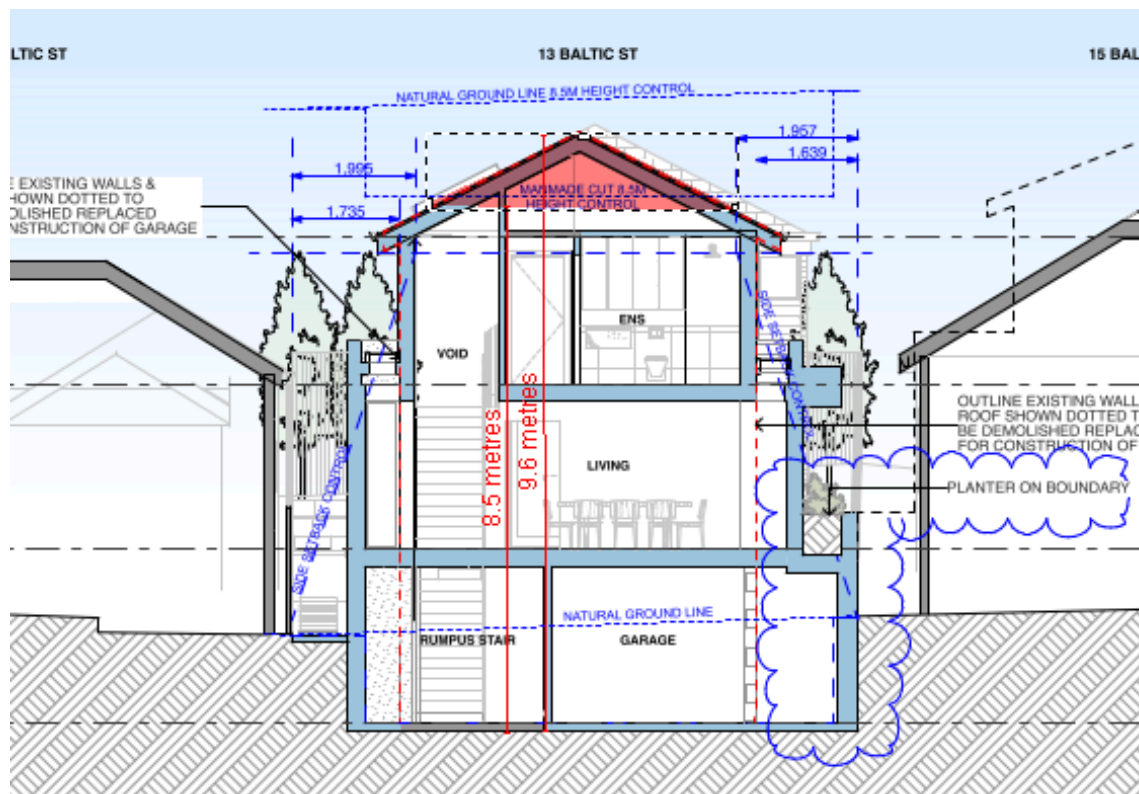


Image 1: Building height non-compliance shaded in red.

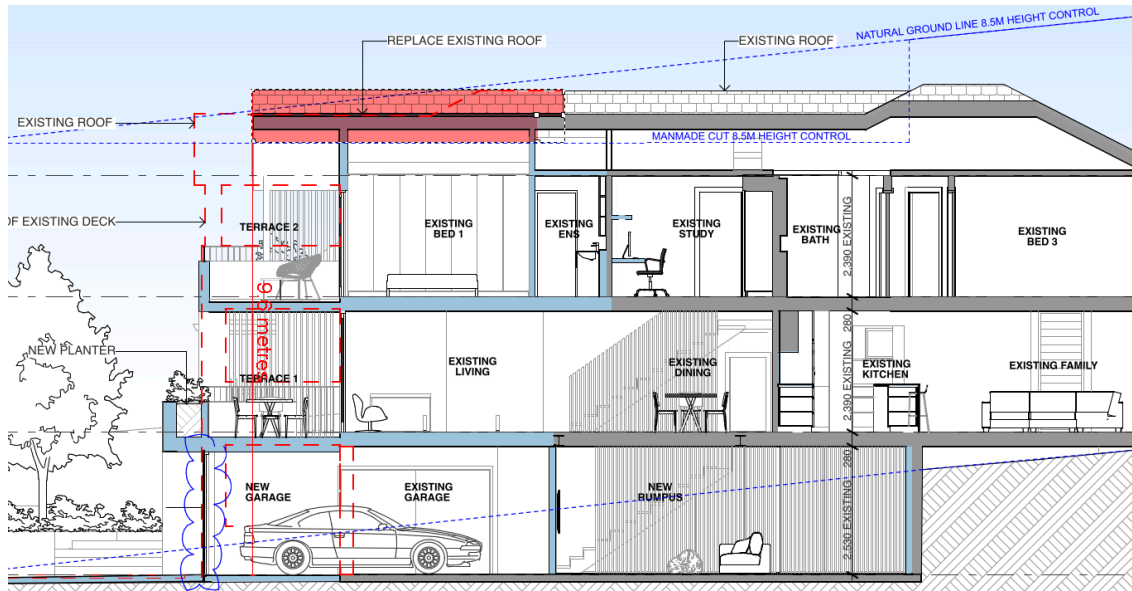


Image 2: Building height non-compliance shaded in red.

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is 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 Height of Buildings 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 Height of

Buildings is unreasonable or unnecessary in the circumstances of this application for the following reasons:

'Despite the variation to the Height of Building control which occurs as a result of the topography of the land, the proposed development is considered to be in keeping with the desired future character of the locality. The proposal has been strategically designed to minimise the impact and bulk and scale of the project. The project designer has worked tirelessly to design through alterations and additions a modern high-end development that meet the sites constraints and the existing bulk and scale of the area; therefore, the proposal will not result in any unreasonable visual impact on the Baltic Street streetscape.

The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing. Therefore, this written submission is considered to be compliant with the Statutory Provisions prescribed both under MLEP2013 and the provisions of Clause 4.6 which permit a variation to a development standard. It is noted it is consistent with the approval granted through the case Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582 is that the distorted height plane creates reasonable environmental planning ground that justifies the contravention of the height standard.

In determining the building heights of the development, it is important to understand the definitions of building height and ground level (existing) and also relevant case law from the NSW Land and Environmental Court.

The court now considers the definition of "ground level (existing)" Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582, which insists that the ground level (existing) is measured from the excavated ground level (within the footprint of the existing building) to the highest point of the proposal directly above. It is noted that the Court accepted (at [74]) that there is an 'environmental planning ground' that may justify the contravention of the height standard under 'clause 4.6' when the prior excavation of the site (within the footprint of the existing building) distorts the maximum building height plane. This falls hand in hand with the original leading cases Bettar v Council of the City of Sydney [2014] NSWLEC 1070 and Stamford Property Services Pty Ltd v City of Sydney & Anor [2015] NSWLEC 1189.

It is noted that common-sense should prevail from the new court case "Merman Investments Pty Ltd" with the fact that many height planes are now going to be distorted creating an argument which goes hand in hand with the original court cases relating to the extrapolated levels of a site through 'Bettar'. As a result of the above, it is determined that the maximum building above ground level (existing) is 9.55m for the proposed development. This results in a 1.05m variation or 12.35%. The Development Application is supported by a Clause 4.6 Variation to Development Standard report. The proposed breach relates to the front component of the dwelling and a portion where the excavated ground level distorts the height plane.

It is noted that the building height flows from 5.41m at the rear of the site to the maximum 9.55m which is consistent with the topography of the southern side of Baltic Street. It is noted that the breach is the result of the sloping nature of the site, several existing man-made level changes which distort the existing ground level and the existing man-made changes. If the natural ground level was applied, the proposed variation would be consistent with other approvals granted in the area. It is noted that if the natural ground level was applied, the proposal would achieve compliance with the 8.5m building height control for the majority of the building footprint. Regardless, the natural topography of the site makes compliance with the building height impractical, and therefore unreasonable for Council to enforce. The bulk and scale and three storey appearance of the southern side of Baltic Street is also retained.'

(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:

'There are sufficient environmental planning grounds to justify contravening the development standard. Whilst there is no requirement that the development comply with the objectives set out in clause 4.6(1) it is relevant to note that objective (b) provides:

"to achieve better outcomes for and from development by allowing flexibility in particular circumstances."

It should be noted at the outset that in *Initial Action* the Court held that it is incorrect to hold that the lack of adverse impact on adjoining properties is not a sufficient ground justifying the development contravening the development standard when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse impacts.

'There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. From a planning perspective, there is sufficient grounds to justify the variation to the height of buildings development standard for the following reasons:

1. *Historical excavation and site disturbance*
2. *Topography of the site*
3. *Characterisation of the development*
4. *Streetscape Appearance*

- *The sites topography and existing man-made excavation distorts the height plane for the site. If the natural ground level was taken, the proposal would substantially comply with the building height control (as per the existing building height retained and above the 8.5m allowance).*
- *The proposed development responds to the existing and desired future character of the locality. Furthermore, the subject proposed dwelling through alterations and additions retains the building footprint and in majority the height existing on the site. It's our opinion that the proposal will integrate into the existing streetscape and pattern of development within Baltic Street.*
- *The development does not result in any unnecessary or undue bulk or visual impacts on adjoining properties and is of a scale that is compatible with the existing and surrounding buildings. The streetscape analysis completed within the Statement of Environmental Effects notes numerous recent approvals with a variation to the building height and properties three storeys in height.*
- *The amenity impacts to neighbouring residential properties, arising from the non-compliant building height, is negligible. Adjoining properties will continue to receive suitable solar access,*

- privacy impacts are suitably minimised, and views are reasonably maintained.*
- *The building height breach is minor (when assessed from the natural ground level) and would relate to only a small portion of the proposed development only, which will largely be indiscernible when viewed from Baltic Street.*
- *The proposal is consistent with the stance Council has taken on developments within Fairlight noting numerous approvals granted for variations to the building height control for the following developments:*
 - *DA2024/0040 – 18 Wattle Avenue Fairlight – 8.8% variation*
 - *DA2024/0864 – 4 Jamieson Avenue Fairlight – 7% variation*
 - *MOD2024/0155 – 9 Francis Street Fairlight – 15.3% variation*
 - *DA2023/1583 - 38 Francis Street Fairlight – 17.4% variation*

Having regard to Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, and further to the proposal's consistency with the above strategic and statutory environmental planning provisions, the proposal is consistent with the following objectives under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):

- (c) to promote the orderly and economic use and development of land; and*
- (g) to promote good design and amenity of the built environment,*

1. *In response to (c), the proposal will facilitate the orderly and economic use and development of the land in a manner that is desired by the planning controls because it will facilitate the renovated dwelling consistent with approvals in the immediate area. In considering the contrary (refusal of the DA), retention of the building in its current form would not promote the orderly and economic use and development of land in the manner that council's strategic and statutory planning provisions seek. Retention of the building in its current form makes no advancement towards achieving the goal of creating functional development opportunities.*
2. *In response to (g) the proposal has been designed to promote good design and amenity of the built environment, with a consistent built form retained for Baltic Street as per recent approvals.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.'

Planner's Comment:

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes good design and amenity of the built environment, noting that the proposed development will not unreasonably compromise the amenity of adjoining residential and other development within the immediate vicinity.
- The development promotes the proper construction and maintenance of buildings, in so far as the proposed alterations and additions is a necessary upgrade of the ageing development.

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.

It is considered on balance, that having regard to the particular circumstances of the breach of the building height development due to the existing site constraints and topography, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

(ii) FLOOR SPACE RATIO

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

Development standard: Clause 4.4 Floor Space Ratio

Requirement: 0.6:1

Proposed: 0.67:1

Percentage of variation: 12.73%



Image 3: Existing and proposed FSR.

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application 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 4.4 Floor Space Ratio 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 4.4 Floor Space Ratio is unreasonable or unnecessary in the circumstances of this application for the following reasons:

'In determining a merits-based assessment for the floor space ratio of the development due consideration has been given to the above objectives and the planning principles set by the Land and Environment Court of NSW, Planning Principle – floor space ratio (*Salanitro-Chafei V Ashfield Council* (2005) NSWLEC 366) and *Project Venture Developments v Pittwater Council* (2005) NSW LEC 91).

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the FSR of the site should be assessed on a greater numerical figure, noting the sites constraints and the unique nature of the locality in a varying degree of development types. Given the proposed application is in our opinion minor and consistent with similar approvals granted in the area, Council's assessment should be focused on this numerical allowance as opposed to the variation to the specific standard. By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for the existing residential development.

The proposal is consistent with the objectives of Clause 4.4, as outlined below:

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

The development proposes alterations and additions to create a functional dwelling for the occupants of the dwelling through design changes. It is important to note that the additional floor space for majority relates to existing space within the building footprint on the lower ground/garage floor (Level 1). In this regard, the additional 15.29sqm of GFA to the lower ground/garage level (Level 1) will be indistinguishable from the streetscape and can be supported. To assist it is noted that the GFA increases to Level 2 and Level 3 are functional changes being 5.03sqm to Level 2 and 7.25sqm to Level 3. The apparent bulk and scale of the dwelling will be negligibly impacted, from the existing approved dwelling and the new refurbishment works will ensure a positive contribution to the streetscape.

The surrounding area varies in size, bulk and scale, ranging from two to three storeys in height and varying setbacks. It is our considered opinion that the proposal is consistent with the intent and approvals granted in the area, therefore confirming that the proposal is consistent with the prevailing

bulk and scale and the future streetscape of the locality.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, I have formed the considered opinion that most observers would not find the bulk and scale of the proposed development, as viewed from Baltic Street, to be offensive, jarring or unsympathetic in a streetscape context. This objective is satisfied, notwithstanding the non-compliant FSR proposed, as the bulk and scale of development is consistent with the existing and desired streetscape character.

(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features.

The development will result in a built form and massing that is of a consistent scale to the existing dwelling and surrounding properties. The development will not obscure any important landscape or townscape features and will not result in any view loss impacts. The proposal integrates new functional landscaping zones to the site. The proposal is of a density and bulk applicable to the site and landscaping within backyard. The proposal retains the existing street trees within the road verge which assists in retaining important landscape features of Baltic Street. It is therefore considered this objective is met, despite the numerical variation.

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

The proposal enhances the existing visual relationship acknowledging the existing parameters of the dwelling that are not functional or usable for the occupants. The proposal has been designed to the character of the area while creating its own "image" and "identity" for the area. The proposal integrates existing landscaping with new functional elements which provides an enhanced dwelling which flows and is usable both inside and out.

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

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

The proposed alterations and additions will not result in any impacts on the use or enjoyment of neighbouring properties or the public areas adjoining the site. It is my professional opinion that the proposal provides a functional building for the new occupants which ensures the amenity and privacy of adjoining properties is maintained.

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

Solar access - *The accompanying shadow diagrams demonstrate that the building, although non-compliant with the FSR standard, will not give rise to any unacceptable shadowing impact to the existing living room and open space areas of the adjoining properties at 11 and 15 Baltic Street, with compliant levels of solar access maintained.*

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

It is my considered opinion that the building, notwithstanding the FSR non-compliance, achieves the objective through skilful design that minimises adverse environmental impacts on the use and enjoyment of adjoining land and the public domain.

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

Not applicable – the site is located within a residential zone.

It is our professional opinion that the building by virtue of its height, bulk and scale, is consistent with the locality and desired character of the area. We have formed the considered opinion that the project is a sympathetic design and development with a bulk and scale consistent with the existing and future character of the area. The proposal is not offensive, or unsympathetic in a streetscape context nor the context from Baltic Street.

As outlined above, the proposed development is consistent with the underlying objectives of the FSR standard, notwithstanding the proposed variation, and therefore compliance with the control is unreasonable and unnecessary and therefore the variation can be supported by Northern Beaches Council.'

(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:

'It should be noted at the outset that in Initial Action the Court held that it is incorrect to hold that the lack of adverse impact on adjoining properties is not a sufficient ground justifying the development contravening the development standard when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse impacts.

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. From a planning perspective, there is sufficient grounds to justify the variation to the FSR development standard for the following reasons:

Context

- *The area surrounding the subject site is characterised by 2 and 3 storey residential dwellings, also noting a three storey residential flat building at 17 Baltic Street.*
- *The proposed dwelling has been designed to remain consistent with the character of the locality, despite the variation to FSR, through design, architectural features and complimentary materials and colour choices.*
- *The proposal has been designed as alterations and additions with the main addition relating the alteration of the garage which increases GFA under the existing building footprint.*

- *Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments:*
 - *DA2022/2135 – 1 Wattle Avenue Fairlight – 12.9% variation*
 - *DA2022/0199 – 13 Austin Street Fairlight – 4.8% variation*
 - *DA2022/0340 – 21 Parkview Road Fairlight – 18.05% variation*
 - *DA2021/2055 – 32 Griffiths Street Fairlight – 26.25% variation*
 - *DA2021/2623 – 47 Griffiths Street Fairlight – 1.22% variation*
- *The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d).*

Future Development

- *The proposed alterations and additions will allow for the provision of a modern floor plan, with refurbished and improved internal spaces. The proposal also allows for a functional side by side garage space (currently a tandem garage).*
- *This represents an efficient use of an existing developed site, with all services readily available.*
- *The built form proposed is relatively consistent with the existing dwelling and other buildings in the locality,*
- *The minor increase to the floor area of 25.49sqm is considered reasonable as it is located within the existing building footprint or minor changes that would be indistinguishable to the public eye from the streetscape and does not result in any unreasonable impacts to neighbouring properties.*
- *The proposed works will not hinder any future development of the lot,*
- *The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g).*

Consistent with Zone Objectives

- *The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for additional residential floor space in a residential zone, with a bulk and scale consistent with the existing dwelling and the locality. Compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.*

Natural Environment

- *The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land,*
- *The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.*

Social and Economic Welfare

- *The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community. It utilises existing services, satisfying Cl1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable*

Appropriate Environmental Planning Outcome

- *The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.*

The above environmental planning grounds are not general propositions, they are unique circumstances to the proposed development. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed floor space ratio non-compliance in this instance.'

Planner's Comment:

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes the orderly and economic use and development of the land, in so far as the proposed development upgrades the useability of the existing dwelling and such building is an orderly response to the development of the site, thereby satisfying objects 1.3(c) of the EPA Act.
- The development promotes good design and amenity of the built environment, noting that the works will not contribute to any unreasonable impact on amenity considerations (i.e solar access, privacy and view loss) to neighbouring properties, thereby satisfying objects 1.3(g) of the EPA Act.

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.

It is considered on balance, that having regard to the particular circumstances the proposed departure from the FSR development standard is acceptable and it is reasonable that flexibility to the standard be applied.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 333.8m²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	E: 7m (based on gradient 1:12)	Addition - 6.7m	N/A	Yes
	W: 7m (based on gradient 1:12)	Addition - 6.9m	N/A	Yes

		Garage - 2.8m		
4.1.2.2 Number of Storeys	2	3/2	N/A	Yes - existing
4.1.2.3 Roof Height	Roof Height: 2.5m	1.9m	N/A	Yes
4.1.4.1 Street Front Setbacks	6m	Level 1: 3.6m Level 2: 3.5m Level 3: 4.29m	40% 41.7% 28.5%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 2.2m	Level 1: 0.9m Level 2: 1.6m Level 3: 1.7m	59.1% 27.3% 22.8%	No
	W: 2.3m	Level 1: Nil Level 2: 0.9m Level 3: 1.6m	100% 60.9% 30.5%	No
	Windows: 3m	E: 1.8m W: 0.9m	40% 70%	No
4.1.4.4 Rear Setbacks	8m	8.7m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space 55% of site area	44.6%	19%	No
	Open space above ground 25% of total open space	25%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	55.4%	N/A	Yes
	1 native trees	1 trees	N/A	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	18m ² m	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5m	45.1%	No
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	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)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	Yes

Detailed Assessment

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

Description of non-compliance

4.1.4.1 Street Front setbacks

The control requires front setbacks to relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity of the site. Where the street front building lines of neighbouring properties are variable, and there is no prevailing building line in the immediate vicinity, a minimum 6m front setback generally applies. In this instance, there is no prevailing building line in the immediate vicinity of the site.

The proposed level 2 planter box is 3.5m from the front boundary. The remainder of the development

maintains the existing front boundary setback of 4.4m (see image 5 below).

4.1.4.2 Side setbacks and secondary street frontages

Clause 4.1.4.2 Side setbacks and secondary street frontages stipulates that the setbacks between any part of a building and the side boundary must not be less than one third of the height of the building. The wall height of the eastern façade of the proposed extension is 6.7m, thereby requiring a side setback of 2.2m. The western facade has a wall height of 6.9m and requires a wall height of 2.3m. The proposal has the below setbacks to the side boundaries:

- Eastern Side setback:
 - Level 1 - 0.9m
 - Level 2 - 1.6m
 - Level 3 - 1.7m

- Western side setback:
 - Level 1 - Nil
 - Level 2 - 0.9m
 - Level 3 - 1.6m

The non-compliance with the side setback requirements result in a variation of 22.8 - 59.1% on the eastern setback and 30.5 - 100% on the western setback.

Under the above mentioned clause, the requirements for all new windows that face the side boundary are to be setback at least 3m. The proposal exhibits several new windows to the eastern and western elevations. These windows are located within the existing building facade, presenting a maximum variation of 70% to the clause requirements.

4.1.4.3 Variations to Side Setback in Residential Density Areas D3 to D9

Clause 4.1.4.3 allows for variations to the side boundary setback for walls located within 0.9m of any one of the side boundaries but they must meet the following requirements:

- i) contain no windows; *
- ii) be constructed to one side boundary only;
- iii) limit height to 3m; *
- iv) limit length to 35 percent of the adjoining site boundary; **
- v) submit a standard of finish and materials for external surfaces which complement the external architectural finishes of adjacent properties and/or the townscape character;
- vi) obtain a right-of-way to provide access for maintenance; and
- vii) satisfy the objectives for setback in this plan and the applicant can demonstrate no disadvantage to the adjacent allotment through increased overshadowing, or loss of view and no impediment to property maintenance.

The proposed encroachment on the western elevation meets these requirements and can be considered for a variation.

