

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 28 MARCH 2018



Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 28 March 2018
in the Walamai Room, Northern Beaches Council, Dee Why**

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 14 MARCH 2018

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 14 March 2018 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA 243/2017 - 61 BOWER STREET, MANLY - DEMOLITION OF THE EXISTING DWELLING AND CONSTRUCTION OF A NEW DWELLING
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2018/183532
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site and Elevation Plans

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.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

That Development Application No. DA243/2017 for demolition of the existing dwelling and construction of a new dwelling at 61 Bower Street, Manly be **Approved** on accordance with the recommendations in the assessment report.



northern
beaches
council

Development Determination Panel Report

2017/536215

DA #	243/2017
Site Address	61 Bower Street, Manly; Part Lot 66 DP 8075
Proposal	Demolition of the existing dwelling and construction of a new dwelling.
Officer	Tom Prosser

SUMMARY:

Application Lodged:	26 October 2017
Applicant:	Daniel Raymond
Owner:	Trustees of the Roman Catholic Church
Estimated Cost:	\$1,754,775.00
Zoning:	MLEP, 2013 – E3 Environmental Management.
NSW LEC:	Not applicable.
Notification:	30 October 2017 to 15 November 2017
Submissions received:	2
Site Inspected:	4 January 2018
LEP (4.6) Variations proposed:	Height.
DCP Variations proposed:	Setbacks and open space.
Recommendation:	Approval

Subject Property and surrounding area



R1, R2, R3, E3 & E4 Zones

1 of 39

The subject property is commonly known as 61 Bower Street, Manly and legally known as Lot 66 in DP 8075. The site is located on the southern side of Bower Street and northern side of Montpelier Place. The property is an irregular shape and has a frontage of 14.68m to Bower Street and 15.405m to Montpelier Place, an average depth of 45m and an overall site area of 680.2m². The property currently contains a two storey dwelling with vehicular access via an existing driveway from Bower Street to an existing garage to the front of the existing dwelling. The property slopes from the south to the north and includes a crossfall of approximately 5m.

The surrounding area includes residential dwellings on both sides of Bower Street and Montpelier Street. The ocean foreshore is in close vicinity being to the north of the site and on the opposite side of Bower Street.

Property Burdens and Constraints

There are no burdens or constraints that would preclude the proposed development.

Site History/Background

DA5102/1991- Proposed alterations and additions.

Description of proposed development

Council sent a letter to the applicant on 19 January 2018 highlighting an issue regarding the height and bulk of the garage. It was suggested amendments were to be made to the application. Subsequently, the applicant submitted amended plans to address these issues on 23 January 2018. The application was not re-notified consistent with Clause 2.6 of the Manly DCP, 2013.

The proposal involves demolition of an existing dwelling and construction of a new dwelling including:

External

- New double garage to Montpelier Place
- Swimming pool
- Outdoor living areas (decks)

Lower Ground Floor

- Studio with ensuite

Ground Floor Level

- New ground floor level with kitchen, dining, two living areas, butlers pantry, study, laundry and WC.

First Floor Level

- New first floor with four bedrooms, bathroom, ensuite and balcony to the north.

Internal Referrals

Engineering Comments

Council's Engineer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Building Comments

Council's Building Surveyor offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Landscaping Comments

Council's Landscape Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Traffic Comments

Council's Traffic Engineer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Driveway Comments

Council's Driveway Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Natural Resources Comments

Council's Natural Resources Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

External Referrals**AUSGRID**

The proposal was referred to the AUSGRID. There was no comment made by AUSGRID at the time of writing this report.

Planning Comments**Environmental Planning & Assessment Act 1979 – Section 79(C)(1)**

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) *the provisions of:*
(i) *any environmental planning instrument, and*

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005:

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

Manly Local Environmental Plan 2013

The subject site is located in Zone E3 Environmental Management under the Manly LEP 2013. The proposed development is considered permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

Zone E3 Environmental Management**Objectives of zone**

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

Subject to conditions, the proposal has reasonable measures to ensure *ecological*, scientific, cultural and aesthetic protection.

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

The proposal is for demolition of the existing dwelling and construction of a new dwelling which is compliant with the development standards for FSR and building height. As such, the proposal would not have an adverse effect on the above values.

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

Subject to conditions, trees will be protected to a reasonable extent. The reasonable separation of the proposed dwelling from the RE1 zone also allows scenic qualities to be maintained.

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

The separation from RE1 zoned land, bushland and foreshore ensures that the proposal would have no unreasonable impact on the above.

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

The proposal involves appropriate landscaping and is compliant with the soft open space control required by the Manly DCP, 2013. Subject to conditions, the proposal will be consistent with this objective.

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

The proposal involves a reduction in building height and a compliant floor space ratio. In this situation, this provides an appropriate outcome having regard to existing vegetation, topography and surrounding land uses.

Part 4 Principal development standards

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

4.	Principal Development Standards	Requirement	Proposed	Complies Yes/No	Comments
4.3	Height of buildings	8.5m	9.9m	No	See comments. Existing height: 10.7m
4.4	Floor Space Ratio Site area: 680.2m ²	0.45:1 306.09m ²	0.449:1 306m ²	Yes	Complies.

4.6 Exceptions to development standards

Height of Building

The following assessment of the variation to Clause 4.3 – Height of buildings development standard and is assessed taking into consideration the questions established in *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46.

Requirement	8.5m
Proposed	9.9m
Is the planning control in question a development standard?	Yes.
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical.
If numerical enter a % variation to requirement	16.5%
Existing height	10.7m
Numerical % variation to existing	-8%

The proposal must satisfy the objectives of Clause 4.3 – Height of buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the MLEP 2013 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MELP 2013 are:

(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 proposal involves demolition of an existing dwelling and construction of a new dwelling. The new dwelling will have a lower maximum building height than the existing dwelling and a lower pitched roof. Along with the slope of the site, this assists in providing a development that will be appropriate given the existing streetscape character.

The proposed level of the ridge line is similar to other dwellings in vicinity on this side of the street and non-compliant section of the building is to the northern part of the dwelling (downslope). This ensures that the building height would be both consistent with surrounding development and desirable having regard to topography.

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

Comment:

The proposal is compliant with the development standard for floor space ratio and located appropriately on site, with compliant front and rear setbacks, to ensure that bulk and scale of the development is adequately controlled. In addition, the non-compliant section of the building is to the north of the dwelling which is downslope. This means that the slope reduces the visual impact of bulk and scale when the dwelling is viewed from upslope.

- (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:

As assessed below, the proposal will be reasonable in terms of minimising disruption to views due to the addition of view over the top of the site as compared to existing site as well as the lack of impact caused by the non-compliance due to the section of non-compliance being downslope and to the front of the site.

- (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 proposal is compliant with the controls for Sunlight access and overshadowing under the Manly DCP, 2013. In addition, the front and rear setbacks are compliant and Floor space ratio is compliant to allow for a development that has an adequate control in bulk so that there is not unreasonable impact on solar access.

- (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 proposal is designed and sited appropriately on site so that the height and bulk of the building will have no unreasonable impact on the area. This includes a compliant floor space ratio and compliant front setback to the partial section of height non-compliance which allows an appropriate relationship with the surrounding environment.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the E3 Environmental Management zone.

The underlying objectives of Zone E3 Environmental Management are:

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

Subject to conditions, the proposal has reasonable measures to ensure *ecological*, scientific, cultural and aesthetic protection.

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

The proposal is for demolition of the existing dwelling and construction of a new dwelling which is compliant with the development standards for FSR and building height. As such, the proposal would not have an adverse effect on the above values.

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

Subject to conditions, trees will be protected to a reasonable extent. The reasonable separation of the proposed dwelling from the RE1 zone also allows scenic qualities to be maintained.

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

The separation from RE1 zoned land, bushland and foreshore ensures that the proposal would have no unreasonable impact on the above.

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

The proposal involves appropriate landscaping and is compliant with the soft open space control required by the Many DC, 2013. Subject to conditions, the proposal will be consistent with this objective.

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

The proposal involves a reduction in building height and a compliant floor space ratio. In this situation, this provides an appropriate outcome having regard to existing vegetation, topography and surrounding land uses.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

(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.*

Comment:

In this circumstance, providing flexibility to the height of building development standard is appropriate as the non-compliance does not lead to any unreasonable amenity impact and would be appropriate in the street context.

- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Comment:

It is appropriate to allow flexibility in this circumstance as the overall height of the dwelling will be lower than existing and although still non-compliant, the non-compliance is located on a section of the site which is downslope and has no unreasonable amenity impact on surrounding dwellings.

(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.

(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.*

Comment:

“1.0 Introduction

This objection 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 building height as described in Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP 2013).

2.0 Background

Clause 4.3 restricts the height of a building within this area of the Manly locality and refers to the maximum height noted within the “Height of Buildings Map.”

The relevant building height for this locality is 8.5m and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

Due to the sloping topography of the site, the ridge at the far northern end of the site will point be approximately 9.9m in height at the northern extremity of the roof ridge. As can be seen from the extract profile below, the non-compliance is limited as it quickly returns back to well within the 8.5m building height.

Being at the far northern extremity of the building, this will have no visual impact on the neighbours behind. Importantly, with the demolition of the existing dwelling, identified by the blue broken line, the maximum ridge height for development on

the site will be reduced by 2.41m from RL 43.43 to RL 41.02 thus providing a much improved overall position for the streetscape and the uphill properties.

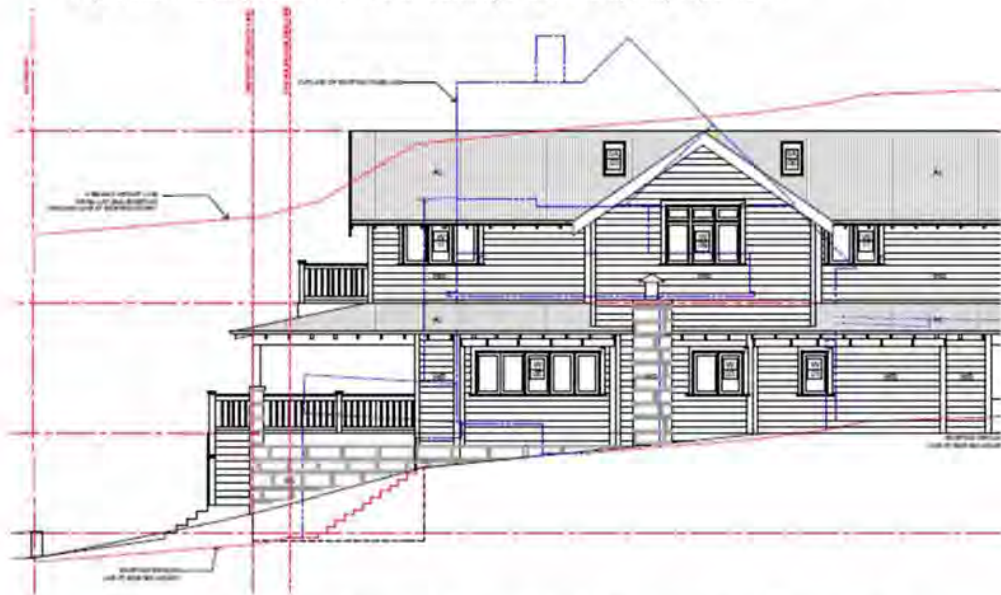


Fig 10: Extract of proposed Western Elevation from Architectural Set prepared by Daniel Raymond, dated 22 September 2017

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

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 LEP should be assessed. These cases are taken into consideration in this request for variation.

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 development will achieve a better outcome in this instance as the site will provide for alterations and additions to an existing dwelling which is consistent with the stated Objectives of the E3 Environmental Management Zone, which are noted over as:

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.

- To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.
- To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.
- To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.
- To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.

As sought by the zone objectives, the proposal will provide for the construction of a new dwelling which is sensitive to the location and the topography of the locality. The proposal includes modulated wall lines and a consistent palette of materials and finishes in order to provide for high quality development that will enhance and complement the locality.

The new development to replace the existing dwelling will see an overall reduction in the maximum ridge height of development within the site by 2.41m to RL 41.02. Notwithstanding the non-compliance with the maximum height control, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood.

5.0 Onus on Applicant

Clause 4.6(3) provides that:

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

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

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

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.
- To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.
- To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.
- To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.
- To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.

6.0 Justification of Proposed Variation

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

Paragraph 27 of the judgement states:

Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

Precondition 1 - Consistency with zone objectives

The site is located in the E3 Environmental Management Zone. The objectives of the E3 zone are noted (over) as:

Comments

It is considered that the proposed development will be consistent with the desired future character of the surrounding locality for the following reasons:

- The proposal will be consistent with and complement the existing residential development within the locality.*
- The proposed development respects the scale and form of other new development in the vicinity and therefore complements the locality.*
- The setbacks maintain compatibility with the existing surrounding development.*
- The proposal will see a substantial reduction in the overall height of the development within the site, with the new dwelling to be up to 2.41m lower than the current dwelling.*
- The proposal does not have any unreasonable impact on long distance views for the surrounding properties.*

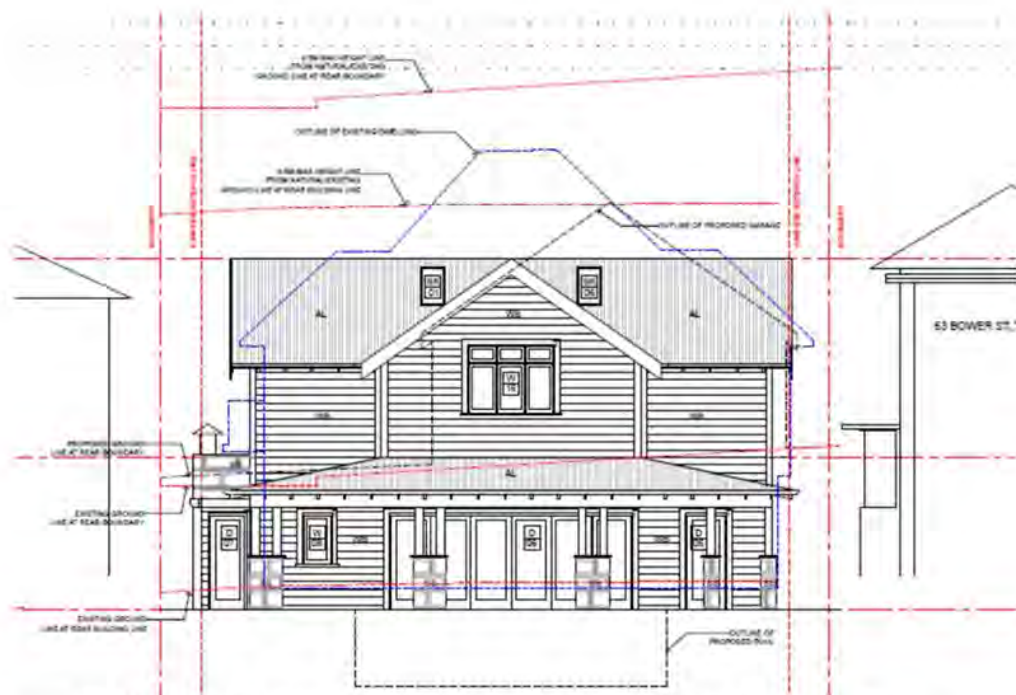


Fig 11: Extract of proposed Southern Elevation from Architectural Set prepared by Daniel Raymond, dated 22 September 2017, indicating significant reduction in overall height and increased view opportunity over the new dwelling for uphill properties

Accordingly, it is considered that the site may be developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

Precondition 2 - Consistency with the objectives of the standard

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

- (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.

Comments

Despite the variation to the statutory height control which occurs as a result of the sloping topography of the site, the proposed new development is considered to be in keeping with the desired future character of the locality.

The majority of the dwelling readily complies with the statutory height limit, with only the most northern portion of the roof form varying the control as a result of the slope towards Bower Street.

The proposed new dwelling is in keeping with the scale of development in the locality, and therefore will not result in any unreasonable visual impact on the Bower Street streetscape. The proposal will see a substantial reduction in the overall height of the development within the site, with the new dwelling to be up to 2.41m lower than the current dwelling.

The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

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

It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for the construction of a new dwelling, which is constrained by the sloping topography of the site.

Council's controls in Clause 4.3 provide a maximum overall height of 8.5m.

It is considered that the proposal achieves the Objectives of Clause 4.3 and that the development is justified in this instance for the following reasons:

- The proposed works will maintain consistency with the general height and scale of residential development in the area and the character of the locality.*
- The majority of the roof form readily complies with the 8.5m height limit and the variation to the maximum height control is minor and limited to a short length of the northern ridge, with the majority of the dwelling comfortably complying with the height control.*
- The variation to the height control is a direct result of the site's topography, with the site falling more steeply at the northern perimeter of the dwelling's footprint.*
- The proposed height and the overall scale of the new works will maintain amenity and appropriate solar access for the subject site and neighbouring properties.*

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

Precondition 4 - To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed
Council's controls in Clause 4.3 provide a maximum overall height of 8.5m for the subject development.

Due to the sloping topography of the site, the proposed new works will be up to approximately 9.9m in height.

The development is justified in this instance for the following reasons:

- Compliance with the height control is constrained by the sloping topography of the site.
- The proposed dwelling does not result in a significant bulk when viewed from either the street or the neighbouring properties.
- The development will maintain a compatible scale relationship with the existing residential development in the area. Development in the vicinity has a wide range of architectural styles and the given the variety in the scale of development, this proposal will reflect a positive contribution to its streetscape.
- The majority of the roof form readily complies with the statutory height limit.
- The proposal will see a substantial reduction in the overall height of the development within the site, with the new dwelling to be up to 2.41m lower than the current dwelling.
- The extent of the proposed new works where they are not compliant with Council's maximum height control do not present any significant impacts in terms of view loss for neighbours, loss of solar access or unreasonable bulk and scale.

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

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

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

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

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

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

Accordingly, in regards to the proposed development at 61 Bower Street, Manly, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The development is constrained by the site's sloping topography.
- The variation to the height control is inconsequential as it will not result in any unreasonably impact to the streetscape and the amenity of neighbouring properties.

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

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

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

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

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

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

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

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

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

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

Comment: Not applicable.

5. the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would

be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

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

7.0 Conclusion

This development proposed a departure from the maximum building height development standard, with the proposed new dwelling to provide a maximum overall height of 9.9m.

This variation occurs as a result of the sloping topography of the site and the fall in levels towards the northern perimeter of the dwellings footprint. The proposal will see a substantial reduction in the overall height of the development within the site, with the new dwelling to be up to 2.41m lower than the current dwelling (See Figure 11).

This objection to the maximum building height specified in Clause 4.3 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 building height control would be unreasonable and unnecessary in the circumstances of this case."

- (4) Development consent must not be granted for development that contravenes a development standard unless:

(a) *the consent authority is satisfied that:*

(i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

Comment:

A written request has been provided which gives sufficient reasoning as to why the compliance with the development standard is both unreasonable and unnecessary and that there are sufficient grounds to justify contravening the standard. This includes the reasoning as stated above.

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

Comment: For reasons detailed above, the proposal is considered to be consistent with the objectives of the E3 Environmental Management zone in the MLEP 2013.

(b) *the concurrence of the Secretary has been obtained*

Comment: Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. However, the development contravenes the development standard by greater than 10% and as such concurrence may not be assumed by a delegate of Council but in this case a local planning panel.

Part 5 Miscellaneous Provisions

The relevant provisions of the Manly LEP 2013 are referred to below as part of this assessment:

5.	Miscellaneous Provisions	Applies	Complies	Comment
5.10	Heritage Conservation	Yes	Yes	The proposal would have no unreasonable impact on the heritage of any item in the vicinity.

Part 6 Local Provisions

The relevant provisions of the Manly LEP 2013 are referred to below as part of this assessment:

6.	Local Provisions	Applies	Complies	Comment
6.1	Acid Sulphate Soils	No	N/A	
6.2	Earthworks	Yes	Yes	Subject to conditions.
6.3	Flood Planning	No	N/A	
6.4	Stormwater Management	Yes	Yes	Subject to conditions.
6.5	Terrestrial Biodiversity	Yes	Yes	Council's Biodiversity officer has no objection to the proposal, subject to conditions.
6.6	Riparian land and watercourses	No	N/A	
6.7	Wetlands	No	N/A	
6.8	Landslide Risk	No	N/A	
6.9	Foreshore Scenic Protection Area	Yes	Yes	The subject site is located in the Foreshore Scenic protection area. As a result of the compliant floor space ratio and reasonable proposed siting of the dwelling, there would be no unreasonable impact on visual aesthetic amenity or views.
6.12	Essential services	Yes	Yes	Existing and subject to conditions.

79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and
There is no applicable Draft Planning Instrument.

79C(1)(a)(iii) - any development control plan, and

Manly Development Control Plan 2013

The following is an assessment of the proposal's compliance with the standards of the Development Control Plan. Where a variation is proposed to the standards, an assessment is included in the Planning Comments.

Part 3 General Principles of Development

Issues	Consistent with Principle	Inconsistent with Principle
Streetscape	✓ see comment	
Heritage – In Vicinity	✓	
Landscaping Design	✓	
Landscape/Tree Preservation	✓	
Sunlight Access and Overshadowing	✓	

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Privacy and Security	✓	see comment
Maintenance of Views	✓	see comment

Comment:

3.1 Streetscapes and Townscapes

Streetscape

The proposal is consistent with the objectives for streetscape under clause 3.1 as follows:

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

The proposal involves the addition of a double garage to Montpellier Place. As a result of the amended plans received on 23 January 2018 and the proposed RL to be level with the proposed ridge of the dwelling, the proposal is reasonable in terms of visual presentation to the street. This reasonable height along with similar bulk to garages on the boundary in close proximity will also ensure the garage will be appropriate in the street context.

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

The proposed dwelling is sited so as to have compliant front and rear setbacks, it will reduce height on site as compared to existing dwelling on site and would have a compliant floor space ratio proposed. Along with the garage at the rear setback being consistent in type and bulk with other structures in the street, this provides a situation in which the overall development would generally complement the identified streetscape.

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

The proposal has planting around the majority of the site boundary and this is appropriate in terms of providing soft landscaping.

3.4.2 Privacy and Security

The proposal is consistent with the objectives for Privacy and security under Clause 3.4.2 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.*

The proposed development reasonably minimises loss of privacy by providing private open space areas and windows in locations that ensure appropriate mitigation of acoustical and visual privacy issues. This includes locating the swimming pool and open space above ground centrally on the site and ensuring windows are located so that there is not unreasonable direct overlooking between adjacent windows. This includes approved windows for application DA229/2016 at 59 Bower Street, Manly.

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

The proposal will maintain reasonable access to light, air and views through reasonable modulation of the first floor and appropriate setbacks for the swimming pool and balcony. This means screening and other structures to mitigate privacy impact would not be required and as such a reasonable balance between privacy and other amenity would be found.

Objective 3) To encourage awareness of neighbourhood security.

The proposal provides open space areas, entries and windows that have appropriate outlook to allow for awareness of neighbourhood security.

3.4.3 Maintenance of Views

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

The proposal involves a reduction of height as compared to the existing dwelling on site and the section of the dwelling that is non-compliant is at the front of the site but with a compliant front setback. This provides a situation in which reasonable views can be obtained toward the ocean to the north for both the proposed dwelling and surrounding dwellings (adjacent and dwellings to the rear on Montpellier Street), particularly over the front boundaries.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths) and,

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

An assessment of view loss has been undertaken with reference to the Views Principle established by the NSW Land and Environment Court. This has been made with consideration of view sharing and the importance of minimising disruption of views. The area with potential for substantial view loss as a result of the proposed development are on the opposite side of Montpellier Street from the subject site. This area has been assessed under the view loss principle with consideration of each step below:

Dwellings to the rear of the subject site

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Comment:

The views obtained from dwellings to the rear of the subject site are water views toward the ocean. As existing, the view obtained is a partially obstructed view of the horizon as a result of the existing dwelling on site. It is also noted that there are headland and ocean view corridors to the side of the existing dwelling from the dwellings to the rear.

The second step is to consider from what part of the property the views are obtained.

For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

Comment:

The views obtained from the dwellings on the opposite side of Montpellier Street are generally views from front bedrooms and living areas at both the first and second floor level. The views at the second floor level are generally unaffected by development in Bower Street.

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Comment:

In relation to the existing dwelling, the view loss from the dwellings on the opposite side of Montpellier Street is considered to be negligible as there will be a slight water view loss to the sides of the proposed dwelling but a view gained of the horizon over the top of the proposed dwelling (see figure 1 for comparison between existing and proposed dwelling).

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

The proposed development is non-compliant with building height under the Manly LEP, 2013. However, as a result of the impact on views being negligible-minor the non-compliance is reasonable. In addition, a view will be retained of the horizon as compared to the existing dwelling and a proposed compliant with the building height development control would have a negligible improvement on views obtained.

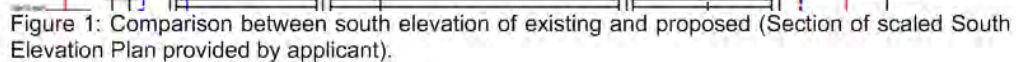




Photo 1: View toward 61 Bower Street, Manly from living room 11 Montpellier Street, Manly.

Part 4 - Development Controls

Site Area: 680.2m ²		Permitted/ Required	Proposed	Complies Yes/No
Wall height	East side	7.2m	7.1m	Yes.
	West side	6.9m	6.7m	Yes.
Number of Storeys		2	2	Yes.
Roof height		2.5m	2.5m (for dwelling and garage)	Yes.
Setback Front		6.0m or streetscape	5.4m but consistent with front building line of neighbouring properties.	Yes.
East setback side		2.37m	0.9m	No, see comments.
West setback side		2.23m	0.9m	No, see comments.
Setback Rear/ Secondary Street Frontage		8m	0m (garage) 14.3m (dwelling)	No, see comments.
Open space - total		Min. 55% of Site Area (374.11m ²)	32.8% (223m ²)	No see comments.
Open space - landscaped		Min. 35% of Total Open Space (78.05m ²)	60.5% (135m ²)	Yes.
Open space - above ground		Max. 25% of Total Open Space (55.75m ²)	10m ²	Yes.

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Site Area: 680.2m ²	Permitted/ Required	Proposed	Complies Yes/No
Number of Endemic Trees	3	-	Subject to conditions.
Private Open Space	18m ²	190m ²	Yes.
Car Parking – Residents	2 spaces	3 spaces (1 space at Bower Street in garage)	Yes.
Swimming pool height	1m	0m	Yes.
Swimming pool setbacks pool concourse / deck	1m	2m	Yes.
Swimming pool setbacks water's edge	1.5m	3.6m	Yes.

Comment:

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

The proposal is non-complaint with the numerical requirements for side and rear setback but is consistent with the objectives for Setbacks under Clause 4.1.4 of the Manly DCP 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.

The proposal has compliant front and rear setbacks to the dwelling and provides landscaping to the side setbacks to ensure the proposed dwelling would present appropriately in the street.

Objective 2) To ensure and enhance local amenity by:

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

The proposal provides adequate location and design of windows as well as a modulated first floor to ensure that there would be no unreasonable amenity impact. In particular, windows are located so as to not have any unreasonable angles of overlooking and the modulation allows for adequate access to light sunshine and air. In addition, the swimming pool area at the rear and balcony at the front have compliant side setbacks so as to ensure the development would not cause privacy issues as a result of these highly usable areas.

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

An appropriate degree of flexibility in terms of side setback is reasonable in this circumstance due to other design features that ensure the development would be both visually suitable in the street and adequate in terms of amenity impact. This comes as a result of the compliant front and rear setbacks to the dwelling, the landscaping at the sides, the modulation of the top floor and the compliant floor space ratio.

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.*

The proposal has a compliant amount of landscaped area and subject to conditions will provide appropriate landscaping across the site.

Objective 5) To assist in appropriate bush fire asset protection zones.
Not applicable.

4.1.5 Open Space and Landscaping

The proposal is non-complaint with the numerical requirements for open space but is consistent with the objectives for open space under Clause 4.1.5 of the Manly DCP as follows:

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

The proposal is compliant with landscaped open space and subject to conditions Council's Biodiversity officer supports the proposal. This provides a situation in which natural features on site can be reasonably retained and augmented.

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.

The proposal is compliant with the control for landscaped area under the Manly DCP, 2013. In addition, the majority of the site boundary has planting proposed to provide an adequate outcome for the site in terms of landscaped area and vegetation.

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

The proposed dwelling is appropriately sited and modulated at the top floor level to ensure that amenity despite not providing calculable open space in the side setbacks. In addition, the open space areas provided at the front and rear of the dwelling will allow for appropriate amenity to be obtained for surrounding dwellings.

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

The proposal has compliant landscaped areas and subject to conditions will be appropriate in terms of stormwater management.

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

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.
Subject to conditions, the proposal will be appropriate in terms of providing weed minimisation and wildlife corridors.

Part 5 - Special Character Areas and Sites

Special Character Areas and Sites	Applicable	Not Applicable
Conservation Area		✓
Foreshore Scenic Protection Area	✓	
Threatened Species and Critical Habitat	✓	
Flood Control Lots		✓
Riparian Land and Watercourses		✓
Road Widening		✓
Gurney Crescent and Clavering Road, Seaforth		✓

Comment:

Foreshore Scenic Protection Area

The proposal is consistent with the provisions for consideration under subclause 5.4.1.1. The dwelling is setback from the street and will have no unreasonable visual impact on the existing natural environment.

Threatened Species and Critical Habitat

Council's Biodiversity officer supports the proposal, subject to conditions.

79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
No planning agreement has been entered into in relation to the proposed development.

79C(1)(a) (iv) - the regulations

The proposed development has been assessed having regard to the Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 and is considered to be satisfactory.

79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)

There is no Coastal Zone Management Plan applicable for the Manly area.

79C(1) (b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The proposed development as modified by the conditions of consent is not considered to have any detrimental impact on the natural and built environments and is accordingly recommended for approval.