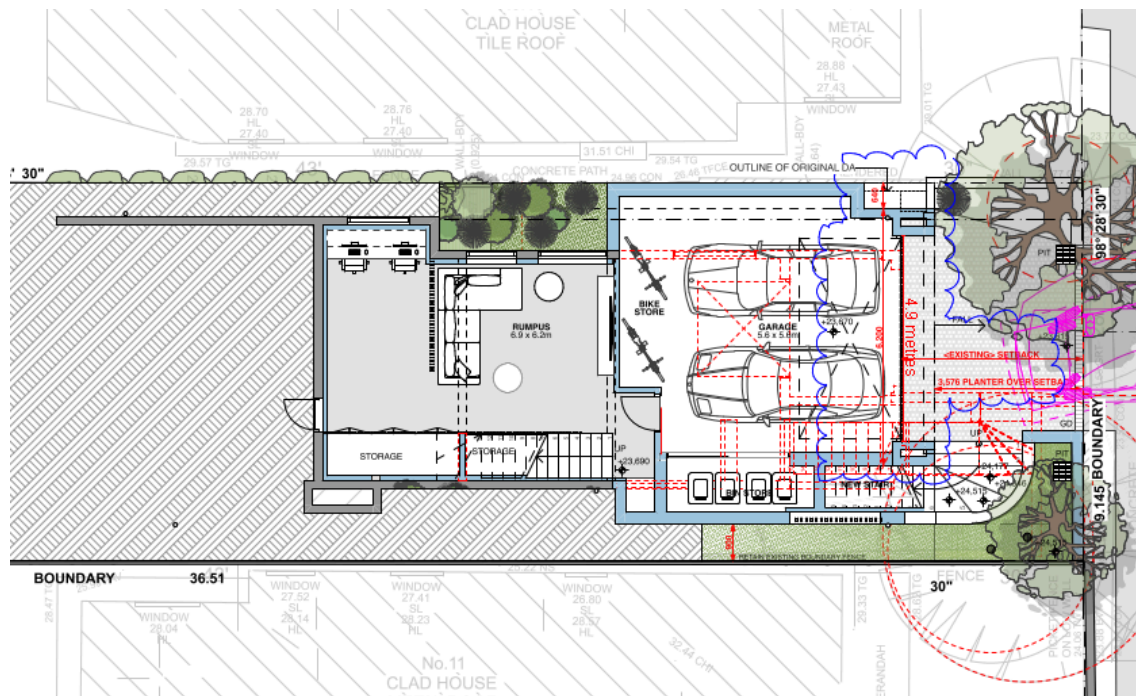


Image 4: Level 1 - western side boundary setback non-compliance.

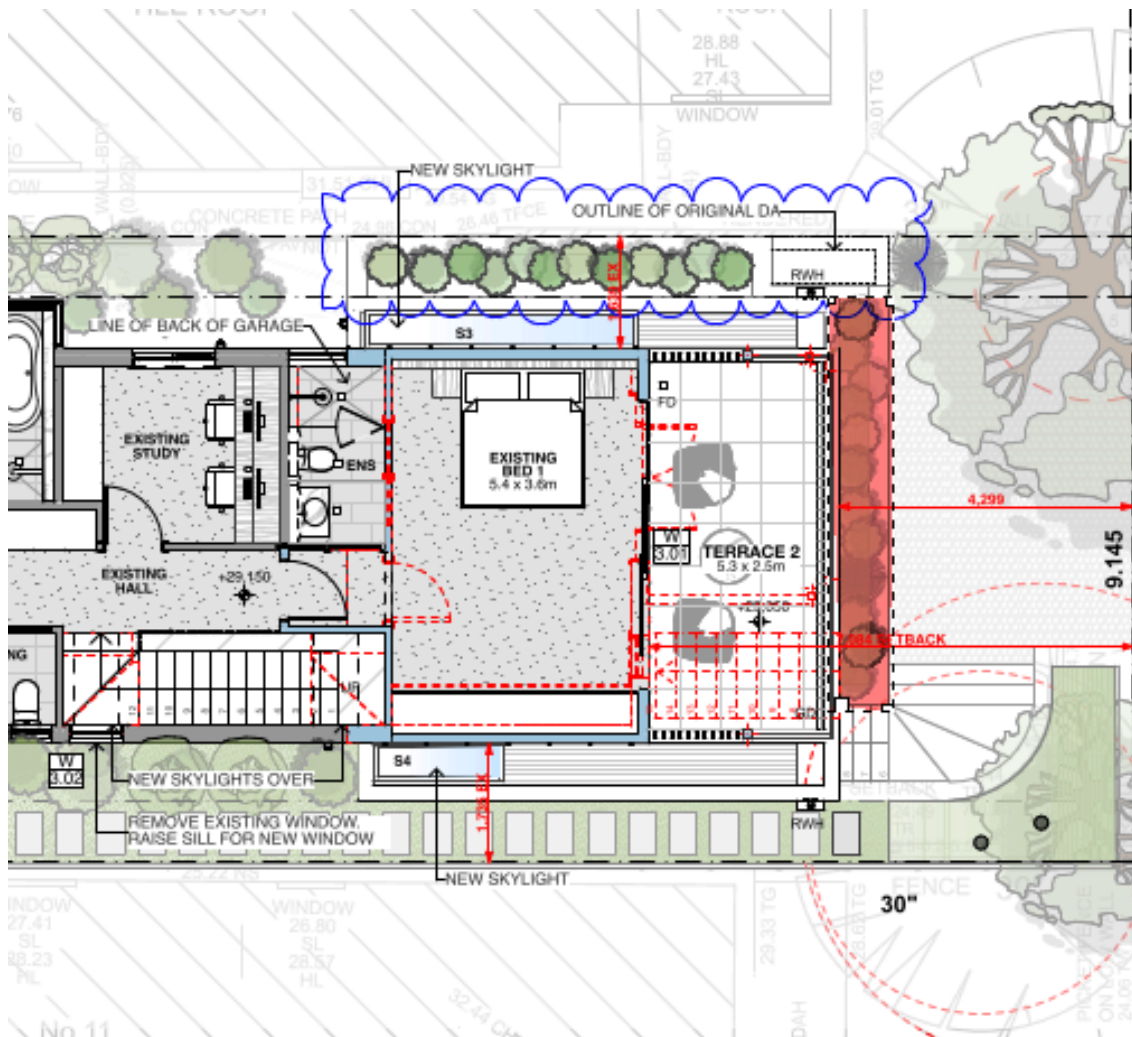


Image 5: Level 2 - front boundary encroachment highlighted in red.

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 non-compliance with the side boundary setback will be screen from the street by the existing and proposed landscaping. Level 1 is also slightly stepped in from the western side boundary at the front to give the appearance of separation between the sites. This along with the proposed landscaping will maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

The proposed first floor planter box and supports are forwarded of the existing building line. While the planter box does not meet the requirement, the planter box will soften the appearance of dwelling when viewed from the street and adjoining dwellings.

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 development is considered to provide reasonable amenity including privacy, solar access and view sharing for the dwelling occupants and those of adjoining and surrounding properties. The development is also considered to appropriately respond to the site constraints and prevailing pattern of development seen within the vicinity of the site whilst maintaining safe and adequate parking by providing two onsite car parking spaces.

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

Comment:

Flexibility is afforded in this circumstance, as the window, side and rear setback variations will not result in unreasonable amenity impacts to adjoining sites and allow for a modernised home with safe and accessible carparking.

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 existing topography of the land will be unaltered, with no significant forms of vegetation being proposed for removal. Acceptable dimensions of landscaped open space is provided on site to accommodate for plantings, deep soil zones, and vegetation.

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

Comment:

The subject site is not located within bush fire prone land and therefore this objective is not relevant.

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.

4.1.5 Open Space and Landscaping

Description of non-compliance

The control requires at least 55% of the site to consist of total open space (TOS). To be included as

TOS open space areas must be at least 3x3m in dimension and must not relate to parking structures or vehicular access (i.e. the driveway and hardstand parking space with carport above is excluded).

The application proposes 44.6% of the site as TOS, which does not satisfy the numeric requirement.

Merit consideration:

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

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

Comment:

No significant vegetation is proposed to be removed. The landscape plan provides significant new vegetation to the site which will increase the landscaping on the site and also increases the total open space.

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

Comment:

The proposed development includes deep soil landscaped areas along the front of the dwelling to ensure an appropriate landscaping outcome. No significant vegetation on the site is proposed to be removed.

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

Comment:

The proposed development does not result in unacceptable amenity impacts, specifically with regard to view sharing, solar access, privacy and visual bulk. Sufficient TOS is provided elsewhere on the site, to meet the recreational needs of the occupants of the dwelling.

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

Comment:

The site contains sufficient pervious areas to assist in water infiltration, in turn minimising stormwater runoff. Furthermore, suitable conditions have been included with this consent to ensure that stormwater is managed and disposed of in an acceptable manner.

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

Comment:

The proposal will not lead to a significant spread of weeds.

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

Comment:

The proposed development does not have an adverse impact upon wildlife corridors.

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

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

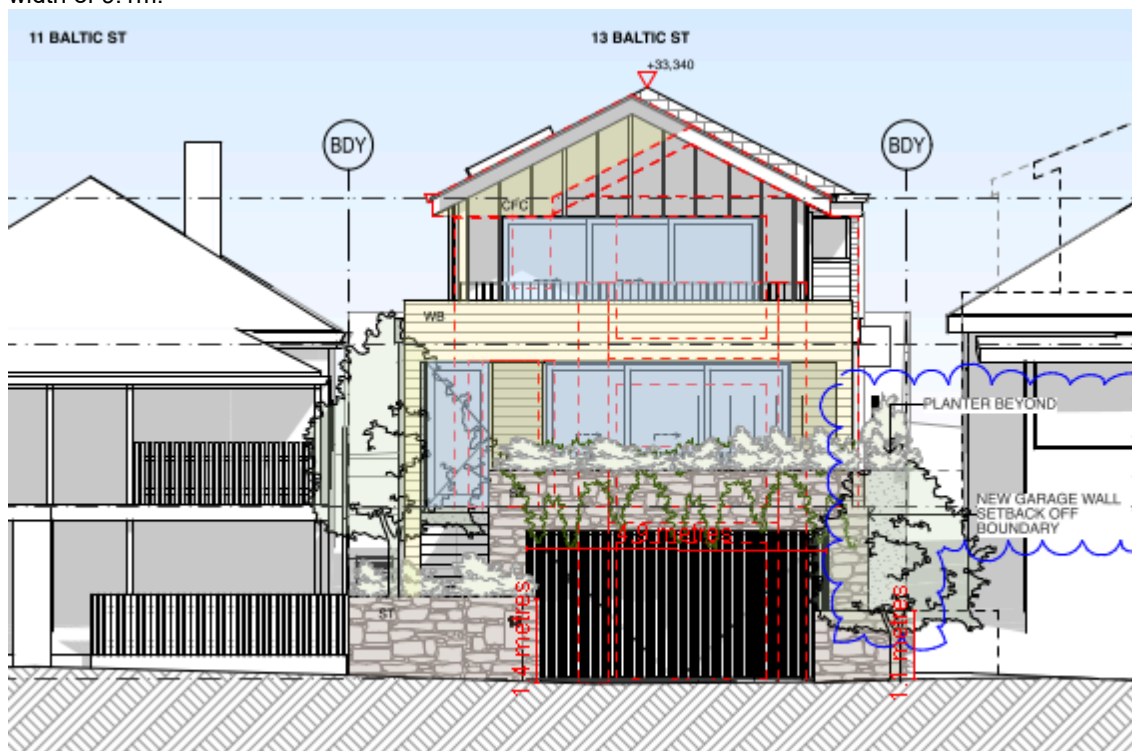
Description of non-compliance

Under MDCP Clause 4.1.6, dwellings require the provision of two (2) off-street parking spaces. This proposal brings the site into compliance through the expansion of the garage to provide two (2) spaces where previously only one (1) was provided.

Clause 4.1.6.1 of MDCP 2013, requires garages forward of the building line to be designed and sited to not dominate the street frontage. In particular:

c) the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m.

The width of the garage door is 4.9m, which is non-compliant with the width control as the site has width of 9.1m.



North Elevation

Image 6: North elevation - garage and front fence.

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

Comment:

The proposed garage provides accessible and adequate parking on-site for two (2) cars and is consistent with the stipulated width requirement. The size and width of the garage is considered appropriate for the site.

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

Comment:

The proposal provides two (2) off-street parking spaces which meets the requirements of the control. Whilst widening of the driveway will effect the availability of on-street parking, this trade off is considered acceptable, given that the proposal is doing so to attain compliance with off-street parking requirements, and that the additional off-street parking space will reduce on-street parking demand.

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

Comment:

The location and design of the garage is considered to be efficient, safe and convenient. The size and width of the garage and driveway crossover is considered appropriate, and the proposal is supported by Council's Development Engineering team, subject to conditions.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment:

The proposed garage expansion requires excavation to expand the driveway. The excavation is considered very minor for a small portion of the driveway. The proposal is supported by a Geotechnical Report and has been supported by Council's Development Engineering team, subject to conditions

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

Comment:

The number of footpath crossings remains unchanged.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

The expansion of the garage utilises the existing garage and is therefore reasonably placed. Due to the existing site layout and topography, there are not considered to be reasonable alternatives to this expansion

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

Comment:

The site is located within a residential area and the proposal complies with the required number of parking spaces. The proposal will not restrict the use of active or public transport by residents of the area.

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.

4.1.10 Fencing

Description of non-compliance

Clause 4.1.10 Fencing requires the following:

- *Freestanding walls and fences between the front street boundary and the building are to be no more than 1m high above ground level at any point.*
- *In relation to open/ transparent fences, height may be increased up to 1.5m where at least 30 percent of the fence is open/ transparent for at least that part of the fence higher than 1m.*

The proposed a solid masonry fence which ranges in height from 1.1 - 1.4m, which does not comply with the requirement of the clause.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying objectives of the control. The control relies upon the objectives of Clause 3.1 - Streetscapes and Townscapes within the MDCP.

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

Comment:

The new fence exceeds the height requirement of 1m or 1.5m with 30% transparency. However, the proposed fence will be maintaining the height of the existing fence line and will compliment the design of the proposed dwelling.

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

Comment:

The southern side of Baltic Street has inconsistent fence heights and designs. There is a mix of fence styles and materials. The proposed solid fence is consistent with the existing fence on the site, however, it will be constructed of materials that match the works to the proposed dwelling. The proposed fence will provide visual interest and complement the identified streetscape.

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

Comment:

There is an existing front fence on the site and the proposed fence will not impact on landscaping within the front setback.

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 2024

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2024.

A monetary contribution of \$7,373 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$737,326.

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 the Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This proposal, for Alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to a greater than 10% variation to both the Height of Buildings and Floor Space Ratio development standards.

No submissions were received.

Critical assessment issues included height of buildings, FSR, setbacks, landscaping open space, parking and fencing. These issues 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.

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013 because the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2024/1769 for Alterations and additions to a dwelling house on land at Lot 15 DP 4449, 13 Baltic 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
DA10	D	Proposed Level 1 & Demolition Plan	Mont Architects	25/3/2025

DA11	D	Proposed Level 2 & Demolition Plan	Mont Architects	25/3/2025
DA12	D	Proposed Level 3 & Demolition Plan	Mont Architects	25/3/2025
DA13	D	Proposed Site, Roof & Demolition Plan	Mont Architects	25/3/2025
DA14	D	North & South Elevation	Mont Architects	25/3/2025
DA15	B	East Elevation	Mont Architects	12/12/2025
DA16	D	West Elevation	Mont Architects	25/3/2025
DA17	C	Section A	Mont Architects	24/3/2025
DA18	D	Section B	Mont Architects	25/3/2025

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Waste Management Plan	-	-	-
1 of 1 - Landscape Plan	B	Paul Scrivener Landscape	11.12.24
Geotechnical Assessment Project: Alterations & Additions 13 Baltic Street, Fairlight NSW	Ref: AG 24526	AscentGeo Geotechnical Consulting	3.12.24

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	03/02/2025

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

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

3. Prescribed Conditions

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

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

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

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

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

on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. General Requirements

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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) Should any construction cranes be utilised on site, they are to be fitted with bird deterrents along the counterweight to discourage raptor (bird) nesting activity. Deterrents are to remain in place until cranes are dismantled. Selection of deterrent methods is to be undertaken in accordance with the recommendations of a suitably qualified ecologist.
- (p) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$7,373.26 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 \$737,326.00.

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

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

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

Reason: To provide for contributions in accordance with the Contribution Plan to fund the

provision of new or augmented local infrastructure and services.

6. **Security Bond**

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 4.5 metres wide in accordance with Northern Beaches Council Standard Drawing Normal and in accordance with Section 138 of the Roads Act 1993. The existing concrete footpath shall be reconstructed, in order to provide for a standard Vehicular crossing and Layback.

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.

8. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

9. **Compliance with Standards**

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

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

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

10. **External Finishes to Roof**

The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.43 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a 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.

11. **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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

12. **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: No. 11 Baltic 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.

13. **Sediment and Erosion Controls**

For developments that include more than 2500sqm of disturbance:

A Soil and Water Management plan (SWMP), in accordance with section 2.3 of the Blue Book, must be prepared and certified by a suitably qualified professional.

For sites larger than 250sqm and less than 2500sqm of disturbance:

An Erosion and Sediment Control Plan (ESCP) must be prepared by a suitably qualified person in accordance with the following considerations and documents:

- Sites that have slopes exceeding 20% (measured in any direction across the site), and/or where works are within the high-water mark or adjacent to a waterway or watercourses are considered environmentally sensitive areas. These sites require a site-specific ESCP which must be prepared and certified by a suitably qualified professional,
- The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate – Volume 1, 4th Edition (2004)' (the Blue Book), and
- The 'Guidelines for Erosion and Sediment Control on Building Sites' (Department of Planning, Housing and Infrastructure).

The ESCP must include the following as a minimum:

- Site Boundaries and contours,
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application),
- Location of site access, proposed roads and other impervious areas (e.g. parking area and site facilities),
- Existing and proposed drainage patterns with stormwater discharge points,
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected,
- North point and scale,
- Type of erosion control measures to divert and slow run-off around and within the site.

Environmentally sensitive areas (i.e. Sites that have slopes exceeding 20% and/or where works are within the high-water mark or adjacent to a waterway or watercourses) must also consider:

- Identify and mark any environmentally sensitive areas on and immediately next to the site and how you will protect these, including any appropriate buffer zones (for example, marking them out as 'no-go' areas),
- Details on vegetation you will clear, as well as areas of vegetation you will keep (mark no go areas),
- Detail on soil information and location(s) of problem soil types, especially dispersive soils and potential or actual acid sulfate soils,
- Location of any natural waterways that could receive run-off and how these will be protected these from run-off.

For sites smaller than 250sqm or where the disturbance is less than 50sqm:

Run-off and erosion controls must be implemented to prevent soil erosion, water pollution or the discharge of loose sediment on the surrounding land by:

- Diverting uncontaminated run-off around cleared or disturbed areas, and
- Erecting a silt fence and providing any other necessary sediment control measures that will prevent debris escaping into drainage systems, waterways or adjoining properties, and
- Preventing the tracking of sediment by vehicles onto roads, and
- Stockpiling top soil, excavated materials, construction and landscaping supplies and debris within the lot.
- Identifying any environmentally sensitive areas on and immediately next to the site, and demonstrating how these will be protected (for example, by designation as no-go areas).

Details demonstrating compliance with the relevant requirements above are to be submitted to the Certifier, and the measures implemented, prior to the commencement of works.

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

DURING BUILDING WORK

14. **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.

15. **Removing, Handling and Disposing of Asbestos**

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

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

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

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

16. 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.

17. 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.

18. Survey Certificate

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

19. Maintenance of Sediment and Erosion Controls

Erosion and sediment controls must be adequately maintained and monitored at all times, particularly surrounding periods of rain, and shall remain in proper operation until all development activities have been completed and the site is in a state where no substance other than rainwater can enter the stormwater system and waterways.

All sediment control measures must be maintained at, or above, their design capacity.

Where more than 2500 square metres of land are disturbed or if the site has a slope of more than 20%, a self-auditing program must be developed for the site. A site inspection using a log book or inspection test plan (ITP) must be undertaken by the site supervisor:

- at least each week
- immediately before site closure
- immediately following rainfall events that cause runoff.

Details demonstrating compliance must be provided to the Certifier during demolition and building works.

Reason: Protection of the receiving environment and to ensure no substance other than rainwater enters the stormwater system and waterways.

20. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

21. 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.

22. 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.

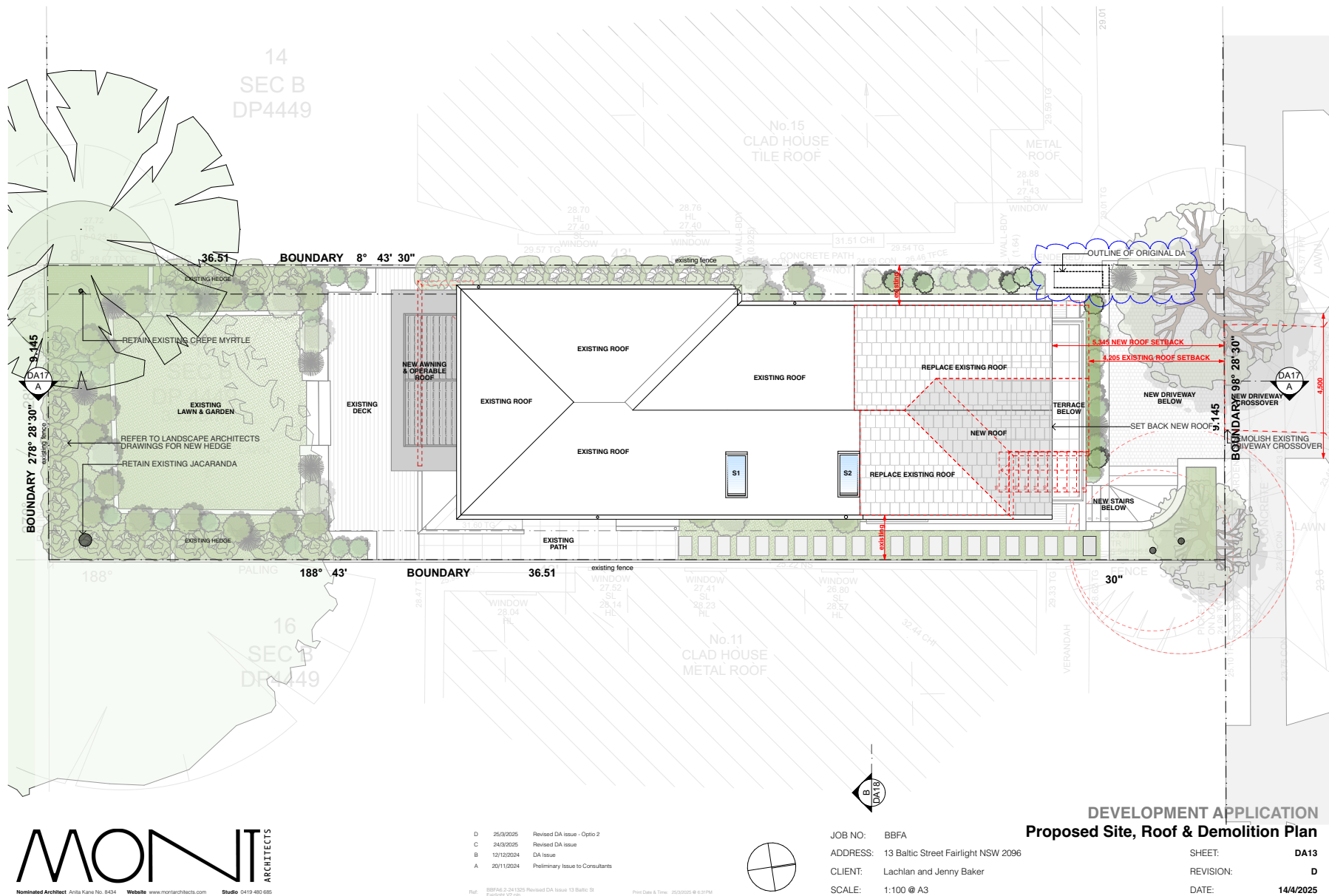
Reason: To maintain proper records in relation to the proposed development.

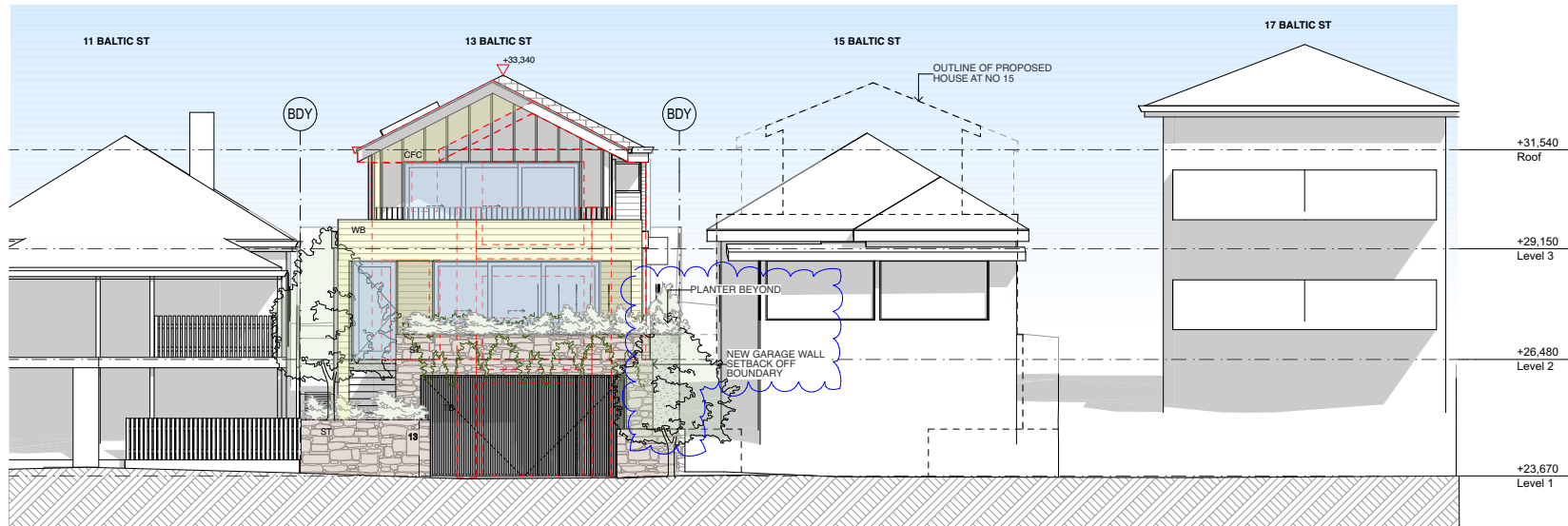
23. Waste Management Confirmation

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

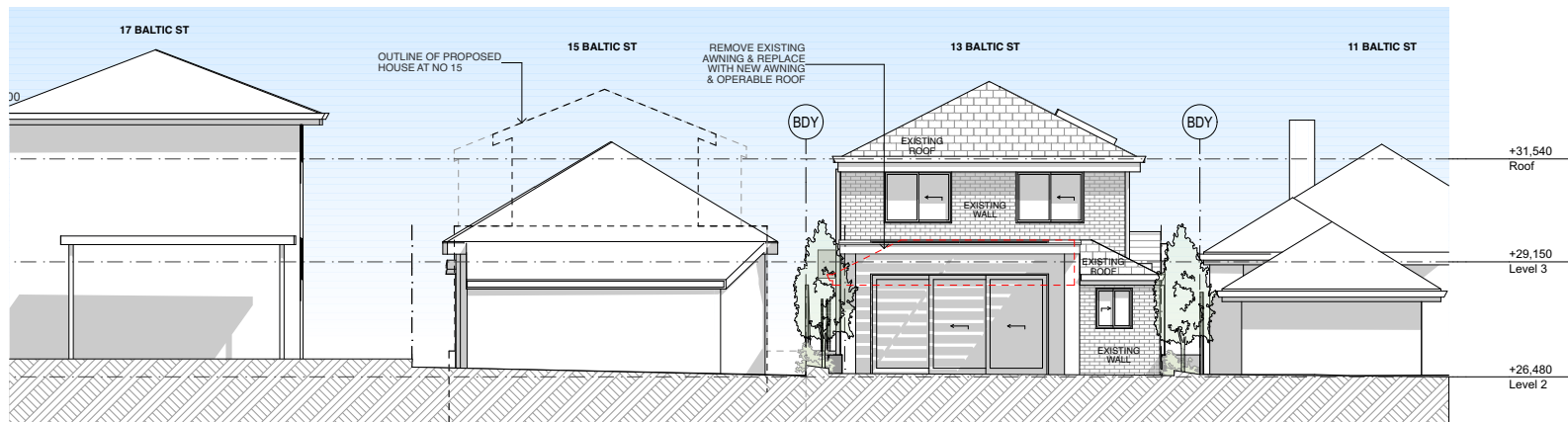
and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

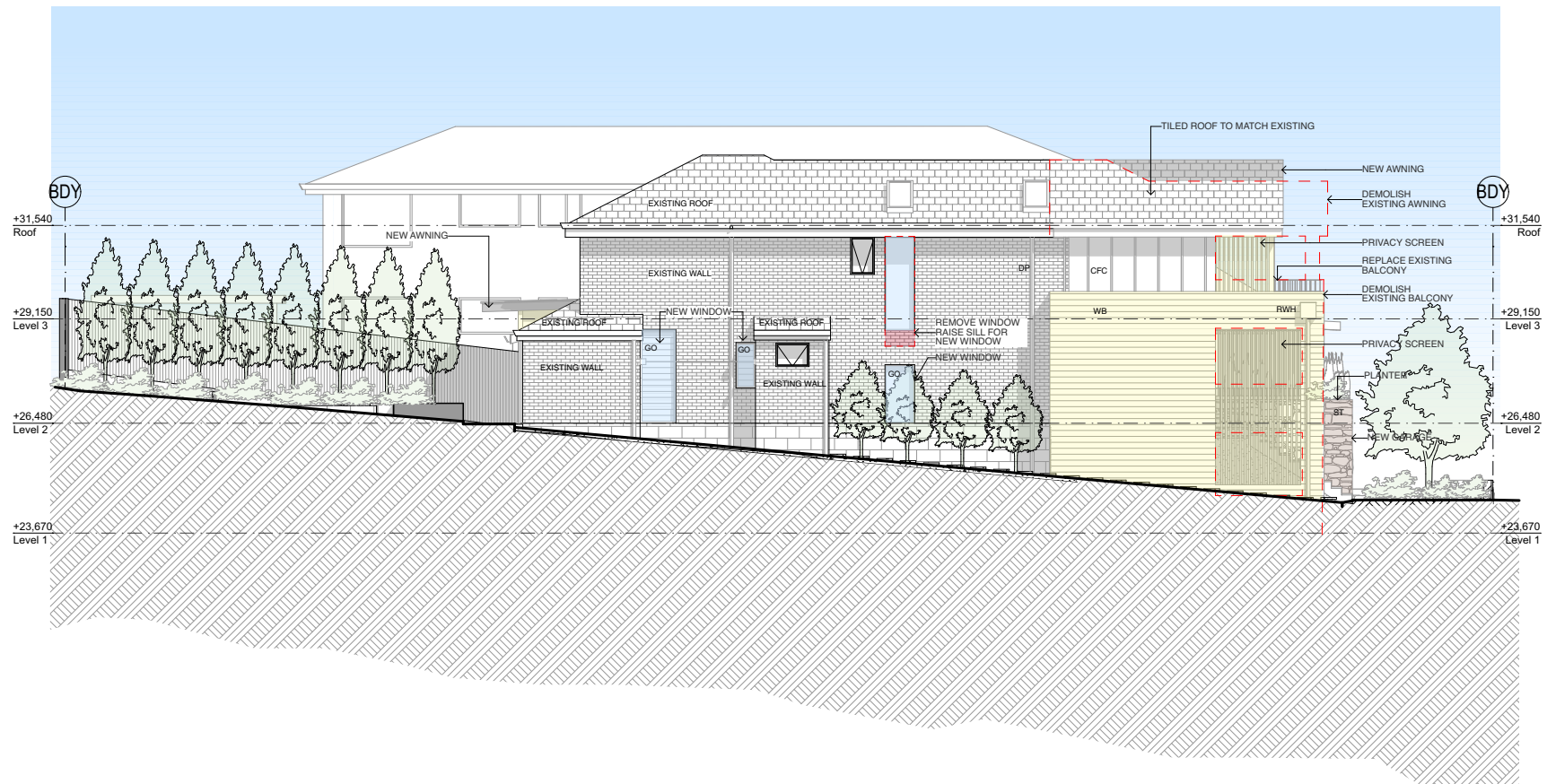


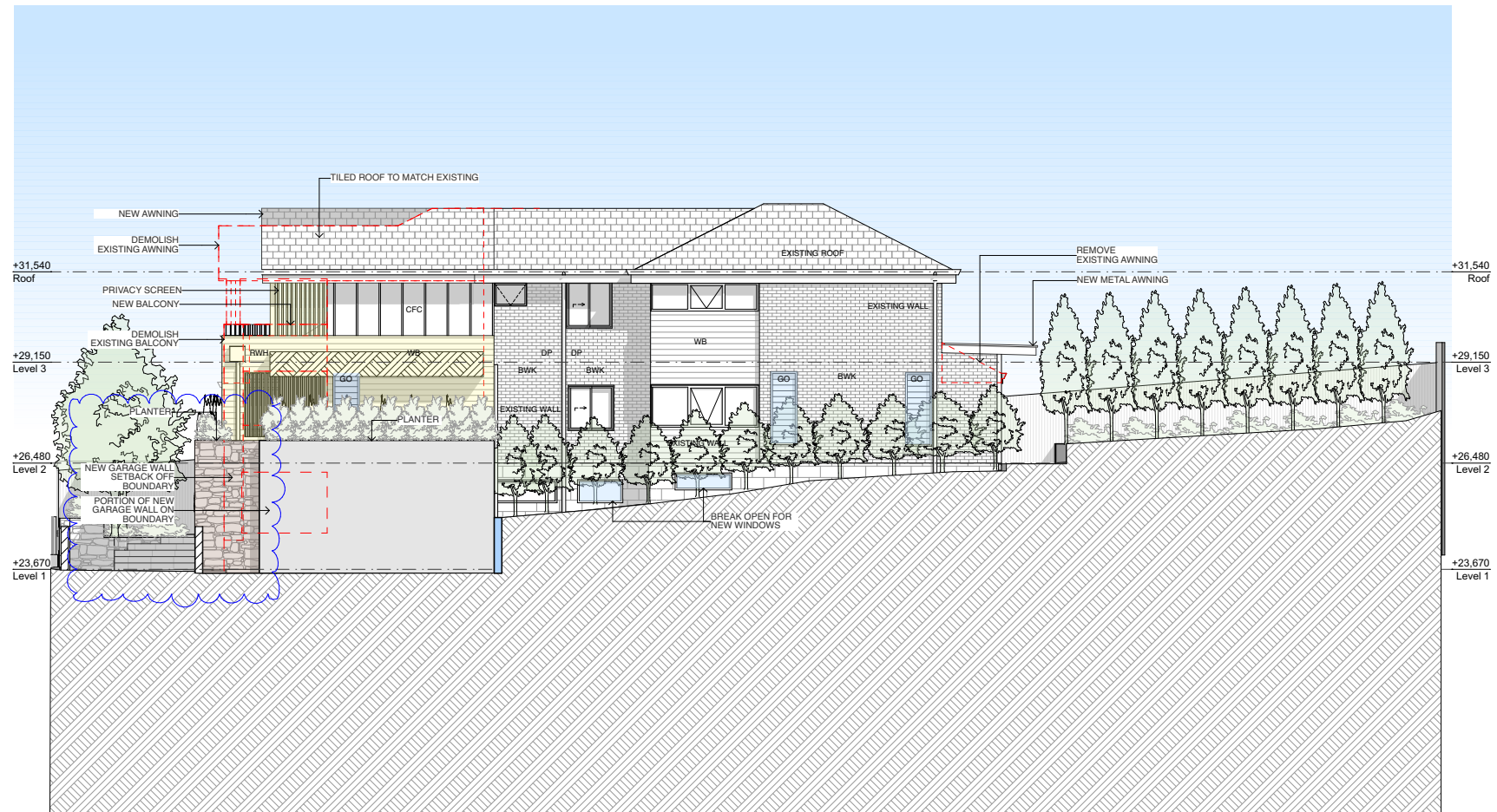


2 North Elevation
1:100



1 South Elevation
1:100







**WRITTEN REQUEST PURSUANT TO
CLAUSE 4.6 OF MANLY LOCAL
ENVIRONMENTAL PLAN 2013**

**VARIATION OF A DEVELOPMENT
STANDARD REGARDING HEIGHT OF
BUILDINGS AS DETAILED IN CLAUSE 4.3
OF MANLY LOCAL ENVIRONMENTAL
PLAN 2013**

**Alterations and Additions to Existing
Dwelling House and Associated Works**

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Alterations and Additions to Existing Dwelling House and Associated Works

This report has been prepared to support a Development Application under the *Environmental Planning and Assessment Act 1979*.

Report prepared by:

Mathew Quattroville
Director – Four Towns Pty Ltd

Report prepared for:

Lachlan and Jenny Baker

12 December 2024

Disclaimer

This report has been prepared with due care and thoroughness by Four Towns Pty Ltd. The statements and opinions are given in good faith and in confidence that they are accurate and not misleading. In preparing this document, Four Towns Pty Ltd has relied upon information and documents provided by the Client or prepared by other Consultants. Four Towns Pty Ltd does not accept responsibility for any errors or omissions in any of the material provided by other parties.

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Alterations and Additions to Existing Dwelling House and Associated Works

Introduction

This written request under Clause 4.3 of the Manly Local Environmental Plan 2013 (**MLEP 2013**) accompanies a Development Application seeking consent for alterations and additions to the existing dwelling house and associated works at 13 Baltic Street, Fairlight, being Lot 15 Sec B within Deposited Plan 4449.

The written request is made pursuant to Clause 4.6 MLEP 2013 and requests a variation to height of buildings as detailed under Clause 4.3 of Manly Local Environmental Plan 2013.

Clause 4.3 of MLEP 2013 notes:

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The site has a maximum building height provision of 8.5m. The proposal will result in a maximum height of 9.55m. It is noted that the breach is the result of the sloping nature of the site, the existing building height and building footprint, which results in existing man-made changes.

The proposed works are reasonable within the context of the site and surrounding development and will not result in excessive bulk and scale. It is submitted that there is more than enough justification and precedence within the area to support the breach.

The following assessment of the variation to Clause 4.3 – Building Height development standard, has taken into consideration the recent judgement contained within Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582, Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.

In this regard, it is requested Council support a variation with respect to compliance with the maximum height of buildings as described in Clause 4.3 of the MLEP 2013. The nature and extent of the contravention is as follows:

Requirement	8.5m
Proposed	9.55m
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a numerical/or performance based variation?	Numerical
If numerical enter a % variation to requirement	12.35%

Manly Local Environmental Plan 2013**2.1 Clause 2.2 and the Land Use Table**

Clause 2.2 and the Land Zoning Map provide that the subject site is zoned R1 – General Residential (the R1 zone) and the Land Use Table in Part 2 of MLEP 2013 specifies the following objectives for the R1 zone:

Alterations and Additions to Existing Dwelling House and Associated Works

- **To provide for the housing needs of the community.**

Comment: The proposed development is for alterations and additions to an existing dwelling which enhances the functionality of the dwelling. The proposal will ensure a high-quality dwelling which contributes to the ongoing provision of housing in the Fairlight area.

- **To provide for a variety of housing types and densities.**

Comment: The proposal maintains the use of the site as a dwelling house which is a permissible land use with the R1 zone.

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

Comment: Not applicable – the proposal is for a permissible residential land use on the site.

2.3 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) MLEP 2013 provides:

- (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.*

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

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

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

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

Clause 4.6(2) of MLEP 2013 provides:

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

Clause 4.3 is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the MLEP 2013.

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Clause 4.6(3) Of MLEP provides:

- (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, and*
 - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*

The proposed development does not comply with the prescribed height of buildings for residential accommodation in the Zone R1, as prescribed under Clause 4.3 of the MLEP 2013, however strict compliance is unreasonable or unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

3. Relevant Caselaw

The grounds of objection are based upon the various tests of the recent judgements in the *NSW Land and Environment Court Case Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*, *Wehbe v Pittwater Council (2007) 156 LGERA 446*; [2007] NSWLEC 827, *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

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

1. Is Clause 4.3 of MLEP 2013 a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard?

4. Request for Variation

4.1 Is Clause 4.3 of MLEP 2013 a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act includes:

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

- (b) Clause 4.3 relates to the height of building. Accordingly, Clause 4.3 is a development standard.

4.2 Is compliance with Clause 4.3 unreasonable or unnecessary?

This request relies upon the First method identified by Preston CJ in *Wehbe*. The first way in *Wehbe* is to establish that the objectives of the standard are achieved.

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In determining a merit-based assessment of the building height for the proposed development, due consideration has been given to the above objectives and the planning principles set by the Land and Environment Court of NSW, Planning Principle – floor space ratio (*Salanitro-Chafei V Ashfield Council* (2005) NSWLEC 366) and *Project Venture Developments v Pittwater Council* (2005) NSW LEC 91).

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard, site topography should be considered when assessing the proposed height of buildings for the site. Given the proposed application is relatively minor and consistent with the built form character of the area, Council's assessment should be focused on this numerical allowance as opposed to the variation to the specific standard.

By providing flexibility the subject proposal is capable of achieving a better development and design outcome which adequately caters for enhanced housing options for the residential needs within the Northern Beaches LGA, in particular the Fairlight precinct.

The First Method

The proposal is consistent with the objectives of Clause 4.3.

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,*
- (b) to control the bulk and scale of buildings,*
- (c) to minimise disruption to the following—*
 - (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) views between public spaces (including the harbour and foreshores),*
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).

Comment: It is acknowledged that the proposed development does not comply with clause 4.3 (2) and accordingly there is a requirement to submit a Clause 4.6 Variation. This Clause 4.6 seeks an exemption to the development standard as prescribed under the MLEP2013 and demonstrates that compliance with the provisions of clause 4.3 (2) is both unreasonable and unnecessary and the proposed development meets the required steps that are set out in the relevant NSW Land and Environment Court decisions to justify that the standard can be varied to achieve the subject proposal.

The development standard in Clause 4.3 (2) of the MLEP2013, is amendable to variation. The purpose of this Clause 4.6 is to vary the Height of Building as a building height referable to the building to give Council the power to grant development consent to the non-compliant purposes. This proposition is reinforced by the following:

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Clause 4.3 (2) states:

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The Height of Building Map sets a maximum Height of Building control of 8.5m. For the purpose of calculating Height of Building, the MLEP2013 provides the following definition:

Building height is defined as follows:

building height (or height of building) means—

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

ground level (existing) means the existing level of a site at any point.

The Height of Building in clause 4.3(2) of the MLEP2013 is a development standard in accordance with the definition set out below:

Development standards' is defined in section 1.4 of the EP&A Act 1979 as:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which **requirements are specified or standards are fixed** in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

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

Despite the variation to the Height of Building control which occurs as a result of the topography of the land, the proposed development is considered to be in keeping with the desired future character of the locality. The proposal has been strategically designed to minimise the impact and bulk and scale of the project. The project designer has worked tirelessly to design through alterations and additions a modern high-end development that meet the sites constraints and the existing bulk and scale of the area; therefore, the proposal will not result in any unreasonable visual impact on the Baltic Street streetscape.

The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing. Therefore, this written submission is considered to be compliant with the Statutory Provisions prescribed both under MLEP2013 and the provisions of Clause 4.6 which permit a variation to a development standard. It is noted it is consistent with the approval granted through the case *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 is that the distorted height plane creates reasonable environmental planning ground that justifies the contravention of the height standard.

In determining the building heights of the development, it is important to understand the definitions of building height and ground level (existing) and also relevant case law from the NSW Land and Environmental Court.

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The court now considers the definition of “ground level (existing)” *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, which insists that the ground level (existing) is measured from the **excavated** ground level (within the footprint of the existing building) to the highest point of the proposal directly above. It is noted that the Court accepted (at [74]) that there is an ‘environmental planning ground’ that may justify the contravention of the height standard under ‘clause 4.6’ when the prior excavation of the site (within the footprint of the existing building) distorts the maximum building height plane. This falls hand in hand with the original leading cases *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 and *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189.

It is noted that common-sense should prevail from the new court case “Merman Investments Pty Ltd” with the fact that many height planes are now going to be distorted creating an argument which goes hand in hand with the original court cases relating to the extrapolated levels of a site through ‘Bettar’.