79C(1) (c) - the suitability of the site for the development,

The proposed development as modified by the conditions of consent is considered to be suitable for the site.

79C(1) (d) - any submissions made in accordance with this Act or the regulations

The application was notified to nearby and adjoining property owners in accordance with Section 2.3 of Council's Development Control Plan 2013 with 2 submissions received from the following objectors raising the following concerns:

Submission and Address	Main Issues raised in the submission	Comments on submission
1. S. Carracher, 11 Montpellier Place, Manly.	<ul style="list-style-type: none"> Height, scale and setbacks. Bulk and scale of proposed garage and its inconsistency with the streetscape. Inconsistency with Manly DCP requirements Side setbacks and impact on scenic amenity, streetscape and views. Request for access to the site to be from Bower Street. 	<ul style="list-style-type: none"> A consideration of height scale and setbacks has been made earlier in this report and found the proposal to be reasonable. Council sent a letter to the applicant on 19 January 2018 highlighting an issue regarding the height and bulk of the garage. It was suggested amendments were to be made to the application. Subsequently, the applicant submitted amended plans to address these issues on 23 January 2018. These amend plans included a reduction in

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		<p>height of the garage to be level with the proposed level of the dwelling. This was assessed as being an adequate bulk and scale, and complementary with the streetscape.</p> <ul style="list-style-type: none"> • An assessment has been made against the Manly DCP including detailed assessment under Part 3, Part 4 and Part 5 earlier in this report. This assessment has found the proposal to be reasonable and consistent with the Manly DCP. • An assessment for setbacks has been made under Part 4 of the Manly DCP, earlier in this report. This assessment has found the proposal to be reasonable in terms of setbacks. • A condition has been imposed to ensure appropriate measures are considered during construction such as site access.
2. J & C, Kelleher, 12 Montpellier Place, Manly.	<ul style="list-style-type: none"> • Bulk and scale of proposed garage and its inconsistency with streetscape. Garage would compromise area for visitor parking. • Setbacks do not enhance local amenity and open space does not dominate. This is in comparison to larger setbacks at 59 Bower Street. • Request for access only on Bower Street • Request for start time of construction works of not before 7am. 	<ul style="list-style-type: none"> • Council sent a letter to the applicant on 19 January 2018 highlighting an issue regarding the height and bulk of the garage. It was suggested amendments were to be made to the application. Subsequently, the applicant submitted amended plans to address these issues on 23 January 2018. These amend plans included a reduction in height of the garage to be level with the proposed level of the dwelling. This was assessed as being an adequate bulk and scale, and complementary with the streetscape • An assessment for setbacks has been made under Part 4 of the Manly DCP, earlier

		<p>in this report. This assessment has found the proposal to be reasonable in terms of setbacks.</p> <ul style="list-style-type: none"> • A condition has been imposed to ensure appropriate measures are considered during construction such as site access. • A conditions has been imposed (4CD02) which requires audible site works to be no earlier than 7am.
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79C(1) (e) - the public interest.

The proposed development as modified by the conditions of consent is not considered to have an adverse impact on the public interest.

S94 Contribution towards provision or improvement of amenities or services

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- (1) *If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:*
- (a) *the dedication of land free of cost, or*
 - (b) *the payment of a monetary contribution,*
 - or both.*
- (2) *A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'*

Comments:

In this case, the proposal does not involve the addition of any dwellings and as a result contributions are not applicable.

CONCLUSION:

The application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act 1979, Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 and is considered to be satisfactory for **approval**, subject to conditions.

RECOMMENDATION

In consideration of the written request made by the applicant pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013, the consent authority is satisfied that compliance with the development standard contained in Clause 4.3 (Height of Buildings) of the Manly Local Environmental Plan 2013 is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard.

That Development Application No. DA243/2017 for demolition of the existing dwelling and construction of a new dwelling at 61 Bower Street, Manly be **Approved** subject to the following conditions:-

GENERAL CONDITIONS

1. The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and reference documentation;

Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. 243/2017:

Plan No. / Title	Issue/ Revision & Date	Prepared By
DA-001 – Site Plan	Rev A- 22.01.2018	Daniel Raymond Architect
DA-100 – Lower Ground Floor Plan	Rev A- 22.01.2018	Daniel Raymond Architect
DA-101- Ground Floor Plan	Rev A- 22.01.2018	Daniel Raymond Architect
DA102- First Floor Plan	Rev A- 22.01.2018	Daniel Raymond Architect
DA-103- Garage Plans and Sections	Rev A- 22.01.2018	Daniel Raymond Architect
DA300 – Elevation Sheet 01	Rev A- 22.01.2018	Daniel Raymond Architect
DA301- Elevation Sheet 02	Rev A- 22.01.2018	Daniel Raymond Architect
DA302 - Elevation Sheet 03	22.09.2017	Daniel Raymond Architect
DA303- Elevations Sheet 04	22.09.2017	Daniel Raymond Architect
DA304- Garage Elevations & Sections	Rev A- 22.01.2018	Daniel Raymond Architect
DA400- Section Sheet 01	22.09.2017	Daniel Raymond Architect
DA401- Section Sheet 02	22.09.2017	Daniel Raymond Architect

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

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council

2. Prescribed Conditions

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

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

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and

- B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative Requirement (DACPLB09)

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

ANS01

The Landscape Concept Plan (Daniel Raymond Architect, 22 September 2017) submitted in support of the DA is to be amended to delete the following species: *Lophostemon confertus*, *Liriope* 'Evergreen Giant', *Viburnum odoratissimum* 'Emerald Lustre'. Replacement species are to be selected from Section 3.3.1a)iv) and/or Schedule 4 (Part B) of the Manly Development Control Plan 2013. The amended Landscape Concept Plan shall also include provision for relocation of the two locally significant *Macrozamia communis* specimens in a suitable location on the site or alternatively, within the adjacent Council reserve by written agreement of Council's Parks and Recreation Business Unit.

Reason: To maintain habitat value of the site for the endangered population of long-nosed bandicoots and other native fauna.

ANS02

Long-nosed Bandicoots are to be excluded from constructed waterbodies while maintaining access to the surrounding soft landscaping. Pool fencing must have no gaps large enough to allow bandicoots through to the waterbody. Plans are to be amended prior to the issue of the Construction Certificate.

Reason: To prevent the waterbody from becoming a drowning hazard for Long-nosed Bandicoots.

ANS03

An Environmental Construction Management Plan (ECMP) is to be prepared and is to outline all measures for the protection of native fauna during construction phase of the approved development. Measures to be addressed in the ECMP include, but are not limited to all, biodiversity conditions of this consent and those measures identified in the ecological report submitted as part of the Development Application. The ECMP is to be provided to the certifying authority prior to the issue of the Construction Certificate.

Reason: To ensure that all conditions of consent relating to the protection of native fauna are documented and complied with for the duration of works.

ANS04

Any new gates or fences are to be designed to include gaps appropriate to maintain bandicoot access through and within the site. Gaps are to be at least 150mm high and 300mm wide. This condition does not apply to pool fencing.

Reason: To maintain bandicoot access to existing and proposed habitat within and surrounding the site.

ANS05

Drainage plans detailing the provision of On-site Stormwater Retention in accordance with Northern Beaches Council's "Manly Specification for On-site Stormwater Management 2003" and the concept drawing by GZ Consulting Engineers Pty Ltd, drawing number DR000-003 dated 19/09/2017. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

ANS06

An application for street levels shall be made with Council subject to the payment of fee applicable at the time of payment. The fee includes all Council inspections relating to the driveway construction and must be paid.

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

Reason: To ensure adequate an vehicular crossing.

ANS07

A Construction Management Plan shall be submitted to the Certifying Authority prior to the issue of a Construction Certificate. The plan shall detail:

- a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion, noise and dust in the area, with no access across public parks or reserves being allowed;
- b) The proposed phases of construction works on the site, and the expected duration of each construction phase;
- c) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- d) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- e) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent;
- f) Proposed protection for Council and adjoining properties;
- g) The proposed method of traffic management and measures to mitigate the impact on surrounding roads and footpaths.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining

owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community.

1A (2AP03)

Consent given to build in close proximity to the allotment boundary is in no way to be construed as permission to build on or encroach over the allotment boundary. Your attention is directed to the provisions of the Dividing Fences Act 1991 which gives certain rights to adjoining owners, including use of the common boundary. In the absence of the structure standing well clear of the common boundary, it is recommended you make yourself aware of your legal position which may involve a survey to identify the allotment boundary.

Reason: To advise developers of their responsibilities and to protect the interests of adjoining owners.

2 (2CD01)

Pursuant to Section 97 of the Local Government Act, 1993, Council requires prior to the issue of Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit as per the current rates in Council's Fees and Charges. The Deposit is required as security against damage to Council property during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Note: Should Council property adjoining the site be defective e.g. cracked footpath, broken kerb etc., this should be reported in writing, or by photographic record, submitted to Council at least seven (7) days prior to the commencement of any work on site. This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicants interest for it to be as full and detailed as possible.

Where by Council is not the Principal Certifying Authority, refund of the trust fund deposit will also be dependent upon receipt of a final Occupation Certificate by the Principal Certifying Authority and infrastructure inspection by Council.

Reason: To ensure security against possible damage to Council property.

3 (2CD02)

A Dilapidation Report is required for this development. A photographic survey of adjoining properties detailing the physical condition of those properties, both internally and externally, including walls, ceilings, roof, structural members and other such items, is to be submitted to Council and the Accredited Certifier (where Council does not issue the Construction Certificate) prior to the issue of the Construction Certificate. This survey is to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining property/ies.

All costs incurred in achieving compliance with this condition must be borne by the person entitled to act on this Consent.

If access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant must demonstrate, in writing, to Council's satisfaction attempts have been made to obtain access and/or advise the affected property owner of the reason for the survey and these attempts have been unsuccessful. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only, and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

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

4 (2CD05)

Detailed engineering drawings of all work must be submitted for approval by the Council/Accredited Certifier prior to the release of the Construction Certificate.

Reason: To ensure the provision of public infrastructure of an appropriate quality arising from the development works to service the development.

5 (2DS02)

A Stormwater Management Plan (SWMP) in line with Council's stormwater management guidelines and signed off by a practising Chartered Professional Engineer on the National Professional Engineer's Register (NPER) at Engineers Australia is to be submitted to the Council/Accredited Certifier, prior to issue of the Construction Certificate. The SWMP is to include but is not limited to the following:

- Increase in the impervious area (m²)
- Impervious percentage (%) post development
- Demonstration of no-adverse flooding issues to the downstream and upstream properties
- Peak flow rate to street drainage system in a 1:100 Average Recurrence Interval (ARI) flood event
- Connection details and location of the outlet drainage pipe, if applicable.
- If it is an absorption trench zone (Zone 2 as per Storm Water Management guidelines), then the detail calculations along with the soil report to be submitted for review by demonstrating no-adverse drainage issues due to this development.
- Details of the Chartered Engineer including full name, signature and registration number is required.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure public infrastructure in Council's care and control is not overloaded.

6 (2FP02)

Detailed drawings and specifications of all works (including but not limited to structures, road works, driveway crossings, footpaths and stormwater drainage) within existing roads, must be submitted to and approved by Council under the Roads Act 1993, before the issue of any Construction Certificate. Specific works include:

- 1) Full width vehicular crossings having a maximum width, at the back of layback, and in accordance with the current policy of Council and Specifications for the construction of vehicle crossings; and
- 2) Longitudinal sections for both sides of the vehicular crossing and driveway commencing at the centre line of the road carriageway must be provided for assessment. Gradients and transitions must be in accordance with Australian Standard AS 2890.1 – 2004, Part 1 – Off-Street Car Parking. The driveway profile submitted to Council must be to scale at 1:25 (for template checking purposes) and contain all relevant details: reduced levels, proposed grades and distances.

Driveway to be designed to provide for existing or future footpaths across driveway, in accordance with Council's Specification for Civil Infrastructure Works, Developments & Subdivisions 2003 and Australian Standard AS 1428.1:2001 - Design for access and mobility.

Reason: To facilitate suitable vehicular access to private sites.

7 (2FP03)

No portion of the proposed building or works, as approved within the subject site, are to encroach upon any road reserve or other public land except as may be permitted by the Local Government Act 1993. This includes the opening and closing of gates and doors which must open and close within the subject site.

Reason: To ensure structures are contained within the site.

8 (2LD03)

Details are to be provided of the existing or proposed native trees for the site which are typically expected to reach a height at maturity of 10 metres, to bring the proposal into compliance with Figure 37 of the Manly Development Control Plan 2013. A list of appropriate native trees for the Manly area may be obtained at Council's Customer Service desk and the Manly Council website. Details of new planting are to include appropriate siting and pot size (minimum of 25 litres) in accordance with section 2.1.3 of the Manly Development Control Plan 2013. Details are to be submitted with the Construction Certificate to the satisfaction of the Council/Accredited Certifier.

Reason: This is to ensure the planting of endemic trees back onto the site.

9 (2MS01)

Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details including drawings and specifications must be submitted to Council accompanying the Construction Certificate, which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with Manly Council Guidelines on Erosion and Sediment Control, or a suitable and effective alternative method. The Sediment Control Plan must incorporate and disclose:

- 1) all details of drainage to protect and drain the site during the construction processes,
- 2) all sediment control devices, barriers and the like,
- 3) sedimentation tanks, ponds or the like,
- 4) covering materials and methods, and
- 5) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing these design requirements have been met must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier prior to issuing of the Construction Certificate.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

10 (2PT02)

All driveways, car parking areas and pedestrian paths are to be suitably surfaced. Details of the treatment to these areas are to be submitted to the Council/Accredited Certifier prior to issue of the Construction Certificate.

Reason: To provide suitable stormwater disposal and to prevent soil erosion and runoff.

11 (2SP01)

All of the following are to be satisfied in relation to the proposed swimming pool:

- 1) The swimming pool is to be surrounded by a child-resistant barrier in accordance with the Swimming Pools Amendment Act 2009 and Regulations 2008 which:
 - separates the swimming pool from any residential building situated on the property and from any place adjoining the property, and
 - is designed, constructed, installed and maintained in accordance with the standards prescribed by the Regulations and appropriate Australian Standards.
- 2) All surface waters from non-pervious areas surrounding the swimming pool must be collected and disposed of to the stormwater system.
- 3) Windows giving access to the pool areas must be made child safe and comply with the following:
 - Window opening is to be restricted by an approved means so that a round bar 105mm in diameter cannot be passed through the opening or the window is to be protected by a child safe grille.

However if the restricted opening of such windows means that they will no longer meet the natural ventilation requirements of the Building Code of Australia, then only a child safe grille is permissible.

- 4) The proposed pool gates are to be mounted so that:
- they are clear of any obstruction that could hold the gate open, and
 - when lifted upward or pulled downward, movement of the gate does not release the latching device, unhinge the gate or provide a ground clearance greater than 100mm; and
 - they open outwards from the pool.

Reason: To comply with Australian Standard AS 1926 and provide a reasonable level of child safety

12 (2SP02)

A railing or other safety measures or devices are to be erected around the sides of the pool surround structure where height above natural ground level exceeds 900mm. All details of the necessary device are to be submitted to and approved by the Council/Accredited Certifier prior to issue of the Construction Certificate.

Reason: To ensure the safety of persons using those walkways.

13 (2SP03)

The backwash of Swimming Pool water must be discharged to Sydney Waters' sewer in accordance with Australian/New Zealand Standard AS/NZS 3500.

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

Reason: To ensure compliance with legislation and Australian Standards and to protect public health and amenity.

14 (2SP04)

Any mechanical plant associated with the swimming pool and spa shall be centrally located within the site, away from the boundaries and acoustically treated so the noise from the machinery is not audible at the property boundary. Details are to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

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

15 (2SP05)

Spa pools or the like are to be provided with approved-type safety outlet covers in accordance with Australian Standard AS 2610 (Spa Pools), and details of the outlet areas are to be submitted to the Council/Accredited Certifier prior to issue of the Construction Certificate.

Reason: To comply with Australian Standards and provide a reasonably level of child safety.

16 (2TC01)

Details of the method of termite protection which will provide whole of building protection, inclusive of structural and non-structural elements must be submitted to the Council / Accredited Certifier prior to issue of the Construction Certificate. Attention is drawn to the provisions of Australian Standard AS 3660.1 - 2000 Termite management – New building work, and to the Manly Code for the Protection of Buildings Against Termite Attack 1996.

Reason: To protect the building from possible termite damage.

17 (2TS05)

No bright lighting or motion detectors are to be installed to illuminate the lawn or garden areas. A modest amount of low lighting may be used for safety purposes only.

Reason: Bright lighting disturbs Long-nosed Bandicoots and disrupts normal Bandicoot foraging, sheltering and nesting activity.

18 (2TS06)

Where concealing material is required for any undercroft areas (e.g. under the house, stairs or balcony, gaps are to be established to allow Long-nosed Bandicoot access (i.e. gaps 150mm high by 300mm long, spaced at the base of the concealing material at least every 2-3 metres).

Reason: To ensure the development does not reduce Long-nosed Bandicoot access to habitat on site.

CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT

ANS08

Before any vegetation/materials/debris stockpiles are removed, a pre-clearance survey for native fauna is required. Clearing may only proceed if this survey concludes that no native fauna are present within the area to be cleared. All clearing must initially be carried out with hand tools to identify whether native fauna are sheltering within the area to be cleared (e.g. at the base of vegetation or under deep litter). Machinery may only be used once it has been confirmed that no native fauna are sheltering within the area to be cleared.

Reason: To prevent direct impacts to native fauna in accordance with objectives of Clause 6.5 of the Manly LEP 2013.

ANS09

Immediately prior to removal of any trees, the trees must be inspected for the presence of native mammals, reptiles, amphibians and birds (including birds' nests). If such animals are present, they must be safely collected and transported to be cared for by a suitably qualified wildlife carer.

Reason: To prevent direct impacts to native fauna in accordance with objectives of Clause 6.5 of the Manly LEP 2013.

ANS10

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

ANS11

If a Long-nosed Bandicoot enters the worksite or is found during a survey of holes/stockpiles, works must cease until the bandicoot has safely vacated the worksite. Any injured or dead Long-nosed Bandicoots found within the worksite must be reported to the National Parks & Wildlife Service (NPWS) or Northern Beaches Council on the following phone numbers:

National Parks & Wildlife Service – Duty Officer (9457 9577); or

Northern Beaches Council – Bushland & Biodiversity Team (South) (9976 1500).

Reason: To ensure that injured bandicoots receive expert care so that they can be returned to the endangered population where possible.

ANS12

There is to be no off-loading or storage of construction materials or debris on the grassed reserve adjacent to the property. The integrity of the grass must be preserved at all times.

Reason: To prevent direct physical injury to Long-nosed Bandicoots and allow for foraging activity. This area is used by bandicoots for foraging.

ANS13

Temporary chain wire fencing is to be installed around all work areas (including demolition, storage and construction areas) prior to the commencement of works. Fencing is to be maintained for the duration of works. The fencing is to be designed to minimise the possibility of ground-dwelling native fauna accessing the work areas and sheltering in cavities or voids.

Reason: To prevent direct impacts to native fauna in accordance with objectives of Clause 6.5 of the Manly LEP 2013 and the Biodiversity Conservation Act 2016.

19 (3BM01)

The floor surfaces of bathrooms, shower rooms, laundries and WC compartments are to be of an approved impervious material properly graded and drained and waterproofed in accordance with Australian Standard AS 3740. Certification is to be provided to the Principal Certifying Authority from a licensed applicator prior to the fixing of any wall or floor tiles.

Reason: To prevent the penetration of dampness through walls and floors.

20 (3CD01)

Building work, demolition or excavation must not be carried out until a Construction Certificate has been issued.

Reason: To ensure compliance with statutory provisions.

21 (3CD02)

Demolition must be carried out by a registered demolition contractor. Documentary evidence of registration must be submitted to Council prior to the commencement of demolition work.

Reason: To ensure demolition is carried out in an appropriate manner that is non-disruptive to the locality and the public.

22 (3CD03)

An adequate security fence is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

Reason: To protect the public interest and safety.

23 (3FP01)

The applicant must complete an application form and pay applicable fees for an application to Council for the construction of a Vehicular Crossing, for the design, specification and inspection by Council. Applications are to be made a minimum of two (2) working days prior to commencement of proposed works on Council's property.

Reason: To provide suitable vehicular access to private sites, without disruption to pedestrian and vehicular traffic.

24 (3PT01)

In accordance with the Roads Act 1993, written consent from Council must be obtained and must be in hand prior to any track equipped plant being taken in or onto any roadway, kerb & gutter, footway, nature strip, or other property under Council's control.

Reason: To ensure appropriate protection of public infrastructure and facilitate access for public and vehicular traffic.

25 (3PT02)

Applications for a construction zone on a local road require 28 days notice to Council indicating location and length. All construction zones require the approval of the Manly Traffic Committee.

Reason: To ensure Council and the Traffic Committee have sufficient time and information to assess the traffic and access implications of a proposed construction zone and to develop appropriate responses to those implications.

26 (3TS02)

All workers, including site inspectors and sub-contractors, are to be made aware of the potential presence of Long-nosed Bandicoots through a site induction prior to commencement of works. The site induction is to include information about the conservation significance of this endangered population, their potential activities on-site, means of identification and the measures to be implemented for their protection. A confirmation of induction is to be signed by every worker and the site foreman/supervisor. Evidence of the site induction is to be documented and provided to the Principle Certifying Authority.

Reason: To avoid direct physical harm to Long-nosed Bandicoots, it is important that workers are aware of their presence, their conservation significance and the measures in place to protect them.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

ANS14

The provision of a vehicle crossing 3 metres wide on Bower Street in accordance with Northern Beaches Council Drawing No A4-3330/1 N and specifications.

An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card/ letter issued.

Inspection card/ letter is to be submitted to the Certifying Authority.

Reason: To facilitate suitable vehicular access to private sites.

27 (4CD01)

All of the following are to be satisfied/complied with during demolition, construction and any other site works:

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- 2) Demolition must be carried out by a registered demolition contractor.
- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- 10) All waste must be contained entirely within the site.
- 11) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 12) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- 13) Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.
- 14) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- 15) Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.
- 16) Building operations such as brick-cutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- 17) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.

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18) Any work must not prohibit or divert any natural overland flow of water.

Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.

28 (4CD02)

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm Saturday (including works undertaken by external contractors). No site works can be undertaken on Sundays or public holidays.

Unless otherwise approved within a Construction Traffic Management Plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Reason: To prevent disturbance to the surrounding community.

29 (4CD03)

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

Reason: To maintain sanitary conditions on building sites.

30 (4CD05)

Retaining walls being constructed in conjunction with excavations must be in accordance with structural engineer's details. Certification by a suitably qualified structural engineer that the constructed works comply with the structural detail must be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure the structural adequacy of the retaining walls.

31 (4CD06)

All construction works must be strictly in accordance with the Reduced Levels (RLs) as shown on the approved drawings. A copy of approved drawings should be kept at site. Certification from a registered surveyor is to be submitted to the Principal Certifying Authority during construction to confirm floor and finished ridge levels.

Reason: To ensure compliance with the consent.

32 (4CD07)

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from Workcover NSW. Before starting work, a work site-specific permit approving each asbestos project must be obtained from Workcover NSW. A permit will not be granted without a current Workcover licence.

All removal, repair or disturbance of or to asbestos material must comply with the following:

- The Work Health and Safety Act 2011.
- The Work Health and Safety Regulation 2011.
- How to Safely Remove Asbestos Code of Practice – WorkCover 2011.

The owner or occupier of the premises must consult an appropriately qualified and Australian Institute of Occupational Hygienists registered professional to undertake an assessment of the site to determine the potential for contamination. The owner or occupier must develop a management plan and be issued with Clearance Certificate before the commencement of any work.

Reason: To ensure the health of site workers and the public.

33 (4FP01)

The existing footpath level and grade at the street alignment of the property must be maintained. The existing trees (Brushbox, Port Jackson Fig and Bottlebrush) within the Bower St verge shall be protected for the duration of the works.

Reason: To ensure appropriate access and infrastructure protection.

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34 (4LD08)

Retain and protect trees and planting on council's Road Reserve during construction.

Reason: To maintain the number of street trees and preserve the amenity of the local area.

35 (4MS04)

An approved Erosion and Sediment Management plan is to be implemented from the commencement of works and maintained until completion of the development.

The design and controls addressed in the Sediment and erosion management plan must comply with the criteria identified in:

- Manly Development Control Plan 2013, Amendment 2, and
- Manly Councils Guidelines for Sediment and Erosion Controls on building sites, 2005, and
- The document "Managing Urban Stormwater: Soils and Construction" Volume 1, 2004.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

36 (4TS01)

Construction hours are to be adhered to, with no construction vehicles or heavy machinery used outside the hours of 7:30am and 4:30pm.

Reason: Noise and vibration may disturb local native fauna (including species and populations listed as threatened under State or Federal legislation) and discourage their use of adjoining areas.

37 (4TS03)

An inspection register log-book must be kept on site recording daily inspections of all holes (created for footings, installations etc.), machinery and construction material stockpiles, checking for Long-nosed Bandicoots. These inspections are to be undertaken each work day prior to commencement of works and works may only proceed once the Bandicoot has safely vacated the work site. If a Long-nosed Bandicoot is found within the work area, no work shall proceed until the Bandicoot has safely vacated the area. The log-book is to be made available to Principal Certifying Authority.

Reason: To ensure no Long-nosed Bandicoots are injured or killed during construction/demolition.

38 (4TS05)

Construction is to be undertaken in accordance with the Construction Management Plan (CMP). All workers are to be made aware of the content of the CMP.

Reason: To ensure that all conditions of consent relating to the protection of native fauna are documented and complied with for the duration of works.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

ANS15

An application for the authorisation of legal documents is to be lodged with Council and payment of the associated fee. The application is to include the original completed request forms (Department of Lands standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and photographic evidence of the completed system.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

ANS16

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure the on-site detention and/or pump system is maintained to an appropriate operational standard.

39 (5FP01)

All surplus vehicular crossings and/or kerb laybacks must be removed and the kerb and nature strip reinstated prior to issue of the Occupation Certificate.

Reason: To provide on-street parking, suitable vehicular access to private sites, and infrastructure protection.

40 (5FR01)

An automatic fire detection and alarm system must be installed in the proposed dwelling in accordance with the requirements of the Building Code of Australia.

Reason: To comply with the Environmental Planning and Assessment Act 1979.

41 (5SP01)

All protective fencing and gates are to be in accordance with Australian Standard AS 1926 prior to the pool being filled with water. The fence is to be a minimum of 1200mm in height and posts and/or supports are to be firmly fixed or encased in such a way that the posts/support are unable to be removed easily. The fence is not to be removed or altered at any time without the prior approval of Council. No water can be in the swimming pool until the required protective fencing has been inspected and approved by Council.

Reason: To comply with Australian Standard AS1926 and provide a reasonable level of child safety.

42 (5TC01)

Prior to issue of the Occupation Certificate, a durable termite protection notice must be permanently fixed to the building in a prominent location detailing the form of termite protection which has been used in accordance with the Manly Code for the protection of Buildings against Termite Attack.

Reason: To inform owners and future owners of the type of termite protection installed and of the need for regular inspections.

ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT

ANS17

All bandicoot access provisions specified in these conditions of consent, and in Map 1 of the submitted Terrestrial Biodiversity Report (GIS Environmental Consultants, September 2017), are to be implemented and maintained for the life of the development.

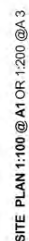
Reason: To maintain bandicoot access to existing and proposed habitat within and surrounding the site.

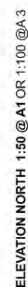


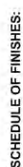
47 (6MS02)

No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.

Reason: Statutory requirement, Environmental Planning and Assessment Act 1979.