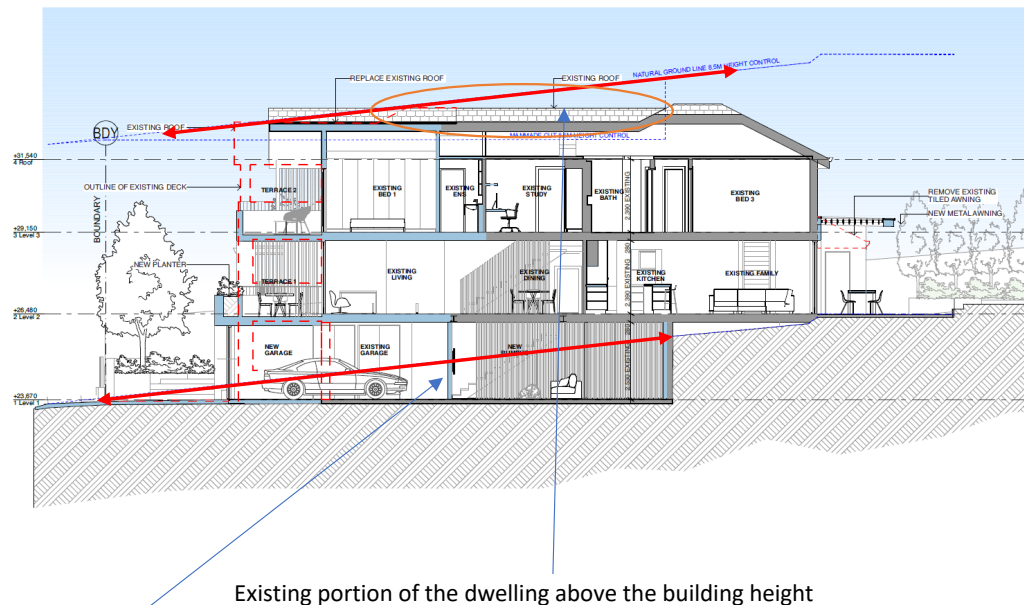
As a result of the above, it is determined that the maximum building above ground level (existing) is 9.55m for the proposed development. This results in a 1.05m variation or 12.35%. The Development Application is supported by a Clause 4.6 Variation to Development Standard report. The proposed breach relates to the front component of the dwelling and a portion where the excavated ground level distorts the height plane.

It is noted that the building height flows from 5.41m at the rear of the site to the maximum 9.55m which is consistent with the topography of the southern side of Baltic Street. It is noted that the breach is the result of the sloping nature of the site, several existing man-made level changes which distort the existing ground level and the existing man-made changes. If the natural ground level was applied, the proposed variation would be consistent with other approvals granted in the area. It is noted that if the natural ground level was applied, the proposal would achieve compliance with the 8.5m building height control for the majority of the building footprint. Regardless, the natural topography of the site makes compliance with the building height impractical, and therefore unreasonable for Council to enforce. The bulk and scale and three storey appearance of the southern side of Baltic Street is also retained. The proposal is supported and in our opinion is consistent with the objectives of the Clause, as outlined below:

(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, This objective relates to streetscape character and in this regard the proposed dwelling has been designed to be consistent with the three-storey bulk and scale of Baltic Street. The height, bulk, scale of the development, as reflected by floor space, are entirely consistent with the built form characteristics established by the enclave of surrounding development in this precinct noting the topography of the southern side of Baltic Street. It is our considered opinion that the proposal is consistent with the intent and approvals granted in the area, therefore confirming that the proposal is consistent with the prevailing building height, roof forms and the future streetscape of the locality.

The proposed breach relates to the front component of the dwelling and a portion where the excavated ground level distorts the height plane, noting that the rear façade is 5.41m. The resulting variation is due to the natural topography and existing man-made changes which hinders the development when assessed with the ground level (existing) definition. If the merits of the ‘Bettar’ Court Case are utilised, the natural ground level enables a variation with that consistent with other developments. Refer to excerpt below which shows the distortion of the site:

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Existing man-made changes which distort the height plane of the site

The proposal is consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, in that I have formed the considered opinion that most observers would not find the proposed development by virtue of its roof form and building height, and in particular the non-compliant building height elements, offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment. The proposal is consistent with this objective notwithstanding the variation to the building height.

(b) to control the bulk and scale of buildings,

The proposal has been strategically designed to minimise the impact and bulk and scale of the project. The project designers have worked tirelessly to design a modern high-end dwelling that meet the sites constraints and the existing bulk and scale of the area. The proposal has been designed to be compatible with the existing streetscape (noting the existing three-storey bulk and scale along the southern side of Baltic Street) while accommodating a bulk and scale that is complementary to the natural environment. The first floor has been designed with varying and large side setbacks which reduces the bulk and scale and accommodates a dwelling that blends in with the streetscape. As assessed within objective (a) the proposal is consistent with the streetscape of Baltic Street, which therefore dictates the bulk and scale for the locality.

(c) to minimise disruption to the following—

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

Having inspected the site and its surrounds I am of the opinion that the building form and height of the proposed development, in particular that associated with the building height breaching elements, has been appropriately located within the site to minimise disruption of views to nearby

Alterations and Additions to Existing Dwelling House and Associated Works

residential development and from surrounding public spaces. The proposal is consistent with this objective notwithstanding the proposal variation to the building height.

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

Having regard to the view sharing principles established by the Land and Environment Court of NSW in the matter of Tenacity Consulting v Warringah [2004] NSWLEC 140 as they relate to an assessment of view impacts, I am satisfied that the proposed building height variation will not give rise to any unacceptable public or private view affectation. Whilst the proposal seeks a variation to the building height standard, view impacts have been minimised and a view sharing outcome achieved. The proposal is consistent with this objective notwithstanding the proposed building height variation.

(iii) [views between public spaces \(including the harbour and foreshores\),](#)

The building form and height has been appropriately distributed across the site such that the proposed variation to the building height will have no impact on views between public spaces. The proposal is consistent with this objective notwithstanding the proposed variation to the building height.

(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,](#)

The application is accompanied by shadow diagrams drawings DA21 to DA23 which depict the impact of shadowing on the neighbouring properties. The shadow diagrams demonstrate that the proposed development, in particular the non-compliant building height elements, will not cast shadows on the adjoining neighbours living room windows and private open space areas with compliant levels of solar access maintained between 9am and 3pm on 21st June. The proposal is consistent with this objective notwithstanding the building height breaching elements proposed.

(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.](#)

Not applicable – the site is not located within a recreation or environmental protection zone.

The extent of the breach associated are appropriately described both quantitatively and qualitatively as minor. The non-compliant elements of the proposed development do not result in any unreasonable impacts upon the amenity of adjoining sites or the wider public domain.

Consistent with the findings of Commissioner Walsh in Eather v Randwick City Council [2021] NSWLEC 1075 and Commissioner Grey in Petrovic v Randwick City Council [202] NSW LEC 1242, the particularly small departure from the actual numerical standard and absence of impacts consequential of the departure constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with the objects of the EP&A Act. Overall, there are sufficient environmental planning grounds to justify contravening the development standard.

It is our professional opinion that the building by virtue of its height, bulk and scale, is consistent with the locality and desired character of the area. We have formed the considered opinion that the project is a sympathetic design and development with a bulk and scale consistent with the existing and future character of the area. The proposal is not offensive, or unsympathetic in a streetscape context nor the context from Baltic Street, and therefore the variation can be supported by Northern Beaches Council.

4.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient environmental planning grounds to justify contravening the development standard. Whilst there is no requirement that the development comply with the objectives set out in clause 4.6(1) it is relevant to note that objective (b) provides:

*“to achieve better outcomes **for and from** development by allowing flexibility in particular circumstances.”*

It should be noted at the outset that in *Initial Action* the Court held that it is incorrect to hold that the lack of adverse impact on adjoining properties is not a sufficient ground justifying the development contravening the development standard when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse impacts.

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. From a planning perspective, there is sufficient grounds to justify the variation to the height of buildings development standard for the following reasons:

1. Historical excavation and site disturbance
2. Topography of the site
3. Characterisation of the development
4. Streetscape Appearance
 - The sites topography and existing man-made excavation distorts the height plane for the site. If the natural ground level was taken, the proposal would substantially comply with the building height control (as per the existing building height retained and above the 8.5m allowance).
 - The proposed development responds to the existing and desired future character of the locality. Furthermore, the subject proposed dwelling through alterations and additions retains the building footprint and in majority the height existing on the site. It's our opinion that the proposal will integrate into the existing streetscape and pattern of development within Baltic Street.
 - The development does not result in any unnecessary or undue bulk or visual impacts on adjoining properties and is of a scale that is compatible with the existing and surrounding buildings. The streetscape analysis completed within the Statement of Environmental Effects notes numerous recent approvals with a variation to the building height and properties three storeys in height.
 - The amenity impacts to neighbouring residential properties, arising from the non-compliant building height, is negligible. Adjoining properties will continue to receive suitable solar access, privacy impacts are suitably minimised, and views are reasonably maintained.
 - The building height breach is minor (when assessed from the natural ground level) and would relate to only a small portion of the proposed development only, which will largely be indiscernible when viewed from Baltic Street.
 - The proposal is consistent with the stance Council has taken on developments within Fairlight noting numerous approvals granted for variations to the building height control for the following developments:

Alterations and Additions to Existing Dwelling House and Associated Works

- DA2024/0040 – 18 Wattle Avenue Fairlight – 8.8% variation
- DA2024/0864 – 4 Jamieson Avenue Fairlight – 7% variation
- MOD2024/0155 – 9 Francis Street Fairlight – 15.3% variation
- DA2023/1583 - 38 Francis Street Fairlight – 17.4% variation

Having regard to Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, and further to the proposal's consistency with the above strategic and statutory environmental planning provisions, the proposal is consistent with the following objectives under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):

- (c) to promote the orderly and economic use and development of land; and*
(g) to promote good design and amenity of the built environment,

1. In response to (c), the proposal will facilitate the orderly and economic use and development of the land in a manner that is desired by the planning controls because it will facilitate the renovated dwelling consistent with approvals in the immediate area. In considering the contrary (refusal of the DA), retention of the building in its current form would not promote the orderly and economic use and development of land in the manner that council's strategic and statutory planning provisions seek. Retention of the building in its current form makes no advancement towards achieving the goal of creating functional development opportunities.

2. In response to (g) the proposal has been designed to promote good design and amenity of the built environment, with a consistent built form retained for Baltic Street as per recent approvals.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed height of buildings non-compliance in this instance.

5 Conclusion

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

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

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



**WRITTEN REQUEST PURSUANT TO
CLAUSE 4.6 OF MANLY LOCAL
ENVIRONMENTAL PLAN 2013**

**VARIATION OF A DEVELOPMENT
STANDARD REGARDING THE MAXIMUM
FLOOR SPACE RATIO AS DETAILED IN
CLAUSE 4.4 OF MANLY LOCAL
ENVIRONMENTAL PLAN 2013**

**Alterations and Additions to Existing
Dwelling House and Associated Works**

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Fairlight NSW 2094**

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PO Box 361, Balgowlah NSW 2093

Alterations and Additions to Existing Dwelling House and Associated Works

This report has been prepared to support a Development Application under the *Environmental Planning and Assessment Act 1979*.

Report prepared by:

Mathew Quattroville

Director – Four Towns Pty Ltd

Report prepared for:

Lachlan and Jenny Baker

12 December 2024

Disclaimer

This report has been prepared with due care and thoroughness by Four Towns Pty Ltd. The statements and opinions are given in good faith and in confidence that they are accurate and not misleading. In preparing this document, Four Towns Pty Ltd has relied upon information and documents provided by the Client or prepared by other Consultants. Four Towns Pty Ltd does not accept responsibility for any errors or omissions in any of the material provided by other parties.

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Alterations and Additions to Existing Dwelling House and Associated Works

1. Introduction

The nature and extent of the contravention is as follows:

Requirement	0.6:1 200.28sqm
Proposed	0.676:1 225.77sqm
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a numerical/or performance based variation?	Numerical
If numerical enter a % variation to requirement	12.73%

Manly Local Environmental Plan 2013 ("MLEP")**2.1 Clause 2.2 and the Land Use Table**

Clause 2.2 and the Land Zoning Map provide that the subject site is zoned R1 – General Residential (the R1 zone) and the Land Use Table in Part 2 of MLEP 2013 specifies the following objectives for the R1 zone:

- ***To provide for the housing needs of the community.***

Comment: The proposed development is for alterations and additions to an existing dwelling which enhances the functionality of the dwelling. The proposal will ensure a high-quality dwelling which contributes to the ongoing provision of housing in the Fairlight area.

- ***To provide for a variety of housing types and densities.***

Comment: The proposal maintains the use of the site as a dwelling house which is a permissible land use with the R1 zone.

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

Comment: Not applicable – the proposal is for a permissible residential land use on the site.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

(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.*

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

Alterations and Additions to Existing Dwelling House and Associated Works

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

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

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

Clause 4.6(2) of MLEP provides:

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

Clause 4.4 is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of MLEP.

Clause 4.6(3) of MLEP provides:

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

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

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

The proposed development does not comply with the floor space ratio standard pursuant to clause 4.4 of the Manly Local Environmental Plan 2013 which specifies a floor space ratio of 0.6:1, however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP provides:

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

Clause 4.6(5) of MLEP has been repealed and is not applicable.

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of the MLEP2013 from the operation of clause 4.6.

Alterations and Additions to Existing Dwelling House and Associated Works

3. Relevant Caselaw

The grounds of objection are based upon the various tests of the recent judgements in the *NSW Land and Environment Court Case Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827, Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.*

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

1. Is clause 4.4 of MLEP2013 a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard?

4. Request for Variation**4.1 Is clause 4.4 of MLEP2013 a development standard?**

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act includes:

“(d) the cubic content or floor space of a building”

- (b) Clause 4.4 relates to the floor space ratio or floor space of a building. Accordingly, clause 4.4 is a development standard.

4.2 Is compliance with clause 4.4 unreasonable or unnecessary?

- (a) This request relies upon the 1st, 2nd and 4th ways identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved. The second way in *Wehbe* is to establish that an objective is not relevant to the development. The fourth way in *Wehbe* is to establish that the development standard has been abandoned by Council’s own actions in approving development that does not comply with the standard.
- (c) Each objective of the standard and reasoning why compliance is unreasonable or unnecessary is set out below. Firstly, an analysis of the objectives is provided:

In determining a merits-based assessment for the floor space ratio of the development due consideration has been given to the above objectives and the planning principles set by the Land and Environment Court of NSW, Planning Principle – floor space ratio (*Salanitro-Chafei V Ashfield Council (2005) NSWLEC 366*) and *Project Venture Developments v Pittwater Council (2005) NSW LEC 91*.

Alterations and Additions to Existing Dwelling House and Associated Works

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the FSR of the site should be assessed on a greater numerical figure, noting the sites constraints and the unique nature of the locality in a varying degree of development types. Given the proposed application is in our opinion minor and consistent with similar approvals granted in the area, Council's assessment should be focused on this numerical allowance as opposed to the variation to the specific standard. By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for the existing residential development.

The proposal is consistent with the objectives of Clause 4.4, as outlined below:

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

The development proposes alterations and additions to create a functional dwelling for the occupants of the dwelling through design changes. It is important to note that the additional floor space for majority relates to existing space within the building footprint on the lower ground/garage floor (Level 1). In this regard, the additional 15.29sqm of GFA to the lower ground/garage level (Level 1) will be indistinguishable from the streetscape and can be supported. To assist it is noted that the GFA increases to Level 2 and Level 3 are functional changes being 5.03sqm to Level 2 and 7.25sqm to Level 3. The apparent bulk and scale of the dwelling will be negligibly impacted, from the existing approved dwelling and the new refurbishment works will ensure a positive contribution to the streetscape.

The surrounding area varies in size, bulk and scale, ranging from two to three storeys in height and varying setbacks. It is our considered opinion that the proposal is consistent with the intent and approvals granted in the area, therefore confirming that the proposal is consistent with the prevailing bulk and scale and the future streetscape of the locality.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, I have formed the considered opinion that most observers would not find the bulk and scale of the proposed development, as viewed from Baltic Street, to be offensive, jarring or unsympathetic in a streetscape context. This objective is satisfied, notwithstanding the non-compliant FSR proposed, as the bulk and scale of development is consistent with the existing and desired streetscape character.

(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

The development will result in a built form and massing that is of a consistent scale to the existing dwelling and surrounding properties. The development will not obscure any important landscape or townscape features and will not result in any view loss impacts. The proposal integrates new functional landscaping zones to the site. The proposal is of a density and bulk applicable to the site and landscaping within backyard. The proposal retains the existing street trees within the road verge which assists in retaining important landscape features of Baltic Street. It is therefore considered this objective is met, despite the numerical variation.

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

The proposal enhances the existing visual relationship acknowledging the existing parameters of the dwelling that are not functional or usable for the occupants. The proposal has been designed to the character of the area while creating its own "image" and "identity" for the area. The proposal

Alterations and Additions to Existing Dwelling House and Associated Works

integrates existing landscaping with new functional elements which provides an enhanced dwelling which flows and is usable both inside and out.

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

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

The proposed alterations and additions will not result in any impacts on the use or enjoyment of neighbouring properties or the public areas adjoining the site. It is my professional opinion that the proposal provides a functional building for the new occupants which ensures the amenity and privacy of adjoining properties is maintained.

Privacy

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

Solar access

The accompanying shadow diagrams demonstrate that the building, although non-compliant with the FSR standard, will not give rise to any unacceptable shadowing impact to the existing living room and open space areas of the adjoining properties at 11 and 15 Baltic Street, with compliant levels of solar access maintained.

Visual amenity/ building bulk and scale

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

It is my considered opinion that the building, notwithstanding the FSR non-compliance, achieves the objective through skilful design that minimises adverse environmental impacts on the use and enjoyment of adjoining land and the public domain.

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

Not applicable – the site is located within a residential zone.

It is our professional opinion that the building by virtue of its height, bulk and scale, is consistent with the locality and desired character of the area. We have formed the considered opinion that the project is a sympathetic design and development with a bulk and scale consistent with the existing and future character of the area. The proposal is not offensive, or unsympathetic in a streetscape context nor the context from Baltic Street.

As outlined above, the proposed development is consistent with the underlying objectives of the FSR standard, notwithstanding the proposed variation, and therefore compliance with the control is unreasonable and unnecessary and therefore the variation can be supported by Northern Beaches Council.

4.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient environmental planning grounds to justify contravening the development standard. Whilst there is no requirement that the development comply with the objectives set out in clause 4.6(1) it is relevant to note that objective (b) provides:

*“to achieve better outcomes **for and from** development by allowing flexibility in particular circumstances.”*

It should be noted at the outset that in *Initial Action* the Court held that it is incorrect to hold that the lack of adverse impact on adjoining properties is not a sufficient ground justifying the development contravening the development standard when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse impacts.

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. From a planning perspective, there is sufficient grounds to justify the variation to the FSR development standard for the following reasons:

Context

- The area surrounding the subject site is characterised by 2 and 3 storey residential dwellings, also noting a three storey residential flat building at 17 Baltic Street.
- The proposed dwelling has been designed to remain consistent with the character of the locality, despite the variation to FSR, through design, architectural features and complimentary materials and colour choices.
- The proposal has been designed as alterations and additions with the main addition relating the alteration of the garage which increases GFA under the existing building footprint.
- Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments:
 - DA2022/2135 – 1 Wattle Avenue Fairlight – 12.9% variation
 - DA2022/0199 – 13 Austin Street Fairlight – 4.8% variation
 - DA2022/0340 – 21 Parkview Road Fairlight – 18.05% variation
 - DA2021/2055 – 32 Griffiths Street Fairlight – 26.25% variation
 - DA2021/2623 – 47 Griffiths Street Fairlight – 1.22% variation
- The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d).

Future Development

- The proposed alterations and additions will allow for the provision of a modern floor plan, with refurbished and improved internal spaces. The proposal also allows for a functional side by side garage space (currently a tandem garage).
- This represents an efficient use of an existing developed site, with all services readily available.
- The built form proposed is relatively consistent with the existing dwelling and other buildings in the locality,
- The minor increase to the floor area of 25.49sqm is considered reasonable as it is located within the existing building footprint or minor changes that would be indistinguishable to the public eye from the streetscape and does not result in any unreasonable impacts to neighbouring properties.

Alterations and Additions to Existing Dwelling House and Associated Works

- The proposed works will not hinder any future development of the lot,
- The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g).

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for additional residential floor space in a residential zone, with a bulk and scale consistent with the existing dwelling and the locality. Compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.

Natural Environment

- The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land,
- The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.

Social and Economic Welfare

- The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community. It utilises existing services, satisfying Cl1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable

Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report

Having regard to Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, and further to the proposal's consistency with the above strategic and statutory environmental planning provisions, the proposal is consistent with the following objectives under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):

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

Alterations and Additions to Existing Dwelling House and Associated Works

The above environmental planning grounds are not general propositions, they are unique circumstances to the proposed development. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed floor space ratio non-compliance in this instance.

Summary

In summary, the proposal satisfies all of the requirements of clause 4.6 of MLEP 2013 and exception to the development standard is reasonable and appropriate in the circumstances of the case.

ITEM 3.3	DA2024/1677 - 7 CLIFF STREET MANLY - ALTERATIONS AND ADDITIONS TO A SEMI-DETACHED DWELLING
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PURPOSE

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

RECOMMENDATION

- 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 DA2024/1677 for alterations and additions to a semi-detached dwelling on land at Lot 2 DP 534838, 7 Cliff Street MANLY, subject to the conditions set out in the Assessment Report.

Reporting manager	Rodney Piggott
TRIM file ref	2025/295215
Attachments	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6 - FSR 4 Clause 4.6 - BHS

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1677
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Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 2 DP 534838, 7 Cliff Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a semi-detached dwelling
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:	Katherine Marian Keenan

Application Lodged:	17/12/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	13/01/2025 to 27/01/2025
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 29.06% 4.4 Floor space ratio: 9.24%
Recommendation:	Approval

Estimated Cost of Works:	\$ 1,655,000.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a semi-detached dwelling.

The application is referred to the Development Determination Panel (DDP) due to a variation greater than 10% to the building height development standard of the Manly Local Environment Plan 2013. There is also a proposed variation of the floor space ratio (FSR) development standard of the Manly Local Environment Plan 2013, however this variation is less than 10%.

Concerns raised in the one submission received predominantly relate to potential visual privacy impacts on the adjoining property to the east.

Critical assessment issues included assessment of the proposed variations to height of building and

FSR development standards, assessment of potential visual privacy impacts, as well as assessment of proposed variations to the following Manly Development Control Plan built from controls:

- Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
- Clause 4.1.4 Setbacks (front, side and rear) and Building Separation
- Clause 4.1.5 Open Space and Landscaping
- Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
- Clause 4.1.7 First Floor and Roof Additions
- Clause 4.1.10 Fencing

The 4.6 request for the non-compliance with the building height standard arises from the proposed construction of alterations and additions at the roof level to create a Level 3 within the roof form. The existing roof is partially above the 8.5m height standard, with a maximum ridge line RL of 25.23m AHD. Additions will extend the roof form rearward, maintaining this maximum RL. However, as the site slopes away to the rear, the result is an increased height breach, reaching a maximum of 10.97m, a 29.06% variation to the 8.5m development standard. The proposed development does not increase the overall ridge height and additions are largely proposed to the rear, maintaining the existing street character. Most importantly, the subject dwelling is part of a pair of two semi-detached dwellings with 5 Cliff Street, and the proposed alterations and additions generally mirror previously approved and constructed alterations and additions made to this adjoining semi-detached dwelling. Therefore, the development will remain of a size and scale that will not be out of character within this environment.

The 4.6 request for the non-compliance with the FSR standard arises from a 21.8sqm increase in floorspace. The existing building has an existing FSR of 0.594:1 (209.9sqm), which is just under the FSR development standard of 0.6:1 (212.1sqm). The proposed development would increase this to 0.655:1 (231.7sqm), creating a 9.24% (19.6sqm) variation to the standard. The additional GFA is considered to be minor and will only negligibly impact the perceived overall bulk and scale as compared to the existing dwelling. The additional floorspace is mostly located within the proposed roof form, thereby reusing the existing roof to create a Level 3 within part of the existing built form. Again, the most important factor to note is symmetry with the neighbouring semi-detached dwelling at 5 Cliff Street, with the proposed alterations and additions generally reflective of previously approved and constructed alterations and additions made to this adjoining semi-detached dwelling. It is also noted more generally that this area of Manly is characterised by large and narrow dwelling houses and semi-detached dwellings, located on small allotments, many with recently approved FSR variations. Therefore, the proposed development will not be out of character within this environment.

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

PROPOSED DEVELOPMENT IN DETAIL

This Development Application seeks development consent for alterations and additions to a semi-detached dwelling. Specifically, the following is proposed:

Level 1

- Demolition of rear portion of existing dwelling and provide new addition to rear in similar location.
- Floor plan reconfigured to provide secondary entry, two bedrooms, bathroom/laundry and living room.
- New terrace to rear addition with screened walkway.

Level 2

- Demolition of rear portion of existing dwelling and provide new addition to rear in similar location.
- New tiled deck to rear elevation.
- Demolition bay window on front elevation and provide new wall with French doors.
- Reconfigure floor plan to provide bedroom with ensuite, WC, office and kitchen/dining room.

Level 3

- New first floor level to provide for bedroom, ensuite and rear balcony.

Other works

- Existing masonry wall and timber gate will be demolished and replaced with a new low sandstone wall with screening above to match the fence at No. 5 Cliff Street. A new retractable gate will be provided to provide pedestrian access.
- Upgrade existing stormwater system.

Additional information was requested in relation to Manly Local Environmental Plan 2013 Clause 4.4 Floor space ratio & Clause 4.6 Exceptions to development standards, as well as Manly Development Control Plan Clause 3.4.2 Privacy and Security, Clause 4.1.4 Setbacks (front, side and rear) and Building Separation & Clause 4.1.5 Open Space and Landscaping. Amended plans and additional information was submitted in response, which did not require re-notification (in accordance with the Northern Beaches Community Participation Plan).

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 - Zone R1 General Residential
 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 - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.7 First Floor and Roof Additions
 Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 2 DP 534838 , 7 Cliff Street MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment located on the north-western side of Cliff Street. The site is regular in shape with a frontage of 7.595m along Cliff Street and a depth of 45.82m. The site has a surveyed area of 353.5sqm. The site is located within the R1 General Residential zone and accommodates a semi-detached dwelling. The site slopes from the front (south-east) down towards the rear (north-west), with a fall across the site of approximately 12.9m. The site contains garden beds, trees and vegetation. The site is located within declared habitat for the endangered population of Long-nosed Bandicoots at North Head. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by residential development, primarily semi-detached dwellings and dwelling houses.

Map:



SITE HISTORY

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

Development Application No. DA0548/2002 for "Path/Wall/External Steps" was approved by former Manly Council on 16 December 2002. This application was subsequently modified on 18 January 2004.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> 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. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Manly Local Environmental Plan 2013 Clause 4.4 Floor space ratio & Clause 4.6 Exceptions to development standards, as well as Manly Development Control Plan Clause 3.4.2 Privacy and Security, Clause 4.1.4 Setbacks (front, side and rear) and Building Separation & Clause 4.1.5 Open Space and Landscaping. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
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	The site is considered suitable for the proposed development.

Section 4.15 Matters for Consideration	Comments
development	
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 13/01/2025 to 27/01/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr Paul Thomas Whittard	17 Malcolm Street NARRABEEN NSW 2101

The following issue was raised in the submission:

- **Visual privacy**

The submission raised concerns that the proposed development would have an unreasonable visual privacy impact on the adjoining property to the east (9A Cliff Street).

Comment:

Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for a detailed assessment of visual privacy. In summary, issue was raised with the Applicant during the assessment process regarding privacy, noting this submissions and the proximity of proposed windows and balconies to the adjoining neighbour. In response, the proposed development was amended to include additional privacy solutions. Overall, the amended proposal is considered to meet the requirements and objectives of this control in regard to the design of windows and balconies in response to privacy. Privacy screening and fixed / obscure glazing have been employed where necessary to improve on the existing privacy situation and mitigate privacy impacts to an appropriate level.

REFERRALS

Internal Referral Body	Comments			
NECC (Bushland and Biodiversity)	Supported, subject to conditions. The subject site is located within declared habitat for the endangered population of Long-nosed Bandicoots at North Head. As such, a threatened species 'test of significance' is required to be undertaken in accordance with Section 7.3 of NSW Biodiversity Conservation Act 2016. This assessment has been undertaken and concludes that the proposal will not result in a significant impact to the endangered population. The new fencing will be designed to maintain bandicoot access to habitat on the site.			
Strategic and Place Planning (Heritage Officer)	Supported, subject to conditions. <table><tr><th>HERITAGE COMMENTS</th></tr><tr><td> <u>Discussion of reason for referral</u> The proposal has been referred to Heritage, as the site is in the vicinity of two heritage items and adjoins a heritage item, listed in Schedule 5 of Manly LEP 2013: Item I95 - Group of 6 semi-detached houses - 2–12 Cliff Street, Manly Item I96 - House, “Strathmore” - 14 Cliff Street Item I2 - All stone kerbs - Manly municipal area (Along Cliff Street) </td></tr><tr><td> <u>Details of heritage items affected</u> Details of the heritage items as contained within the Heritage Inventory are: Item I95 - Group of 6 semi-detached houses <u>Statement of Significance</u> Six Federation Queen Anne style semi-detached houses which form a unified group. <u>Physical description</u> Single storey brick semi-detached houses in the Federation Queen Anne style with hipped unglazed terracotta tile roofs with a central gablet over front entries, roughcast stucco to gablet ends, sandstone foundations, timber balustrading and fretwork and elaborately turned timber verandah posts to front verandahs. Item I96 - House, “Strathmore” <u>Statement of Significance</u> An intact and finely detailed representative example of a Federation Queen Anne style house. <u>Physical description</u> Single storey Federation Queen Anne style brick house with hipped and gabled slate roof with unglazed terracotta ridge capping, sandstone foundations, timber fretwork to front return </td></tr></table>	HERITAGE COMMENTS	<u>Discussion of reason for referral</u> The proposal has been referred to Heritage, as the site is in the vicinity of two heritage items and adjoins a heritage item, listed in Schedule 5 of Manly LEP 2013: Item I95 - Group of 6 semi-detached houses - 2–12 Cliff Street, Manly Item I96 - House, “Strathmore” - 14 Cliff Street Item I2 - All stone kerbs - Manly municipal area (Along Cliff Street)	<u>Details of heritage items affected</u> Details of the heritage items as contained within the Heritage Inventory are: Item I95 - Group of 6 semi-detached houses <u>Statement of Significance</u> Six Federation Queen Anne style semi-detached houses which form a unified group. <u>Physical description</u> Single storey brick semi-detached houses in the Federation Queen Anne style with hipped unglazed terracotta tile roofs with a central gablet over front entries, roughcast stucco to gablet ends, sandstone foundations, timber balustrading and fretwork and elaborately turned timber verandah posts to front verandahs. Item I96 - House, “Strathmore” <u>Statement of Significance</u> An intact and finely detailed representative example of a Federation Queen Anne style house. <u>Physical description</u> Single storey Federation Queen Anne style brick house with hipped and gabled slate roof with unglazed terracotta ridge capping, sandstone foundations, timber fretwork to front return
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Internal Referral Body	Comments		
	verandah, elaborate Art Nouveau influenced leadlight to front door, fanlight and front windows. Elaborate timber fretwork to gable ends.		
	Item I2 - All stone kerbs		
	<u>Statement of significance</u>		
	Stone kerbs are heritage listed.		
	<u>Physical description</u>		
	Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century.		
	Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight.		
	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 alterations and additions to an existing two storey - late Federation semi-detached dwelling, built in the early 1900s. The subject property is not a heritage item, however, its original form is still discernible and it is located opposite the heritage listed Group of 6 semi-detached houses. The proposed works include internal alterations, a new first floor level addition, removal of the ground floor bay window at the street frontage and replacement of the existing front fence. The proposed first floor is in a dormer style addition on the eastern side elevation, similar to the dormer on the adjoining semi-detached dwelling at No. 5 Cliff Street, except the adjacent dormer is further set back from the street. It is considered that the proposed works are consistent with the character of Cliff Street as the overall form of the existing building at the Cliff Street frontage is retained, except the removal of the bay window at the entry level and the addition of a skylight at the street frontage, similar to the adjoining semi. The proposed first floor dormer style addition is almost symmetrical to the adjacent semi. The new front fence replacing the existing masonry fence is also similar to the adjoining semi, including a 2.5 m wide sliding			

Internal Referral Body	Comments
	gate to the eastern side of the front boundary. Given the proposed works are mainly confined to the rear, and there is no work proposed impacting the heritage listed stone kerbs, the impact of the proposal upon the heritage items is considered tolerable. Therefore, no objections are raised on heritage grounds subject to two conditions. <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? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<i>Supported, subject to conditions.</i> 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. A1765426_02, issued 23 April 2025).

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) 2021Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021**Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.97m	29.06%	No
Floor Space Ratio (Site Area: 353.5sqm)	FSR: 0.6:1 (212.1sqm)	FSR: 0.655:1 (231.7sqm)	9.24% (19.6sqm)	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
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
6.1 Acid sulfate soils	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
6.12 Essential services	Yes

Detailed Assessment

Zone R1 General Residential

The underlying objectives of the R1 General Residential zone:

- *To provide for the housing needs of the community.*

Comment:

The proposal is for alterations and additions to a semi-detached dwelling, which will adapt the existing dwelling for the changing housing needs of the owners / occupants, and thereby the community.

- *To provide for a variety of housing types and densities.*

Comment:

The proposal is for alterations and additions to a semi-detached dwelling. In adapting the existing dwelling for the changing housing needs of the owners / occupants, and thereby the community, the development will provide for a variety of housing types and densities.

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

Comment:

The proposal is for alterations and additions to a semi-detached dwelling, which will service the residential needs of residents and is located in proximity to other facilities and services to meet other day to day needs of residents

The proposed development satisfies the underlying objectives of the R1 General Residential zone.

4.6 Exceptions to development standards

Clause 4.3 Height of Buildings

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

Development standard: Clause 4.3 Height of Buildings

Requirement: 8.5m

Proposed: 10.97m

Percentage of variation: 29.06%

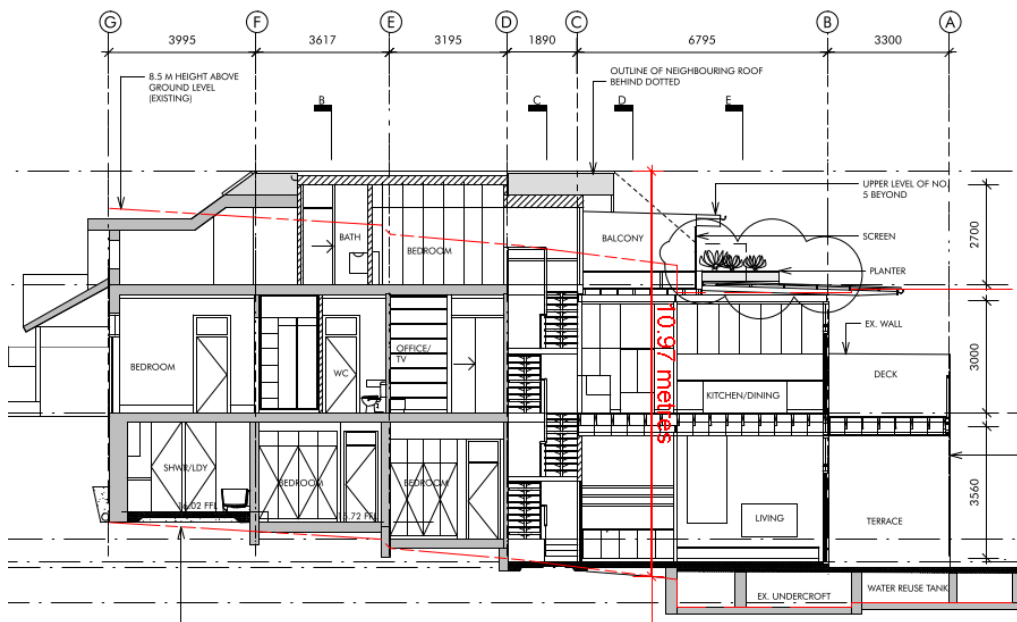


Figure 1 - Extract from Section AA (Drawing No. A 303) depicting building height.

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is 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 Height of Buildings 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 Height of Buildings is unreasonable or unnecessary in the circumstances of this application for the following reasons:

The 4.6 request addresses the first method outlined in *Wehbe v Pittwater Council [2007] NSWLEC 827*, that is demonstrating that the objectives of the standard are achieved despite the non-compliance with the standard. The objectives of the development standard are addressed within the 4.6 request 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,

Response from the Applicant:

"The proposed additions have been designed having regard to the existing roof form of the subject site and the built form of the adjoining semidetached dwelling at No. 5 Cliff Street.

The proposed additions merely seek to extend the existing roof ridge to the rear, consistent with the additions at No. 5 Cliff Street. The existing dwelling on the subject currently exceeds the height of building control and the extension of the existing roof ridge which in conjunction with the significant slope further exceeds the height control.

The proposed additions do not exceed the ridge height of the existing dwelling on site and does not exceed of the existing dwelling of the adjoining semi-attached dwelling, No. 5 Cliff Street.

The resultant dwelling is compatible with the prevailing building height in the immediate locality, particularly having regard to No. 3, 5 and 9 Cliff Street.

The proposed additions are located behind the existing roof form and will predominately be obscured from the public domain and streetscape as it will be largely screened by the existing dwelling. In this regard, the resultant dwelling will continue to present as single level dwelling."

(b) to control the bulk and scale of buildings,

Response from the Applicant:

"The proposed additions which result in the non-compliance with the height control, merely relates to the existing of the existing roof ridge towards the rear. The resultant dwelling is consistent the bulk and

scale with the adjoining semi-detached dwelling at No. 5 Cliff Street. The subject dwelling is part of a pair of two semi-detached dwellings with No. 5 Cliff Street and additions have designed to generally reflect the adjoining semi-detached dwelling.

The proposed additions are predominantly obscured from the public domain as it is located behind the front façade of the existing dwelling. The resultant dwelling will continue to present as a single level dwelling with rooms within the roof form. This is compatible with the existing surrounding development."

(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),*

Response from the Applicant:

"The proposed additions are located behind the existing front façade and roof form and will not obstruct views to nearby development from public spaces.

The site is well separated from the foreshore and will not impacts from the foreshore to the adjoining dwellings.

The proposed additions will not obstruct existing views from nearby residential development. In relation to properties on the opposite (southern) side of Cliff Street, with the additions not exceeding the existing ridge height, there will be no loss of views. With regard to the two adjoining properties, No. 5 and 9A Cliff Street, the proposed additions do not extend beyond the rear wall of the adjoining dwellings. The proposal will not obstruct any existing views from the adjoining properties.

The proposal will not obstruct any existing views between public spaces."

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

Response from the Applicant:

"Detailed shadow diagrams have been prepared and submitted with the application. This demonstrates only minimal additional shadow cast to a very small portion of the balcony of No. 5 Cliff Street. The proposal continues to provide a reasonable level of solar access in accordance with Council's DCP."

(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.

Response from the Applicant:

"The site is not within a recreation or conservation zone and as such this clause does not apply."

The arguments provided by the applicant in response to each objective are generally concurred with. The proposed development does not increase the overall ridge height of the existing semi-detached dwelling. Rather the proposal seeks to alter and extend the existing roof form rearward, which due to the sloping site results in an increased height breach. The roof form alterations and additions are largely obscured from the street by being located behind the existing roof. Most importantly, the proposal development will be consistent with the bulk and scale of the adjoining semi-detached dwelling at 5 Cliff Street. The subject dwelling is part of a pair of two semi-detached dwellings with 5 Cliff Street and the proposed alterations and additions generally reflect previously approved and

constructed alterations and additions made to this adjoining semi-detached dwelling. Overall the objectives of the standard are achieved despite the non-compliance with the standard.

(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 site is currently occupied by a two storey dwelling which exceeds the maximum height control and is a part of a pair of semi-detached dwellings with No. 5 Cliff Street. The proposal merely seeks to provide an addition similar to that constructed at No. 5 Cliff Street which results in the non-compliance. The proposed development is consistent with the objectives of the zone and objectives of the building height control. The non-compliance does not result in any adverse impacts on the adjoining properties. The non-compliance does not result in any loss of views. The area of exceedance does not contribute to visual bulk."

The arguments provided by the applicant are general concurred with. The proposal seeks to construct alterations and additions continuing the existing maximum RL, located behind the existing roof form. The proposal is considered to be commensurate to surrounding built form, noting very similar previously approved and constructed alterations and additions made to the adjoining semi-detached dwelling at 5 Cliff Street. Furthermore, as alterations and additions, the proposal is designed to adapt an existing structure, with existing non-compliances. Flexibility in the application of the development standard will allow adaptation and reuse of existing built form for the changing needs of owners and occupants and promote ecologically sustainable development.

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.3 Height of Buildings for the following reasons:

- 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, thereby satisfying objects 1.3(c) and (g) of the EPA Act.
- Flexibility in the application of the development standard will allow adaptation and reuse of existing built form for the changing needs of owners and occupants. This promotes ecologically sustainable development and the orderly development of land, thereby satisfying objects 1.3(b) and (c) of the EPA Act.

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.

It is considered on balance, that having regard to the particular circumstances, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

Clause 4.4 Floor Space Ratio

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

Development standard: Clause 4.4 Floor Space Ratio

Requirement: 0.6:1 (212.1sqm)

Proposed: 0.655:1 (231.7sqm)

Percentage of variation: 9.24% (19.6sqm)

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is 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 4.4 Floor Space Ratio 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 4.4 Floor Space Ratio is unreasonable or unnecessary in the circumstances of this application for the following reasons:

The 4.6 request addresses the first method outlined in *Wehbe v Pittwater Council [2007] NSWLEC 827*, that is demonstrating that the objectives of the standard are achieved despite the non-compliance with the standard. The objectives of the development standard are addressed within the 4.6 request as follows:

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

Response from the Applicant:

"The proposed additions have been designed having regard to the existing roof form of the subject site and the built form of the adjoining semi-detached dwelling at No. 5 Cliff Street.

The proposed additions merely seek to extend the existing roof ridge to the rear, consistent with the additions at No. 5 Cliff Street. The additional floor area is contained at the rear of the site and within the extended roof form. This portion of the additions are predominantly obscured from the street given the slope of the site and the existing built form.

The proposed additions provide for a development, when viewed from Cliff Street, that is consistent and matches the existing adjoining semi-detached dwelling at No. 5 Cliff Street.

The resultant dwelling is compatible with the floor area in the immediate locality, which comprises a number of multi-dwelling developments and large dwelling houses.

The proposed additions are located behind the existing roof form and will predominately be obscured from the public domain and streetscape as it will be largely screened by the existing dwelling. In this regard, the resultant dwelling will continue to present as single level dwelling when viewed from Cliff Street."

(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

Response from the Applicant:

"The proposed additions which result in the non-compliance with the floor space ratio control, is consistent with the bulk and scale with the adjoining semi-detached dwelling at No. 5 Cliff Street. The subject dwelling is part of a pair of two semi-detached dwellings with No. 5 Cliff Street and additions have designed to generally reflect the adjoining semi-detached dwelling.

The proposed additions are predominantly obscured from the public domain as it is located behind the front façade of the existing dwelling. The resultant dwelling will continue to present as a single level dwelling with rooms within the roof form. This is compatible with the existing surrounding development.

The additional floor area and the resultant dwelling will not obscure any important landscape or townscape features and is therefore consistent with this objective."

(c) to maintain an appropriate visual relationship between new development and the existing character

and landscape of the area,

Response from the Applicant:

"The proposed additions, including the non-compliance with the floor space ratio controls, results in a development that is appropriate with regard to the adjoining development as is depicted in the streetscape elevations above. The dwelling will continue to present as a single level dwelling with rooms within the roof form when viewed from the street frontage and public domain. The additional roof form is contained predominantly within the roof form and as such does not result in unreasonable bulk. The upper level is provided with an increased side boundary setback (at least 3.03m) which ensures sufficient visual separation to the adjoining built form.

The proposed additions do not reduce the existing landscaped area, rather it provides for some additional landscaping in the rear yard. The proposal does not require the removal of existing vegetation."

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

Response from the Applicant:

"The proposed additions are located behind the existing front façade and roof form and will not obstruct views to nearby development from public spaces.

The site is well separated from the foreshore and will not impacts from the foreshore to the adjoining dwellings.

The proposed additions will not obstruct existing views from nearby residential development. In relation to properties on the opposite (southern) side of Cliff Street, with the additions not exceeding the existing ridge height, there will be no loss of views. With regard to the two adjoining properties, No. 5 and 9A Cliff Street, the proposed additions do not extend beyond the rear wall of the adjoining dwellings. The proposal will not obstruct any existing views from the adjoining properties.

The proposal, and in particular the additional floor area, will not obstruct any existing views between public spaces.

Shadow diagrams have been submitted with the application demonstrating that the proposal continues to provide sufficient solar access to the adjoining properties.

The proposal, and in particularly, the additional floor area will not result in a loss of privacy to the adjoining properties. The proposal incorporates considered window placement, privacy screens and glazing in conjunction with increased setbacks to the upper level to ensure visual separation."

(e) to provide for the viability of Zone E1 and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Response from the Applicant:

"The site is not within E1 zone and as such this objective does not apply."

The arguments provided by the applicant in response to each objective are generally concurred with. The proposed development seeks to create habitable space within a roof area by extending the existing roof form. Most importantly, the proposal development will be consistent with the bulk and scale of the adjoining semi-detached dwelling at 5 Cliff Street. The subject dwelling is part of a pair of two semi-detached dwellings with 5 Cliff Street and the proposed alterations and additions generally

reflect previously approved and constructed alterations and additions made to this adjoining semi-detached dwelling. When viewed from the street or adjoining properties, the proposed development will visual match that already located at 5 Cliff Street and will not be out of character within the locality. Overall the objectives of the standard are achieved despite the non-compliance with the standard.