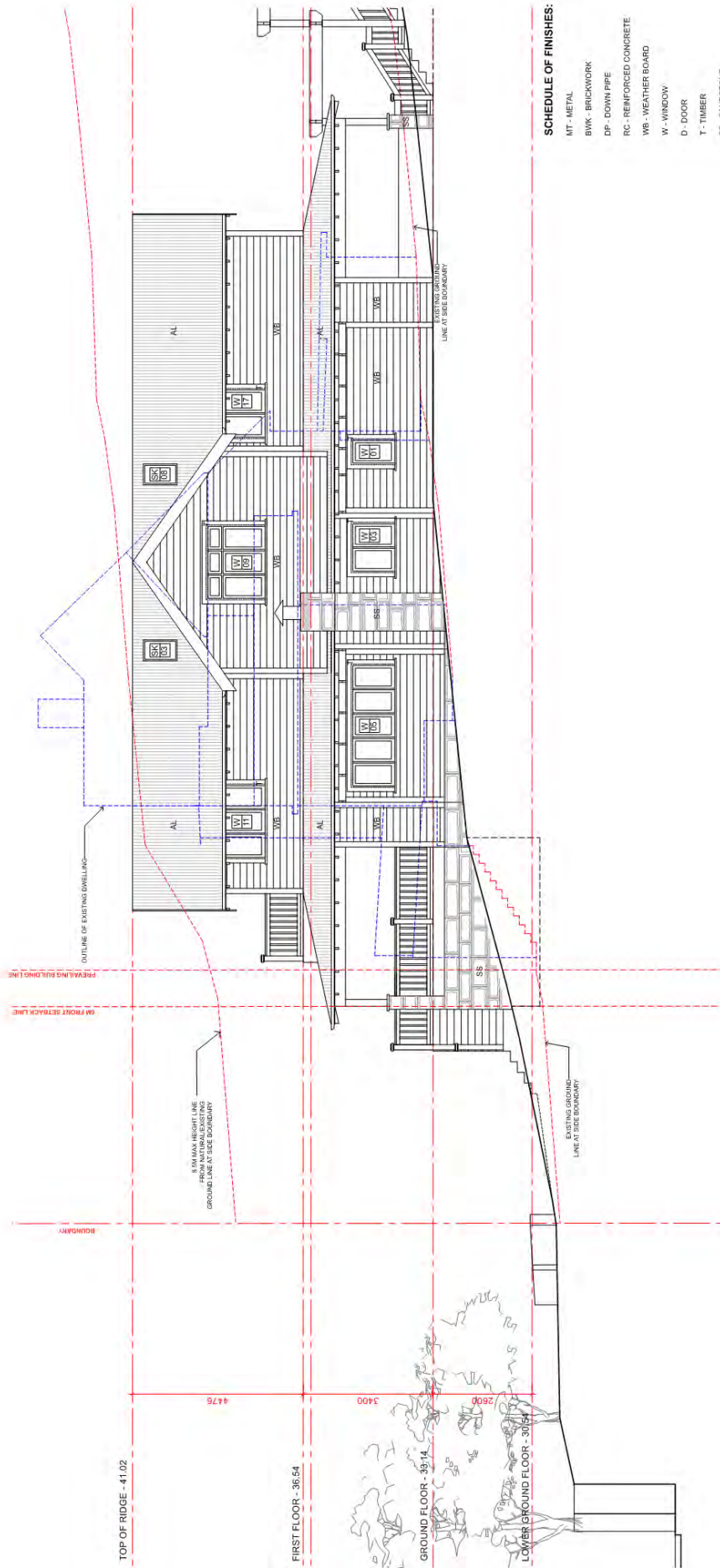
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- MT - METAL
BWK - BRICKWORK
DP - DOWN PIPE
RC - REINFORCED CONCRETE
WB - WEATHER BOARD
W - WINDOW
D - DOOR
T - TIMBER
SS - SANDSTONE
AL - ALUMINIUM

ELEVATION SOUTH 1:50 @ A1 OR 1:100 @ A3


<p>LEGEND:</p> <div style="display: flex; justify-content: space-between;"> <div> DENOTES EXISTING SPOT LEVEL >.03 </div> <div> DENOTES PROPOSED LEVEL RL 7.10 </div> </div> <p>NOTE: THESE DRAWINGS ARE NOT FOR CONSTRUCTION, FOR APPROVAL ONLY. NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE RELEVANT AUSTRALIAN STANDARDS. NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE DRAIN REQUIREMENTS.</p>	<p>KEY:</p> <div style="display: flex; justify-content: space-around;"> <div> DENOTES TREES TO BE REMOVED </div> <div> DENOTES OUTLINE OF EXISTING BUILDING </div> </div>	<p>PROJECT: PROPOSED DWELLING HOUSE INC SWIMMING POOL & ASSOCIATED LANDSCAPING</p> <hr/> <p>CLIENT: CURRIE WILLIAMS</p> <hr/> <p>LOCATION: 61 BOWER STREET, MANKY</p>	<p>PROJECT STAGE: DA</p> <hr/> <p>DRAWING TITLE: ELEVATION SHEET 02</p> <hr/> <p>SCALE: 1:100 @ A3</p>	<p>DATE OF ISSUE: 22.01.2018</p> <hr/> <p>DRAWING NO. DA-301</p> <hr/> <p>REVISION: A</p>	<div style="text-align: center;"> </div> <p> Liam Williams Licensed Professional Engineer No. 123456789 Engineering Council of Australia (ECA) </p> <hr/> <p> 10/11/2018 10:11 AM Drawing created by: L.Williams Checked by: J.Doe Approved by: S.Smith Date: 10/11/2018 </p> <hr/> <p> This drawing is the property of Currie Williams Pty Ltd. It is to be used solely for the project described above. Any other use without written permission is prohibited. Copyright © 2018 Currie Williams Pty Ltd. All rights reserved. </p>
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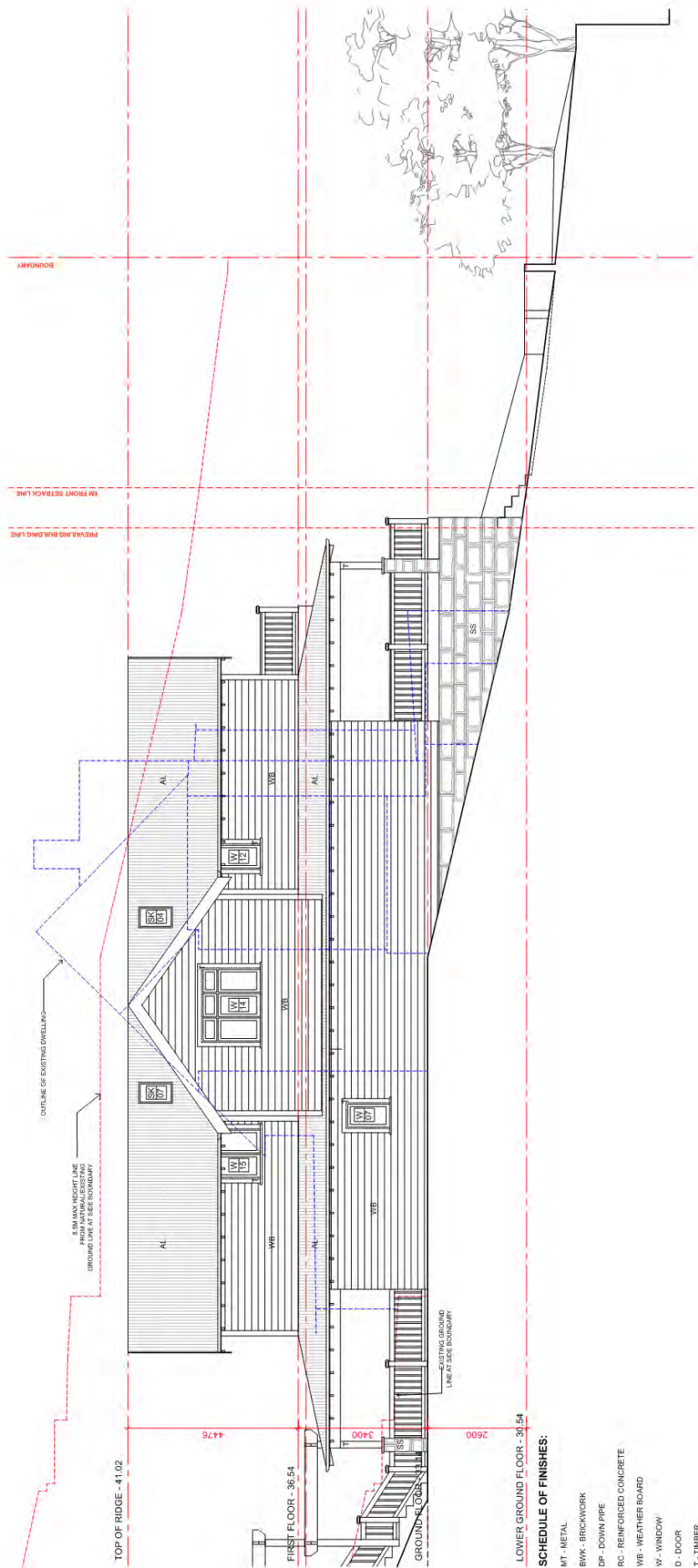


SCHEDULE OF FINISHES:

MT - METAL
BWK - BRICKWORK
DP - DOWN PIPE
RC - REINFORCED CONCRETE
WB - WEATHER BOARD
W - WINDOW
D - DOOR
T - TIMBER
SS - SANDSTONE
AL - ALUMINIUM

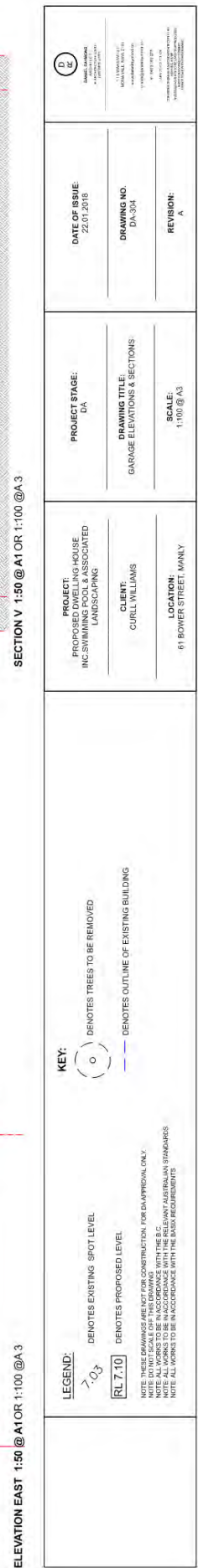
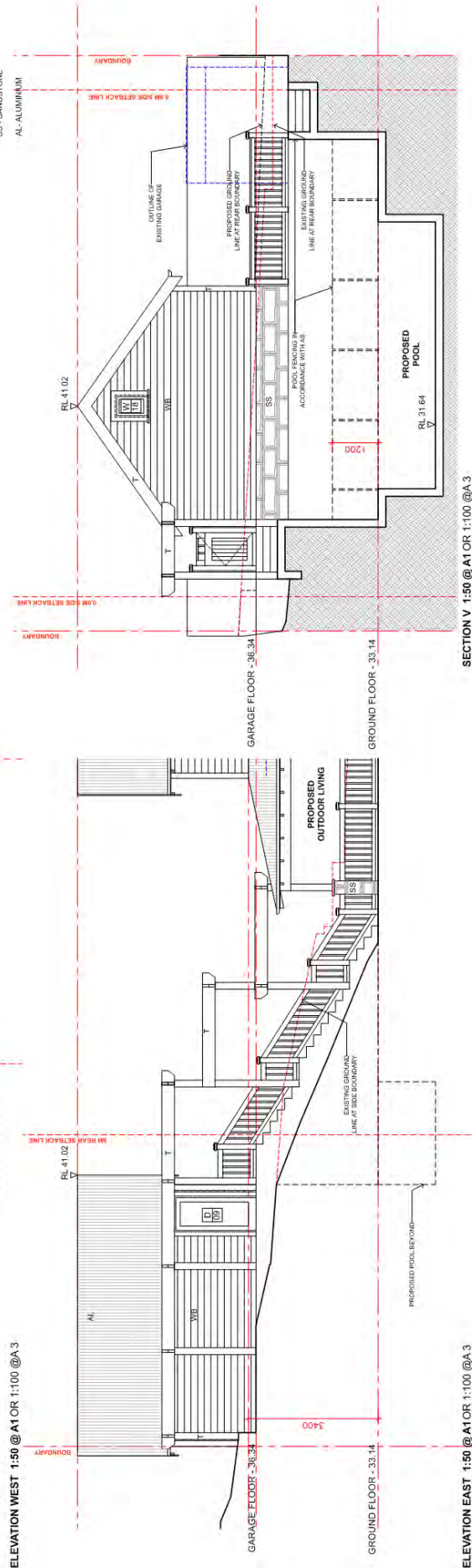
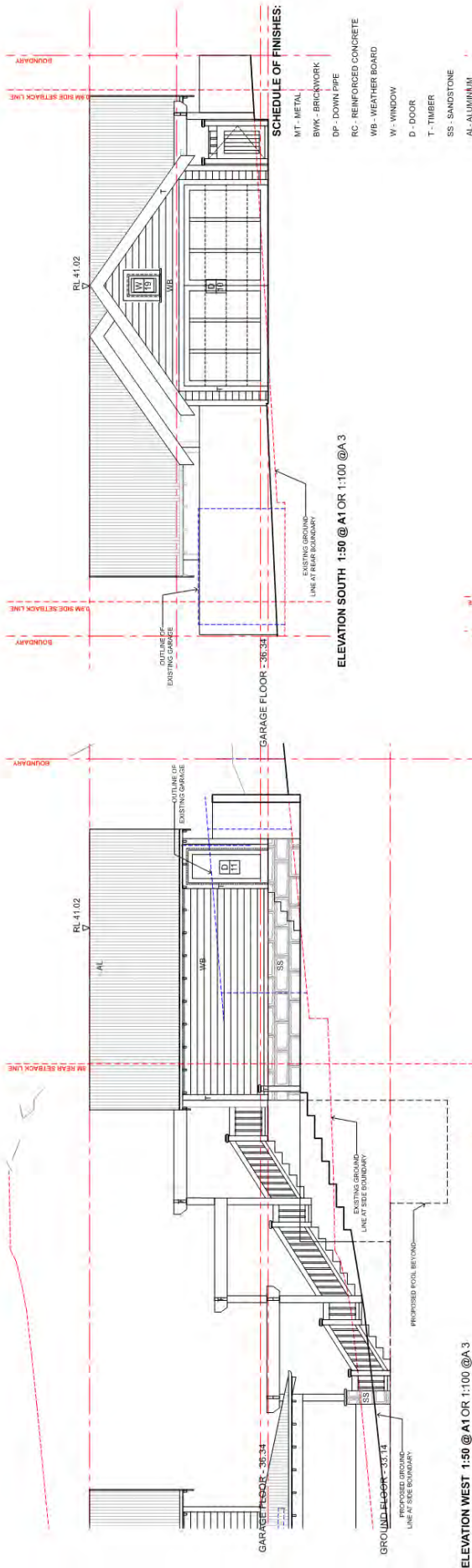
ELEVATION WEST 1:50 @ A1 OR 1:100 @ A3

	<p>DATE OF ISSUE: 22.09.2017</p> <p>DRAWING NO.: DA-302</p> <p>REVISION: -</p>
<p>PROJECT STAGE: DA</p> <p>DRAWING TITLE: ELEVATION SHEET 3</p> <p>SCALE: 1:100 @ A3</p>	<p>PROJECT: PROPOSED DWELLING HOUSE INC SWIMMING POOL & ASSOCIATED LANDSCAPING</p> <p>CLIENT: CURLL WILLIAMS</p> <p>LOCATION: 61 BOWER STREET, MANNLY</p>
<p>KEY:</p> <p>○ DENOTES TREES TO BE REMOVED</p> <p>--- DENOTES OUTLINE OF EXISTING BUILDING</p>	<p>LEGEND:</p> <p>○ DENOTES EXISTING SPOT LEVEL</p> <p>□ DENOTES PROPOSED LEVEL</p> <p>NOTE: THESE DRAWINGS ARE NOT FOR CONSTRUCTION, FOR DA APPROVAL ONLY.</p> <p>NOTE: DO NOT SCALE OFF THIS DRAWING.</p> <p>NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE RELEVANT AUSTRALIAN STANDARDS.</p> <p>NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE BANK REQUIREMENTS.</p>



ELEVATION EAST 1:50 @ A1 OR 1:100 @ A3

<p>LEGEND:</p> <p> DENOTES EXISTING SPOT LEVEL</p> <p> DENOTES PROPOSED LEVEL</p> <p>RL 7.10</p> <p><small>NOTE: THESE CHANGES ARE NOT FOR CONSTRUCTION, FOR DA APPROVAL ONLY.</small></p> <p><small>NOTE: DO NOT SCALE OFF THIS DRAWING.</small></p> <p><small>NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE RELEVANT AUSTRALIAN STANDARDS.</small></p> <p><small>NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE BANK REQUIREMENTS.</small></p>	<p>KEY:</p> <p> DENOTES TREES TO BE REMOVED</p> <p> DENOTES OUTLINE OF EXISTING BUILDING</p>	<p>PROJECT: PROPOSED DWELLING HOUSE INC SWIMMING POOL & ASSOCIATED LANDSCAPING</p> <p>CLIENT: CURILL WILLIAMS</p> <p>LOCATION: 61 BOWER STREET, MANNLY</p>	<p>PROJECT STAGE: DA</p> <p>DRAWING TITLE: ELEVATION SHEET 04</p> <p>SCALE: 1:100 @ A3</p>	<p>DATE OF ISSUE: 22.09.2017</p> <p>DRAWING NO.: DA-303</p> <p>REVISION:</p>	<p> DAVID J. WILLIAMS ARCHITECT 1/100 BOWER STREET MANNLY, NSW 1522 P: 02 9339 1000 F: 02 9339 1001 WWW.DJWILLIAMS.COM.AU</p>
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<p>LEGEND:</p> <p>7-03 DENOTES EXISTING SPOT LEVEL</p> <p>RL 7.10 DENOTES PROPOSED LEVEL</p> <p>NOTE: THESE DRAWINGS ARE NOT FOR CONSTRUCTION, FOR INFORMATION ONLY.</p> <p>NOTE: DO NOT SCALE OFF THE DRAWINGS.</p> <p>NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE RELEVANT AUSTRALIAN STANDARDS.</p> <p>NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE BANK REQUIREMENTS.</p>	<p>KEY:</p> <p>(○) DENOTES TREES TO BE REMOVED</p> <p>--- DENOTES OUTLINE OF EXISTING BUILDING</p>	<p>PROJECT: PROPOSED DWELLING HOUSE INC SWIMMING POOL & ASSOCIATED LANDSCAPING</p> <p>CLIENT: CURL WILLIAMS</p> <p>LOCATION: 61 BOWER STREET, MANLY</p>	<p>PROJECT STAGE: DA</p> <p>DRAWING TITLE: GARAGE ELEVATIONS & SECTIONS</p> <p>SCALE: 1:100 @ A3</p>	<p>DATE OF ISSUE: 22.01.2018</p> <p>DRAWING NO.: DA-304</p> <p>REVISION: A</p>	<p>DATE OF ISSUE: 22.01.2018</p> <p>DRAWING NO.: DA-304</p> <p>REVISION: A</p>
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ITEM 3.2 **DA 384/2009 - 31 VICTORIA PARADE, MANLY - SECTION 96(2)
TO MODIFY APPROVED ALTERATIONS AND ADDITIONS TO
THE EXISTING RESIDENTIAL FLAT BUILDING - PART 5**

REPORTING MANAGER **Rodney Piggott**
TRIM FILE REF **2018/183542**
ATTACHMENTS 1 [↓](#) **Assessment Report**
 2 [↓](#) **Site and Elevation Plans**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

That pursuant to Section 96 (2) of the Environmental Planning and Assessment Act 1979, the proposed modification to Development Consent No. 384/2009 for alterations and additions to the existing residential flat building at 31 Victoria Parade be **Approved** in accordance with the recommendations in the assessment report.



northern
beaches
council

Development Determination Panel Report

2018/096809

DA No.	384/3009
Site Address	31 Victoria Parade, Manly SP 11799
Proposal	Section 96(2) to modify approved alterations and additions to the existing residential flat building - Part 5
Officer	Claire Ryan

SUMMARY:

Application Lodged:

21 November 2017

Applicant:

Momentum Project Group Pty Ltd

Owner:

Cecil and Isabel Koutsos

Estimated Cost:

\$2,400,000

Zoning:

MLEP, 2013 – R3 Medium Density Residential

Heritage:

Item 242 Residential Flat Building, and adjacent to Items 226 House, 238 Street Trees and 241 Residential Flat Building

NSW LEC:

Not applicable

Notification:

22 November to 8 December 2017

Submissions received:

Nil

Site Inspected:

7 February 2018

LEP (4.6) Variations proposed:

Height of Building

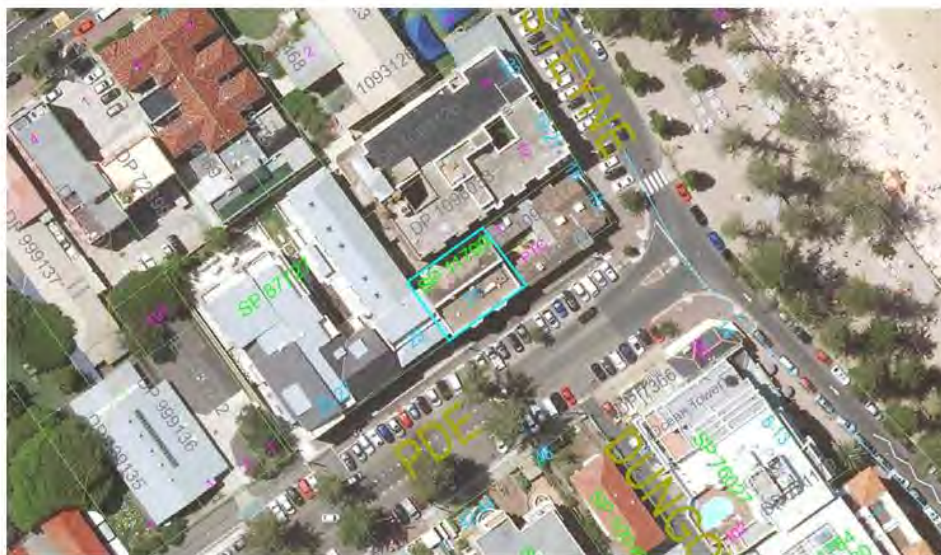
DCP Variations proposed:

Side Setbacks (East and West), Open Space Above Ground

Recommendation:

Approval

Subject Property and surrounding area



R1, R2, R3, E3 & E4 Zones – S96

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The subject property is commonly known as 31 Victoria Parade and legally known as SP 11799. The site is located on the northern side of Victoria Parade. The property is rectangular in shape and has a frontage of 19.42m to Victoria Parade, an average depth of 15.85m and an overall site area of 303.5m². The property currently contains a three-storey residential flat building. The property is level.

The adjacent property to the northeast, at 15-16 South Steyne, is developed with a two-storey commercial premises. The adjacent property to the southwest, at 29 Victoria Parade, is developed with a three-storey residential flat building. Development in this area consists of commercial premises and residential flat buildings.

Property Burdens and Constraints

A sewer main bisects the property running northwest-southeast. An easement for maintenance exists along the north-eastern boundary of the site. However, these do not preclude the proposed modifications.

Site History/Background

Recent relevant applications on site include:

- DA384/2009: Alterations and additions to an existing four (4) storey Residential Flat Building including two (2) additional storeys comprising of four (4) new units. Approved by MIAP on 19 August 2010.
- DA384/2009 – Part 2: Section 96 to modify approved Alterations and additions to an existing four (4) storey Residential Flat Building including two (2) additional storeys comprising of four (4) units. Approved by DAU on 8 March 2012.
- DA384/2009 – Part 3: Section 96 to modify approved Alterations and additions to an existing four (4) storey Residential Flat Building including two (2) additional storeys comprising of four (4) units - involving new lobby, relocate lift, change to layout of units, new facade, changes to roof of the upper two (2) levels, new terraces and modification to building height. Approved by DAU on 20 February 2013.
- DA384/2009 – Part 4: Section 96 to modify approved Alterations and additions to an existing four (4) storey Residential Flat Building including two (2) additional storeys comprising of four (4) units – involving deletion of condition of consent ANS06 regarding terraces to Units 9 and 10, changes to internal layouts, modifications windows, doors, external façade and roof of the additional floors. Approved by MIAP 21 April 2016.

Description of proposed development

The proposal seeks the following modifications to Development Consent No. 384/2009:

- Addition of roof terraces for use by Units 9 and 10;
- Modifications to the stairwell from Level 4 to allow access to the roof terraces;
- Modifications to balconies and awnings;
- Modifications to the parapet;
- Addition of skylights;
- Reconfiguration of plant layout and enclosure on roof;
- Changes to the front door; and
- Replacement of entry and foyer tiles.

Internal Referrals

Engineering Comments

Council's Engineer offered no objections to the proposal.

Building Comments

Council's Building Surveyor offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Heritage Comments

Council's Heritage Officer has commented on the proposal as follows:

"The application is a S.96, substantially the same as the last version of the approved DA. Therefore, it is fair to assess that impact of the current proposal will be closely similar to the impact of the previously approved DA"

External Referrals

No external referrals were considered necessary.

Planning Comments

Environmental Planning & Assessment Act 1979 – Section 79(C)(1)

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) *the provisions of:*
 - (i) *any environmental planning instrument, and*

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005:

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) and Apartment Design Guide (ADG)

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

- (1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:
 - (a) the development consists of any of the following:
 - (i) the erection of a new building,
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
 - (iii) the conversion of an existing building, and
 - (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
 - (c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for the modification of a five-storey residential flat 'housing' development plus basement car parking for the provisions of 26 self-contained dwellings. As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

As previously outlined within this report Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

- (2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):
 - (a) the advice (if any) obtained from the design review panel, and
 - (b) the design quality of the development when evaluated in accordance with the design quality principles, and
 - (c) the Apartment Design Guide.

DESIGN REVIEW PANEL

Northern Beaches Council does not have an appointed Design Review Panel.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, coordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident wellbeing.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety. A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment: The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

APARTMENT DESIGN GUIDE

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

by DEPT 00.

Development Control	Criteria / Guideline	Comments												
Part 3 Siting the Development														
Site Analysis	Does the development relate well to its context and is it sited appropriately?	No change to the approved siting of the development is proposed.												
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	No change to the approved orientation of the development is proposed.												
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	No change to the approved transition between the private and public domain of the development is proposed.												
Communal and Public Open Space	Appropriate communal open space is to be provided as follows: 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid-winter)	The approved development does not include any communal open space. The proposed modifications do not alter this.												
Deep Soil Zones	Deep soil zones are to meet the following minimum requirements: <table><tr><th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (%)</th></tr><tr><td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr><tr><td>650m² – 1,500m²</td><td>3m</td></tr><tr><td>Greater than 1,500m²</td><td>6m</td></tr><tr><td>Greater than 1,500m²with significant existing tree cover</td><td>6m</td></tr></table>	Site area	Minimum dimensions	Deep soil zone (%)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	The approved development does not include any deep soil planting. The proposed modifications do not alter this.
Site area	Minimum dimensions	Deep soil zone (%)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													

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Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1" data-bbox="470 369 965 638"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>The proposed development includes extensions to the fifth floor balconies with nil side setbacks, and the addition of roof terraces with setbacks of 5.125m to the east and 3.18m to the west. The intention of the required building separation is to provide adequate privacy. The proposed balcony extensions are minor in nature and do not result in any unreasonable privacy impacts. The proposed roof terraces are adequately set back from adjacent properties to prevent overlooking.</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												
Pedestrian Access and entries	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p>No change to the approved pedestrian access and entry arrangements is proposed.</p>												
Vehicle Access	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p>The approved development does not include any vehicular access. The proposed modifications do not alter this.</p>												
Bicycle and Car Parking	<p>For development in the following locations: On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</p> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p>Not applicable. The site is not within 800 metres of a railway station or light rail stop and is not zoned or within 400 metres of land zoned B3 Commercial Core, B4 Mixed Use.</p>												

Part 4 Designing the Building														
Amenity														
Solar and Daylight Access	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	The proposed modifications make no change to the approved solar and daylight access arrangements.												
Natural Ventilation	The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by: At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	The proposed modifications make no change to the approved ventilation arrangements.												
Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>If located in mixed used areas</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	The proposed modifications make no change to the approved ceiling heights.
Minimum ceiling height														
Habitable rooms	2.7m													
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For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
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If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													

Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p> <p>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space).</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <p>3.6m for studio and 1 bedroom apartments 4m for 2 and 3 bedroom apartments</p> <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>			Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>The proposed modifications make no change to the approved apartment sizes and layouts.</p>						
Apartment type	Minimum internal area																			
Studio	35m ²																			
1 bedroom	50m ²																			
2 bedroom	70m ²																			
3 bedroom	90m ²																			
Private Open Space and Balconies	<p>All apartments are required to have primary balconies as follows:</p> <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</p>			Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	<p>The proposed modifications include additional private open space for Units 9 and 10 through balcony extensions and the addition of roof terraces. Units 9 and 10 are each proposed to have a balcony of 7.5m² with a minimum dimension of 2.6m, and a roof terrace of 23.5m² with a minimum dimension of 4.3m.</p> <p>No change is proposed to the approved private open spaces of Units 1-8.</p>	
Dwelling Type	Minimum Area	Minimum Depth																		
Studio apartments	4m ²	-																		
1 bedroom apartments	8m ²	2m																		
2 bedroom apartments	10m ²	2m																		
3+ bedroom apartments	12m ²	2.4m																		

Common Circulation and Spaces	<p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	The proposed modifications make no change to the approved number of units of the single circulation core (10 units over 5 storeys).										
Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m³</td></tr><tr><td>1 bedroom apartments</td><td>6m³</td></tr><tr><td>2 bedroom apartments</td><td>8m³</td></tr><tr><td>3+ bedroom apartments</td><td>10m³</td></tr></table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling Type	Storage size volume	Studio apartments	4m ³	1 bedroom apartments	6m ³	2 bedroom apartments	8m ³	3+ bedroom apartments	10m ³	The proposed modifications make no change to the approved storage arrangements.
Dwelling Type	Storage size volume											
Studio apartments	4m ³											
1 bedroom apartments	6m ³											
2 bedroom apartments	8m ³											
3+ bedroom apartments	10m ³											
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	The proposed modifications make no change to the approved layout of the apartments.										
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	The proposed modifications make no change to the approved siting layout and design of the building in relation to noise and pollution.										
Configuration												
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	The proposed modifications make no change to the approved apartment mix.										
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	The proposed modifications retain the façade of the heritage building. The modifications to the façade at the upper storeys are consistent with the approval.										
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Test whether the roof space can be maximised for residential accommodation and open space.	The proposed modifications to the use of the roof make adequate consideration for sustainability with the inclusion of skylights, which will assist with lighting to the upper units. The roof space is proposed to be used for private open space for Units 9 and 10.										
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	The approved development does not include any landscaped area. The proposed modifications do not alter this.										

Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes:				The approved development does not include any planting on structures. The proposed modifications do not alter this.
	Plant type	Definition	Soil Volume	Soil Depth	
	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	
	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	
	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	
	Shrubs			500-600mm	
	Ground Cover			300-450mm	
	Turf			200mm	
Universal Design	Developments are to achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.				The proposed modifications make no change to the approved adaptable units arrangements.
Adaptive Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.				Not applicable.
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.				Not applicable.
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.				Not applicable.

Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	The proposed development is compliant with this criterion.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, storm water and groundwater?	The proposed development is compliant with this criterion.
Waste Management	Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.	The proposed development is compliant with this criterion.
Building Maintenance	Incorporates a design and material selection that ensures the longevity and sustainability of the building.	The proposed development is compliant with this criterion.