(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 site is currently occupied by a two storey dwelling and is a part of a pair of semi-detached dwellings with No. 5 Cliff Street. The proposal merely seeks to provide an addition similar to that constructed at No. 5 Cliff Street which results in the non-compliance. The proposed development is consistent with the objectives of the zone and objectives of the floor space ratio control. The non-compliance does not result in any adverse impacts on the adjoining properties. The non-compliance does not result in any loss of views. The area of exceedance does not contribute to unreasonable visual bulk."

The arguments provided by the applicant are general concurred with. The proposal is considered to be commensurate to surrounding built form, noting very similar previously approved and constructed alterations and additions made to the adjoining semi-detached dwelling at 5 Cliff Street. Furthermore, as alterations and additions, the proposal is designed to adapt an existing structure, with existing non-compliances. Flexibility in the application of the development standard will allow adaptation and reuse of existing built form for the changing needs of owners and occupants and promote ecologically sustainable development.

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.4 Floor Space Ratio for the following reasons:

- 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, thereby satisfying objects 1.3(c) and (g) of the EPA Act.
- Flexibility in the application of the development standard will allow adaptation and reuse of existing built form for the changing needs of owners and occupants. This promotes ecologically sustainable development and the orderly development of land, thereby satisfying objects 1.3(b) and (c) of the EPA Act.

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.

It is considered on balance, that having regard to the particular circumstances, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

Mainly Development Control PlanBuilt Form Controls

Built Form Controls - Site Area: 353.5sqm	Requirement	Proposed	% Variation	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings (1 dwelling per 250sqm)	1	-	Yes
	Dwelling Size: 117sqm (4 bedroom, 4 bathroom)	231.7sqm	-	Yes
4.1.2.1 Wall Height	East: 7.8m (based on gradient 1:4.5)	7.7m	-	Yes
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	3m	20%	No but existing
	Pitch: maximum 35 degrees	39 degrees	11.4%	No but existing
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	3.7m, consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East: L1: 1.4m (based on 4.1m wall height) L2 Wall: 2.6m (based on 7.7m wall height) L2 Balcony Planter: 1.9m (based on 5.8m wall height) L3 Dorma: 3.5m (based on 10.4m wall height) L3 Balcony: 3.1m (based on 9.3m wall height)	L1 Wall: 2.1m - 1.9m L2 Wall: 2.1m - 1.9m L2 Balcony Planter: 2.1m - 1.5m L3 Dorma: 3.1m - 3m L3 Balcony: 3.1m	- Max. 26.9% Max. 21.1% Max 14.3% -	Yes No but existing No No Yes
	No new or altered windows within 3m of a side boundary	9 new or altered within 3m of a side boundary	N/A	No

4.1.4.4 Rear Setbacks	8m	20.6m		Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (194.425sqm)	69% (244sqm)	-	Yes
	No more than 25% of open space above ground (61sqm)	16.6% (40.6sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (85.4sqm)	25% (60.9sqm)	28.7% (24.5sqm)	No but existing
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	0 spaces	100%	No but existing

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 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	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.3 Floor Space Ratio (FSR)	N/A	N/A
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Description of non-compliance

One submission has raised privacy concerns regarding the potential impact on the adjoining property to the east (9A Cliff Street).

The assessment of potential privacy impacts of a proposal requires consideration of the requirements and objectives of this Clause, as well as planning principals established within *Meriton v Sydney City Council [2004] NSWLEC 313*, which hold that when applying judgment to assess privacy impacts, consideration should be given to density, separation, use and design.

This Clause requires the following:

3.4.2.1 Window Design and Orientation

- 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.*

3.4.2.2 Balconies and Terraces

- 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.*

Issue was raised with the Applicant during the assessment process regarding privacy, noting this

submissions and the proximity of proposed windows and balconies to the adjoining neighbour. In response, the proposed development was amended to include additional privacy solutions. These include:

- Fixed and obscure glazing on windows across the eastern elevation where appropriate, particularly at the stairwell.
- Notation of screening details for the proposed Level 1 Deck fixed privacy screen.
- Fixed privacy screening to the Level 2 Deck and adjoining windows of the Level 2 Kitchen / Dining and notation of the screening details. This screen extends approximately half the depth of the deck, which is appropriate given the relative positioning of the two dwellings and considering it is an improvement to the currently unobscured view from this deck. It also allows the Applicant to maintain views towards the north.
- Shrinking of the Level 3 Deck and incorporation of a greater non-trafficable planter area. The roof form has also been altered to provide privacy screening to the west via the roof form itself. These changes move the trafficable area of the deck away from the eastern side boundary and adequately screen overlooking to the east, whilst preserving views to the north. The smaller deck size also lowers usability and therefore potential traffic / dwell time at the Level 3 deck.

Overall, the amended proposal is considered to meet the requirements of this control in regard to the design of windows and balconies in response to privacy. These amendments ensure that potential privacy impacts are mitigated. Any remaining impacts are considered to be reasonable within the context of this residential environment. Nonetheless, for the benefit of a full assessment, the proposed development is considered against the underlying Objectives of the Control as follows:

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

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

Comment:

As above, the proposed development is considered to meet the requirements of this control in regard to the design of windows and balconies in response to privacy. As such, loss of privacy to adjacent and nearby development has been adequately minimised by appropriate design.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

The proposed development will not unreasonably impact access to light and air. Outlook and views are adequately balanced.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal will not compromise neighbourhood security or casual surveillance of the street frontage.

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.

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

Description of non-compliance

Clause 4.1.2.1 Wall Height stipulates that the wall height shall not exceed 7.8m (based on gradient 1:4.5) at the east elevation. With a wall height of 7.7m (noting that this excludes Level 3 as this level is located in the roof form), the proposed development complies with this control.

Clause 4.1.2.2 Number of Storeys stipulates a number of stories limit of two (2) storeys for this site. The proposed development will create a third storey (3) within the roof form, therefore creating a non-compliance with this control.

Clause 4.1.2.3 Roof Height stipulates a roof height control of 2.5m and a roof pitch control of 35 degrees. The roof form has a height of 3m and a pitch of 39 degrees. However, the roof form is an existing feature and is only added to by the proposed development.

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 Manly LEP 2013. The proposal has been assessed against these objectives under clause 4.6, above in this report. In summary, the proposal is considered to meet the objectives of the height of buildings development standard.

Having regard to the above, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.3 Floor Space Ratio (FSR)

The provisions of this Clause providing for variation of the FSR development standard for undersized allotments is not applicable in this case, as the subject site is compliant with the minimum lot size control. Refer to the section of this report on MLEP 2013 Clause 4.6 Exceptions to Development Standards for a detailed assessment of the proposed FSR variation.

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

Description of non-compliance

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages stipulates that the setbacks between any part of a building and the side boundary must not be less than one third of the wall height. At the eastern side boundary, the following setbacks are required and exhibited:

- L1: 1.4m (based on 4.1m wall height), 2.1m - 1.9m exhibited, complies.
- L2 Wall: 2.6m (based on 7.7m wall height), 2.1m - 1.9m exhibited, a maximum 26.9% variation.
- L2 Balcony Planter: 1.9m (based on 5.8m wall height), 2.1m - 1.5m exhibited, a maximum 21.1% variation.
- L3 Dorma: 3.5m (based on 10.4m wall height), 3.1m - 3m exhibited, a maximum 14.3% variation.
- L3 Balcony: 3.1m (based on 9.3m wall height), 3.1m exhibited, complies.

Notably, Level 1 and Level 2 dwelling wall side setbacks are existing.

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages also requires that no new windows be located within 3m of side boundaries. The proposed development includes replacement / alteration of existing windows within 3m of side boundaries, and the creation of new windows within 3m of side boundaries. There are a total of nine (9) new or altered windows within 3m of a side boundary. Nonetheless, the proposed windows are considered acceptable from a visual privacy perspective (refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for a detailed assessment of visual privacy).

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 alterations and additions maintain the established existing building setbacks. Proposed works will add to and alter some of these walls, as well as construct a new Level 3 with the roof form, which will create some side setback non-compliances. However, these alterations and additions are primarily located to the rear of the existing dwelling and will not significantly impact the desired spatial proportions of the street, the street edge and the landscape character of the street. Furthermore, the proposed development has been designed to generally reflect the previously approved and constructed alterations and additions made to the adjoining semi-detached dwelling at 5 Cliff Street, exhibiting a similar built form to the streetscape where visible. Windows on the side elevations proposed within 3m of side boundaries do not compromise the desired streetscape. Given these factors, the streetscape is not considered to be adversely impacted.

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 proposal is considered to meet the requirements of relevant clauses of the MDCP relating to amenity. The development is not considered to create unreasonable overshadowing on public or private spaces, or to unreasonably impact views from or to public or private spaces. The proposal is also considered to maintain existing streetscape characteristic and not to detrimentally impact on traffic conditions or the privacy of surrounding dwellings. Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for a detailed assessment of visual privacy. Overall, the amended proposal is considered to meet the requirements and objectives of this control in regard to the design of windows and balconies in response to privacy.

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

Comment:

Flexibility is required in the siting of alterations and additions to existing structures as the proposal must contend with existing non-compliances. By allowing the adaption and alteration of existing structures to suit the changing needs of owners and occupants, sustainability is encouraged. The proposed development is not expected to result in any unreasonable amenity impacts on surrounding properties and it has demonstrated it meets the underlying objectives of controls where non-compliance arise. As such, flexibility is warranted in this instance.

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:

Refer to the section of this report on MDCP Clause 4.1.5 Open Space and Landscaping for discussion of total open space, landscaped area and landscaping. In summary, the proposal is non-complaint with the required level of landscaped area. However, this is an existing feature of the site and is not reduced by the proposed development as all proposed works are within the footprint of existing hard surfaces.

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

Comment:

The site is not classified as bush fire prone land.

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.

4.1.5 Open Space and Landscaping

Description of non-compliance

The subject site is located within Residential Open Space Area OS3, which requires at least 55% (194.425sqm) of the site to be open space. In addition, at least 35% (85.4sqm) of the proposed total open space is to be landscaped area and no more than 25% (61sqm) of total open space can be provided above ground level.

The proposed development exhibits the following:

- Total open space: 69% (244sqm) of site area, complies.
- Total open space above ground: 16.6% (40.6sqm), complies.
- Landscaped area: 25% (60.9sqm) of total open space, a 28.7% (24.5sqm) variation to the control.

It is noted that these site features are largely result of the existing site layout. The proposed development only increases total open space and total open space above ground through the addition of above ground deck areas. The proposed development does not change the level of landscaped area provided at the site as all proposed works are within the footprint of existing hard surfaces.

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:

The proposal will not result in the removal of any significant topographical or landscape features, given all works are located within the footprint of existing hard surfaces. In this regard, the proposal retains and augments important landscape features and vegetation, in that it does not worsen the existing situation.

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:

Existing trees, vegetation and landscaped area are retained.

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

Comment:

The proposal does not result in any unacceptable impacts to amenity including sunlight, privacy, and views. Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for a detailed assessment of visual privacy. Overall, the amended proposal is considered to meet the requirements and objectives of this control in regard to the design of windows and balconies in response to privacy. The proposal is consistent with the surrounding area and streetscape character.

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

Comment:

An acceptable amount of soft landscaping is provided on site to minimise stormwater runoff and maximise water infiltration, considering the existing landscaping situation is maintained.

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

Comment:

The proposed development is not likely to increase the spread of any weeds, or degradation of private or public open space.

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

Comment:

The subject site is located within declared habitat for the endangered population of Long-nosed

Bandicoots at North Head. Council's Bushland and Biodiversity team has reviewed the proposed development and concluded that the proposal will not result in a significant impact to the endangered population. The team has recommended suitable conditions of consent to ensure fencing is passable to native fauna. As such, the proposed works are not expected to significantly affect wildlife habitat. Existing wildlife corridors will be retained.

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

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

For semi-detached dwellings this Clause requires the provision of two (2) off-street parking spaces. As existing, the semi-detached dwelling provides nil (0) off-street parking spaces and this arrangement is not proposed to be changed.

Whilst the proposed development is numerically non-compliant with Schedule 3 of the MDCP 2013 that requires two (2) off-street parking spaces, the provision of any additional parking spaces on the subject site is not achievable within the existing context, nor expected in this instance considering the nature of the proposed alterations and additions and the existing site context. Requiring the provision of parking at the site would negatively impact the existing built form and streetscape. As this non-compliance is existing and unchanged, further merit assessment is not required, in this instance.

4.1.7 First Floor and Roof Additions

MDCP Clause 4.1.7.2 states as follows:

"Habitable rooms will be permitted in a roof structure subject to compliance with all other controls in this plan and the LEP including height and FSR in the LEP. However alterations and additions to a building which existed prior to 2007 may involve habitable rooms within an existing roof structure that is above the maximum wall and roof height; (see paragraph 4.1.2 of this plan) subject to the rooms not detracting from the character or integrity of the roof structure and not adversely impacting on the amenity of adjacent and nearby properties and the streetscape. Similarly, alterations and additions which exceed the maximum height must not increase the overall height of the building. Consideration may be given in this paragraph to the application of LEP clause 4.6 in considering exceptions to the LEP Building Height standard."

The proposal includes the addition of habitable space within a roof structure of a dwelling house built before 2007. However, the proposal exceeds the building height development standard and technically increases the the overall height of the building (due to sloping land at the rear). The proposal also does not comply with the FSR development standard of the MLEP 2013. Nonetheless, both the building height and FSR development standard non-compliances are addressed within the section of this report on MLEP 2013 Clause 4.6 Exceptions to development standards.

Notwithstanding the non-compliances, it is considered that the habitable rooms within the roof structure have been appropriately designed to be within the existing building footprint, do not detract from the character or integrity of the roof structure and do not adversely impact on the amenity of adjacent and nearby properties and the streetscape. The proposal also seeks to closely replicate previously approved and constructed alterations and additions at the adjoining semi-detached dwelling at 5 Cliff Street, demonstrating consistency with adjacent built form. Furthermore, the effect of this Clause in promoting the creation of habitable rooms in the roof structure should be considered in

regards to the height of buildings development standard non-compliance, given the building was built prior to 2007 and the ridge height RL is maintained.

4.1.10 Fencing

Description of non-compliance

Under Clause 4.1.10, fences between the front street boundary and the building are to be no more than 1m high above ground level at any point. The fence height may be increased up to 1.5m where the fence is open / transparent for at least the part of the fence higher than 1m.

The proposed development includes demolition of the existing brick wall on the front boundary and replacement with new low sandstone wall with screening over. The low wall is up to 0.8m high and the screening is up to 1.8m high. A new sliding gate is also proposed, which is up to 1.5m high. The overall design is similar in style to that currently exhibited by the adjoining semi-detached dwelling at 5 Cliff Street, which also has a low wall topped by open screening with the same relative heights.

The low wall is compliant with the 1m front fence height control. However, the screening above the wall is over the stipulated 1.5m height for open / transparent elements.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying objectives of the control. The control relies upon the objectives of MDCP Clause 3.1 Streetscapes and Townscapes.

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

Comment:

Notwithstanding the variation, the fencing design is considered to be adequate, sufficiently low in height, open / transparent above 1m, and in keeping with the streetscape character (particularly noting that it seeks to replicate the fencing style exhibited by the adjoining semi-detached at 5 Cliff Street). The proposed variation is relatively minor. Negative visual impacts are adequately minimised.

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

Comment:

The proposed frontage fence will not be out-of-character with the locality and will complement the streetscape, whilst still providing a sense of privacy and security to the front porch of the subject site. It is noted that Council's Heritage team has recommended a condition of consent requiring details of the new front fence, including the height, material and colour, to be provided to Council for approval prior to the issue of the Construction Certificate. This will ensure the new fence is appropriate within the heritage context.

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

Comment:

The proposed frontage fence is reasonable in this circumstance and therefore a soft landscape alternative is not required in this instance.

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 2024

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2024.

A monetary contribution of \$16,550 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,655,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

Council is also satisfied that the Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify variation of the development standard contained within Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a semi-detached dwelling, has been referred to the Development Determination Panel (DDP) due to a variation greater than 10% to the building height development standard of the Manly Local Environment Plan 2013. There is also a proposed variation of the floor space ratio (FSR) development standard of the Manly Local Environment Plan 2013, however this variation is less than 10%.

Privacy concerns raised in the one submission received have been addressed and resolved via amendments made to the plans during the assessment process.

Critical assessment issues included assessment of the proposed variations to height of building and FSR development standards, assessment of potential visual privacy impacts, and assessment of proposed variations to the following Manly Development Control Plan built from controls:

- Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
- Clause 4.1.4 Setbacks (front, side and rear) and Building Separation
- Clause 4.1.5 Open Space and Landscaping
- Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
- Clause 4.1.7 First Floor and Roof Additions
- Clause 4.1.10 Fencing

Overall, the development is considered to be of a design that mirrors previously approved and constructed alterations and additions to the adjoining semi-detached dwelling at 5 Cliff Street, thereby demonstrating that the proposal is consistent with the existing streetscape and character of the area. The development, as amended during the assessment process, 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 Northern Beaches Council, as the consent authority, vary the development standards contained within Clause 4.3 Height of Buildings & Clause 4.4 Floor Space Ratio, pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013, because the Applicant's written requests have adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2024/1677 for Alterations and additions to a semi-detached dwelling on land at Lot 2 DP 534838, 7 Cliff Street, MANLY, 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
A 201	B	Proposed Site Plan	Barbara Bagot Architecture	22 April 2025
A 202	B	Level 1 Plan	Barbara Bagot Architecture	22 April 2025
A 203	B	Level 2 Plan	Barbara Bagot Architecture	22 April 2025
A 204	B	Level 3 Plan	Barbara Bagot Architecture	22 April 2025
A 205	B	Level 1 Demolition Plan	Barbara Bagot Architecture	22 April 2025
A 206	B	Level 2 Demolition Plan	Barbara Bagot Architecture	22 April 2025
A 301	B	East Elevation	Barbara Bagot Architecture	22 April 2025
A 302	B	South and North Elevation	Barbara Bagot Architecture	22 April 2025

A 303	B	Proposed Section AA	Barbara Bagot Architecture	22 April 2025
A 304	B	Sections BB + CC	Barbara Bagot Architecture	22 April 2025
A 304	B	Sections DD + EE	Barbara Bagot Architecture	22 April 2025

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. A1765426_02	-	BASIX Certificate Centre	23 April 2025
Waste Management Plan - 7 Cliff Street, Manly	-	-	November 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	Referral - Ausgrid	Undated

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

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

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifier for the work, and

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

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

Reason: Legislative requirement.

4. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
 - 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,

- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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) Should any construction cranes be utilised on site, they are to be fitted with bird deterrents along the counterweight to discourage raptor (bird) nesting activity. Deterrents are to remain in place until cranes are dismantled. Selection of deterrent methods is to be undertaken in accordance with the recommendations of a suitably qualified ecologist.
- (p) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$16,550.00 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 \$1,655,000.00.

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

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

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

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

6. Security Bond

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or

demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. Fencing for Wildlife Passage

Any new permanent fencing (with the exception of swimming pool fencing) is to be made passable to native fauna through the provision of access gaps or raised fencing to provide appropriate ground clearance. Any access gaps are to be a minimum of 150mm wide x 100mm high at ground level and distance between gaps is not to exceed more than 6 metres.

Plans are to be certified as complying with this condition and provided to the Certifier prior to issue of the Construction Certificate.

Reason: To preserve wildlife corridors.

8. Stormwater Drainage Disposal

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil or Hydraulic Engineer, and where relevant, a Geotechnical Engineer, must be submitted to and approved by the Certifier prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the owner/developer must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

9. Boundary Identification Survey

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on a boundary identification survey, prepared by a Registered Surveyor, 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. **Front fence**

Details of the new front fence including the height, material and colour should be provided to Council for approval prior to the issue of the Construction Certificate.

Reason: To ensure the new fence is appropriate within the heritage context.

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. **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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

13. **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:

- 5 Cliff Street, Manly

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.

14. **Sediment and Erosion Controls**

For developments that include more than 2500sqm of disturbance:

A Soil and Water Management plan (SWMP), in accordance with section 2.3 of the Blue Book, must be prepared and certified by a suitably qualified professional.

For sites larger than 250sqm and less than 2500sqm of disturbance:

An Erosion and Sediment Control Plan (ESCP) must be prepared by a suitably qualified person in accordance with the following considerations and documents:

- Sites that have slopes exceeding 20% (measured in any direction across the site), and/or where works are within the high-water mark or adjacent to a waterway or watercourses are considered environmentally sensitive areas. These sites require a site-specific ESCP which must be prepared and certified by a suitably qualified professional,
- The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate – Volume 1, 4th Edition (2004)' (the Blue Book), and
- The 'Guidelines for Erosion and Sediment Control on Building Sites' (Department of Planning, Housing and Infrastructure).

The ESCP must include the following as a minimum:

- Site Boundaries and contours,
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application),
- Location of site access, proposed roads and other impervious areas (e.g. parking area and site facilities),
- Existing and proposed drainage patterns with stormwater discharge points,
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected,
- North point and scale,
- Type of erosion control measures to divert and slow run-off around and within the site.

Environmentally sensitive areas (i.e. Sites that have slopes exceeding 20% and/or where works are within the high-water mark or adjacent to a waterway or watercourses) must also consider:

- Identify and mark any environmentally sensitive areas on and immediately next to the site and how you will protect these, including any appropriate buffer zones (for

- example, marking them out as 'no-go' areas),
- Details on vegetation you will clear, as well as areas of vegetation you will keep (mark no go areas),
- Detail on soil information and location(s) of problem soil types, especially dispersive soils and potential or actual acid sulfate soils,
- Location of any natural waterways that could receive run-off and how these will be protected these from run-off.

For sites smaller than 250sqm or where the disturbance is less than 50sqm:

Run-off and erosion controls must be implemented to prevent soil erosion, water pollution or the discharge of loose sediment on the surrounding land by:

- Diverting uncontaminated run-off around cleared or disturbed areas, and
- Erecting a silt fence and providing any other necessary sediment control measures that will prevent debris escaping into drainage systems, waterways or adjoining properties, and
- Preventing the tracking of sediment by vehicles onto roads, and
- Stockpiling top soil, excavated materials, construction and landscaping supplies and debris within the lot.
- Identifying any environmentally sensitive areas on and immediately next to the site, and demonstrating how these will be protected (for example, by designation as no-go areas).

Details demonstrating compliance with the relevant requirements above are to be submitted to the Certifier, and the measures implemented, prior to the commencement of works.

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

DURING BUILDING WORK

15. **Wildlife Protection**

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

16. **Removing, Handling and Disposing of Asbestos**

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

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

17. Survey Certificate

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

18. Maintenance of Sediment and Erosion Controls

Erosion and sediment controls must be adequately maintained and monitored at all times, particularly surrounding periods of rain, and shall remain in proper operation until all development activities have been completed and the site is in a state where no substance other than rainwater can enter the stormwater system and waterways.

All sediment control measures must be maintained at, or above, their design capacity.

Where more than 2500 square metres of land are disturbed or if the site has a slope of more than 20%, a self-auditing program must be developed for the site. A site inspection using a log book or inspection test plan (ITP) must be undertaken by the site supervisor:

- at least each week
- immediately before site closure
- immediately following rainfall events that cause runoff.

Details demonstrating compliance must be provided to the Certifier during demolition and building works.

Reason: Protection of the receiving environment and to ensure no substance other than rainwater enters the stormwater system and waterways.

19. Heritage listed sandstone kerbs

The heritage listed sandstone kerbs are to be protected at all times during demolition and construction works on site.

Reason: To ensure the current contribution of the heritage listed sandstone kerbs to the streetscape is maintained.

20. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**21. No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

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

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

22. **Waste Disposal Verification Statement**

On completion of demolition work:

- a signed statement must be submitted to the Certifier verifying that demolition work, and any recycling of materials, was undertaken in accordance with the waste management plan approved under this consent, and
- if the demolition work involved the removal of asbestos, an asbestos clearance certificate issued by a suitably qualified person, must be submitted to the Certifier within 14 days of completion of the demolition work.

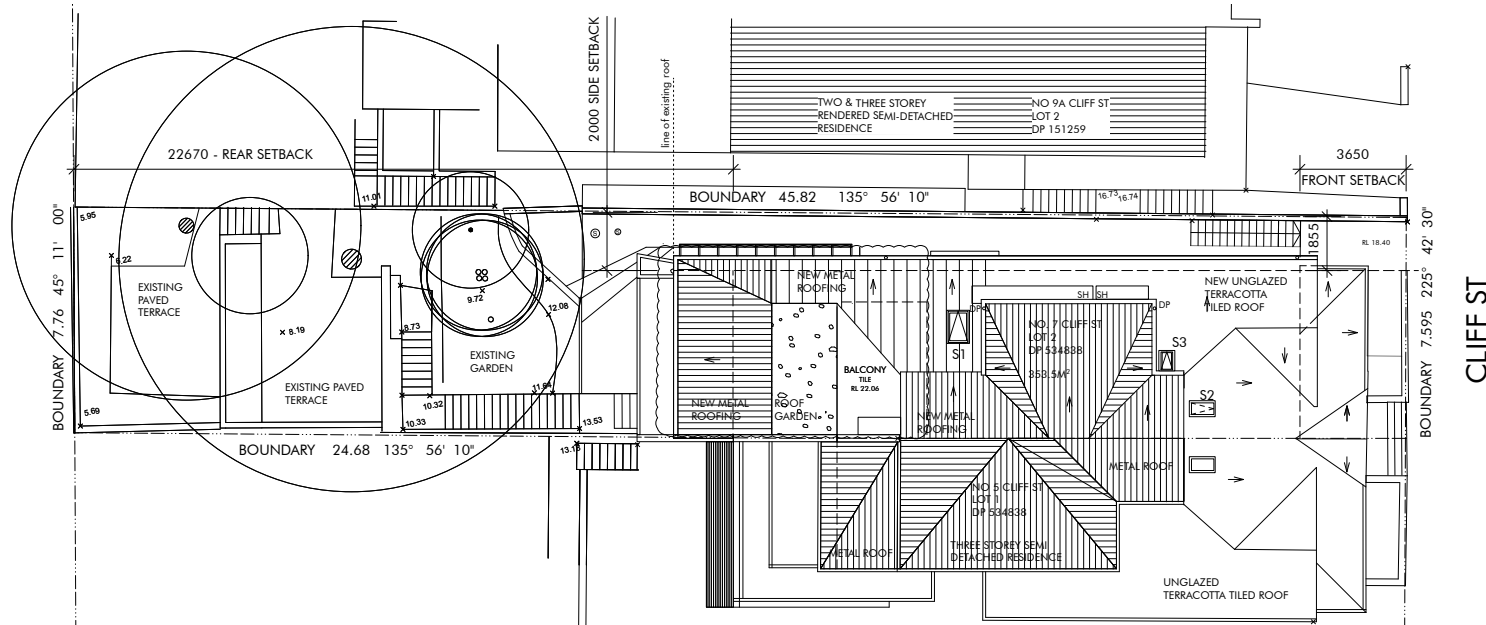
Reason: To provide for the submission of a statement verifying that demolition waste management and recycling has been undertaken in accordance with the approved waste management plan.

23. **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.



**BARBARA ARCHITECTURE
BAGOT**

16 KINGSLANGLEY ROAD
GREENWICH
NSW 2065

PHONE 0420 931 019
BBAGOT@AAP.NET.AU
NSW REG NO. 8289

STAGE
PROJECT
CLIENT
REF

DEVELOPMENT APPLICATION
7 CLIFF ST MANLY
LOT 2 DP 534838

JAMES BURTON AND KATH KEENAN
0152

DOCUMENT
REV
SCALE

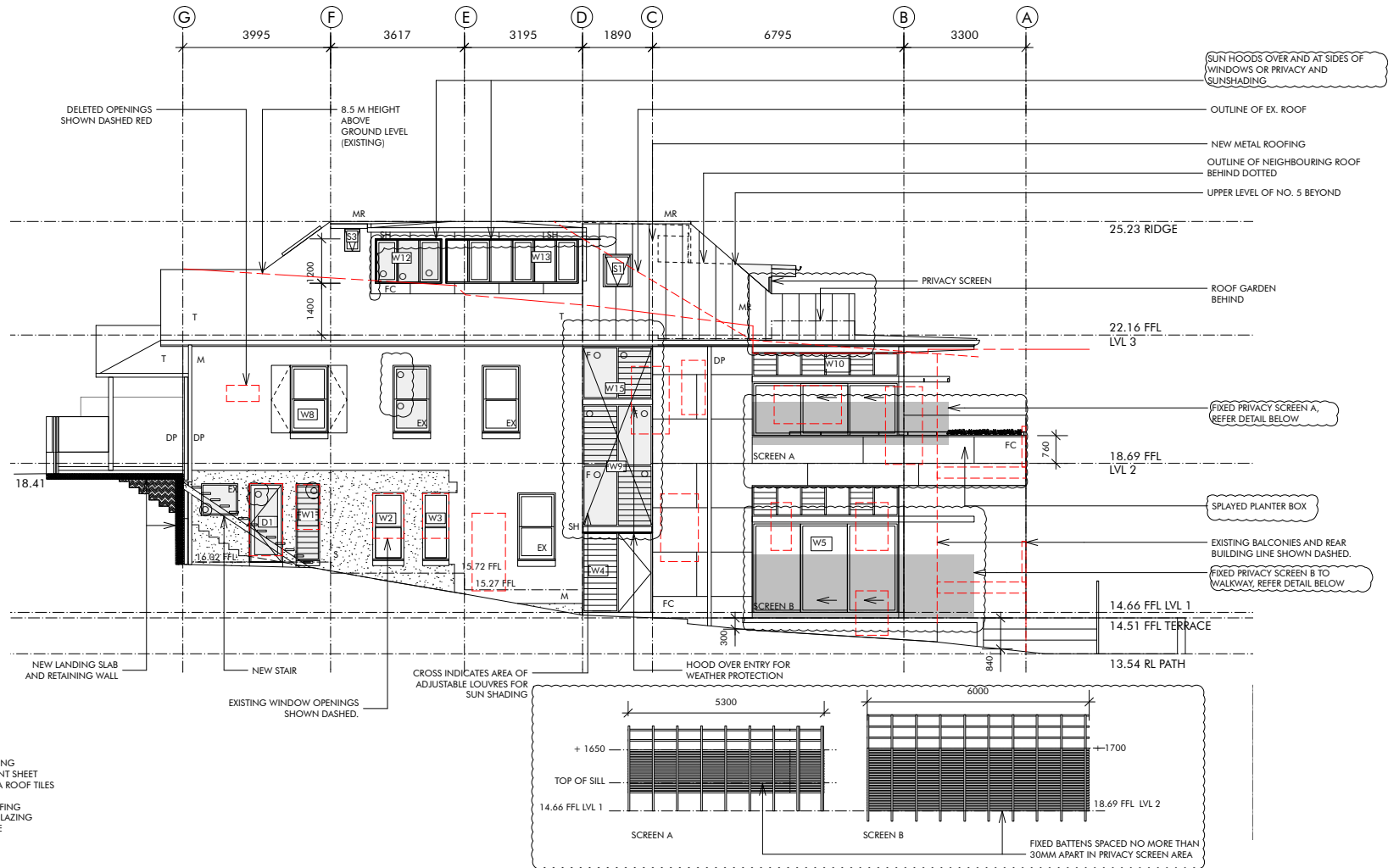
PROPOSED SITE PLAN
REVISION B
22.4.2025
1: 150



DRAWING NO.

A 201

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BARBARA BAGOT ARCHITECTURE

14 KINGSLEY ROAD
GREENWICH
NSW 2065

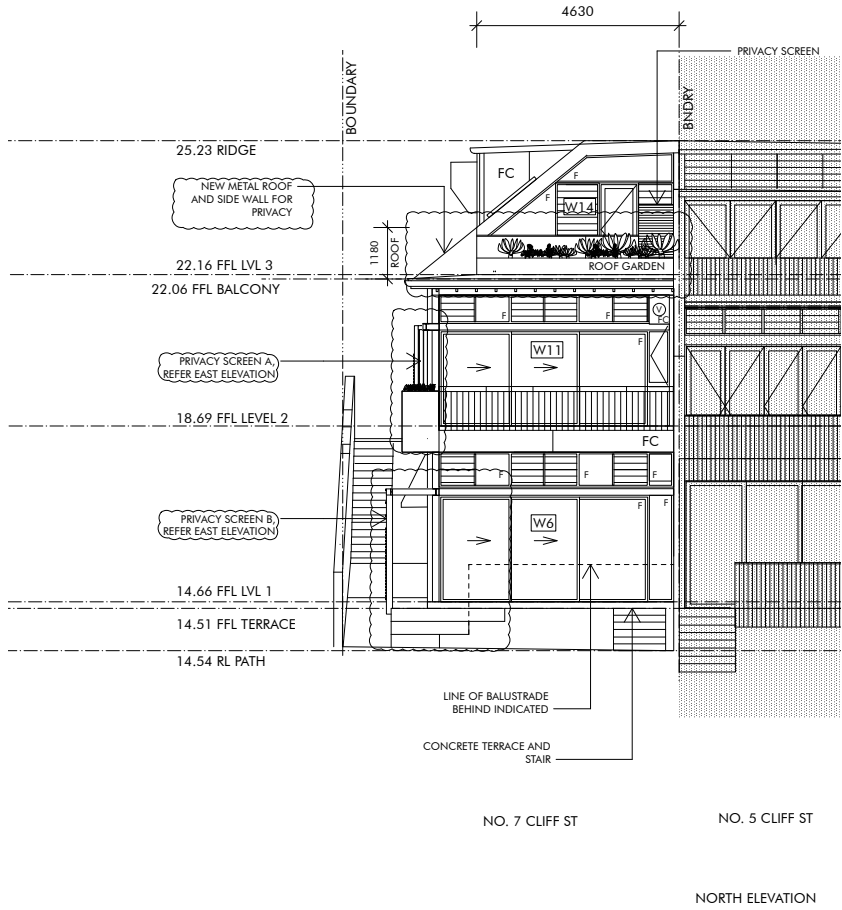
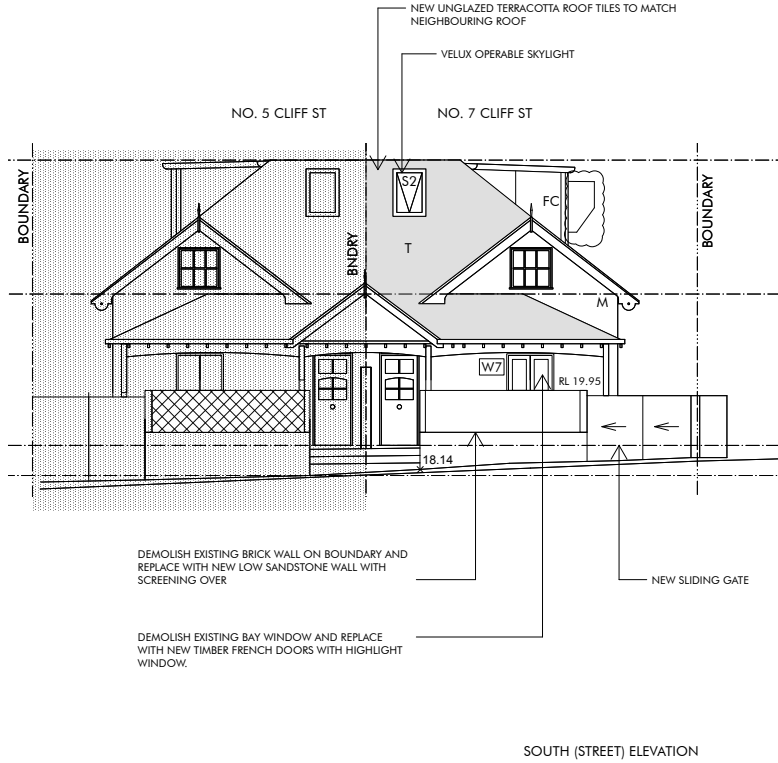
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STAGE PROJECT
DEVELOPMENT APPLICATION
7 CLIFF ST MANLY
LOT 2 DP 534838
CLIENT
JAMES BURTON AND KATH KEENAN
REF
0152

DOCUMENT EAST ELEVATION
REV REVISION B
22.4.2025
SCALE 1: 100

DRAWING NO.
A 301

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- LEGEND
C CONCRETE
F FIXED GLAZING
FC FIBRE CEMENT SHEET
T TERRACOTTA ROOF TILES
M MASONRY
MR METAL ROOFING
O OBSCURE GLAZING
S SANDSTONE
SH SUN HOOD
DP DOWNPIPE

**BARBARA ARCHITECTURE
BAGOT**

14 KINGSLANGLEY ROAD
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NSW REG NO. 8289

STAGE	DEVELOPMENT APPLICATION
PROJECT	7 CLIFF ST MANLY LOT 2 DP 534838
CLIENT	JAMES BURTON AND KATH KEENAN
REF	0152

DOCUMENT	SOUTH AND NORTH ELEVATION
REV	REVISION B 22.4.2025
SCALE	1: 100

DRAWING NO.
A 302

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7 Cliff Street, Manly

**7 CLIFF STREET, MANLY
CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO EXISTING SEMI-DETACHED
DWELLING**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM
FLOOR SPACE RATIO CONTROL AS DETAILED IN CLAUSE 4.4 OF THE MANLY
ENVIRONMENTAL PLAN 2013**

For: Construction of Alterations and Additions to an Existing Semi-Detached Dwellings
At: 7 Cliff Street, Manly
Owner: Mr Burton & Ms Keenan
Applicant: Mr Burton & Ms Keenan

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard, it is requested Council support a variation with respect to compliance with the maximum floor space ratio development standard as described in Clause 4.4 of the Manly Local Environmental Plan 2013 (MLEP 2013).

2.0 Background

Clause 4.4 of MLEP sets out the maximum floor space ratio standard as follows:

- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

The Floor Space Ratio Map specifies a maximum floor space ratio of 0.6:1.

The proposed dwelling additions provide for a maximum gross floor area of 231.65m². This is a non-compliance of 19.55m or a variation of 9.3%.

The proposal is considered acceptable and as discussed further within this request, there are sufficient environmental planning grounds to justify contravening the development standard.

The controls of Clause 4.4 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

Is Clause 4.4 of the LEP a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act means standards fixed in respect of an aspect of the development and includes:

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

- (b) Clause 4.4 relates to the maximum floor space ratio. Accordingly, Clause 4.4 is a development standard.

3.0 Purpose of Clause 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

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

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 118 have been relied on in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

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

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

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

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

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

Clause 4.6(2) of the LEP provides:

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

Clause 4.4 (the Floor Space Ratio control) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of the LEP provides:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The proposed development does not comply with the maximum floor space ratio development standard pursuant to Clause 4.4 of MLEP which specifies a maximum floor space ratio of 0.6:1 in this area.

The proposed dwelling additions will result in a maximum gross floor area of 231.65m². This is a non-compliance of 19.55m or a variation of 9.3%.

The non-compliance with the maximum floor space does not result in any detrimental impacts and is compatible with the floor space of the adjoining semi-detached dwelling on the adjoining property (at No. 5 Cliff Street). The proposal provides for an attic style addition that is consistent with the additions to the adjoining semi-detached dwelling at No. 5 Cliff Street. The application merely seeks to provide for a modest addition that does not extend the height or depth of the adjoining semi-detached dwelling at No. 5 Cliff Street.

Strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP provides:

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

A register has been established to record assessments carried out.

Clause 4.6(5) has been repealed. Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) has been repealed. Clause 4.6(8) is only relevant so as to note that it does not exclude Clause 4.4 of the LEP from the operation of clause 4.6.

Clause 4.6(6) relates to certain subdivision of land clauses. This does not apply to the proposal.

The specific objectives of Clause 4.6 are as follows:

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

The development will provide additions to an existing dwelling on site. The non-compliance will not result in any detrimental impacts to the adjoining properties or the character of the locality. It is important to note that the subject site is part of a pair of semi-detached dwellings with No. 5 Cliff Street to the west. This application merely seeks to replicate the previously approved and constructed additions at No. 5 Cliff Street. It is considered that allowing for flexibility in this instance is reasonable and given the proposal is consistent with additions and constructed at No. 5 Cliff Street. The additions merely seek to extend the existing roof ridge towards the rear, as has been done by No. 5 Cliff Street which contributes the non-compliance with the floor space ratio. The additional floor area will not be prominent in the streetscape, being largely obscured by the existing dwelling on site.

7 Cliff Street, Manly

Further the additional floor area does not result in loss of privacy, overshadowing or unreasonable bulk when viewed from the adjoining properties.

The resultant dwelling will provide bulk and scale (and floor area) that is consistent with the existing dwelling at No. 5 Cliff Street.

The non-compliance results in a development that is compatible with the existing surrounding development in this portion of Cliff Street and which is consistent with the stated Objectives of the R1 General Residential Zone, which are noted as:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the maximum floor space ratio development standard contained in Clause 4.4 of MLEP.
- 5.2 Clause 4.4 of MLEP specifies a maximum floor space ratio of 0.6:1 in this area of Manly.
- 5.3 The proposal provides for additions to an existing dwelling. The works proposed result in a development that is compatible with the existing surrounding development in this portion of Cliff Street and in particular matches the bulk and envelope of the adjoining semi-detached dwelling at No. 5 Cliff Street. The non-compliance is a result of providing for extension of the roof form to provide additional floor area consistent with the existing semi-detached dwelling at No. 5 Cliff Street.

6.0 Relevant Caselaw

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

-
17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
 18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
 19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
 20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
 21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
 22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*
-

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

1. Is Clause 4.4 of MLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of Clause 4.4 and the objectives for development for in the R1 zone?

7.0. Request for Variation

7.1 Is compliance with Clause 4.4 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) Each objective of the maximum floor space ratio development standard, as outlined under Clause 4.4, and reasoning why compliance is unreasonable or unnecessary, is set out below:

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

The proposed additions have been designed having regard to the existing roof form of the subject site and the built form of the adjoining semi-detached dwelling at No. 5 Cliff Street.

The proposed additions merely seek to extend the existing roof ridge to the rear, consistent with the additions at No. 5 Cliff Street. The additional floor area is contained at the rear of the site and within the extended roof form. This portion of the additions are predominantly obscured from the street given the slope of the site and the existing built form.

The proposed additions provide for a development, when viewed from Cliff Street, that is consistent and matches the existing adjoining semi-detached dwelling at No. 5 Cliff Street.

The resultant dwelling is compatible with the floor area in the immediate locality, which comprises a number of multi-dwelling developments and large dwelling houses.

The proposed additions are located behind the existing roof form and will predominately be obscured from the public domain and streetscape as it will be largely screened by the existing dwelling. In this regard, the resultant dwelling will continue to present as single level dwelling when viewed from Cliff Street.

The proposal and in particularly the non-compliance achieves this objective.

(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

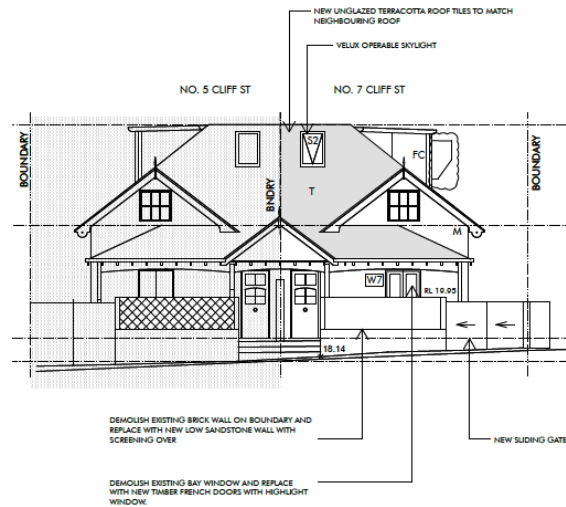
The proposed additions which result in the non-compliance with the floor space ratio control, is consistent with the bulk and scale with the adjoining semi-detached dwelling at No. 5 Cliff Street. The subject dwelling is part of a pair of two semi-detached dwellings with No. 5 Cliff Street and additions have designed to generally reflect the adjoining semi-detached dwelling.

The proposed additions are predominantly obscured from the public domain as it is located behind the front façade of the existing dwelling. The resultant dwelling will continue to present as a single level dwelling with rooms within the roof form. This is compatible with the existing surrounding development.

The additional floor area and the resultant dwelling will not obscure any important landscape or townscape features and is therefore consistent with this objective.

Proposed streetscape and existing streetscape is depicted below:

7 Cliff Street, Manly

**Proposed Streetscape****Existing Streetscape**

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

The proposed additions, including the non-compliance with the floor space ratio controls, results in a development that is appropriate with regard to the adjoining development as is depicted in the streetscape elevations above. The dwelling will continue to present as a single level dwelling with rooms within the roof form when viewed from the street frontage and public domain. The additional roof form is contained predominantly within the roof form and as such does not result in unreasonable bulk. The upper level is provided with an increased side boundary setback (at least 3.03m) which ensures sufficient visual separation to the adjoining built form.

The proposed additions do not reduce the existing landscaped area, rather it provides for some additional landscaping in the rear yard. The proposal does not require the removal of existing vegetation.

The proposal achieves this objective.

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

The proposed additions are located behind the existing front façade and roof form and will not obstruct views to nearby development from public spaces.