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

- (1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:
 - (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
 - (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
 - (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

Note. The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Comment: The parking rate specified in Part 3J of the Apartment Design Guide (as per the Guide to Traffic Generating Developments) does not apply in this case, as the site is not within 800 metres of a railway station or light rail stop and is not zoned or within 400 metres of land zoned B3 Commercial Core, B4 Mixed Use. The parking rate within the MDCP 2013 was applied to the approved development. The proposed modifications make no alteration to the parking requirement for the site. No change is proposed to the approved internal areas or ceiling heights for each apartment. The application is not being refused in relation to these matters.

- (2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:
 - (a) the design quality principles, and
 - (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.
- (3) To remove doubt:
 - (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
 - (b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

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Comment: The application demonstrates that adequate regard has been given to design quality principles and the objectives of the Apartment Design Guide, as it provided a Design Verification Statement with the original application, outlining the proposed works.

Manly Local Environmental Plan 2013

The subject site is located in Zone R3 Medium Density Residential under the Manly LEP 2013. The proposed development is permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

Zone R3 Medium Density Residential

Objectives of zone

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

The proposed modifications retain the use of the site as a residential flat building.

- *To provide a variety of housing types within a medium density residential environment.*

The proposed modifications retain the use of the site as a residential flat building.

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

Not applicable. The proposed modifications retain the use of the site as a residential flat building.

- *To encourage the revitalization of residential areas by rehabilitation and suitable redevelopment;*

The proposed modifications provide for suitable revitalisation of the site.

- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

Not applicable. The proposed modifications retain the use of the site as a residential flat building.

Part 4 Principal development standards

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

4.	Principal Development Standards	Requirement	Approved	Proposed	Complies	Comments
4.3	Height of buildings	13m	17.8m	18.7m	No	See comment below.
4.4	Floor Space Ratio	1.5:1 455.25m ²	3.05:1 926.14m ²	3.05:1 926.14m ²	No – As approved.	-

4.6 Exceptions to development standards

Whilst the modification application will result in a building height that exceeds the maximum permitted by Clause 4.3 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6. This application has been made under Section 96 of the Environmental Planning and Assessment (EP&A) Act 1979, which is a free-standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 96 is subject to its own stand-alone tests (such as substantially the same test and consideration of all relevant s.79C 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 96 modification applications. Nevertheless, an assessment of the variation is as follows:

Height of Building

The following assessment of the variation to Clause 4.3 – Height of buildings development standard and is assessed taking into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement	13
Proposed	18.7m
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	43.8% to development standard 5% to existing non-compliance

The proposal must satisfy the objectives of Clause 4.3 – Height of buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the MLEP 2013 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MELP 2013 are:

(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: While the proposed modifications would result in a building height on the subject site that is greater than the two adjacent developments, the height is consistent with and complementary to existing developments in the vicinity. Further, the proposed additional roof terraces and associated stairwell and balustrades are centrally located, so are generally not visible from the street, thereby reducing their visual impact on the streetscape.

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

Comment: The proposed development does not provide any additional floor space. The proposed additional roof terraces and associated stairwell and balustrades are centrally located, so are generally not visible from the street. The proposed balcony extensions at Level 4 do not result in any additional unreasonable bulk, in that they propose to align with the approved north eastern and south western building lines.

- (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 modifications do not result in unreasonable view loss, as detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development – Maintenance of Views.

- (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 modifications do not result in unreasonable overshadowing impacts, as detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development – Sunlight Access and Overshadowing.

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

Comment: Not applicable. The subject site is zoned R3 Medium Density Residential

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R3 Medium Density Residential zone.

The underlying objectives of Zone R3 Medium Density Residential are addressed as follows:

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

The proposed modifications retain the use of the site as a residential flat building.

- *To provide a variety of housing types within a medium density residential environment.*

The proposed modifications retain the use of the site as a residential flat building.

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

Not applicable. The proposed modifications retain the use of the site as a residential flat building.

- *To encourage the revitalization of residential areas by rehabilitation and suitable redevelopment;*

The proposed modifications provide for suitable revitalisation of the site.

- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

Not applicable. The proposed modifications retain the use of the site as a residential flat building.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

- (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.*

Comment: The proposed modifications provide for an appropriate level of flexibility in applying the height of building development standard.

- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Comment: The proposed modifications result in a better outcome by providing additional private open space on site without resulting in unreasonable amenity impacts to the subject site or adjacent sites.

- (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.

- (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.*

Comment: As detailed, a written request is not required in this case.

- (4) Development consent must not be granted for development that contravenes a development standard unless:

- (a) *the consent authority is satisfied that:*
- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

Comment: As detailed, a written request is not required in this case.

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

Comment: For reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone in the MLEP 2013.

- (b) *the concurrence of the Director-General has been obtained*

Comment: Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of Buildings Development Standard is assumed.

Part 5 Miscellaneous Provisions

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

5.	Miscellaneous Provisions	Applies	Complies	Comments
5.10	Heritage Conservation	Yes	Yes	The proposed modifications are consistent with the objectives and provisions of Clause 5.10 of the Manly LEP 2013.

Part 6 Local Provisions

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

6.	Local Provisions	Applies	Complies	Comments
6.4	Stormwater Management	Yes	Yes	The proposed modifications are consistent with the objectives and provisions of Clause 6.4 of the Manly LEP 2013.

79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and

There is no applicable Draft Planning Instrument.

79C(1)(a)(iii) - any development control plan, and

Manly Development Control Plan 2013:

The following is an assessment of the proposal's compliance with the standards of the Development Control Plan. Where a variation is proposed to the standards, an assessment is included in the Planning Comments.

Part 3 General Principles of Development

Issues	Consistent with controls	Inconsistent with controls
Streetscape	✓	
Heritage – In Vicinity	✓	
Landscaping Design	NA	
Landscape/Tree Preservation	NA	
Sunlight Access and Overshadowing	✓	
Privacy and Security	✓	
Maintenance of Views	✓	

Comment:

3.1 Streetscapes and Townscapes

Streetscape

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

The proposed modifications do not alter the visual impact of the approved development in relation to walls. No car parking or fences are approved or proposed on site.

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

The proposed additional roof terraces and associated stairwell and balustrades are centrally located, so are generally not visible from the street. The proposed modifications to the balconies at Level 4 are minor in nature and retain the visual appearance of the approved development in the streetscape.

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

The approved and existing walls on the street frontage remain unchanged.

3.2 Heritage Considerations

Objective 1) To retain and conserve environmental heritage and cultural significance of Manly including:

- *significant fabric, setting, relics and view associated with heritage items and conservation areas;*
- *the foreshore, including its setting and associated views; and*
- *potential archaeological sites, places of Aboriginal significance and places of natural significance.*

The proposed development does not unreasonably impact upon the heritage significance of the items on the subject site and adjacent sites. The subject site is not located on the foreshore and does not contain any potential archaeological sites, places of Aboriginal significance, or places of natural significance.

Objective 2) To ensure any modification to heritage items, potential heritage items or buildings within conservation areas is of an appropriate design that does not adversely impact on the significance of the item or the locality.

The proposed modifications are of a complementary and consistent design to the existing and approved development, and do not to unreasonably impact on the items on the subject site or adjacent sites.

Objective 3) To ensure that development in the vicinity of heritage items, potential heritage item and/ or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items.

The proposed modifications are of a form and design so as to not to detract from the significance of the items on the subject site or adjacent sites.

Objective 4) To provide infrastructure that is visually compatible with surrounding character and locality/visual context with particular regard to heritage buildings/areas and cultural icons.

The proposed development does not involve infrastructure.

Objective 5) To integrate heritage management and conservation into the planning development process including incentives for good heritage management, adaptive reuse, sustainability and innovative approaches to heritage conservation.

The heritage significance of the site has been considered throughout the planning process for this application. Council's Heritage Advisor has reviewed the application and has raised no objection to the proposal, as it adequately conserves the heritage value of the subject site and surrounds.

3.4.1 Sunlight Access and Overshadowing

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

The proposed modifications to the approved development result in a minor increase to overshadowing due to the additional stairwell height and balustrades. However, given the centralised location of the stairwell and balustrades on site, the proposal will retain equitable access to light and sunshine for the subject site and adjacent sites.

Objective 2) To allow adequate sunlight to penetrate:

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

The proposed modifications to the approved development result in a minor increase to overshadowing due to the additional stairwell height and balustrades. However, these modifications do not unreasonably increase overshadowing to private open spaces and windows to habitable rooms on the subject site or adjacent sites.

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

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

The proposed modifications to the approved development retain adequate building modulation by centralising the additional height on the site. The development is currently built to the southern (front) boundary.

3.4.2 Privacy and Security

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

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

The proposed modifications retain adequate privacy for adjacent properties, by locating and orientating private open spaces away from adjacent sites. As such, direct viewing is mitigated between the subject site and adjacent properties.

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

The proposed modifications provide adequate privacy without compromising access to light and air. The outlook and views from habitable rooms and private open space is balanced in that overlooking is minimised, but views from the subject site are still available.

Objective 3) To encourage awareness of neighbourhood security.

The proposed modifications retain the approved and existing windows and balconies on the front (southern) elevation of the development, thereby encouraging awareness of neighbourhood security through passive surveillance.

3.4.3 Maintenance of Views

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

The proposed development retains existing view sharing for the subject site and adjacent sites.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

The proposed modifications do not disrupt view to, from or across the site.

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

The proposed development does not result in view creep.

Part 4 - Development Controls

Site Area: 303.5m²	Permitted/ Required	DA Approved	Proposed	Complies Yes/No
Number of Storeys	3	4	4	Yes – As approved
East setback side	1/3 wall height (Level 4: 5.76m)	0m	1.925m to building	Yes – As approved
			5.125m to roof terrace	No. See comment below.
West setback side	1/3 wall height (Level 4: 5.76m)	0m	0m to building	Yes – As approved
			3.18m to roof terrace	No. See comment below.
Open space - total	Min. 45% of site area (136.5m²)	76. 5m²	128.5m²	Yes – Improvement on existing
Open space - soft	Min. 25% of total open space (32.125m²)	0m²	0m²	Yes – As approved

Site Area:	303.5m ²	Permitted/ Required	DA Approved	Proposed	Complies Yes/No
Open space - above ground		Max. 40% of total open space (51.4m ²)	19.4% (25m ²)	58.9% (77m ²)	No. See comment below.
Private Open Space		12m ² per dwelling	Units 1-2: 25.75m ² each Units 4-6: 0m ² each Units 7-8: 7.5m ² each Units 9-10: 7.5m ² each	Units 1-2: 25.75m ² each Units 4-6: 0m ² each Units 7-8: 7.5m ² each Units 9-10: 31m ² each	Yes – Improvement on existing

Comment:

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

Clause 4.1.4.2 of the MDCP 2013 provides that setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building. The proposed roof terraces have non-compliant side setbacks.

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.

Given their height and centralised location, the proposed roof terraces will generally not be visible from the street. As such, their inclusion will not unreasonably impact upon the desired spatial proportions of the street, the street edge and the landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

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

The sunlight access, privacy, maintenance of view and streetscape character impacts resulting from the proposed development are acceptable for the reasons detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development. The proposed development does not impact upon traffic conditions.

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

The proposed modifications are adequately sited in order to provide an appropriate level of amenity to the subject site, as well as adjacent sites.

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.

The approved development does not include any landscaped open space. The proposed modifications do not alter this. The subject site does not contain urban bushland.

Objective 5) To assist in appropriate bush fire asset protection zones.
The subject site is not within an area of bushfire prone land.

4.1.5 Open Space and Landscaping

Clause 4.1.5.2 of the MDCP 2013 provides that the subject site provide no more than 40% of its open space above ground. The proposed modifications bring the open space above ground to 59.9% of the total open space.

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

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.

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

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

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

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

The approved development does not include any landscaped open space. The proposed modifications do not alter this. This is because the subject site contains a heritage listed item, being Item 242 Residential Flat Building. As such, the development potential of the site is limited in order to conserve the heritage value of the building and the site. While the proposed open space above ground does not provide landscape features, planting, infiltration, weed prevention or wildlife habitat/corridors, the proposal does allow for greater amenity for the subject site by providing additional private open space areas, without resulting in any unreasonable impacts on adjacent sites.

Part 5 - Special Character Areas and Sites

Special Character Areas and Sites	Applicable	Not Applicable
Conservation Area		✓
Foreshore Scenic Protection Area		✓
Threatened Species and Critical Habitat		✓
Flood Control Lots		✓
Riparian Land and Watercourses		✓
Road Widening		✓

79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
No planning agreement has been entered into in relation to the proposed modifications to the approved development.

79C(1)(a) (iv) - the regulations

The relevant prescribed regulations contained within the *Environmental Planning and Assessment Regulations 2000* are addressed through the imposition of suitable conditions.

79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)

There is no Coastal Zone Management Plan applicable for the Manly area.

79C(1) (b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The proposed modifications to the approved development will not result in any unreasonable impact on the natural and built environments or any unreasonable social and economic impacts in the locality.

79C(1) (c) - the suitability of the site for the development,

The proposed modifications to the approved development are suitable for the site.

79C(1) (d) - any submissions made in accordance with this Act or the regulations

The application was notified to nearby and adjoining property owners in accordance with Council's Development Control Plan 2013 Section 2.3 with no submissions received.

79C(1) (e) - the public interest.

The proposed modifications to the approved development are in the public interest.

S94 Contribution towards provision or improvement of amenities or services

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- '(1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:
- (a) the dedication of land free of cost, or
 - (b) the payment of a monetary contribution,
- or both.
- (2) A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'

Comments:

In this case, the proposed modifications to the approved development will not require the provision of or increase the demand for public amenities and public services in the area. As such, the payment of a monetary contribution is not required.

Section 96(2) of the Environmental Planning and Assessment Act 1979

(2) Other modifications

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
- (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
- (c) it has notified the application in accordance with:
 - (i) the regulations, if the regulations so require, or
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan 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 the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.
- (4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.
- (5) **Threatened species**
Development consent of the kind referred to in section 79B (3), or in respect of which a biobanking statement has been issued under Part 7A of the Threatened Species Conservation Act 1995, is not to be modified unless:
 - (a) in the case of development referred to in section 79B (3)—the requirements of section 79B (3)–(7) have been complied with in relation to the proposed modification as if the application for the proposed modification were an application for development consent, or
 - (b) in the case of development in respect of which a biobanking statement has been issued under Part 7A of the Threatened Species Conservation Act 1995—the applicant has made an application for modification of the biobanking statement in relation to the proposal and a new biobanking statement has been issued or the consent authority is satisfied that the modification will have no impact on biodiversity values (within the meaning of that Act).

With regard to the above it is considered that the proposed modifications to the original consent, will result in substantially the same development for which consent was originally granted. The modifications requested were notified in accordance with Council's Manly DCP with no submissions received. All matters relating to the proposed modifications in terms of impact on have been considered. On balance, the proposed modifications are considered to be satisfactory for approval, subject to conditions.

CONCLUSION:

The application has been assessed having regard to Section 79C and Section 96 of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 and is considered to be satisfactory for **Approval**, subject to conditions.

RECOMMENDATION

That pursuant to Section 96 (2) of the Environmental Planning and Assessment Act 1979, the proposed modification to Development Consent No. 384/2009 for alterations and additions to the existing residential flat building at 31 Victoria Parade be **Approved** subject to:

GENERAL CONDITIONS

The following Condition No.1 is to be amended as per Section 96(2) Application – Part 5:

1. The development, except where modified by the conditions of this consent, is to be carried out in accordance with Plans affixed with Council's stamp relating to Development Consent No. DA384/09:

Plan No. / Title	Issue/ Revision & Date	Date Received by Council
DA 01 to DA 11	Dated 7 December 2009	10 December 2010

Documentation affixed with Council's stamp relating to Development Consent No. DA384/09:

- Statement of Environmental Effects prepared by LJB Urban Planning Pty Ltd dated Dec 2009 received by the Council on 10 Dec 09.
- BASIX Certificate No A72459 dated 30 November 2009
- Conservation Plan prepared by Blackmore Design Group received by the Council on 10 Dec 09.
- Addendum to Conservation Plan prepared by Blackmore Design Group prepared 22 April 2010 and received by the Council on 7 June 2010.
- Quantity Surveyor Report dated 14 May 2010 prepared by Washington Brown Quantity Surveyors and received by the Council on 7 June 2010.

Except as modified by the following:

Documents relating to consent.

The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and documentation.

Plans affixed with Council's stamp relating to Development Consent No. DA384/09 – S96(2) – Part 2:

Plan No. / Title	Issue/ Revision & Date	Date Received by Council
S96 01 to S96 05 (both inclusive)	Dated 6 December 2011	07 December 2011
S96 07 to S96 10 (both inclusive)	Dated 6 December 2011	07 December 2011
S96 06 & S96 11	Rev B Dated 21 February 2012	29 February 2012

Documentation affixed with Council's stamp relating to Development Consent No. DA384/09

- Statement of Environmental Effects prepared by LJB Urban Planning Pty Ltd dated Dec 2011 received by the Council on 07 Dec 11.
- Conservation Management Plan dated 1 December 2011 received by the Council on 07 Dec 011.
- Limited Condition Report prepared by Northern Beaches Consulting Engineers Pty Ltd dated 25/11/2011 and received by the Council on 7 Dec 2011.
- Building Code of Australia Assessment Report dated 6 December 2011 prepared by Peter Dix and received by the Council on 7 December 2011.
- Revised BASIX Certificates as given below:

Unit No and Certificates No.	Dated	Date Received by Council
Unit-1- A72455_02	Dated 6 December 2011	07 December 2011
Unit-2- A72016_02	Dated 6 December 2011	07 December 2011
Unit-3- A72457_02	Dated 6 December 2011	07 December 2011
Unit-4- A72458_02	Dated 6 December 2011	07 December 2011
Unit-5- A72459_02	Dated 6 December 2011	07 December 2011
Unit-6- A72460_02	Dated 6 December 2011	07 December 2011

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Unit 7-10- 284219M_02	Dated 6 December 2011	07 December 2011
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Except as modified by the following:

Documents relating to consent.

The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and documentation.

Plans affixed with Council's stamp relating to Development Consent No. DA384/09 – S96(2) – Part 3:

Plan No. / Title	Issue/ Revision & Date	Date Received by Council
A1.01 to A1.06 (both inclusive)	Rev –A Dated 30/10/2012	6/11/2012
A2.01 to A 2.04 (both inclusive)	Rev –A Dated 30/10/2012	6/11/2012
A3.01 and A3.02	Rev –A Dated 30/10/2012	6/11/2012

Documentation affixed with Council's stamp relating to Development Consent No. DA384/09

- *Statement of Environmental Effects prepared by Blackmore Design Group dated 2 November 2012 received by the Council on 06 Nov 2012.*
- *Heritage Impact Commentary dated 20 Oct 2012 prepared by Graham Brookes and Associates and received by the Council on 6 Nov 2012.*
- *Revised BASIX Certificate No 284219M_04 dated 05 October 2012 and received by the Council on 06 Nov 2012.*

Except as amended by:-

Documents relating to consent.

The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and reference documentation;

Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. DA384/2009:

Plan No. / Title	Issue/ Revision & Date	Date Received by Council
A1.01- Ground Floor Plan	Issue S96 dated 24/11/15	26/11/2015
A 1.02 – Level 1 Plan	Issue S96 dated 24/11/15	26/11/2015
A 1.03 – Level 2 Plan	Issue S96 dated 24/11/15	26/11/2015
A 1.04 – Level 3 Plan	Issue S96A dated 17/02/2016	18/2/2016
A 1.05 – Level 4 Plan	Issue S96A dated 17/02/2016	18/2/2016
A 1.06 – Roof Plan	Issue S96A dated 17/02/2016	18/2/2016
A 2.02 – South West Elevation	Issue S96A dated 17/02/2016	18/2/2016
A2.03 – North East Elevation	Issue S96A dated 17/02/2016	18/2/2016
A2.04- North West Elevation	Issue S96 dated 24/11/15	26/11/2015
A3.01- Section AA	Issue S96 dated 24/11/15	26/11/2015
A3.02- Section BB	Issue S96 dated 24/11/15	26/11/2015

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

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council

Reference Documentation affixed with Council's stamp relating to Development Consent No. DA384/2009:

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- Statement of Environmental Effects prepared by Blackmore Design Group dated November 2015 and received by Council on 26/11/2015.
- Heritage Impact Commentary prepared by Graham Brooks and Associated dated 20/11/2015 and received by Council on 26/11/2015.

Except as amended by:

Drawings affixed with Council's 'Development Consent' stamp relating to this Section 96(2) Application – Part 5:

Plan No. / Title	Issue/ Revision & Date	Prepared By
A1.01 Ground Floor Plan	Revision A 16 November 2017	Platform Architects
A1.02 Level 1 Plan	Revision A 16 November 2017	Platform Architects
A1.03 Level 2 Plan	Revision A 16 November 2017	Platform Architects
A1.04 Level 3 Plan	Revision A 16 November 2017	Platform Architects
A1.05 Level 4 Plan	Revision A 16 November 2017	Platform Architects
A1.06 Roof Plan	Revision A 16 November 2017	Platform Architects
A2.01 South East Elevation	Revision A 16 November 2017	Platform Architects
A2.02 South West Elevation	Revision A 16 November 2017	Platform Architects
A2.03 North East Elevation	Revision A 16 November 2017	Platform Architects
A2.04 North West Elevation	Revision A 16 November 2017	Platform Architects
A3.01 Section AA	Revision A 16 November 2017	Platform Architects
A3.02 Section BB	Revision A 16 November 2017	Platform Architects
A3.03 Section CC	Revision A 16 November 2017	Platform Architects

Reference Documentation relating to this Section 96(2) Application – Part 5:

- BASIX Certificate No. A72455_04 prepared by Efficient Living Pty Ltd dated 17 November 2017
- BASIX Certificate No. A72016_03 prepared by Efficient Living Pty Ltd dated 16 November 2017
- BASIX Certificate No. A72457_03 prepared by Efficient Living Pty Ltd dated 16 November 2017
- BASIX Certificate No. A72458_03 prepared by Efficient Living Pty Ltd dated 16 November 2017
- BASIX Certificate No. A72459_04 prepared by Efficient Living Pty Ltd dated 16 November 2017
- BASIX Certificate No. A72460_03 prepared by Efficient Living Pty Ltd dated 16 November 2017
- BASIX Assessment prepared by Efficient Living Pty Ltd dated 16 November 2017
- Heritage Impact Commentary prepared by GBA Heritage dated 10 November 2017

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

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council.

The following Condition No. ANS01 was deleted as per Section 96(2) – Part 3 – determined on 20 February 2013:

ANS1
DELETED

The following Condition No. ANS02 was deleted as per Section 96(2) – Part 2 – determined on 8 March 2012:

ANS02
DELETED

The following Condition No. ANS03 was added as per Section 96(2) – Part 2 – determined on 8 March 2012:

ANS03 (3MS01)

Works in connection with this Section 96 modification are not to be commenced/carried out until a new Construction Certificate is issued.

Reason: The Environmental Planning and Assessment Act 1979 requires a new updated Construction Certificate to cover any or all approved Section 96 modifications involving changes in the design of the development.

The following Condition No. ANS04 was deleted as per Section 96(2) – Part 3 – determined on 20 February 2013:

ANS04
DELETED

The following Condition No. ANS05 was added as per Section 96(2) – Part 3 – determined on 20 February 2013:

ANS05

Works in connection with this Section 96 modification are not to be commenced/carried out until a new Construction Certificate is issued.

Reason: The Environmental Planning and Assessment Act 1979 requires a new updated Construction Certificate to cover any or all approved Section 96 modifications involving changes in the design of the development.

The following Condition No. ANS06 is to be deleted as per Section 96(2) – Part 4 – determined on 21 April 2016:

ANS06
DELETED

The following Condition No. ANS07 was added as per Section 96(2) – Part 3 – determined on 20 February 2013:

ANS07

Retain the existing ceilings to the original entries to Units 1, 2, 3, 4, 5 and 6 and all original timber joinery is to be conserved to the original entries, living rooms and corridors

Reason: To ensure all matters relating to significant fabric and spaces are undertaken using best practice for heritage conservation.

The following Condition No. ANS08 was added as per Section 96(2) – Part 3 – determined on 20 February 2013:

ANS08

The proposed works are to be carried out in a manner which minimises any demolition, alteration, new penetrations/fixing or irreversible damage to the significant fabric of the existing buildings which are listed as heritage items in the Manly Local Environmental Plan 1988. Particular care must be taken to minimise damage to the significant fabric of the building during the carrying out of the internal fit out and any electrical or plumbing works.

Reason: To ensure the heritage significance of the site is not adversely affected and best practice for heritage conservation is undertaken.

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The following Condition No. ANS09 was added as per Section 96(2) – Part 3 – determined on 20 February 2013:

ANS09

The applicant is to commission experienced tradespersons (as appropriate) skilled in traditional building and engineering trades to carry out the proposed scope of works.

Reason: To ensure all matters relating to significant fabric and spaces are undertaken using best practice for heritage conservation.

The following Condition No. ANS10 was added as per Section 96(2) – Part 3 – determined on 20 February 2013:

ANS10

Should any historic relics be unexpectedly discovered on the site during excavation, all excavation or disturbance to the area is to stop immediately and the Heritage Council of NSW should be informed in accordance with Section 146 of the Heritage Act 1977.

Should any Aboriginal relics be unexpectedly discovered then all excavation or disturbance of the area is to stop immediately and the National Parks and Wildlife Service is to be informed in accordance with Section 89A of the National Parks and Wildlife Act 1974.

Reason: To ensure the proper management and preservation of historical artifacts.

The following Condition No. ANS11 (3MS01) is to be amended as per Section 96(2) – Part 5:

ANS11 (3MS01)

Works in connection with this Section 96 modification are not to be commenced/carried out until a new Construction Certificate is issued.

Reason: The Environmental Planning and Assessment Act 1979 requires a new updated Construction Certificate to cover any or all approved Section 96 modifications involving changes in the design of the development.

The following Condition No. ANS12 is to be added as per Section 96(2) – Part 4 – determined on 21 April 2016:

ANS12

The external colours of any works approved under this modification application are to be submitted to Councils Heritage Advisor for approval prior to the issue of any Construction Certificate.

Reason: To preserve and protect the heritage of the building.

The following Condition No. ANS13 is to be added as per Section 96(2) – Part 5:

ANS13

An Erosion and Sediment Management Plan which provides adequate measures for erosion and sediment control, must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier. The Erosion and Sediment Management Plan shall comply with the requirements for Erosion and Sediment Management plans contained with Clause 2.1.11 of the Manly Development Control Plan, 2013 and Manly Council's Guidelines for Sediment and Erosion Controls on Building Sites, 2005.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

1 (2AP03)

Consent given to build in close proximity to the allotment boundary is in no way to be construed as permission to build on or encroach over the allotment boundary. Your attention is directed to the provisions of the Dividing Fences Act 1991 which gives certain rights to adjoining owners, including use of the common boundary. In the absence of the structure standing well clear of the common boundary, it is recommended you make yourself aware of your legal position which may involve a survey to identify the allotment boundary.

Reason: To advise developers of their responsibilities and to protect the interests of adjoining owners.

2 (2CD01)

Pursuant to Section 97 of the Local Government Act, 1993, Council requires prior to the issue of Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit of \$15,000.00. The Deposit is required as security against damage to Council property during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Note: Should Council property adjoining the site be defective e.g. cracked footpath, broken kerb etc., this should be reported in writing, or by photographic record, submitted to Council at least seven (7) days prior to the commencement of any work on site. This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicants interest for it to be as full and detailed as possible.

Where by Council is not the Principal Certifying Authority, refund of the trust fund deposit will also be dependent upon receipt of a final Occupation Certificate by the Principal Certifying Authority and infrastructure inspection by Council.

Reason: To ensure security against possible damage to Council property.

3 (2CD02)

A Dilapidation Report is required for this development. A photographic survey of adjoining properties No. 29 Victoria Parade, 15 and 16 South Steyne, Manly and detailing the physical condition of those properties, both internally and externally, including walls, ceilings, roof, structural members and other such items, is to be submitted to Council and the Accredited Certifier (where Council does not issue the Construction Certificate) prior to the issue of the Construction Certificate. This survey is to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining property/ies.

All costs incurred in achieving compliance with this condition must be borne by the person entitled to act on this Consent.

If access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant must demonstrate, in writing, to Council's satisfaction attempts have been made to obtain access and/or advise the affected property owner of the reason for the survey and these attempts have been unsuccessful. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only, and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

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

4 (2CD05)

Detailed engineering drawings of all work must be submitted for approval by the Council/Accredited Certifier prior to the release of the Construction Certificate.

Reason: To ensure the provision of public infrastructure of an appropriate quality arising from the development works to service the development.

5 (2CD07)

A Certificate of Adequacy signed by a practising structural engineer stating the existing structure is capable of supporting the proposed additions, is to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: The existing building must be able to support proposed additional loading.

6 (2DS01)

A detailed stormwater management plan is to be prepared to fully comply with Council's Specification for On-site Stormwater Management 2003 and Specification for Stormwater Drainage 2003 and must be submitted to Council for approval prior to issue of the Construction Certificate. The stormwater management plan and designs are to be prepared by a suitably qualified engineer.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure that infrastructure reverting to Council's care and control is of an acceptable standard.

7 (2FR01)

A Fire Safety Schedule specifying the fire safety measures (both current and proposed) which should be implemented in the building premises must be submitted with the Construction Certificate application, in accordance with Part 9 Clause 168 of the Environmental Planning and Assessment Regulation 2000.

Note: A Construction Certificate cannot be issued until a Fire Safety Schedule is received.

Reason: Compliance with the Environmental Planning and Assessment Act 1979.

8 (2MS01)

Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details including drawings and specifications must be submitted to Council accompanying the Construction Certificate, which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with Manly Council Guidelines on Erosion and Sediment Control, or a suitable and effective alternative method. The Sediment Control Plan must incorporate and disclose:

- 1) all details of drainage to protect and drain the site during the construction processes,
- 2) all sediment control devices, barriers and the like,
- 3) sedimentation tanks, ponds or the like,
- 4) covering materials and methods, and
- 5) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing these design requirements have been met must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier prior to issuing of the Construction Certificate.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

Internal Note: This condition is to be imposed in conjunction with 4MS04.

9 (2US01)

A Section 94 contribution is to be paid for the provision of or increase the demand for public amenities and public services as a consequence of the development in the area. The total contribution for this development of addition of THREE (3) dwelling units is \$60,000.00, being \$20,000.00 per additional dwelling. This contribution shall be paid to Council prior to the release of the Construction Certificate.

Note: The Section 94 Contribution fees are indexed annually in accordance with movements in the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.

Reason: To enable the provision of public amenities and services required/anticipated as a consequence of increased demand resulting from the development.

CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT

10 (3BM01)

The floor surfaces of bathrooms, shower rooms, laundries and WC compartments are to be of an approved impervious material properly graded and drained and waterproofed in accordance with Australian Standard AS 3740. Certification is to be provided to the Principal Certifying Authority from a licensed applicator prior to the fixing of any wall or floor tiles.

Reason: To prevent the penetration of dampness through walls and floors.

11 (3CD01)

Building work, demolition or excavation must not be carried out until a Construction Certificate has been issued.

Reason: To ensure compliance with statutory provisions.

12 (3CD02)

Demolition must be carried out by a registered demolition contractor. Documentary evidence of registration must be submitted to Council prior to the commencement of demolition work.

Reason: To ensure demolition is carried out in an appropriate manner that is non-disruptive to the locality and the public.

13 (3CD03)

An adequate security fence is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

Reason: To protect the public interest and safety.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

14 (4CD01)

All of the following are to be satisfied/complied with during demolition, construction and any other site works:

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- 2) Demolition must be carried out by a registered demolition contractor.
- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- 10) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 11) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.

- 12) Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.
- 13) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- 14) Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.
- 15) Building operations such as brickcutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- 16) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.
- 17) Any work must not prohibit or divert any natural overland flow of water.

Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.

15 (4CD02)

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm Saturday. No site works can be undertaken on Sundays or public holidays. Unless otherwise approved within a Construction Traffic Management Plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Reason: To prevent disturbance to the surrounding community.

16 (4CD03)

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

Reason: To maintain sanitary conditions on building sites.

17 (4CD06)

All construction works must be strictly in accordance with the Reduced Levels (RLs) as shown on the approved drawings. Certification is to be submitted to the Principal Certifying Authority during construction by a registered surveyor certifying complying and finished ridge levels.

Reason: To ensure compliance with the consent.

18 (4CD07)

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from Workcover NSW. Before starting work, a work site-specific permit approving each asbestos project must be obtained from Workcover NSW. A permit will not be granted without a current Workcover licence.

All removal, repair or disturbance of or to asbestos material must comply with the following:

- The Occupational Health and Safety Act 2000,
- The Occupational Health and Safety Regulation 2001,
- The Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (1998)],
- The Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)] <http://www.nohsc.gov.au/>], and
- The Workcover NSW Guidelines for Licensed Asbestos Removal Contractors.

Note: The Code of Practice and Guide referred to above are known collectively as the Worksafe Code of Practice and Guidance Notes on Asbestos. They are specifically referenced in the Occupational Health and Safety Regulation 2001 under Clause 259. Under the Occupational Health and Safety Regulation 2001, the Worksafe Code of Practice and Guidance Notes on Asbestos are the minimum standards for asbestos removal work. Council does not control or regulate the Worksafe Code of Practice and Guidance Notes on Asbestos. Those involved with work to asbestos should be made aware of the requirements by visiting www.workcover.nsw.gov.au or one of Workcover NSW's offices for further advice.

Reason: To ensure the health of site workers and the public.

19 (4FR01)

The building is to be erected in Type- A construction for a Class 2 building in accordance with the Fire Resistance Provisions of the Building Code of Australia.

Reason: To specify the standard of construction and the level of fire safety required by the Building Code of Australia.

20 (4FR02)

All requirements of the NSW Fire Brigades for the building must be complied with in accordance with the requirements of the Building Code of Australia.

Reason: To comply with the requirements of the Building Code of Australia and to provide an adequate level of fire safety for the occupants of the building.

21 (4MS01)

Should you appoint Council as the Principal Certifying Authority (PCA) to undertake inspections during the course of construction, then the following inspection/certification are required:

- Silt control fences,
- Footing inspection - trench and steel,
- Framework inspection,
- Wet area moisture barrier,
- Drainage inspection,
- Driveway crossing/kerb layback,
- Final inspection.

The cost of these inspections by Council is \$1890.00 (being \$270 per inspection inclusive of GST). Payment of the above amount is required prior to the first inspection. Inspection appointments can be made by contacting the Environmental Services Division on 9976 1414.

At least 24 hours notice should be given for a request for an inspection and submission of the relevant inspection card. Any additional inspection required as a result of incomplete works will incur a fee of \$130.

Reason: To ensure that the development is completed in accordance with the terms of the development consent and with the Building Code of Australia.

22 (4MS04)

The Sediment Control Plan is to be implemented from the commencement of works and maintained until completion of the development.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

Internal Note: This condition is to be imposed with 2MS02.

**ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR
DEVELOPMENT**

23 (6MS02)

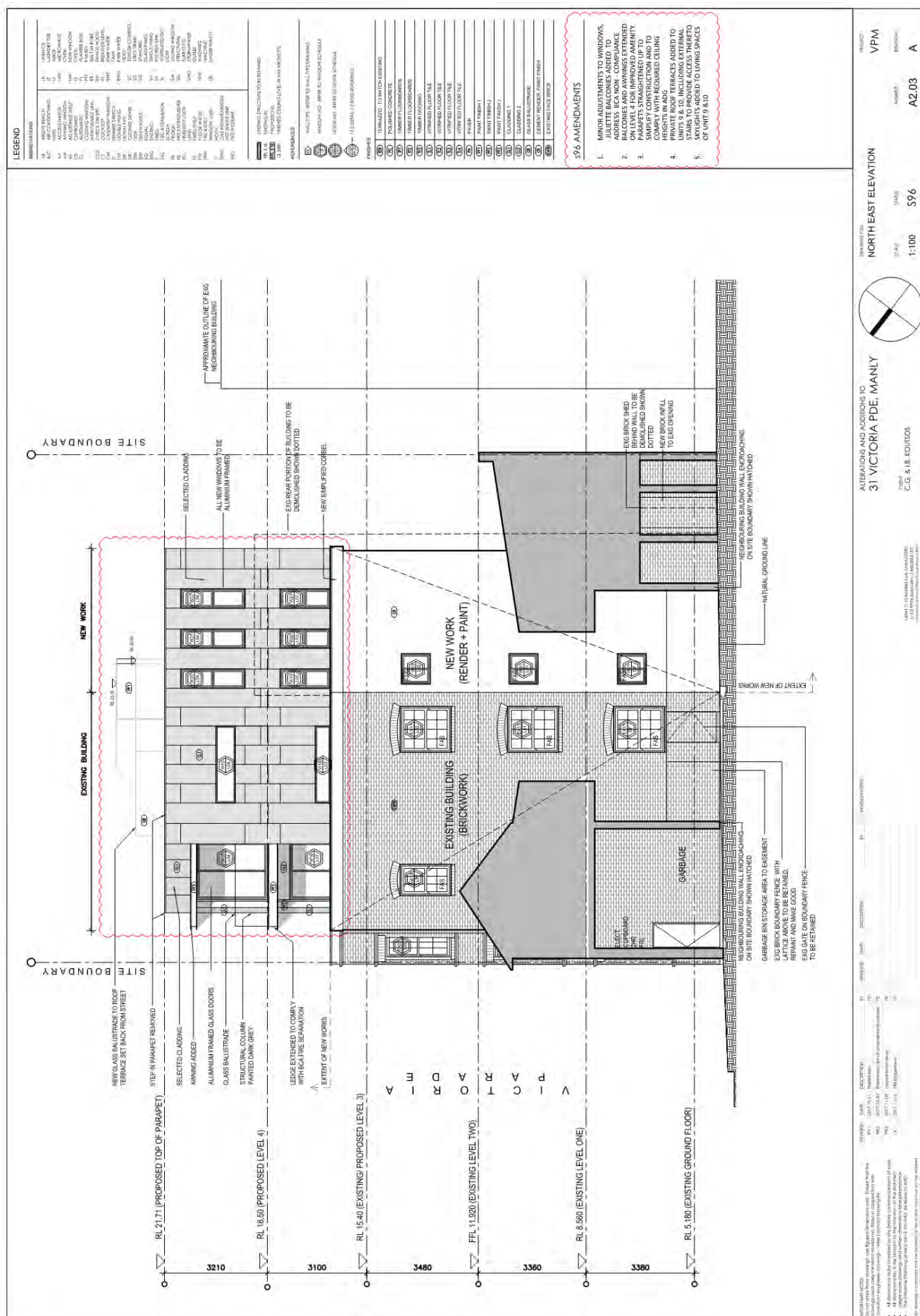
No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.

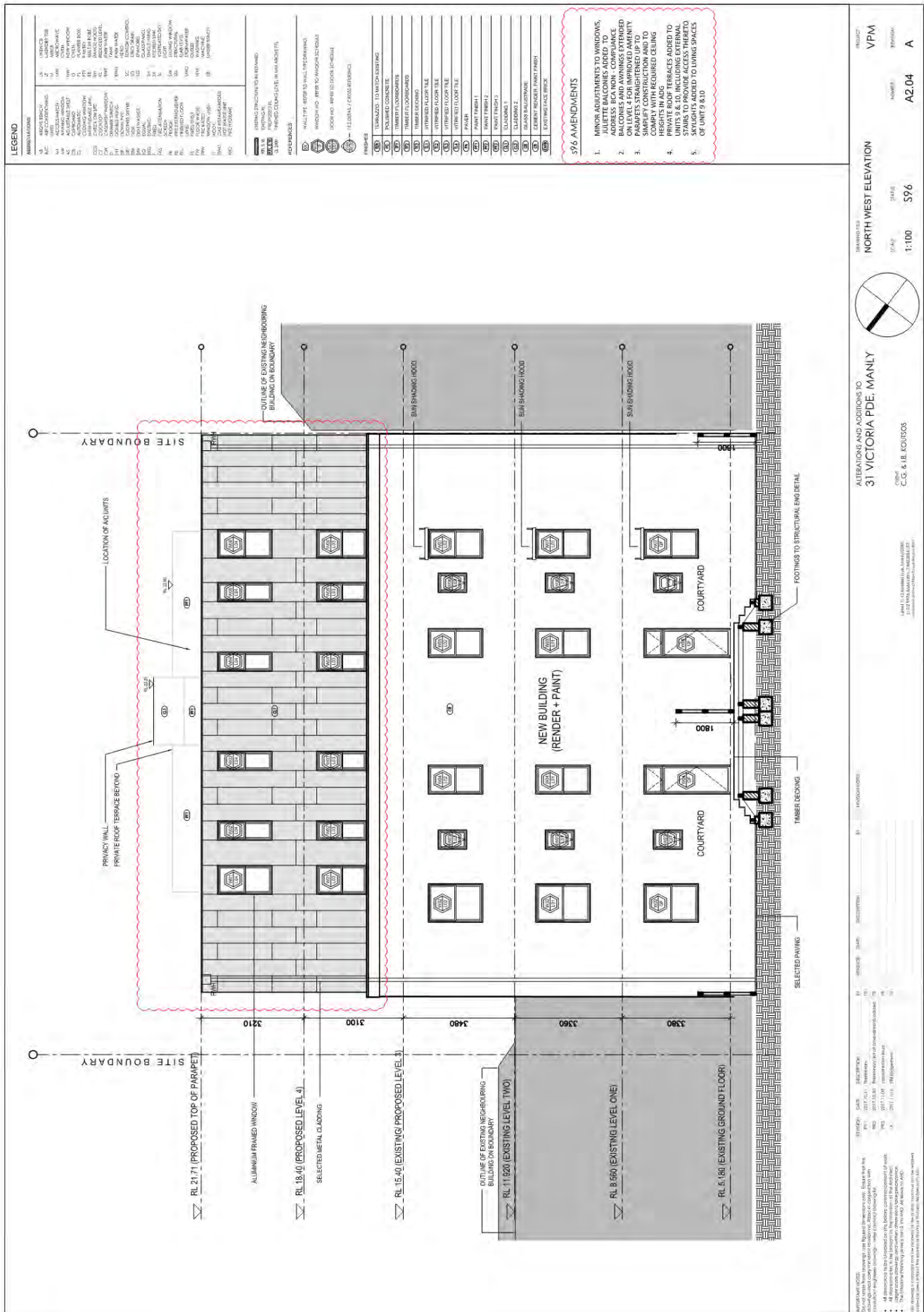
Reason: Statutory requirement, Environmental Planning and Assessment Act 1979.











ITEM 3.3**DA2017/1333 - 50 LAUDERDALE AVENUE, FAIRLIGHT -
DEMOLITION AND CONSTRUCTION OF A NEW DWELLING
HOUSE****REPORTING MANAGER****Rodney Piggott****TRIM FILE REF****2018/183608****ATTACHMENTS**

- 1** [↓](#) **Assessment Report**
- 2** [↓](#) **Site and Elevation Plans**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

That Development Application No. DA2017/1333 for Demolition and construction of a new dwelling house on land at Lot 1 DP 305993, 50 Lauderdale Avenue FAIRLIGHT be **approved** in accordance with the recommendation in the assessment report.



REPORT TO DEVELOPMENT DETERMINATION PANEL

Meeting held on 28 March 2018

50 Lauderdale Avenue Fairlight - Demolition and construction of a new dwelling house

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2017/1333
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 1 DP 305993, 50 Lauderdale Avenue FAIRLIGHT NSW 2094
Proposed Development:	Demolition and construction of a new dwelling house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Development Determination Panel
Land and Environment Court Action:	No
Owner:	Tomislav Ristoski Jeannette Margaret Ristoski
Applicant:	Platform Architects Pty Ltd
Application lodged:	22/12/2017
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	27/12/2017 to 29/01/2018
Advertised:	Not Advertised
Submissions Received:	4
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,356,000.00

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

SITE DESCRIPTION

Property Description:	Lot 1 DP 305993 , 50 Lauderdale Avenue FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of one allotment located on the northern side of Lauderdale Avenue.</p> <p>The site is regular in shape with a frontage of 16.6m along an depth of approximately 30m. The site has a surveyed area of 682.7m².</p> <p>The site is located within the R1 General Residential zone and currently accommodates a dwelling house and an outbuilding.</p> <p>The site has a relatively steep slope from street level up to the rear of the property, having a level difference of approximately 15 metres from front to rear.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised</p>

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by dwellings that step down the slope on the northern side of Lauderdale Avenue and dwellings majorly below the road on the southern side of Lauderdale Avenue. There are also dwellings to the rear of the subject site that (due to the topography of the land) have views over the top of existing dwellings to the south.

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:

- An unauthorised works building certificate was issued by Northern Beaches Council on 19 September 2017 for the outbuilding.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for demolition and the construction of a new dwelling house involving the following:

- Basement garage level with bin storage area
- Ground floor with storage areas and workshop
- Level 1 with 4 bedrooms, ensuite, balcony, walk in robe, bathroom, lift, linen, laundry and store
- Level 2 with terrace, dining, living, kitchen, pantry, family room and entry court
- Level 3 with gym and terrace
- Landscaping and excavation

It is noted that a condition has been imposed to ensure the proposed roof plan is consistent with the other drawings. This being that the proposed ridge of the gym is to be RL49.85 rather than RL50.24.



The outbuilding is not part of this application.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

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	None applicable.
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 Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p>



Section 4.15 Matters for Consideration	Comments
	<p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (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.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Ms Kerry Patricia Chick	13 Burgess Street Armidale NSW 2350

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Name:	Address:
Symons Goodyer Pty Ltd	Po Box 673 BALGOWLAH NSW 2093
Archisoul Architects	Suite 3/23 Belgrave Street MANLY NSW 2095
Ms Karen Lesley Birch	33 Upper Clifford Avenue FAIRLIGHT NSW 2094

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

- Aesthetic appearance of the dwelling, size in relation to neighbouring dwellings and natural environment.; not consistent with desired future for sustainability (smaller dwellings).
- The development would use most of the land and leave little space for outdoor areas and vegetation.
- Excavation of garage and creation of more car parks.
- Owner will consider potential for Air BnB.
- View loss and loss of outlook
- Privacy, noise and loss of amenity
- Error in plans - (The plans contains errors. The Site Plan and the Roof Plan (both numbered 106/A) show the top-most roof ridge as RL 50.240, while the South Elevation (201/A), West Elevation (203/A) and North Elevation (204/A) show RL 49.850.)
- Request for planter box planting to be minimised
- Request for Landscape plan to be condition of consent.
- Loss of solar penetration, overshadowing and insufficient shadow diagrams

The matters raised within the submissions are addressed as follows:

- Aesthetic appearance of the dwelling, size in relation to neighbouring dwellings and natural environment.; not consistent with desired future for sustainability (smaller dwellings).
Comment:
An assessment with reference to the Manly LEP 2013 and Manly DCP 2013 has found the proposal to be reasonable in terms of aesthetic appearance, size, relationship with neighbouring dwellings, the natural environment and sustainability.
- The development would use most of the land and leave little space for outdoor areas and vegetation.
Comment:
The proposal is compliant with the numerical controls for Floor space ratio and Open space, under the Manly DCP 2013 and Manly LEP 2013.
- Excavation of garage and creation of more car parks.
Comment:
A geotechnical report has been provided which supports the proposal subject to recommendations. As such, this report is recommended as reference documentation. Further the bulk and scale of the proposal is satisfactory based on the visual appearance of the proposal when viewed from the street and surrounding areas.
- Owner will consider potential for Air BnB
Comment:
Short-term accommodation has not been applied for in this application. This would be subject to a separate consent.



- View loss and outlook
Comment:
An assessment of views has been made under Part 3 of the Manly DCP 2013 (3.4.3 Maintenance of Views) which included assessment under the Land and Environment Court established planning principle. This assessment found the proposal to be reasonable in relation to Maintenance of views.
- Privacy, noise and loss of amenity
Comment:
As a result of adequate physical separation between private open space and living areas for the subject dwelling and adjoining dwellings, the proposal will be reasonable in terms of privacy. Additionally, windows are adequately located so as to not cause any unreasonable overlooking issues. The roof top terrace has also been conditioned to provide a 2.0m side setback on the western side to ensure no unreasonable privacy impacts.
- Error in plans - (The plans contains errors. The Site Plan and the Roof Plan (both numbered 106/A) show the top-most roof ridge as RL 50.240, while the South Elevation (201/A), West Elevation (203/A) and North Elevation (204/A) show RL 49.850.)
Comment:
A condition of consent has been placed to ensure the RL on the Site/Roof plan is consistent with the other plans being RL49.850.
- Request for planter box planting to be minimised
Comment:
A condition has been placed to ensure the planting on this terrace has a mature height of no greater than 2 metres. This is lower than the ridge of the proposed gym and as such would ensure views from properties to the rear would not be unreasonably disrupted.
- Request for Landscape plan to be condition of consent.
Comment:
The landscape plan will be provided as part of the conditions of consent but subject to other conditions may be modified (based on recommendations from Council's Landscape officer
- Loss of solar penetration, overshadowing and insufficient shadow diagrams
Comment:
An assessment of solar penetration and overshadowing has been made under Part 3 of the Manly DCP 2013 (3.4.1 Sunlight Access and Overshadowing) which found the proposal to be reasonable.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	

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Internal Referral Body	Comments
	Was sufficient documentation provided appropriate for referral? YES
	Are the reports undertaken by a suitably qualified consultant? YES
	What class is the site in on the WLEP2011 Acid Sulfate Soils Map? NA
	Is there risk of acid sulfate soil disturbance? NO
	Will the excavations exceed the depth determined in the risk map? NO
	Does the report adequately address acid sulfate risk mitigation? N/A
	Have you considered disposal of water during excavation, pump out etc. N/A
	Have you considered disposal of contaminated soil. N/A
	General Comments No objections not applicable
	Recommendation APPROVAL - no conditions
	Comments completed by: Anthony Foy EHO Date:9.3.18
Landscape Officer	Council's Landscape officer raises no objection to the proposal, subject to conditions. <u>Assessing Officer Comment</u> The recommended condition requiring trees with a mature height of 10 metres is not considered appropriate given the context of the land (including slope) and the potential impact on views. As such, this condition has been removed. In lieu of this, there have been other conditions imposed to ensure the intention of this condition, to provide native trees in accordance with the Manly DCP, is reached. These conditions include replacement of proposed species with appropriate native species.
NECC (Development Engineering)	Development Engineer has no objection to the application subject to the following conditions of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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



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

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

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

Nil

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.3m to 9.75m	14.7%	No, see comments.
Floor Space Ratio Site area: 682.7m ²	FSR: 0.6:1 (409.62m ²)	FSR: 0.51:1 (349.7m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes

Detailed Assessment

4.6 Exceptions to development standards

Requirement:	8.5m
Proposed:	9.75m
Is the planning control in question a development standard?	YES
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical.
If numerical enter a % variation to requirement	14.7%



The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the MLEP 2013 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the MLEP 2013 are:

(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:

Although non-compliant with the development standard for building height, the proposed dwelling has a large rear setback, a reasonable front setback and appropriate modulation of bulk across the site. This assists in providing a dwelling that is desired in the streetscape and consistent with other building heights in the area.

It is noted that a dual occupancy at the neighbouring site, 52 Lauderdale Avenue, which has a similar slope and site characteristics (in term of streetscape) was approved for 10.6m in 2017. As such, the lower nature of this dwelling and a modulation which reduces bulk on the eastern side of the dwelling, is appropriate.

b) to control the bulk and scale of buildings,

Comment:

The proposal has a compliant floor space ratio and a design which is modulated to reduce the impact of bulk and scale. This includes the building generally stepping with the topography of the land and reducing bulk in areas where there is potential for greater amenity impact. This is shown by one less storey being on the eastern side of the development, where the closest adjoining neighbour exists.

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:

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The proposed development has been assessed as having negligible to minor view loss for the surrounding properties. This view loss is acceptable, for the reasons detailed in the section of this report relating to Part 3 of the Manly DCP 2013, Maintenance of Views. The proposed development does not unreasonably disrupt views to, from or 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,

Comment:

The proposed development is acceptable in relation to solar access, for the reasons detailed in the section of this report relating to Sunlight Access and Overshadowing under Part 3 of the Manly DCP, 2013.

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

Comment:

Not applicable.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R1 General Residential zone.

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.

Comment:

The proposal is for the construction of a new dwelling which will provide housing for the community.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

(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.

Comment:

In this circumstance, providing flexibility to the height of building development standard is appropriate as the non-compliance does not lead to any unreasonable amenity impact and would be appropriate in the street context.

(b) to achieve better outcomes for and from development by allowing flexibility in particular

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circumstances.

Comment:

It is appropriate to allow flexibility in this circumstance as an addition of height can be made to the dwelling without having any unreasonable impact on amenity and the proposed development would be visually appropriate given the context of the site and topographical nature of the surroundings.

(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.

(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.

•

Comment:

The applicant has provided the following justification for the variation to the Height of Buildings development standard:

"This standard and the associated objectives have been previously identified. Having regard to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

- *The areas of non-compliance are generally limited to eave and balcony handrail elements with the exception of Bedroom 3 (Apartment 2) where the south western corner of the building has a maximum height of 10.08 metres. The areas/ extent of variation is depicted in Figures 6, 7, 8 and 9 of this report. The balance the development sits comfortably below the height standard.*
- *In the context of the steep topography of the site (gradient of 1:2.2) and the localised ground level depression in the area of Bedroom 3 (Apartment 2), the extent of non-compliance is appropriately described as minor. The proposal complies with the FSR standard.*
- *The height, bulk and scale of the development is entirely consistent with the built form characteristics established by the adjoining dual occupancy development at No. 54 Lauderdale Avenue and other residential development within the sites visual catchment. The height and form of the development is consistent with the desired future character of the area.*
- *It has been determined that the building height breach will not give rise to any adverse residential amenity impacts in terms of overshadowing, privacy or visual bulk. In this regard detailed shadow diagrams have been provided demonstrating the maintenance of existing levels of solar access to the north, east and west facing living room windows and adjacent private open space area of both adjoining properties between 9am and 3pm on 21st June.*

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- *The proposal provides for the sharing of private views as depicted on the view study plan 14 which demonstrates that both seated and standing views across Middle Harbour from the upper and lower balconies and adjacent living rooms of No. 37 Upper Clifford Avenue will be maintained. The height and front alignment of the proposal, relative to No's 50 and 54 Lauderdale Avenue, will ensure that all critical view elements will be maintained from both a standing and seated position within the living rooms and adjoining private open space areas across Middle Harbour from both these properties. Accordingly, we have formed the considered opinion that a view sharing scenario is maintained in accordance with the DCP provision and the view sharing principles established in the matter of Tenacity Consulting Pty Ltd v Warringah Council [2004] NSWLEC140.*
- *Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development by virtue of its height offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.*
- *Accordingly it can be reasonably concluded that the proposal is compatible with its surroundings when viewed from the harbour, foreshore areas, public domain and surrounding residential properties.*
- *Having regard to the matter of Veloshin v Randwick City Council [2007] NSWLEC 428 this is not a case where the difference between compliance and non-compliance is the difference between good and bad design. Sufficient site specific environmental planning grounds exist to justify the variation in circumstances where the relatively minor non-compliances are directly attributed to the topography of the land. Compliance with the objectives of the standard and the absence of environmental impact also give weight to the acceptability of the variation sought.*

Conclusions

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and*
- (b) that the contextually responsive development is consistent with the objectives of the height of buildings standard, and*
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and*
- (d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (e) that given the developments ability to comply with the zone and height of buildings standard objectives that approval would not be antipathetic to the public interest, and*
- (g) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.*

As such, we 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."

(4) Development consent must not be granted for development that contravenes a development standard unless:



(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

Comment:

A written request has been provided which gives sufficient reasoning as to why the compliance with the development standard is both unreasonable and unnecessary and that there are sufficient grounds to justify contravening the standard. This has been outlined above.

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

Comment:

For reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone in the MLEP 2013.

(b) the concurrence of the Director-General has been obtained

Comment:

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may not be assumed if the development contravenes a numerical standard by more than 10%. As such, the application will be referred to the Development Determination Panel.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 682.7m ²	Requirement	Proposed	Variation*	Complies
4.1.2.1 Wall Height	East: 8m	8.5m	6.25%	No, see comments.
	West: 8m	8.5m	6.25%	No, see comments.
4.1.2.2 Number of Storeys	2	4	2	No, see comments
4.1.2.3 Roof Height	Height: 2.5m	1.2m	N/A	Yes.
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	5.8m	0.2m	No, see comments.
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.83m (based on wall height)	1.6m	1.23m	No, see comments.
4.1.4.4 Rear Setbacks	8m	20m (proposed dwelling) 0.8m (proposed paved area)	N/A	No.

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4.1.5.1 Minimum Residential Total Open Space Requirements	Open space 55% of site area (375.485m ²)	62.4% (426m ²)	N/A	Yes.
Residential Open Space Area: OS3	Open space above-ground 25% of total open space (106.5m ²)	24.6% (105m ²)	N/A	Yes.
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (238.945m ²)	42.5% (290m ²)	N/A	Yes.
	3 native trees	>3 trees	N/A	Yes.
4.1.5.3 Private Open Space	18m	50m	N/A	Yes.
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes.

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.2.2 Requirements for other DAs	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	No	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 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
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

The existing solar access to windows at the west elevation is less than the amount specified under subclause 3.4.1.2. The proposal would result in slight further reduction which is inconsistent with the control



under c) of subclause 3.4.1.2.

Merit consideration:

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

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

Comment:

Given the compliance of the dwelling with floor space ratio and large (and compliant) rear setback, the proposal would provide an equitable situation for access to light and sunshine. This is a result of these compliances providing a corridor for sunlight access at the rear of the subject site and adjoining properties. Given the lack of existing sunlight at the front of the western elevation and the lack of additional sunlight that this area would receive with a fully compliant dwelling, the situation for sunlight access to the rear is a reasonable and equitable provision.

Objective 2) To allow adequate sunlight to penetrate:

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

Comment:

The proposal is for the construction of dwelling that is located adjacent to a dwelling at 48 Lauderdale Avenue, Fairlight and that steps down the slope with the topography of the site. The existing western elevation of 48 Lauderdale Avenue does not receive the number of hours for sunlight access between the hours of 9am and 3pm required, as specified by the subclause 3.4.1.2 of the Manly DCP. This is contributed to by the slope of the land and the siting of the existing development and these factors remain for the proposed development. Despite the lack of sunlight to this area, the large setback to the rear and opportunity for light to access 48 Lauderdale Avenue through this corridor, provides a situation in which there is adequate sunlight that can penetrate the dwelling and property.

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

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

Comment:

The proposed dwelling is appropriately modulated to maximise penetration of sunlight. This includes providing less bulk (including one less level) to the eastern side of the proposed development, which is adjacent to the dwelling in which is most impacted, 48 Lauderdale Avenue. It is also noted that the height non-compliance occurs at the front of the dwelling and the majority of impact for this section of the building would be to the front of the properties.

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Properties to the south would have no unreasonable impact due to the physical separation provided by Lauderdale Avenue.

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

3.4.2 Privacy and Security

Description of non-compliance

The proposal is non-compliant with side setbacks under 4.1.4.2 of the Manly DCP, 2013.