The site is well separated from the foreshore and will not impacts from the foreshore to the adjoining dwellings.

The proposed additions will not obstruct existing views from nearby residential development. In relation to properties on the opposite (southern) side of Cliff Street, with the additions not exceeding the existing ridge height, there will be no loss of views. With regard to the two adjoining properties, No. 5 and 9A Cliff Street, the proposed additions do not extend beyond the rear wall of the adjoining dwellings. The proposal will not obstruct any existing views from the adjoining properties.

The proposal, and in particular the additional floor area, will not obstruct any existing views between public spaces.

Shadow diagrams have been submitted with the application demonstrating that the proposal continues to provide sufficient solar access to the adjoining properties.

The proposal, and in particularly, the additional floor area will not result in a loss of privacy to the adjoining properties. The proposal incorporates considered window placement, privacy screens and glazing in conjunction with increased setbacks to the upper level to ensure visual separation.

In relation to Level 2 floor, the following provides existing views from the deck and dining room.

7 Cliff Street, Manly



View from Existing Balcony – Level 2



View from Existing Dining/kitchen

These photos depict that there are no direct views currently from the deck or dining room into private open space or living areas of the adjoining property, No. 9A Cliff Street. The privacy will be further enhanced with the introduction of the privacy screen and window placement.

The proposal achieves this objective.

(e) to provide for the viability of Zone E1 and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

The site is not within E1 zone and as such this objective does not apply.

7.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

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

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”.
The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15].*

Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

There are sufficient environmental planning grounds to justify contravening the development standard. The site is currently occupied by a two storey dwelling and is a part of a pair of semi-detached dwellings with No. 5 Cliff Street. The proposal merely seeks to provide an addition similar to that constructed at No. 5 Cliff Street which results in the non-compliance. The proposed development is consistent with the objectives of the zone and objectives of the floor space ratio control. The non-compliance does not result in any adverse impacts on the adjoining properties. The non-compliance does not result in any loss of views. The area of exceedance does not contribute to unreasonable visual bulk.

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

- The proposed additions have been designed to complement and be consistent with the additions provided at No. 5 Cliff Street. Therefore, the proposal will promote good design (cl 1.3(g)).
- The proposal provides for an appropriate bulk and scale when viewed from the public domain and surrounding properties and therefore strict compliance is therefore unreasonable.

Further, the proposed works do not have any detrimental impact on the adjoining properties for the following reasons:

- The proposed dwelling additions have been designed consistent with the additions provided at No. 5 Cliff Street. The existing dwelling is part of a pair of semi-detached dwellings with No. 5 Cliff Street and the proposal provides for a consistent design approach. The non-compliance relates to an additional upper floor level which is consistent with the works at No. 5 Cliff Street, and which does not impact on privacy, views or solar access of the adjoining properties.
- Shadow diagrams have been provided indicating that all adjoining properties receive appropriate solar access. The non-compliance does not contribute to any unreasonable shadowing to adjoining properties.
- The non-compliance with the floor space ratio control does not result in any loss of privacy or amenity to the adjoining properties.

- The resultant dwelling is compatible in terms of bulk and scale with the existing surrounding dwelling, particularly and importantly the adjoining semi-detached dwelling at No. 5 Cliff Street.

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the existing roof form and built form of the adjoining semi-detached dwelling, No. 5 Cliff Street. Further, the resultant development and in particular the non-compliance with the floor space ratio standard, is compatible with the existing surrounding development.

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

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

The area of non-compliance does not result in any detrimental impact and is a direct result of providing for an upper floor level to the existing dwelling and which is consistent with the built form of the adjoining semi-detached dwelling. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.4 Is the proposed development in the public interest because it is consistent with the objectives of Clause 4.4 and the objectives of the R1 General Residential Zone?

- (a) Section 4.2 of this written request suggests the 1st test in Wehbe is made good by the development.
- (b) Each of the objectives of the R1 General Residential Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council [2017] NSWLEC 158* where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ also found that *"The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone"*.

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the variation of to the floor space ratio control, the resultant building as proposed will be consistent with the individual Objectives of the R1 General Residential Zone for the following reasons:

- ***To provide for the housing needs of the community.***

The proposal results in additions to an existing semi-detached dwelling house which is consistent with this objective. The non-compliance relates to works behind the existing front facade and does not detract from the low density residential environment.

- ***To provide for a variety of housing types and densities***

The proposal provides for additions to an existing semi-detached dwelling which is appropriate in this location.

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

This objective is not relative to the proposal.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed floor space ratio control, whilst maintaining consistency with the zone objectives.

7.5 Has the Council considered the matters in clause 4.6(5) of MLEP?

(a) Clause 4.6(5) has been repealed.

8.0 Conclusion

This development proposed a departure from the maximum floor space ratio development standard, with the proposed works providing for a maximum floor space ratio of 0.65:1.

The non-compliance is a result of providing an upper level which is consistent with the existing roof form and development of the adjoining semi-detached dwelling, No. 5 Cliff Street.

The extent of the variation to the floor space ratio control does not result in any significant impact on the amenity, views and outlook for the neighbouring properties.

This written request to vary to the maximum floor space ratio standard specified in Clause 4.4 of the Manly LEP 2013 adequately demonstrates that the objectives of the standard will be met.

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

Strict compliance with the maximum floor space ratio control would be unreasonable and unnecessary in the circumstances of this case.

Natalie Nolan
DIRECTOR
NOLAN PLANNING CONSULTANTS

7 Cliff Street, Manly

**7 CLIFF STREET, MANLY
CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO EXISTING SEMI-DETACHED
DWELLING**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM
HEIGHT OF BUILDING CONTROL AS DETAILED IN CLAUSE 4.3 OF THE MANLY
ENVIRONMENTAL PLAN 2013**

For: Construction of Alterations and Additions to an Existing Semi-Detached Dwellings
At: 7 Cliff Street, Manly
Owner: Mr Burton & Ms Keenan
Applicant: Mr Burton & Ms Keenan

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard, it is requested Council support a variation with respect to compliance with the maximum height of building development standard as described in Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP 2013).

2.0 Background

Clause 4.3 of MLEP sets out the maximum height of building standard as follows:

- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The Height of Building Map specifies a maximum height of 8.5m.

The proposed dwelling house provides for a maximum height of 10.965m. This is a non-compliance of 2.465m or a variation of 29%.

The proposal is considered acceptable and as discussed further within this request, there are sufficient environmental planning grounds to justify contravening the development standard.

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

Is Clause 4.3 of the LEP a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act means standards fixed in respect of an aspect of the development and includes:

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

- (b) Clause 4.3 relates to the maximum height of building. Accordingly, Clause 4.3 is a development standard.

3.0 Purpose of Clause 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

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

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 118 have been relied on in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

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

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

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

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

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

Clause 4.6(2) of the LEP provides:

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

Clause 4.3 (the Height of Building Control) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of the LEP provides:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

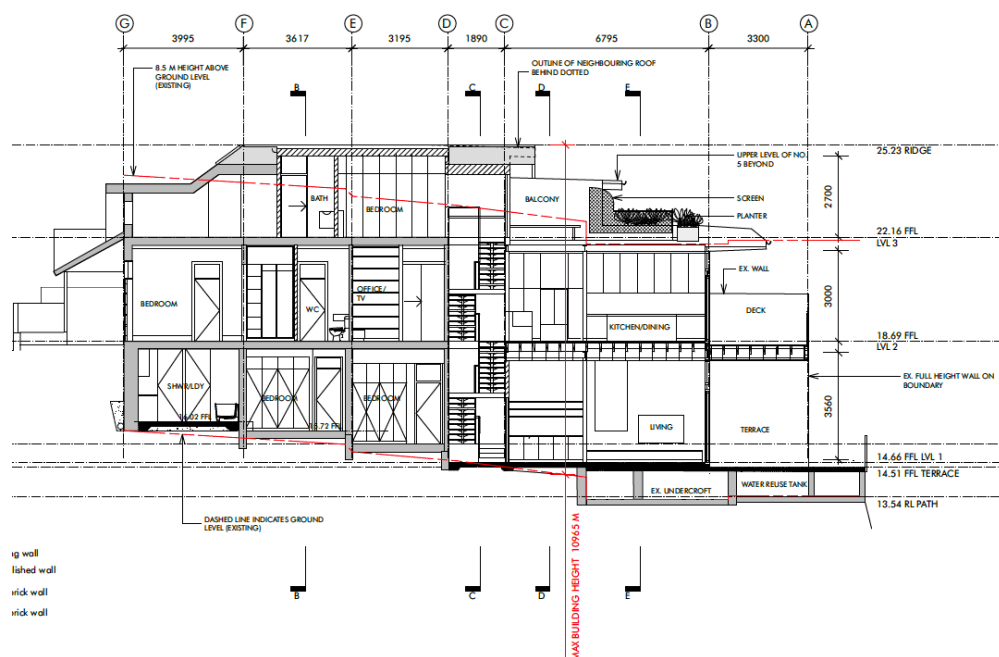
The proposed development does not comply with the maximum height of building development standard pursuant to Clause 4.3 of MLEP which specifies a maximum height of building of 8.5m in this area.

The proposed dwelling will result in a maximum height of 10.965m, resulting in a non-compliance of 2.465m or a variation of 29%.

7 Cliff Street, Manly

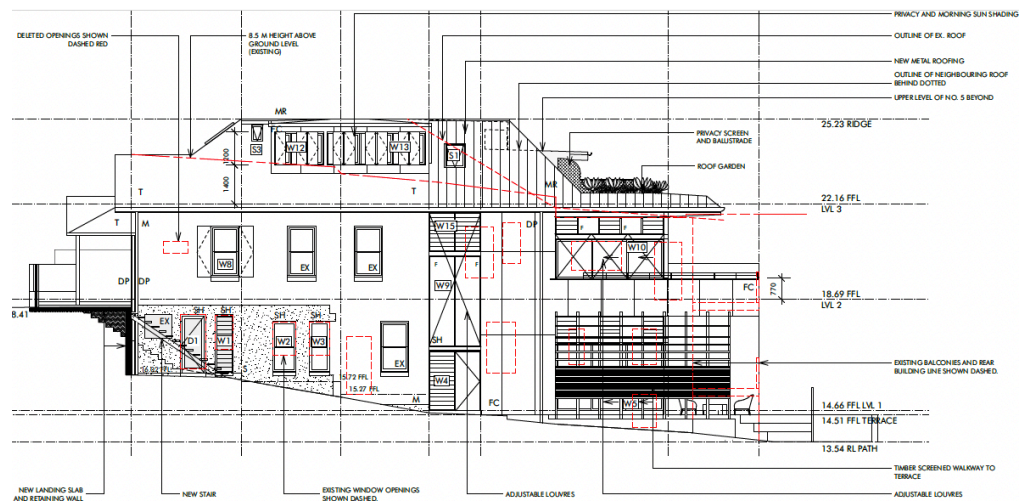
The non-compliance with the height of building control is a result of the slope of the site and the existing roof form of the subject site and the adjoining property. The proposal provides for an attic style addition that is consistent with the additions to the adjoining semi-detached dwelling at No. 5 Cliff Street. The application merely seeks to extend the existing ridge line towards the rear and does not extend the height or depth of the adjoining semi detached dwelling at No. 5 Cliff Street. The sections and elevations below depict both the existing and dwelling on site and the adjoining semi-detached dwelling.

Strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.



Existing section depicting existing outline of adjoining semi-detached dwelling at No. 5 Cliff Street

7 Cliff Street, Manly



Elevation Depicting existing roof form, height limit and outline of adjoining semi-detached dwelling at No. 5 Cliff Street

Clause 4.6(4) of MLEP provides:

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

A register has been established to record assessments carried out.

In *Initial Action* the Court found that clause 4.6 required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority.

The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest **because** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b).

The second precondition requires the consent authority to be satisfied that that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

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

Clause 4.6(5) has been repealed. Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) has been repealed. Clause 4.6(8) is only relevant so as to note that it does not exclude Clause 4.3 of the LEP from the operation of clause 4.6.

Clause 4.6(6) relates to certain subdivision of land clauses. This does not apply to the proposal.

The specific objectives of Clause 4.6 are as follows:

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

The development will provide additions to an existing dwelling on site. The non-compliance is a direct result of the slope of the site and the existing roof form. It is important to note that the subject site is part of a pair of semi-detached dwellings with No. 5 Cliff Street to the west. This application merely seeks to replicate the previous approved and constructed additions at No. 5 Cliff Street. It is considered that allowing for flexibility in this instance is reasonable and given the proposal is consistent with additions and constructed at No. 5 Cliff Street. The existing dwelling has a height exceeding the maximum height control which is exacerbated by the significant slope of the site. The additions merely seek to extend the existing roof ridge towards the rear, as has been done by No. 5 Cliff Street, and does not result in any increase in height to the existing ridge. The area is limited to the area behind the existing roof form at the front of the dwelling. The additions will not be prominent in the streetscape, being largely obscured by the existing dwelling on site.

The resultant dwelling will provide for a ridge height of RL25.23, consistent with the ridge height of existing dwelling on site and No. 5 Cliff Street. The proposed non-compliance provide for a better planning outcome by continuing the existing roof form and providing an addition that is consistent with that constructed at No. 5 Cliff Street.

The non-compliance results in a development that is compatible with the existing surrounding development in this portion of Cliff Street and which is consistent with the stated Objectives of the R1 General Residential Zone, which are noted as:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the maximum height of building standard contained in Clause 4.3 of MLEP.
- 5.2 Clause 4.3 of MLEP specifies a maximum building height of 8.5m in this area of Manly.
- 5.3 The proposal provides for additions to an existing dwelling. The works proposed result in a development that is compatible with the existing surrounding development in this portion of Cliff Street and in particular matches the height and envelope of the adjoining semi-detached dwelling at No. 5 Cliff Street. The non-compliance is a result of the significant slope of the site, the existing roof form and to design an addition consistent to the provided to the adjoining semi-detached dwelling.

6.0 Relevant Caselaw

- 6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular, the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:
 17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
 18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*

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19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46]*
 20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
 21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
 22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*
- 6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:
1. Is Clause 4.3 of MLEP a development standard?
 2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
-

- (b) there are sufficient environmental planning grounds to justify contravening the development standard
- 3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of Clause 4.3 and the objectives for development for in the R1 zone?

7.0. Request for Variation**7.1 Is compliance with Clause 4.3 unreasonable or unnecessary?**

- (a) This request relies upon the 1st way identified by Preston CJ in Wehbe.
- (b) The first way in Wehbe is to establish that the objectives of the standard are achieved.
- (c) Each objective of the maximum height of building development standard, as outlined under Clause 4.3, and reasoning why compliance is unreasonable or unnecessary, is set out below:

(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 proposed additions have been designed having regard to the existing roof form of the subject site and the built form of the adjoining semi-detached dwelling at No. 5 Cliff Street.

The proposed additions merely seek to extend the existing roof ridge to the rear, consistent with the additions at No. 5 Cliff Street. The existing dwelling on the subject currently exceeds the height of building control and the extension of the existing roof ridge which in conjunction with the significant slope further exceeds the height control.

The proposed additions do not exceed the ridge height of the existing dwelling on site and does not exceed of the existing dwelling of the adjoining semi-attached dwelling, No. 5 Cliff Street.

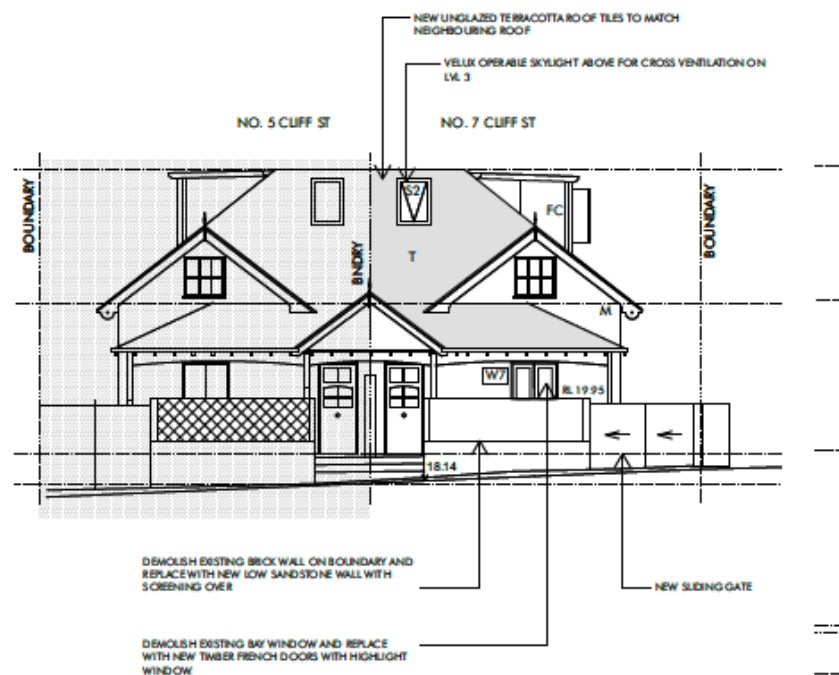
The resultant dwelling is compatible with the prevailing building height in the immediate locality, particularly having regard to No. 3, 5 and 9 Cliff Street.

The proposed additions are located behind the existing roof form and will predominately be obscured from the public domain and streetscape as it will be largely screened by the existing dwelling. In this regard, the resultant dwelling will continue to present as single level dwelling

(b) to control the bulk and scale of buildings,

The proposed additions which result in the non-compliance with the height control, merely relates to the existing of the existing roof ridge towards the rear. The resultant dwelling is consistent the bulk and scale with the adjoining semi-detached dwelling at No. 5 Cliff Street. The subject dwelling is part of a pair of two semi-detached dwellings with No. 5 Cliff Street and additions have designed to generally reflect the adjoining semi-detached dwelling.

The proposed additions are predominantly obscured from the public domain as it is located behind the front façade of the existing dwelling. The resultant dwelling will continue to present as a single level dwelling with rooms within the roof form. This is compatible with the existing surrounding development. Proposed streetscape and existing streetscape is depicted below:



Proposed Streetscape

**Existing Streetscape**

(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),*

The proposed additions are located behind the existing front façade and roof form and will not obstruct views to nearby development from public spaces.

The site is well separated from the foreshore and will not impacts from the foreshore to the adjoining dwellings.

The proposed additions will not obstruct existing views from nearby residential development. In relation to properties on the opposite (southern) side of Cliff Street, with the additions not exceeding the existing ridge height, there will be no loss of views. With regard to the two adjoining properties, No. 5 and 9A Cliff Street, the proposed additions do not extend beyond the rear wall of the adjoining dwellings. The proposal will not obstruct any existing views from the adjoining properties.

The proposal will not obstruct any existing views between public spaces.

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

Detailed shadow diagrams have been prepared and submitted with the application. This demonstrates only minimal additional shadow cast to a very small portion of the balcony of No. 5 Cliff Street. The proposal continues to provide a reasonable level of solar access in accordance with Council's DCP.

(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 site is not within a recreation or conservation zone and as such this clause does not apply.

7.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

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

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”.
The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

There are sufficient environmental planning grounds to justify contravening the development standard. The site is currently occupied by a two storey dwelling which exceeds the maximum height control and is a part of a pair of semi-detached dwellings with No. 5 Cliff Street. The proposal merely seeks to provide an addition similar to that constructed at No. 5 Cliff Street which results in the non-compliance. The proposed development is consistent with the objectives of the zone and objectives of the building height control. The non-compliance does not result in any adverse impacts on the adjoining properties. The non-compliance does not result in any loss of views. The area of exceedance does not contribute to visual bulk.

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

- The proposed additions have been designed to complement and be consistent with the additions provided at No. 5 Cliff Street. Therefore, the proposal will promote good design (cl 1.3(g)).
- The proposal provides for an appropriate bulk and scale when viewed from the public domain and surrounding properties and therefore strict compliance is therefore unreasonable.

Further, the proposed works do not have any detrimental impact on the adjoining properties for the following reasons:

- The proposed dwelling additions have been designed consistent with the additions provided at No. 5 Cliff Street. The existing dwelling is part of a pair of semi-detached dwellings with No. 5 Cliff Street and the proposal provides for a consistent design approach. The non-compliance relates to extension of the existing roof ridge towards the rear, consistent with the works at No. 5 Cliff Street, and which does not impact on privacy, views or solar access of the adjoining properties.
- Shadow diagrams have been provided indicating that all adjoining properties receive appropriate solar access. The non-compliance does not contribute to any unreasonable shadowing to adjoining properties.
- The non-compliance with the building height control does not result in any loss of privacy or amenity to the adjoining properties.
- The resultant dwelling is compatible in terms of bulk and scale with the existing surrounding dwelling, particularly and importantly the adjoining semi-detached dwelling at No. 5 Cliff Street.

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the existing roof form and built form of the adjoining semi-detached dwelling, No. 5 Cliff Street. Further, the resultant development and in particular the non-compliance with the building height standard, is compatible with the existing surrounding development.

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

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

The area of non-compliance does not result in any detrimental impact and is a direct result of existing roof form of the existing dwelling and the built form of the adjoining semi-detached dwelling. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.4 Is the proposed development in the public interest because it is consistent with the objectives of Clause 4.3 and the objectives of the R1 General Residential Zone?

- (a) Section 4.2 of this written request suggests the 1st test in *Wehbe* is made good by the development.
- (b) Each of the objectives of the R1 General Residential Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council* [2017] NSWLEC 158 where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ also found that *“The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone”*.

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the variation of to the height of building control, the resultant building as proposed will be consistent with the individual Objectives of the R1 General Residential Zone for the following reasons:

- ***To provide for the housing needs of the community.***

The proposal results in additions to an existing semi-detached dwelling house which is consistent with this objective. The non-compliance relates to works behind the existing front facade and does not detract from the low density residential environment.

- ***To provide for a variety of housing types and densities***

The proposal provides for additions to an existing semi-detached dwelling which is appropriate in this location.

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

This objective is not relative to the proposal.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed height of building control, whilst maintaining consistency with the zone objectives.

7.5 Has the Council considered the matters in clause 4.6(5) of MLEP?

(a) Clause 4.6(5) has been repealed.

8.0 Conclusion

This development proposed a departure from the maximum height of building development standard, with the proposed works providing for a maximum height of 10.965m.

The non-compliance is a result of the significant slope of the site, the existing roof form and the existing development to the adjoining semi-detached dwelling, No. 5 Cliff Street.

The extent of the variation to the height of building control does not result in any significant impact on the amenity, views and outlook for the neighbouring properties.

This written request to vary to the maximum height of building standard specified in Clause 4.3 of the Manly LEP 2013 adequately demonstrates that that the objectives of the standard will be met.

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

Strict compliance with the maximum height of building control would be unreasonable and unnecessary in the circumstances of this case.

Natalie Nolan
DIRECTOR
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