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 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 a result of the extent of the proposed roof terrace and the close proximity to the neighbouring site at 52 Lauderdale Avenue, a condition has been imposed so that the roof terrace on the western side is to be setback (non-trafficable) 2 metres from the side boundary.

The adequate physical separation between private open space and living areas for the subject dwelling and adjoining dwellings ensures that the proposal would be reasonable in terms of privacy. Additionally, windows are adequately located so as to not cause any unreasonable overlooking issues.

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 gym to the rear of the terrace will not provide any unreasonable view loss and assists in providing a screening for the rooftop terrace to allow for adequate privacy. Subject to conditions including the setback of the terrace from the western boundary, the proposal would sufficiently provide privacy without compromising other amenity.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed dwelling provides open space above ground, windows and entrances which all allow the



opportunity for passive surveillance of the neighbourhood.

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

3.4.3 Maintenance of Views

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 for view sharing for both existing and proposed development and existing and future Manly residents.

As seen in the photo below and as a result of the slope of the land, water views can be obtained for the subject dwelling and also retained for dwellings to the rear (as seen in Photo 1 below). In addition, the orientation of the adjoining dwellings and reasonable front setback of the proposed dwelling ensures extensive water views can be obtained over the front boundaries of these properties. This provides an equitable situation in terms of view sharing.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

As can be seen in the photo below which is taken from the lowest living space level from a property to the rear, the proposed dwelling would not cause any unreasonable disruption to the available views.



Photo 1: Taken from property to the rear of 50 Lauderdale Avenue (with height poles outline of proposed development)

An assessment of view loss has also been undertaken with reference to the Views Principle established by the NSW Land and Environment Court for the adjoining dwellings as follows:

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Comment:

The views that are available for the neighbouring dwellings through the area of the proposed development are partial and obscured water views due to existing topography, buildings and vegetation. An example of one of these views from a living area of 48 Lauderdale Avenue can be seen below.



Photo 2: Taken from living area of 48 Lauderdale Avenue.

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

Comment:

The views that would be impacted as a result of the proposed development are over side boundaries from a variety of room uses. Notably, the main views obtained from these dwellings are across the front boundaries.

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Comment:

In consideration of the extensive views available to the front of the neighbouring dwellings, the impact of the to the partial views of the side boundaries is considered to be negligible to minor.



The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Comment:

The partial views available are through the front of the subject site for the adjoining dwellings. As such, the particularly relevant planning controls in this circumstance are deemed to be front setback and floor space ratio. Given the minor non-compliance with front setback (of 0.2m) and the compliance with floor space ratio the minor to negligible impact is reasonable.

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

Comment:

In accordance with the views principle established by the Land and Environment court and in the reasonable interests of view sharing, the proposal reasonably minimises loss of views including prevention of view creep.

Furthermore, conditions have been imposed in regards to the proposed landscaping to ensure a reasonable compromise between landscaping, privacy and views. This involves ensuring the proposed landscaping does not reach a height that would unreasonably obstruct any views.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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

Manly Section 94 Development Contributions Plan

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S94 Contributions are not applicable to this application.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2017/1333 for Demolition and construction of a new dwelling house on land at Lot 1 DP 305993, 50 Lauderdale Avenue, FAIRLIGHT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By

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DA101 - Rev A - Basement Floor	7/12/2017	Platform Architects
DA102 - Rev A - Ground Floor Plan- Storage & Workshop	7/12/2017	Platform Architects
DA103 - Rev A - Level 1 - Lower Floor	7/12/2017	Platform Architects
DA104 - Rev A - Level 2 - Upper Floor	7/12/2017	Platform Architects
DA105 - Rev A - Level 3 - Roof Terrace	7/12/2017	Platform Architects
DA106 - Rev A - Roof Plan	7/12/2017	Platform Architects
DA201 - Rev A - South (Front) Elevation	7/12/2017	Platform Architects
DA202 - Rev A - East Elevation	7/12/2017	Platform Architects
DA203 - Rev A - West Elevation	7/12/2017	Platform Architects
DA204 - Rev A - North (Rear) Elevation	7/12/2017	Platform Architects
DA301- Rev A - Section AA	7/12/2017	Platform Architects
DA302a- Rev A - Section BB	7/12/2017	Platform Architects
DA302b- Rev A - Section BB	7/12/2017	Platform Architects
DA303- Rev A - Section CC	7/12/2017	Platform Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
SW1- 17124- Issue 1	18.12.17	Michal Korecky
SW1- 17124- Issue 2	18.12.17	Michal Korecky

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Report on Geotechnical Assessment- Project 2017-183	22 September 2017	Crozier Geotechnical Consultants

- b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.
- c) Any plans and / or documentation submitted to satisfy the Conditions of this consent.
- d) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
DA120- Ground Floor Planting Plan Rev A	7.12.17	Platform Architects
DA121- Ground Floor Planting Plan Rev A	7.12.17	Platform Architects

Waste Management Plan		
Drawing No.	Dated	Prepared By
Waste Minimisation and Management Plan & Checklist	30/10/2017	Bridie Goughi



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

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

2. Prescribed Conditions

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the

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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 (DACPLB09)

3. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) 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.
- (d) 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.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and



machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) 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.

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following:

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

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of



residents and the community. (DACPLB10)

FEES / CHARGES / CONTRIBUTIONS

4. 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 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, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

5. On-site Stormwater Detention Compliance Certification

Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Warringah Council's "On-site Stormwater Detention Technical Specification" and the concept drawing by Michal Korecky, drawing number 17124 dated 18/12/2017.

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

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development. (DACENC03)

6. Waterproofing/Tanking of Basement Level

The basement area is to be permanently tanked or waterproofed. Details of the waterproofing/ tanking are to be prepared by a suitably qualified Engineer.

Where dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Department of Primary Industries - Water. The bore license must be obtained prior to commencement of dewatering works. All requirements of the NSW Department of Primary Industries - Water are to be complied with and a copy of the approval must be submitted to the Certifying Authority.

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

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements. (DACENC14)



7. **Shoring of Adjoining Property**

Should the proposal require shoring to support an adjoining property or Council land, owner's consent for the encroachment onto the affected property owner shall be provided with the engineering drawings. Council approval is required if temporary rock anchors are to be used within Council land.

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

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land. (DACENCO5)

8. **Vehicular Crossing/Driveway**

The applicant must complete an application form and pay applicable fees for an application to Council for the construction of a vehicular crossing.

Detailed drawings and specifications of all works (including but not limited to structures, road works, driveway crossings, footpaths and stormwater drainage) within existing roads, must be submitted to and approved by Council under the Roads Act 1993, before the issue of any Construction Certificate.

Approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private sites.

9. **Water Proofing for Landscaping**

Details must be submitted to the Council/Accredited Certifier prior to issue of the Construction Certificate indicating the proposed method of water proofing and drainage of the concrete slabs over which landscaping within the front setback is being provided.

Reason: To ensure the appropriate type of water proofing is carried out and descriptive information about drainage is provided. (DACLACPCC1)

10. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

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

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

11. **Landscaping and Views 1**

The proposed Callistemon kings park special (CKS) is to be deleted from the Landscape Plans and replaced with a native species that reaches a mature height of no greater than 2 metres. details are to be provided prior to the issue of a Construction Certificate.

Reason: To ensure the proposed landscaping does not have an unreasonable impact on views. (DACPLCPCC1)

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12. **Landscaping and Views 2**

The proposed planter box is to be provided with a native species that reaches a mature height of no greater than 2 metres. Details are to be provided prior to the issue of a Construction Certificate.

Reason: To ensure the development does not have an unreasonable impact on views. (DACPLCPC2)

13. **Change to RL on Plans**

The proposed Roof Plan is to be amended to show an RL of 49.85 to the proposed Gym area. Details are to be provided prior to the issue of a Construction Certificate.

Reason: To ensure the roof plan is consistent with all other plans.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

14. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land. (DACEND01)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. **Vehicle Crossings**

The provision of one vehicle crossing 3.6 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1N and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property. (DACENE05)

16. **Civil Works Supervision**

All civil works approved in the Construction Certificate are to be supervised by an appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works. (DACENE06)

17. **Maintenance of Road Reserve**

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

Reason: Public Safety. (DACENE09)



18. **Traffic Control During Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with Council's requirements and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works.

Reason: Public Safety. (DACENE11)

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

19. **Authorisation of Legal Documentation Required for On-site Stormwater Detention**

The original completed request forms (Department of Lands standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and Compliance Certificate issued by an Accredited Certifier in Civil Works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To create encumbrances on the land. (DACENF01)

20. **Registration of Encumbrances for On-site Stormwater Detention**

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To identify encumbrances on land. (DACENF02)

21. **Restriction as to User for On-site Stormwater Detention**

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements, (available from Northern Beaches Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure modification to the on-site stormwater detention structure is not carried without Council's approval. (DACENF04)

22. **On-Site Stormwater Detention Compliance Certification**

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council. Additionally a Compliance Certificate is to be issued by an Accredited Certifier in Civil Works registered with the Institute of Engineers Australia, stating that the works are in accordance with the approved plans.



Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure stormwater disposal is constructed to Council's satisfaction.
(DACENF10)

23. **Positive Covenant for On-site Stormwater Detention**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Northern Beaches Council), at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure ongoing maintenance of the on-site stormwater detention system.
(DACENF12)

24. **Landscape Consultant**

A qualified Landscape Consultant is to submit a Certificate of Practical Completion to the Principal Certifying Authority prior to the issue of the Occupation Certificate, stating the work has been carried out in accordance with the approved Landscape Drawings No. 120 and 121 as prepared by Platform Architects, and a maintenance program has been established.

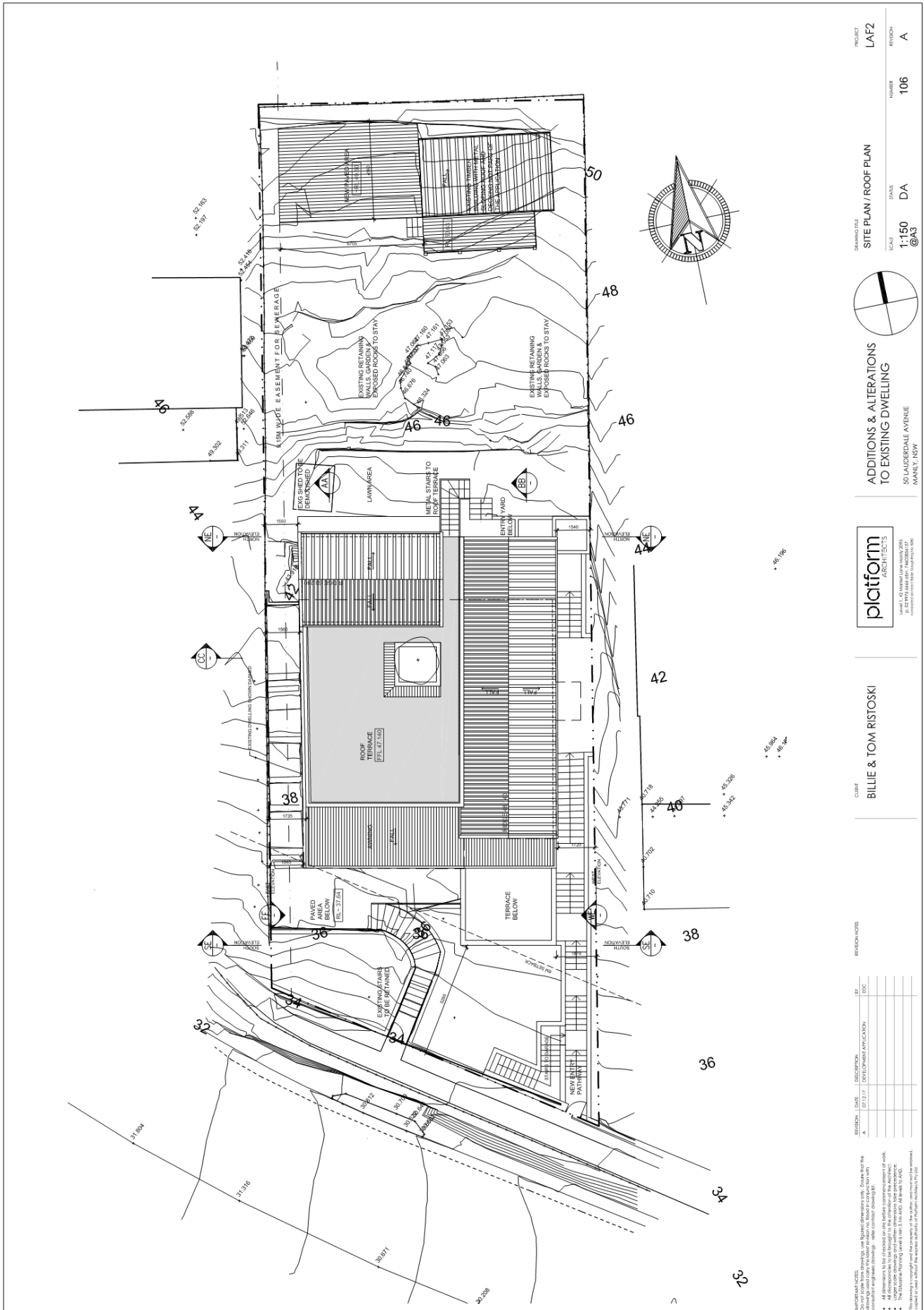
Reason: This is to ensure the landscaping is planted in accordance with the drawing and maintained appropriately. (DACLAFPOC1)

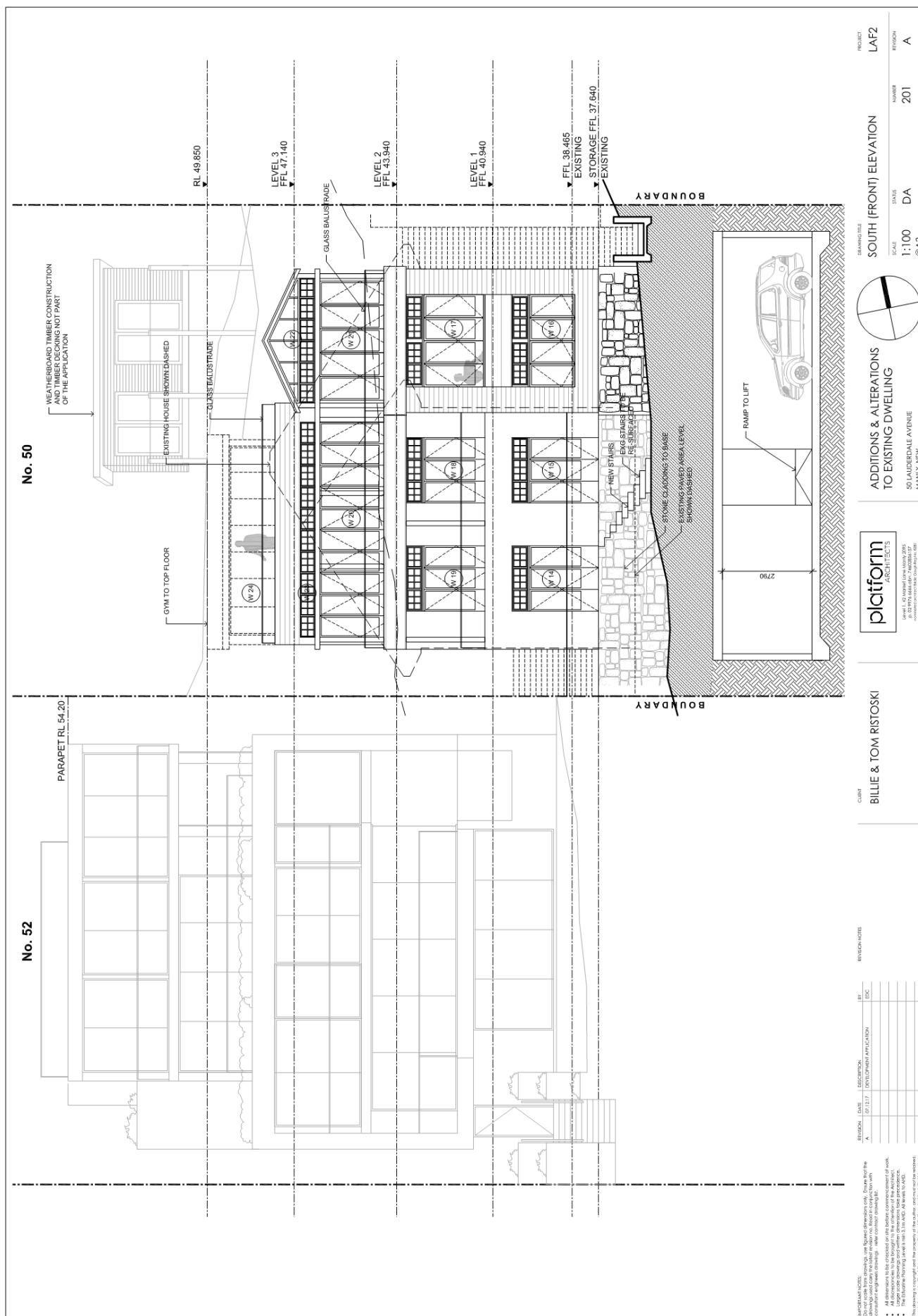
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

25. **Outbuilding**

The outbuilding to the rear of the site is not part of this consent.

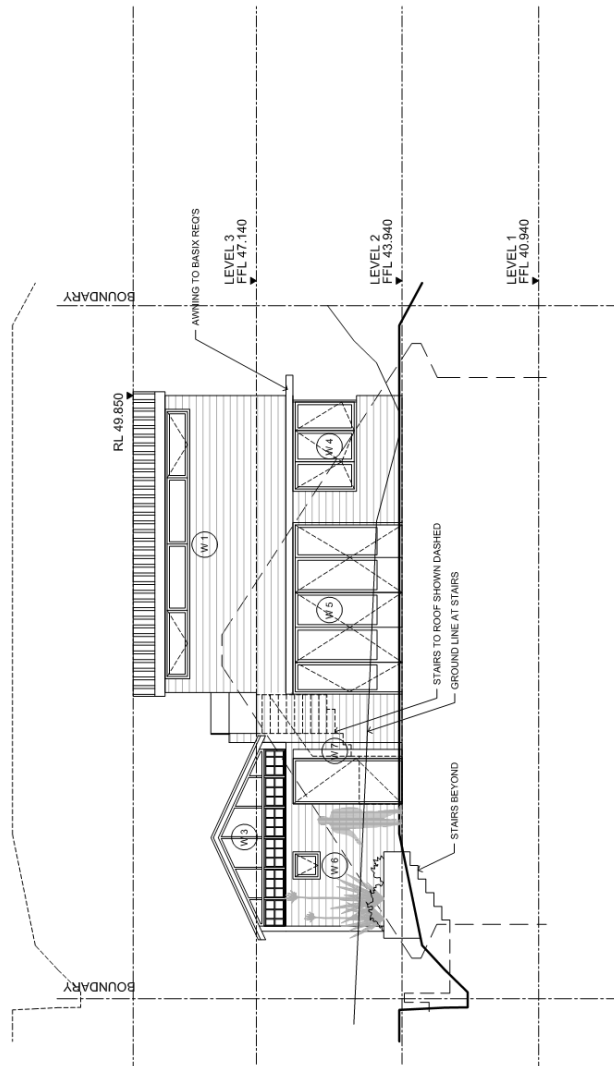
Reason: The outbuilding is existing on the subject site. (DACPLGOG1).











PROJECT	LAF2
REVISION	A
NUMBER	204
DATE	DA
SCALE	1:100
BY	@A3



**ADDITIONS & ALTERATIONS
TO EXISTING DWELLING**
50 LAUDERDALE AVENUE
MANLY, NSW



CLIENT
BILLIE & TOM RISTOSKI

REVISION	DATE	DESCRIPTION	BY
1	07/11/17	FOR APPROVAL	EC

NOTES:
1. All dimensions are in millimetres unless otherwise stated.
2. All dimensions to be checked on the building prior to construction.
3. All dimensions to be checked on the building prior to construction.
4. All dimensions to be checked on the building prior to construction.
5. All dimensions to be checked on the building prior to construction.
6. All dimensions to be checked on the building prior to construction.
7. All dimensions to be checked on the building prior to construction.
8. All dimensions to be checked on the building prior to construction.
9. All dimensions to be checked on the building prior to construction.
10. All dimensions to be checked on the building prior to construction.

ITEM 3.4

**MOD2017/0316 - 26 BEATTY STREET, BALGOWLAH HEIGHTS -
MODIFICATION OF DEVELOPMENT CONSENT DA0085/2016
GRANTED FOR DEMOLITION OF EXISTING STRUCTURES AND
CONSTRUCTION OF A NEW DWELLING**

REPORTING MANAGER

Rodney Piggott

TRIM FILE REF

2018/183570

ATTACHMENTS

- 1** [↓](#) **Assessment Report**
- 2** [↓](#) **Site and Elevation Plans**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

That Modification Application No. Mod2017/0316 for Modification of Development Consent DA0085/2016 granted for demolition of existing structures and construction of a new dwelling on land at Lot 2 DP 217340, 26 Beatty Street, BALGOWLAH HEIGHTS be **approved** in accordance with the recommendations in the assessment report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2017/0316
Responsible Officer:	Benjamin Price
Land to be developed (Address):	Lot 2 DP 217340, 26 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Modification of Development Consent DA0085/2016 granted for demolition of existing structures and construction of a new dwelling
Zoning:	Manly LEP2013 - Land zoned E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Domenico Morello Giuseppe Morello Samina Morello
Applicant:	Domenico Morello
Application lodged:	14/12/2017
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	21/12/2017 to 29/01/2018
Advertised:	Not Advertised
Submissions Received:	6
Recommendation:	Approval

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the

- development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Manly Development Control Plan - 4.1.2.1 Wall Height

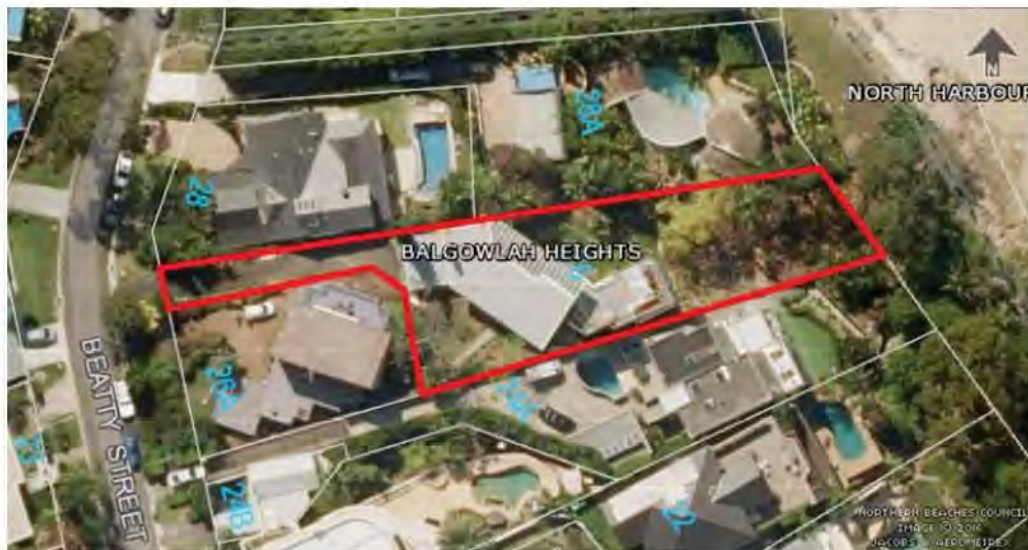
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 2 DP 217340 , 26 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The subject property is commonly known as 26 Beatty Street, Balgowlah and legally known as Lot 2 in DP 217340. The property is a battleaxe allotment and the subject site is the rear allotment. The subject site is located along the eastern side of Beatty Street. The property is accessed through an access handle which provides vehicular access to the subject site from Beatty Street. The site currently contains a multilevel dwelling and attached garage constructed to achieve the approved development application 85/2016. The property slopes from front to the rear towards the foreshore.

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:

DA85/2016 - for demolition and construction of a three (3) storey dwelling house with a triple garage, new driveway, front fence, retaining wall, removal of ten (10) trees, landscaping, swimming pool with spa and deck

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes:

- Erection of Balustrading to roof including an external access hatch/skylight
- Modifications to the external materials and colours

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

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 DA85/2016, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 96(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 96(1A) - 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 proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
(b) 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 development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA85/2016.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan 2011 and Manly Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Public Exhibition" in this report.

Section 79C Assessment

In accordance with Section 96(3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This</p>

Section 79C 'Matters for Consideration'	Comments
	<p>matter has been addressed via a condition in the original consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 79C (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) 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) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (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.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 6 submission/s from:

Name:	Address:
Mr Robert Semsarian	24 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Ms Elizabeth Johnston	124 Beatrice Street BALGOWLAH HEIGHTS NSW 2093
Mrs Elizabeth Karen Johnston	22 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Mrs Greer Anne Couston	25 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Ms Robyn Kim Powell	24 B Beatty Street BALGOWLAH HEIGHTS NSW 2093
Mrs Deborah Hui-Ling Priddle	31 Beatty Street BALGOWLAH HEIGHTS NSW 2093

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

- Privacy
- View loss including view loss due to potential structures/furnishings erected
- Non-compliance with building height control
- Non-compliance with Manly DCP 2013
- Precedent of roof top decks
- hard floor area ratio (Floor Space Ratio)
- unapproved works
- Overdevelopment
- not consistent with the surrounding neighbourhood

The matters raised within the submissions are addressed as follows:

- Privacy
Comment:
The proposal has been assessed below with regard to the objectives of Clause 3.4.2 Privacy and Security. In summary the proposal has adequate physical separation from the surrounding properties to ensure no unreasonable privacy impacts.
- View loss including view loss due to potential structures/furnishings erected
Comment:
The proposed development has been assessed below and found to achieve an acceptable level of view sharing. A condition of consent is recommended to ensure no structures such as umbrellas are erected on the roof.
- Non-compliance with building height control
Comment:
The non-compliance has been assessed below. In summary the non-compliance was found to be consistent with the objectives of the control and the E3 Environmental Management Zone.
- Non-compliance with Manly DCP 2013
Comment:
All non-compliances with the Manly DCP 2013 have been assessed below and found to be satisfactory.
- Precedent of roof top decks
Comment:
Any further Applications for rooftop decks in the area will undergo a merit assessment and be determined accordingly.
- hard floor area ratio (Floor Space Ratio)
Comment:
The proposal will not add to the hard floor area or Floor Space Ratio
- unapproved works
Comment:
In accordance with the decision by the NSW Land and Environment Court in Windy Dropdown Pty Ltd v Warringah Council [2000] NSWLEC 240 modifications may be granted consent retrospectively provided they result in substantially the same development for which consent was originally granted and that there is no sound planning reason to refuse the application. In this regard the proposed modifications are considered to be satisfactory for

approval, subject to conditions.

- Overdevelopment

Comment:

The proposed glass balustrade is transparent and will not add to the visual bulk of the development. The proposal has been assessed below and was found to be satisfactory.

- not consistent with the surrounding neighbourhood

Comment:

A merit assessment has been conducted and the proposal has been found to be satisfactory. The proposed height of the roof area is consistent with the surrounding development and the modifications will not significantly add to the bulk or scale of the development.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

No referrals were sent in relation to this application

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

The proposal will remain consistent with the commitments of the BASIX Certificate submitted with the original application.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	13.7m	14.7m - 10.6m	72%	No

Compliance Assessment

Clause	Compliance with Requirements
Part 4 Principal development standards	No
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
Part 6 Additional local provisions	Yes

Detailed Assessment

4.6 Exceptions to development standards

This application has been made under Section 96 of the Environmental Planning and Assessment (EP&A) Act 1979, which is a free standing provision that in itself authorizes the development to be approved despite any breach of development standards. Section 96 is subject to its own stand-alone tests and does not rely upon Clause 4.6 in order to determine the modification application. In this regard, the merits of the departure have been assessed below with regards to the objectives of Clause 4.3 Height of buildings, the underlying objectives of the E3 Environmental Management Zone and Clause 4.6 Exceptions to development standards of the Manly LEP 2013.

The following assessment of the variation to Clause 4.3 - Height of Buildings has taken into consideration the questions established in *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46.

Requirement:	8.5m
Proposed:	14.7m-10.6m
Is the planning control in question a development standard?	YES
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	72%

The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the MLEP 2013 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

(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 proposal is for a glass balustrade and access hatch on the approved roof area. The glass balustrade is clear and is not visually prominent from the streetscape. As such it does not result in a significant change to the roof form nor any significant impact on the streetscape character of the locality. The proposed access hatch is higher up the slope of the site to minimise the overall height of the structure and is consistent with the prevailing building height of the neighbouring properties. Furthermore the site is located on a battle axe lot and has a significant setback from Beatty Street. The proposed development is of a height and roof form that is consistent with the topographic landscape, prevailing building height and will not result in any unreasonable impacts on the streetscape character of the locality.

b) to control the bulk and scale of buildings,

Comment:

The proposed access hatch is consistent with the prevailing building height of the locality and the clear glass balustrade does not result in any significant increase to the perceived bulk or scale of the development. The proposal does not result in an unreasonable bulk and scale within the locality.

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:

A view loss assessment was conducted below with regard to the Views Planning Principle established by the NSW Land and Environment Court and the objectives of Clause 3.4.3 Maintenance of Views of the Manly DCP 2013. In summary the proposal was found to be satisfactory subject to the recommended conditions of consent.

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 modifications will not result in any significant increase in overshadowing in the locality. The proposal will 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.

Comment:

The proposed balustrade and access hatch will not result in a significant increase to the height and bulk of the development on the site. The proposal has adequate regard to the environmental protection zone and the existing vegetation and topography of the surrounds. The proposal will not conflict with the bushland or surrounding land uses.

What are the underlying objectives of the zone?

In assessing the developments non-compliance, consideration must be given to its consistency with the underlying objectives of the E3 Environmental Management zone.

The underlying objectives of the E3 Environmental Management zone

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

Comment:

The proposal is located over the existing built form and will not result in any unreasonable impact on the areas ecological, scientific, cultural or aesthetic values.

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

Comment:

The proposed development will not result in any unreasonable impacts on the abovementioned 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 modifications will not impact the tree canopies and will not dominate the natural scenic qualities of the foreshore.

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

Comment:

The proposal will not negatively impact on nearby foreshores, significant geological features and bushland.

- *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 located over the existing developed form and will not create any additional hard surfaces.

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

Comment:

The proposed balustrade is transparent and will not add to the bulk of the building. The proposed access hatch is located further up the slope to minimise the overall height of the development. The proposal is of a height and bulk that is consistent with the surrounding properties and has adequate regard to the existing vegetation and topography.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

(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.

Comment:

The proposed non-compliance is consistent with the objectives of the development standard and will not result in any unreasonable impacts within the locality. The requested degree of flexibility is appropriate in this circumstance.

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Comment:

The proposal is appropriately designed to ensure no unreasonable impacts within the locality. The proposed degree of flexibility is satisfactory in this circumstance.

(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.

(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.

Comment:

This application has been made under Section 96 of the Environmental Planning and Assessment (EP&A) Act 1979, which is a free standing provision. As the application is not subject to Clause 4.6 the applicant is not required to submit a formal Clause 4.6 application. However, the Statement of Environmental Effects submitted with the application has provided the following justification as to the variation:

The balustrading extends above the LEP Height of Buildings limit, but does not create a non-compliance as the existing building has already been approved over the height limit. Given this is a minor transparent element it does not in any way contribute to the bulk or perceptible height of the building and does not offend the objectives of the standard as discussed below:

(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: There is no change to the built form and the building has been approved to step down the site with a reduced upper level concentrated to the western end of the site.

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

Comment: The perceptible scale of the building is not changed, the roof hatch is centralised, limited in area and the balustrade is clear glazed making it quasi non visible.

(c) to minimise disruption to the following:

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

Comment: The works are receive in terms of siting and materiality that within the surrounding landscape and layering of built form is not detectable from public places.

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

Comment: The works do not have any notable obstruction or impact on view particularly given the expansive panoramic views available to surrounding properties.

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

Comment: Views between public places are not affected.

(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 works do create any overshadowing of neighbouring living areas or private open spaces areas, and does not contribute to overshadowing of any public places.

(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 proposed works do not create any additional visual bulk such as to cause conflict with bushland or surrounding land uses.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

Comment:

The statement of environmental effects adequately demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances and there are sufficient environmental planning grounds to justify the non-compliance.

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

Comment:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E3 Environmental Management zone in the MLEP 2013.

(b) the concurrence of the Director-General has been obtained

Comment:

This application has been made under Section 96 of the Environmental Planning and Assessment (EP&A) Act 1979, which is a free standing provision. This application does not require the concurrence of the Director General.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1163	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	North: 8m (based on gradient 1:4+)	8.8m	11m	No
	South: 8m (based on gradient 1:4+)	12.7m	14.7m	No
4.1.4.2 Side Setbacks	North 4.9m	North 2m	North 2m	No

	South 3.67m (based on wall height)	South 0.8m-2.8m	South 0.8m-2.8m	
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (697.8m ²)	50%(580.8m ²) calculated from approved plans	60.34% (701.7m ²)	No
	Open space above ground 25% of total open space (175.4m ²)	14.7% (103.2m ²) calculated from approved plans	31.9% (224.1m ²)	

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.2.1 Wall Height	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.4.2 Side setbacks and secondary street frontages	No	Yes
4.1.4.4 Rear Setbacks	Yes	Yes
4.1.4.5 Foreshore Building Lines and Foreshore Area	Yes	Yes
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	Yes	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements	No	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.1.1 Additional matters for consideration	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

The proposal also includes modification to the external finishes in particular modification of the outer edges of the roof from the approved grey finish to white. Clause 3.4 Amenity (Views, Overshadowing, Overlooking/ Privacy, Noise) c) recommends external finishes minimise reflectivity. After a visit to the site and the surrounding properties it is evident the development does not result in any excessive glare or reflectivity nuisance to the neighboring properties.

3.4.2 Privacy and Security

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

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

The balustrade of the rooftop deck has a 1.5m setback from the northern and eastern elevations. The setback from the edge of the roof ensures that overlooking of the neighbouring properties is minimised. The southern balustrade has a 0.4m setback from the southern elevation. Adjacent to this elevation is private open space and a swimming pool of the neighbouring property. It is recommended a condition be imposed to require the southern balustrade be setback 1.5m from the edge of the roof on the southern side. Subject to the recommended condition of consent the proposal will not result in any unreasonable overlooking of the neighbouring properties. The rooftop deck has adequate physical separation from the surrounding properties to ensure no unreasonable loss of visual or acoustic privacy within the locality.

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

The proposal subject to the recommended conditions of consent will not result in any unreasonable impacts on privacy while maintaining access to light and air. The proposal will achieve a balanced outlook.

Objective 3) To encourage awareness of neighbourhood security.

The proposal will encourage an awareness of neighborhood security within the locality.

3.4.3 Maintenance of Views

During the notification period a number of objections raised concerns regarding a loss of views due to the development. An assessment of the view loss was conducted below with regard to the views planning principle established by the NSW Land and Environment Court .

"The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

The views affected are water views.

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

The views are obtained from the living rooms, bedrooms and private open spaces of the affected properties.

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

The following were taken from the living room and terrace of 24 Beatty Street.



These photos demonstrate that the proposal does not result in any significant view loss from 24 Beatty

Street.

The following photograph was taken from the terrace of the property at 24b Beatty Street.



The photograph demonstrates that the proposal results in minor view loss due to the access hatch.

The following photograph was taken from the dining room in a sitting position of 25 Beatty Street.



The photograph demonstrates the proposal results in a negligible impact on the views of 25 Beatty Street.

The following photograph was taken from the bedroom of 31 Beatty Street.



This photograph demonstrates that the proposal does not result in any significant obstruction of views.

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

The above photographs demonstrate that the proposal does not result in any significant loss of views from 31, 25 and 24 Beatty Street. The view loss from 24b Beatty street is negligible and is a result of the access hatch which is compliant with the height of buildings control. The proposed development is acceptable and will achieve a reasonable level of view sharing. A number of the submissions raised concerns regarding the affect of shading structures and furniture on the views. Given the exposure of the rooftop terrace to the elements the likelihood of the occupant to place shading structures on the roof is considered to be high. These structures would breach the building height control and result in an unreasonable loss of views to the surrounding properties. To ensure the proposal does not result in any unreasonable loss of views an ongoing condition of consent is recommended to prohibit the placement of furniture or shading structures on the roof terrace.

An assessment of the proposal with regard to the objectives of Clause 3.4.3 Maintenance of Views of the Manly DCP 2013 has been conducted below.

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

The proposal subject to the conditions of consent will provide appropriate view sharing for both the

future and existing development.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths). The proposal has been assessed above in accordance with the views planning principle established by the NSW Land and Environment Court and was found to provide for adequate view sharing within the locality.

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan. The proposal will not result in any unreasonable view loss or view creep subject to the recommended conditions of consent.

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

The proposal is not compliant with the wall height control of the Manly DCP 2013 due to the addition of the glass balustrades. The Manly DCP 2013 does not contain objectives relating to this control but refers to the objectives of Clause 4.3 Height of Buildings of the Manly LEP 2013 as having particular relevance. An assessment of the non-compliance with regard to the relevant objectives has been conducted 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,

Comment:

The proposal is for a glass balustrade and access hatch on the approved roof area. The glass balustrade is clear and is not visually prominent from the streetscape. As such it does not result in a significant change to the roof form nor any significant impact on the streetscape character of the locality. The proposed development is of a height and roof form that is consistent with the topographic landscape, prevailing building height and will not result in any unreasonable impacts on the streetscape character of the locality.

b) to control the bulk and scale of buildings,

Comment:

The proposed clear glass balustrade does not result in any significant increase to the perceived bulk or scale of the development. The proposal does not result in an unreasonable bulk and scale within the locality.

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:

A view loss assessment was conducted below with regard to the Views Planning Principle established by the NSW Land and Environment Court and the objectives of Clause 3.4.3 Maintenance of Views of the Manly DCP 2013. In summary the proposal was found to be satisfactory subject to the

recommended conditions of consent.

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 modifications will not result in any significant increase in overshadowing in the locality. The proposal will 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.

Comment:

The proposed development will not result in a building height and bulk that is inconsistent with the zone, topography, bushland and surrounding land uses.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.2.1 Wall Height

The proposal is not compliant with the wall height control of the Manly DCP 2013 due to the addition of the glass balustrades. The Manly DCP 2013 does not contain objectives relating to this control but refers to the objectives of Clause 4.3 Height of Buildings of the Manly LEP 2013 as having particular relevance. An assessment of the non-compliance with regard to the relevant objectives has been conducted 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,

Comment:

The proposal is for a glass balustrade and access hatch on the approved roof area. The glass balustrade is clear and is not visually prominent from the streetscape. As such it does not result in a significant change to the roof form nor any significant impact on the streetscape character of the locality. The proposed development is of a height and roof form that is consistent with the topographic landscape, prevailing building height and will not result in any unreasonable impacts on the streetscape character of the locality.

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

Comment:

The proposed clear glass balustrade does not result in any significant increase to the perceived bulk or scale of the development. The proposal does not result in an unreasonable bulk and scale within the locality.

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:

A view loss assessment was conducted below with regard to the Views Planning Principle established by the NSW Land and Environment Court and the objectives of Clause 3.4.3 Maintenance of Views of the Manly DCP 2013. In summary the proposal was found to be satisfactory subject to the recommended conditions of consent.

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 modifications will not result in any significant increase in overshadowing in the locality. The proposal will 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.

Comment:

The proposed development will not result in a building height and bulk that is inconsistent with the zone, topography, bushland and surrounding land uses.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

The proposal is not compliant with the side setback control due to the increased wall height from the clear glass balustrades. The proposal will maintain the approved side boundary setbacks of the building. An assessment of the proposal with regard to the objectives of the control has been conducted below.

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.

The proposal is setback from the street and will maintain the spatial proportions of the approved development on the site. The proposal will maintain the existing streetscape within the locality.

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.*

See also objectives at paragraph 3.4 Amenity.

The proposal has been assessed above with regard to the objectives of Clause 3.4.2 Privacy and Security of the Manly DCP 2013 and was found to be satisfactory subject to conditions.

The proposal will not result in any unreasonable overshadowing of the neighboring properties.

The proposal has been assessed above with regard to clause 3.4.3 Maintenance of Views of the Manly DCP 2013 and the Views Planning Principle established by the NSW Land and Environment Court and was found to be satisfactory subject to conditions.

The proposal does not result in any unreasonable impacts of the streetscape or traffic conditions within the locality.

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

The requested flexibility is satisfactory in this circumstance.

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.

The proposal will maintain the natural features of the site.

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

The proposal will not impact any bushfire asset protection zones.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP 2013 (inclusive of Part 3) and the objectives specified in section 5 (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

The proposal is not compliant with the total open space and above ground open space controls of the Manly DCP 2013. It is noted that the total open space will be increased from the approved situation. An assessment of the non-compliance with regard to the objectives of the control has been conducted below.

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

The proposal does not include the removal of any important landscape features or vegetation.

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.

The proposal will maintain the soft landscaped areas and the approved landscape plan. The proposal is not compliant with the above ground open space control however will maintain adequate open space at ground level to achieve an adequate level of amenity for the dwelling.

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

The proposal will not result in any unreasonable overshadowing of the surrounding area. The proposal was assessed above with regard to the objectives of Clause 3.4.2 Privacy and Security of the Manly DCP 2013 and was found to achieve an adequate level of privacy within the locality. The proposal was assessed above in accordance with the Views Planning Principle established by the NSW Land and Environment Court and the objectives of Clause 3.4.3 Maintenance of Views of the Manly DCP 2013. In summary the development was found to achieve adequate view sharing subject to the conditions of consent.

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

The proposal will maintain the approved impervious area on the site.

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

The proposal will not result in the spread of weeds or the degradation of private and public open space.

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

The proposal does not include the removal of any wildlife habitat or wildlife corridors.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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

Manly Section 94 Development Contributions Plan

S94 Contributions are not applicable to this application.

CONCLUSION

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

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

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

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

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

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. Mod2017/0316 for Modification of Development Consent DA0085/2016 granted for demolition of existing structures and construction of a new dwelling on land at Lot 2 DP 217340, 26 Beatty Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA04 Roof and Site Plan - RevB	4 December 2017	Aleksandar Design Group
DA06 Elevations North and South - Rev B	4 December 2017	Aleksandar Design Group
DA07 Elevations East and West - Rev B	4 December 2017	Aleksandar Design Group

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

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

B. Add Condition ANS07A to read as follows:

Privacy

The balustrade is to be setback a minimum of 1.5m from the southern edge of the building.

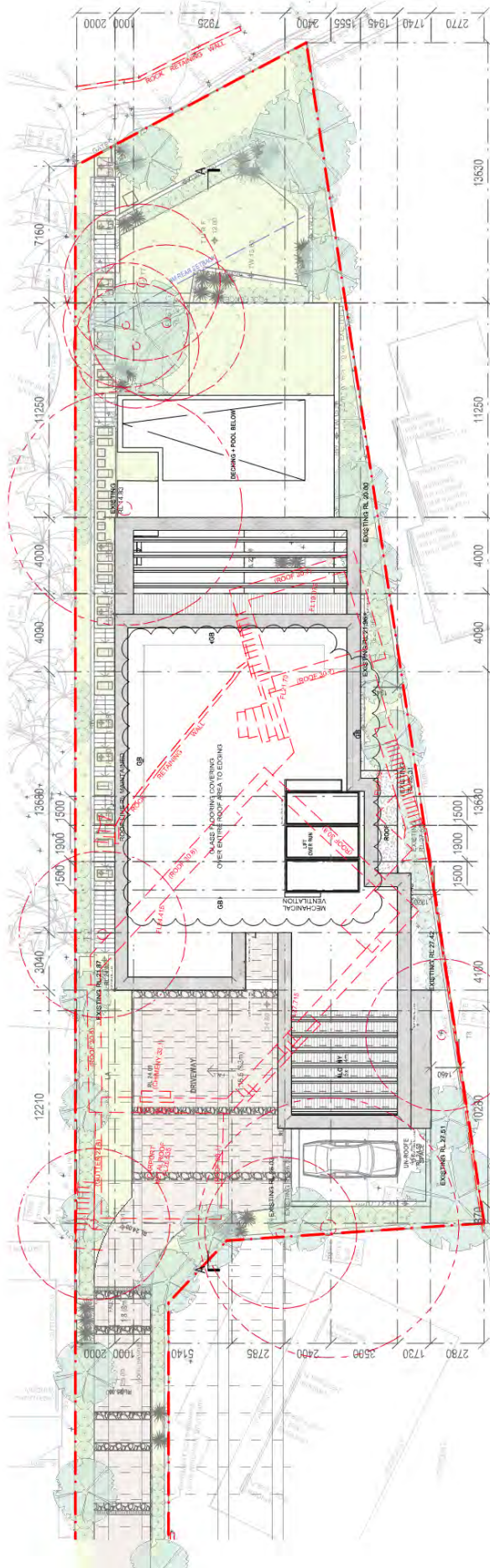
Reason: To minimise the loss of privacy to the neighbouring property.

C. Add Condition ANS07B to read as follows:

Views



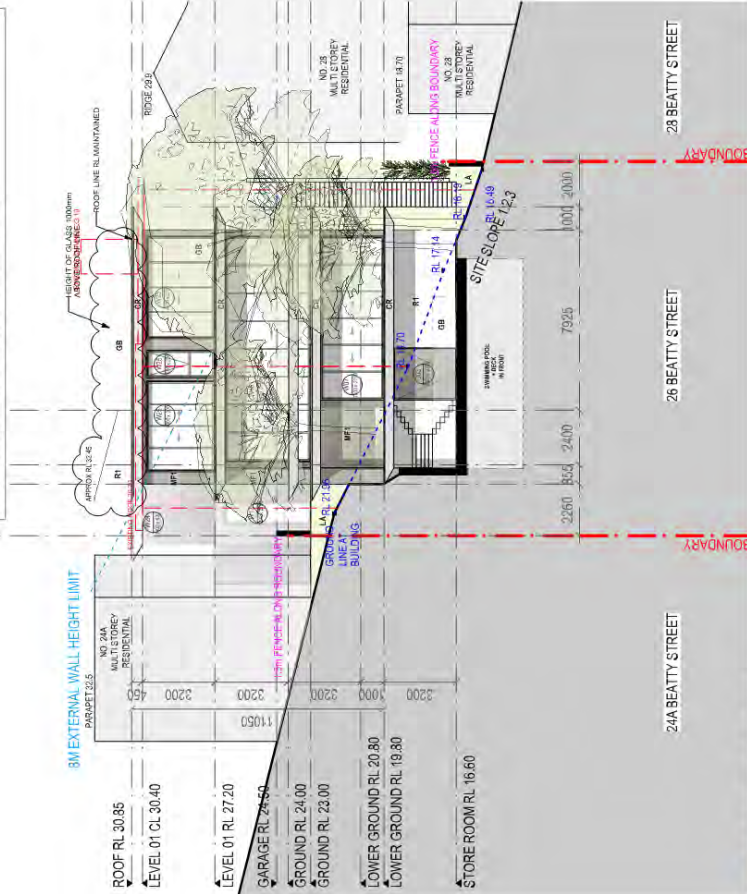
No structures temporary or permanent are to be placed on the roof terrace.
Reason: To minimise loss of views.



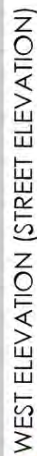
ROOF + SITE PLAN

<p>Project No. 15086</p> <p>Revision DA04 B</p> <p>Scale 1:200 R.A.S.</p> <p>Drawn By HFC</p> <p>Checked By A.J.</p>	<p>Title ROOF + SITE PLAN</p>	<p>Revision S. A.</p> <p>25th POOL FOR DA SUBMISSION</p> <p>4/10/17</p> <p>14/1/16</p>	<p>Address 26 BEATTY STREET, BALGOWLAH HEIGHTS</p>	<p>Client MR DOMENIC MORELLO</p>	<p>Architect Aleksandar Design Group 41 Albion Avenue, Paddington NSW 2021 02 9557 0333 02 9557 0333 02 9557 0333</p>
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EAST ELEVATION



KEY	GROUND LINE AT BUILDING FACE	PROJECT INFO	15086
—	RM EXTERNAL WALL HEIGHT LIMIT	Revision	
—		Drawing No.	DA07 B
—		1:200 @ A3	
—		BY	
—		Checked By	
—		Contract No.	

ELEVATIONS EAST + WEST

	NOCTURNE VIOLENCE -DOES RAISE	9/14/16 10/27/16
Title		

BEATTY STREET,
GOWLAH HEIGHTS

<p>26 BALC</p>	<p>26 BALC</p>
----------------	----------------

Client: _____

Star Design Group
 1 Avenue, Paddington NSW 2021
paddinggroup.com.au
 (02) 9550 9900 (office registration only 7:30-5)
 (02) 9550 9901 (mobile only 5-7)

Architect
Aleksandra
41 Albion
aleksandra
commercial architect
residential architect
interior architect

ITEM 3.5

**DA2017/1051 - 94 BOORALIE ROAD, TERREY HILLS -
DEMOLITION AND SITE WORKS FOR CONSTRUCTION OF A
DWELLING HOUSE, INCLUDING SWIMMING POOL, TENNIS
COURT AND PAVILION, SHED, OUTBUILDING (HOME OFFICE),
DRIVEWAY, LANDSCAPING, DAM AND DRAINAGE WORK**

REPORTING MANAGER

Anna Williams

TRIM FILE REF

2018/183610

ATTACHMENTS

- 1** [↓](#) **Assessment Report**
- 2** [↓](#) **Site and Elevation Plans**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

That Development Application No. DA2017/1051 for Demolition and site works for construction of a dwelling house, including swimming pool, tennis court and pavilion, shed, outbuilding (home office), driveway, landscaping, dam and drainage work be **approved** in accordance with the recommendations in the assessment report.



REPORT TO DEVELOPMENT DETERMINATION PANEL

Meeting held on 28 March 2018

94 Booralie Road Terrey Hills - Demolition and site works for construction of a dwelling house, including swimming pool, tennis court and pavilion, shed, outbuilding (home office), driveway, landscaping, dam and drainage work

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2017/1051
Responsible Officer:	Renee Ezzy
Land to be developed (Address):	Lot 264 DP 752017, 94 Booralie Road TERREY HILLS NSW 2084
Proposed Development:	Demolition and site works for construction of a dwelling house, including swimming pool, tennis court and pavilion, shed, outbuilding (home office), driveway, landscaping, dam and drainage work
Zoning:	Warringah LEP2011 - Land Zoned RU4 Primary Production Small Lots
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Katherine Anne King
Applicant:	Castlepeake Architects
Application lodged:	25/10/2017
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	07/11/2017 to 23/11/2017
Advertised:	Not Advertised
Submissions Received:	5
Recommendation:	Approval



Estimated Cost of Works:	\$ 2,837,417.00
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ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks

SITE DESCRIPTION

Property Description:	Lot 264 DP 752017 , 94 Booralie Road TERREY HILLS NSW 2084
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Booralie Road.</p> <p>The site is regular in shape with a frontage of 76.46m along Booralie Road and a depth of 255.58m. The site has a surveyed area of 17,720m².</p> <p>The site is located within the RU4 Primary Production Small Lots zone and accommodates a two storey dwelling house, elevated swimming pool and a stable building with a 1.8m high lapped and capped fence along Booralie Road.</p> <p>The site has a fall from north to south of approximately 37.5m</p>

U/2011/1001

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	<p>or 14.7%.</p> <p>The site currently contain numerous trees located predominantly around the boundaries of the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by similar sized rural residential properties most with swimming pools and/or equine facilities.</p>
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Map:



SITE HISTORY

Development Application No. DA2010/1310 for construction of a dam, retaining walls and associated landscaping was refused by Council on 7 January 2011

Development Application No. DA2017/1051 for demolition of the existing house and outbuildings and construction of a new two storey, five bedroom dwelling, garage, home office pavilion, landscaping and swimming pool was lodged with Council on 25 October 2017. This application is the subject of this assessment.

On 22 December 2017, the Applicant submitted amended plans in response to submissions received during the notification period. The amendments include:

- Rotation of the proposed shed east-west with a setback of between 5m and 6.68m from the western boundary.

PROPOSED DEVELOPMENT IN DETAIL

DA2017/1051

Page 3 of 36



The proposed development seeks consent for a new dwelling, garage, home office pavilion, tennis court and pavilion, shed, landscaping and swimming pool. The proposed works will require excavation at the rear of the dwelling of up to 4.5m (RL191) and up to 2.0m along the southern end of the shed (RL168).

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under</p>



Section 79C 'Matters for Consideration'	Comments
	<p>the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Public Exhibition" in this report.
Section 79C (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.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Mrs Katrina Makhoul	96 Booralie Road TERREY HILLS NSW 2084
Duffys Forest Residents Association	376 Joalah Road DUFFYS FOREST NSW 2084



Name:	Address:
Nerses Nalbandian Ms Lesley Dawn Nalbandian	47 / 0 Tooronga Road TERREY HILLS NSW 2084
Terrey Hills Progress Association	PO Box 267 Terrey Hills NSW 2084
Ms Pamela Annette Acott	5 Currong Circuit TERREY HILLS NSW 2084

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

- *The proposed 'shed' will primarily be for the purpose of housing a helicopter. The property has been used for the takeoff and landing of helicopters. The noise of helicopters landing and taking off would have a negative effect on the equestrian industry.*
- *Helipads are prohibited within the RU4 zone. There is currently no governing authority to control impacts associated with unrestricted helicopter movements and Council needs to address this issue.*
- *Restriction needs to be placed by Council on the use of the proposed shed which prohibits storage of a helicopter. Council should consider how they could condition any consent of the DA to ensure that the shed is not used to facilitate helicopter activity or prohibited land use.*
- *A permanent warning light and signage have been installed on the northern boundary adjoining the Perimeter Trail in Ku-ring-gai Chase National Park.*

Comment:

The application and supporting documentation received by Council makes no reference to the use of the proposed shed or any other part of the site for a helipad. Pursuant to Warringah LEP 2011, a helipad is defined as:

"helipad means a place not open to the public used for the taking off and landing of helicopters."

This land use is prohibited within the RU4 zone and no evidence has been provided to demonstrate that consent under the previous EPI, Warringah Local Environment Plan 2000 was sought or issued. Accordingly, no consent is issued or implied by this assessment. While the site may not be operated as a helipad for the purpose of helicopters taking off and landing, Council cannot restrict the storage of helicopters on the site. A condition of consent will be imposed on this application in relation to the use of the land. This issue does not hold determining weight.

While evidence of the warning light and signage have been provided, there was no evidence of any helicopter activity when the site was visited. As there is no consent for this form of activity, it is recommended that Council's Compliance section be contacted should this occur in the future.

- *Concern the shed is close to the boundary of neighbouring property and effect on horse arena and associated equestrian activities.*
- *Impact on sunlight access required for: pasture improvement and quality of soil; to maintain healthy stables without the susceptibility of fungi and other parasites that would effect the health of our horses and chickens; and to grow our recently planted 'mature' trees (in anticipation of said structure to provide screening) and our other gardens.*



Comment:

In response to the concerns raised by the neighbouring property, the Applicant has submitted an amended plan which re-orientates the proposed shed east-west instead of north-south so that the short end of the shed is parallel with the boundary instead of the long end.

In terms of overshadowing impact, the proposed shed will cast some minor shadows onto the adjoining property during the morning up to approximately 10am in mid winter.

Notwithstanding the extent of shadow impact is considered minor, it is a recommendation of this assessment that the proposed shed comply with the required 10m side boundary setback. A suitable condition has been incorporated in this regard. This issue does not hold determining weight.

- ***No objection as long as drainage is done properly and water taken care of on site and not running into neighbours property and land levels are not changed.***

Comment:

Council's Development Engineers have reviewed the proposed stormwater management for the site and have raised no objections to the design. Accordingly, this issue does not warrant amendment of the proposed development.

- ***The location of the shed within 10m of the side setback***

Comment:

As discussed above, the location of the proposed shed with a setback of between 5.0m and 6.6m from the western boundary is not supported. The site can comfortably support this structure with a compliant setback so a condition of consent has been recommended requiring this structure to maintain a 10m side setback. Subject to condition, this issue does not warrant refusal of the proposal.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments	
Environmental Health (unsewered lands)	Was sufficient documentation provided appropriate for referral?	YES
	Are the reports undertaken by a suitably qualified consultant?	YES
	Is there a proposed on site sewage management system or an impact to existing onsite sewage management system?	YES
	For residential applications have you considered AS1547 and Environmental Health & Protection Guidelines?	NO (absorption beds too close to a dam)
	For commercial applications have you considered Guidelines for Management Private Recycled Water Schemes and applied the residential guidelines where applicable?	N/A

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Internal Referral Body	Comments
	Are separate land application areas provided for pool water, waste water from the premises and storm water? YES
	Is approval to install and approval to operate applicable? - if so, recommend the DAO refer commercial waste water systems to Department of Energy & Water. YES
	General Comments The system itself appears to be sufficient, however the location of the absorption beds are located within a 40m of a waterway (existing pond). have spoken to the wastewater consultant Sean Harris on 21/11/17 and he is satisfied with removing the existing pond as there is no other location for the absorption bed to be located. Environmental Health recommends approval subject to the removal of the existing pond and compliance with the recommended buffer distances for on-site systems in the guidelines
	Recommendation APPROVAL - subject to conditions
	Comments completed by: Mary Shimon Date: 21 November 2017
Landscape Officer	No objections subject to conditions.
NECC (Development Engineering)	No development engineering objections are raised. The proposal is acceptable subject to conditions.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
Aboriginal Heritage Office	The application was referred to the Aboriginal Heritage Office who provided the following comments: <i>"Reference is made to the proposed development at the above area and Aboriginal heritage.</i> <i>There are known Aboriginal sites in the area although no sites are recorded in the current lot.</i> <i>If areas of in situ sandstone outcrop are in the proposed development area (such as overhangs over 1m in height or level platforms over 2m</i>

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External Referral Body	Comments
	<p>square), the Aboriginal Heritage Office would recommend a preliminary inspection ('due diligence' under the National Parks and Wildlife Act 1974) by a qualified Aboriginal heritage professional prior to any development. If there are no existing sandstone outcrops present (or if any outcrops that were present were properly excluded from future impacts), then no further assessment is required and the Aboriginal Heritage Office would not foresee any further Aboriginal heritage constraints on the proposal.</p> <p>Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council should be contacted."</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 553123S dated 7 August 2017).

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

Commitment	Required Target	Proposed
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Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	53

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Warringah Local Environmental Plan 2011

Is the development permissible?	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	9.2m	8.2%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)



Clause	Compliance with Requirements
4.6 Exceptions to development standards	Yes
5.9 Preservation of trees or vegetation	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard has taken into consideration the questions established in *Winter Property Group Limited v North Sydney Council* (2001) NSW LEC 46.

Requirement:	8.5m
Proposed:	9.2m
Is the planning control in question a development standard?	YES
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	8.2%

The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the WLEP 2011. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the WLEP 2011 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the WLEP 2011 are:

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

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

Comment:

The proposed dwelling is a two storey structure with dual, curved skillion architectural roof lines. The overall structure is considered commensurate in height and scale with other surrounding rural estates.

b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,



Comment:

The proposed dwelling is sufficiently separated from the closest adjoining neighbour to the west and is not considered to adversely impact on any views, privacy or solar access.

c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

Comment:

The proposed development is suitably set back from the adjoining National Park land and is not considered likely to create any adverse impacts on the scenic quality of this natural landscape.

d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,

Comment:

Due to the topography of the site which falls away from the front boundary toward the north, the proposed dwelling will have a finished roof level of approximately 194.78 which is lower than the finished level of the paved road section of Booralie Road which is RL198.53. Accordingly, the main dwelling will not be visible from the public domain at Booralie Road.

What are the underlying objectives of the zone?

In assessing the developments non-compliance, consideration must be given to its consistency with the underlying objectives of the RU4 Primary Production Small Lots zone.

The underlying objectives of the RU4 Primary Production Small Lots zone

- *To enable sustainable primary industry and other compatible land uses.*

Comment:

The proposed development includes construction of a rural residential dwelling with ancillary structures including a large shed store suitable for accommodating a range of rural land uses.

- *To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.*

Comment:

The proposed works are primarily residential in nature. Should primary industry enterprises be proposed at a future time, the site will adequately be able to accommodate any such use.

- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

Comment:

The site is adjoined by rural residential properties to the south, east and west with some of



these properties having equine facilities. The proposed development for a residential dwelling, separate office, tennis court and large shed are not considered to cause conflict with the adjoining properties. Following concerns about the size and proximity of the proposed shed, the Applicant has agreed to re orientate the shed so that the short facade faces the western neighbour reducing the visibility of this element of the design.

- *To minimise the impact of development on long distance views of the area and on views to and from adjacent national parks and bushland.*

Comment:

The site contains a significant slope from the street toward the northern rear boundary adjoining the National Park. The proposed development will be visible from areas within the National Park due to its elevation. Notwithstanding, the works within the site are considerably setback from the boundary with the National Park with the closest structure being the shed set more than 62m from the boundary.

- *To maintain and enhance the natural landscape including landform and vegetation.*

Comment:

The proposed works are generally working with the levels of the site allowing large portions of the site to remain in its natural form. The different elements of the development have been sited to minimise excavation and impact across the site and adjoining properties.

- *To ensure low intensity of land use other than land uses that are primary industry enterprises.*

Comment:

The proposed land use is to remain rural residential in nature with a small home office. This use is considered low intensity.

- *To maintain the rural and scenic character of the land.*

Comment:

The proposed development is representative of surrounding substantial rural properties and will maintain the scenic aspects of the site currently available when viewed from the front boundary and front setback.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the WLEP 2011?

(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.

Comment:

The proposed height breach occurs over an architectural roof feature which is one of the integral features of the design. Notwithstanding the height breach, the maximum RL for this roof element



is at RL194.73 which is 0.89m lower than the existing ground level at the driveway entrance on the front boundary and 3.52m lower than the existing stable roof currently visible from the front gates. The small height breach of 0.7m (8.2%) is considered acceptable in this instance as the site contains significant changes in level and the works do not adversely affect any adjoining properties.

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Comment:

The breach in height in this application provides for superior architectural design features which enhance the relationship of the building form with the landscape.

(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.

(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.

Comment:

The applicant has submitted a request for variation under Clause 4.6 providing justification for the proposed height breach. The request for variation is supported.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

Comment:

The Applicant has provided the following justification:

"Strict compliance with the building height requirement is seen as unnecessary, given there are no negative impacts as a result of the proposed non-compliance. There are no impacts on the amenity of the neighbours with regard to view loss, privacy, overshadowing as a result of the proposal.

The bulk and scale of the dwelling is appropriate for the size of the site and the surroundings,
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especially given the limited views to the dwelling from the public domain at Booralie Rd.

Compliance is unreasonable as there is the potential for a strictly compliant proposal to have far greater impacts on the amenity of the neighbours and general public. The well considered siting of the building provides far greater outcomes given the specific constraints applicable to the subject site.

The negligible impact of overshadowing, view loss and privacy provide justification for the suitability of the proposal. Additionally, the bulk and scale of the proposal is consistent with surrounding development and not largely visible from the public domain. The height limit is exceeded as a result of the topography of the site."

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

Comment:

For reasons detailed above, the proposal is considered to be consistent with the objectives of the RU4 Primary Production Small Lots zone in the WLEP 2011.

(b) the concurrence of the Director-General has been obtained

Comment:

Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of buildings Development Standard is assumed.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	8m	11.1%	No
B5 Side Boundary Setbacks	East - 10m	Home Office - 11.24m Pool - 4.76m	Nil 52.4%	Yes No
	West - 10m	Dwelling - 15.0m	Nil	Yes
		Tennis court - 4.37m- 6.38m Shed - 5.0m-6.68m	56.3%- 36.2% 50%-33.2%	No No
B7 Front Boundary Setbacks	20m	15.7m-18.39m	21.5%- 8.05%	No
B9 Rear Boundary Setbacks	20m	Shed - 62.4m	N/A	Yes

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B12 National Parks Setback	20m	>20m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	30%	72.7%	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
B12 National Parks Setback	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D17 Tennis Courts	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes

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Clause	Compliance with Requirements	Consistency Aims/Objectives
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B5 Side Boundary Setbacks

Description of non-compliance

The proposed development includes a number of non compliances with the side boundary setback requirement including:

- Proposed swimming pool, deck and vegie garden - 4.439m (location and setback supported)
- Proposed 'future tree house' (**not** supported)
- Tennis Court - 4.445m-6.478m (location and setback supported)
- Shed - 5.0m-6.6m (setback **not** supported)

Merit consideration

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

- *To provide opportunities for deep soil landscape areas.*

Comment:

The site, notwithstanding the various non-compliance provides sufficient areas for deep soil landscaping.

- *To ensure that development does not become visually dominant.*

Comment:

Swimming Pool

The proposed swimming pool structure and deck is hidden with a masonry wall which extend from the southern end of the main building at a height of 1.3m up to 2.9m at the northern end of the pool as the land falls away. These structures are supplemented by landscape plantings up to the boundary. In addition, the swimming pool is generally in alignment with the neighboring tennis court and clusters of trees on the adjoining property. This structure is not considered to be visually dominant and is supported.

Tree House

The proposed future tree house identified on the landscape masterplan is not supported. There is insufficient detail with the application in relation to the height of this structure within the side boundary setback. A condition of consent has been recommended for imposition to delete this element from the proposal.

Tennis Court

The tennis court is to be constructed at ground level along the western side of the site, with

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minimal excavation. While the tennis court is to contain a black chain wire fence, this structure is not considered to be visually dominant from the western neighbor due to the diaphanous nature of the fencing and as the finished level of the tennis court is approximately 3m lower than the neighbours swimming pool and approximately 7m lower than the ground level at their dwelling. Further, the planting plan for the site includes a length of screening trees along the boundary to provide a further buffer between properties. This element is supported.

Shed

The proposed shed in its amended location oriented east-west is located between 5.0m and 6.6m from the adjoining western boundary. This shed has a total height of 5.487m and is to be excavated into the southern face by approximately 2.0m. While the proposal includes a 2.4m high masonry wall adjacent to the shed location along the western boundary extending for a length of approximately 45m and a row of landscape screen planting, the proposed shed location is considered unnecessary and unacceptable this close to the boundary due to its size and bulk. As the site can easily accommodate this structure, it is recommended that the shed provide a compliant setback to the western boundary of 10m. Subject to condition providing a compliant side setback, this aspect of the proposed development is considered acceptable.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment:

As identified above, to ensure that the bulk and scale of the more significant structures being the shed is minimized from adjoining properties, it is recommended that the proposed shed be moved further to the east to provide a minimum 10m setback.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment:

The proposed development is located on a large semi rural allotment with a site area of approximately 1.772ha. With the proposed conditions relocating the proposed shed away from the western boundary, the proposed development is considered to adequately maintain a reasonable level of privacy, amenity and solar access.

- *To provide reasonable sharing of views to and from public and private properties.*

Comment:

The proposed development does not adversely affect any views to or from the site and is considered acceptable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B7 Front Boundary Setbacks

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Description of non-compliance

The proposed development includes a single storey detached office pavilion which extends into the front boundary setback. The proposed office has a setback of between 15.7m-18.3m.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The location of the proposed office pavilion is approximately 5m further behind the location of the existing two storey dwelling on the site and has a height of RL201.52. The site currently contains an existing 1.8m high lapped and capped timber fence along the Booralie Road street frontage. The proposed office pavilion encroaches approximately 95m² into the 1529m² front setback area and the site is considered to retain a sense of openness.

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

Comment:

The proposed site layout incorporating a separate office pavilion is not inconsistent with the pattern of development on surrounding properties.

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

Comment:

Due to the topography of the site and the existing fence across the front boundary, the proposed office pavilion will not be an obvious addition when viewed from the street. The existing two storey dwelling which is discreetly visible from street when viewed from certain angles only, has a maximum height 3.43m higher than the proposed office pavilion. Accordingly, the proposed structure within the front setback while a technical non-compliance does not adversely impact on the site or the surrounding visual quality of the streetscape.

- *To achieve reasonable view sharing.*

Comment:

There are no views affected by the proposed development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(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 effect 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

Warringah Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Warringah Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$ 2,837,417		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 26,955
Section 94A Planning and Administration	0.05%	\$ 1,419
Total	1%	\$ 28,374

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah 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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2017/1051 for Demolition and site works for construction of a dwelling house, including swimming pool, tennis court and pavilion, shed, outbuilding (home office), driveway, landscaping, dam and drainage work on land at Lot 264 DP 752017, 94 Booralie Road, TERREY HILLS, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
C01 - Rev DA - Colour & Finishes Sample Board	Aug 2017	Castlepeake Consulting Pty Ltd
DA00 - Rev DA - Site Analysis Plan	Aug 2017	Castlepeake Consulting Pty Ltd
DA01 - Rev DA - Site Plan (Part 1)	Aug 2017	Castlepeake Consulting Pty Ltd
DA02 - Rev DA1 - Site Plan (Part 2)	Dec 2017	Castlepeake Consulting Pty Ltd
DA03 - Rev DA - Home Office Pavilion Floor Plan	Aug 2017	Castlepeake Consulting Pty Ltd
DA04 - Rev DA - Upper Floor & Garage Plan	Aug 2017	Castlepeake Consulting Pty Ltd
DA05 - Rev DA - Lower Floor Plan	Aug 2017	Castlepeake Consulting Pty Ltd
DA06 - Rev DA - Tennis Pavilion & Court Plan	Aug 2017	Castlepeake Consulting Pty Ltd
DA07 - Rev DA - Home Office Elevations & Sections (Sheet 1)	Aug 2017	Castlepeake Consulting Pty Ltd
DA08 - Rev DA - Home Office Elevations & Sections (Sheet 2)	Aug 2017	Castlepeake Consulting Pty Ltd
DA09 - Rev DA - House Elevations	Aug 2017	Castlepeake Consulting Pty Ltd

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DA10 - Rev DA - House & Garage Sections (Sheet 1)	Aug 2017	Castlepeake Consulting Pty Ltd
DA11 - Rev DA - House & Garage Sections (Sheet 2)	Aug 2017	Castlepeake Consulting Pty Ltd
DA12 - Rev DA - House & Garage Sections (Sheet 3)	Aug 2017	Castlepeake Consulting Pty Ltd
DA13 - Rev DA - Tennis Pavilion & Shed Elevations & Sections (Sheet 1)	Aug 2017	Castlepeake Consulting Pty Ltd
A.01 - Cover Page/Site Plan (Shed)	July 2017	ICR Design Building Designers
A.02 - Rev A - Floor Plan/Roof Plan (Shed)	July 2017	ICR Design Building Designers
A.03 - Rev A - Elevations/Sections (Shed)	July 2017	ICR Design Building Designers
L01 - Rev I - Landscape Masterplan (1)	8 Sept 2017	Somewhere Landscape Architects
L02 - Rev H - Landscape Masterplan (1)	8 Sept 2017	Somewhere Landscape Architects
L03 - Rev D - Planting Plan (1)	8 Sept 2017	Somewhere Landscape Architects
L04 - Rev C - Planting Plan (2)	8 Sept 2017	Somewhere Landscape Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Preliminary Contamination Screening and Waste Classification Assessment	4 April 2014	Environmental Investigation Services
Bushfire Attack Level Assessment	18 December 2013	D.B Macarthur

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

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

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

2. **Approved Land Use**
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Nothing in this consent shall authorise the use of site/onsite structures as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house, home business and ancillary outbuildings.

A **dwelling house** is defined as:

"a building containing only one dwelling"

A **home business** is defined as:

"a business that is carried on in a dwelling, or in a building ancillary to a dwelling, by one or more permanent residents of the dwelling and that does not involve:

*(a) the employment of more than 2 persons other than those residents, or
(b) interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise, or*

(c) the exposure to view, from any adjacent premises or from any public place, of any unsightly matter, or

(d) the exhibition of any signage (other than a business identification sign), or

(e) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail, except for goods produced at the dwelling or building, but does not include bed and breakfast accommodation, home occupation (sex services) or sex services premises."

(development is defined by the Warringah Local Environment Plan 2011 (as amended) Dictionary)

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

Reason: To ensure compliance with the terms of this consent. (DACPLB03)

3. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be



appointed:

- A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
- A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative Requirement (DACPLB09)

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) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) 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.
- (d) 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.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) 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.
- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards



- (including but not limited) to:
- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Council Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Northern Beaches Council Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$ 2,837,417.00		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 26,955.46
Section 94A Planning and Administration	0.05%	\$ 1,418.71
Total	1%	\$ 28,374.17

The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating

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compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with Northern Beaches Council's Development Contributions Plan.

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 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, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

7. **Vehicle Crossings Application Formwork Inspection**

An application for street levels shall be made with Council subject to the payment of fee applicable at the time of payment. The fee includes all Council inspections relating to the driveway construction and must be paid.

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

Reason: To facilitate suitable vehicular access to private property. (DACENC12)

8. **Vehicle Driveway Gradients**

Driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in Council's Minor Works Policy.

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

Reason: To ensure suitable vehicular access to private property. (DACENC13)

9. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required.

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All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: Safety. (DACENC19)

10. **Waste Management Plan**

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

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

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

11. **Approval to Install an On-site Sewage Management System**

Prior to the release of the Construction Certificate (CC), the applicant must receive an 'Approval to Install an On-Site Sewage Management System' from Council.

Details demonstrating compliance are to be submitted to the Certifying Authority.

Reason: To fulfil the requirements under Section 68 of the Local Government Act 1993

12. **Location of absorption beds**

Prior to the issuing of the Construction System, the applicant must ensure that the absorption bed are not located within 40 metres of a waterway

Reason: To ensure compliance with the requirements under section 68 of the Local Government Act 1993 (DACHPCPCC4)

13. **Amended Plans - Front landscape treatment.**

Additional screen planting is to be provided between the drainage swales indicated in the front setback and the Booralie Road boundary of the site.

Planting is to incorporate local native species capable of attaining a minimum height of 2 metres at maturity at a minimum rate of one per 2m².

Amended plans detailing these additional plantings are to be submitted to the Principal Certifying Authority for approval prior to issue of a construction certificate.

Reason: Environmental amenity (DACLACPCC1)

14. **Compliance with Standards**

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

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Standards.

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

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

15. **External Finishes to Roof**

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

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

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

16. **Relocation of Shed**

The proposed shed shown on DA02 Site Plan (Part 2) Rev DA1 dated December 2017 is to be relocated further to the east into the site to provide a minimum 10m setback from the western site boundary.

Details demonstrating compliance are to be provided to the certifying authority prior to the issue of a Construction Certificate.

Reason: To ensure the amenity of neighboring properties is adequately retained. (DACPLCPCC1)

17. **No consent for proposed 'tree house'**

No consent is given or implied for the proposed 'tree house' indicated on drawing referenced: Landscape Masterplan (1) L01 Rev I. This element is to be removed from the plans

Details demonstrating compliance should be provided to the Principle Certifying Authority prior to the issue of a Construction Certificate.

Reason: To ensure the amenity of adjoining properties is maintained. (DACPLCPCC2)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

18. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land. (DACEND01)

19. **Tree protection**

(a) Existing trees which must be retained

i) All trees not indicated for removal on the approved plans, unless exempt

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under relevant planning instruments or legislation
ii) Trees located on adjoining land

(b) Tree protection

- i) No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site. (DACLAC01)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

20. Vehicle Crossings

The provision of One vehicle crossing 5.50 metres wide in accordance with Warringah Council Drawing No A4-3330/10R and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property. (DACENE05)

21. Civil Works Supervision

All civil works approved in the Construction Certificate are to be supervised by an appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works. (DACENE06)

22. Maintenance of Road Reserve

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

Reason: Public Safety. (DACENE09)

23. 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.

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Details demonstrating compliance must be submitted to the Principal Certifying Authority.

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

24. **Trees Condition**

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

- (a) A general decline in health and vigour.
- (b) Damaged, crushed or dying roots due to poor pruning techniques.
- (c) More than 10% loss or dieback of roots, branches and foliage.
- (d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- (e) Yellowing of foliage or a thinning of the canopy untypical of its species.
- (f) An increase in the amount of deadwood not associated with normal growth.
- (g) An increase in kino or gum exudation.
- (h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
- (i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of Trees. (DACLAEO3)

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

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

Reason: Preservation of significant environmental features (DACLAEOG1)

26. **Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection. (DACAHE01)



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

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Council's Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

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

28. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with Council's Stormwater Drainage from Low Level Properties Technical Specification and all relevant Australian Standards and Codes by a NPER Civil Engineer registered with Engineer's Australia.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)

29. **Waste Water System**

Prior to the issuing of any interim / final occupation certificate, a copy of a s68 (Local Government Act 1993) approval to operate the Waste Water System, and the waste water system must be activated and effectively operating to the satisfaction of the Principal Certifying Authority.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure the premises are maintained in an appropriate manner in perpetuity. (DACHPFPOC6)

30. **Waste Management Confirmation**

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority 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.

31. **Swimming Pool Requirements**

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

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

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(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

(g) Swimming pools and spas must be registered with the *Division of Local Government*.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

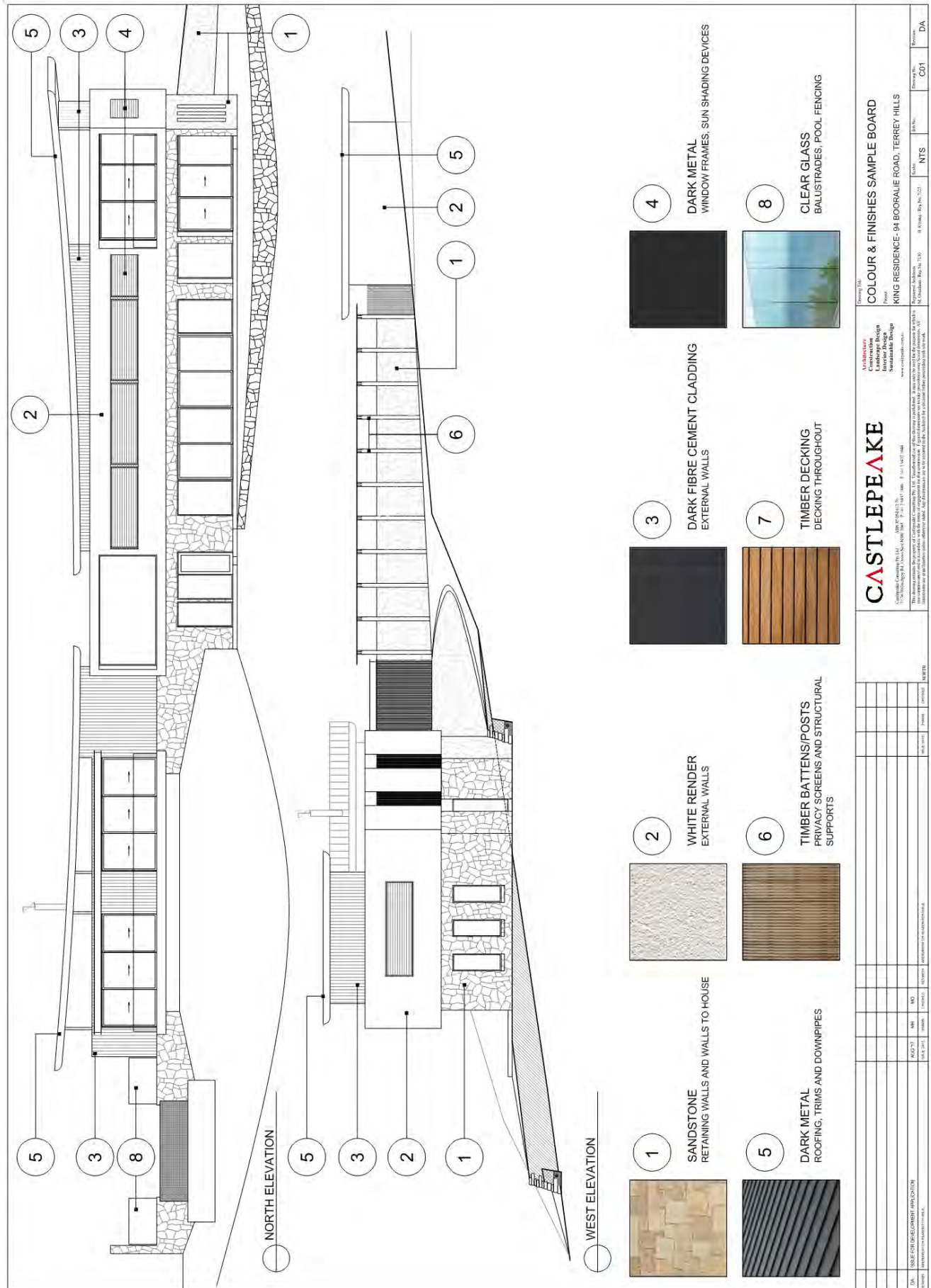
Reason: To protect human life (DACPLF09)

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

32. **Loading Within Site**

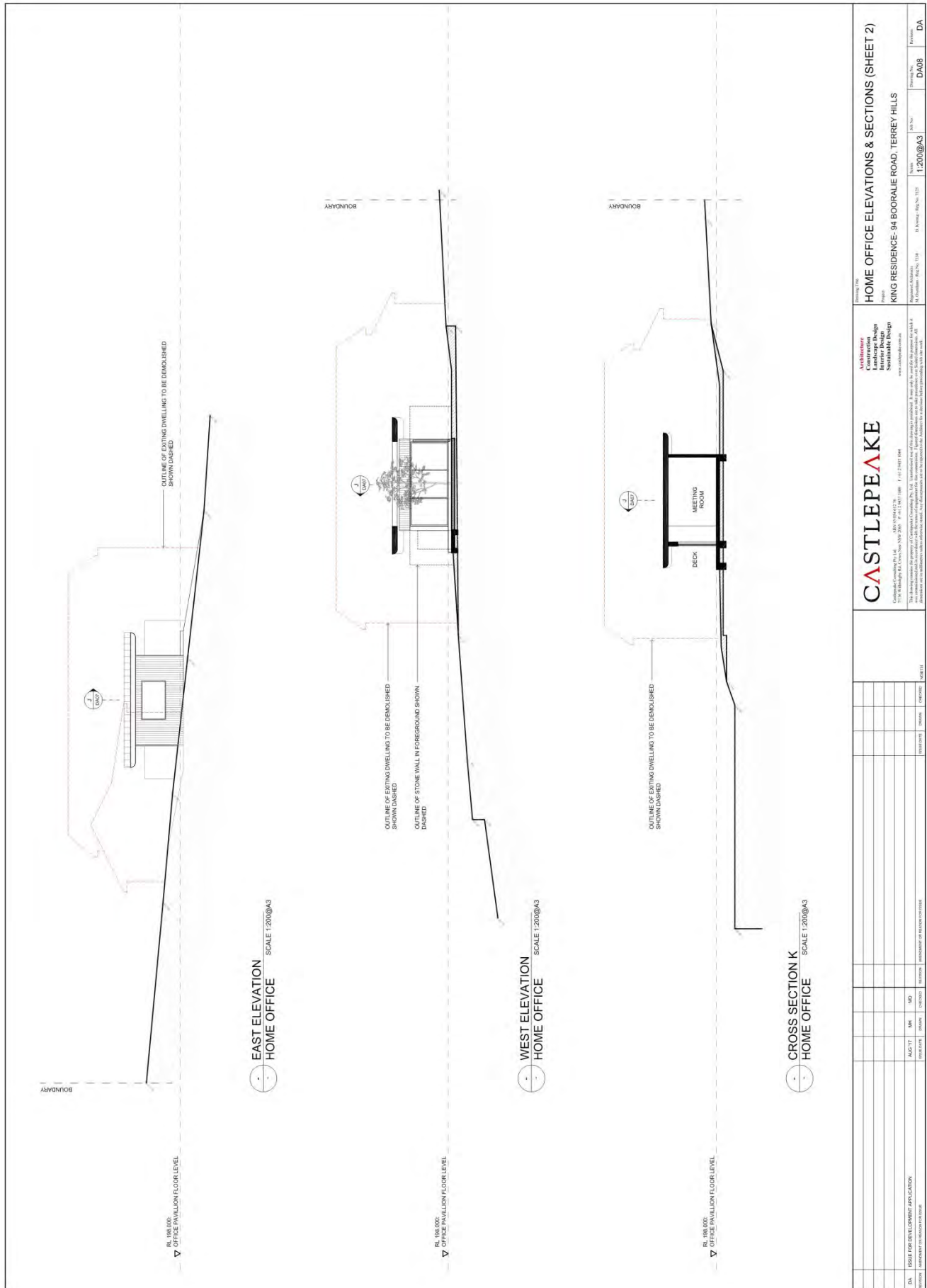
All loading and unloading operations shall be carried out wholly within the confines of the site and within the approved loading areas, at all times.

Reason: To ensure that deliveries can occur safely within the site and does not adversely affect traffic or pedestrian safety and amenity. (DACPLG20)









<p>CASTLEPEAKE</p> <p>Castlepeake Pty Ltd 17/18 Warringah Rd, Crows Nest NSW 1585 P 02 9437 1988 F 02 9437 1944 www.castlepeake.com.au</p> <p><small>The drawings are the property of Castlepeake Pty Ltd. Unauthorised use of this drawing is prohibited. It may only be used for the purpose for which it is provided and no part of it may be reproduced without the written consent of Castlepeake Pty Ltd. Any reproduction or use of this drawing for any other purpose without the written consent of Castlepeake Pty Ltd is prohibited and may result in legal action.</small></p>				<p>HOME OFFICE ELEVATIONS & SECTIONS (SHEET 2)</p> <p>Project: KING RESIDENCE 94 BOORALIE ROAD, TERREY HILLS</p> <p>Drawn: [Name] Checked: [Name] Reviewed: [Name]</p>				<p>Scale: 1:200@A3</p>	<p>Sheet No: DA08</p>	<p>Revision: DA</p>
DA	ISSUE FOR DEVELOPMENT APPLICATION	AUG-17	MM	MD	DATE	DESCRIPTION	BY	CHKD	APPD	REV
DA	ISSUE FOR DEVELOPMENT APPLICATION									



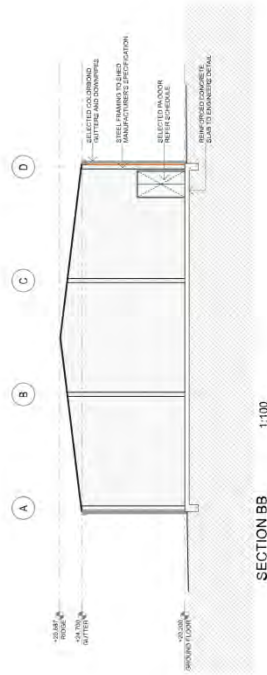
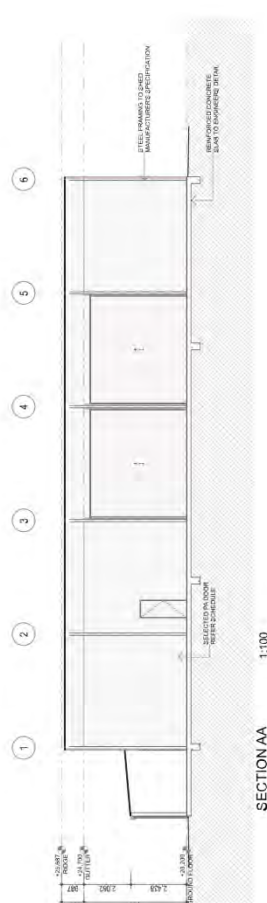
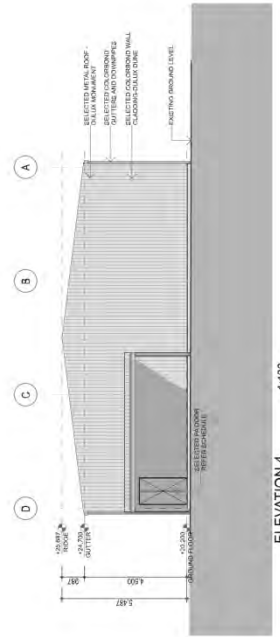
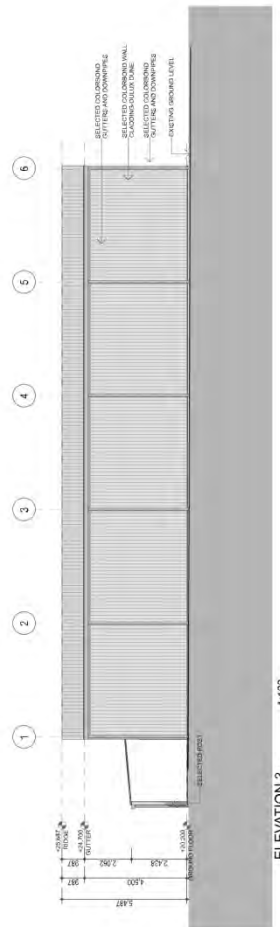
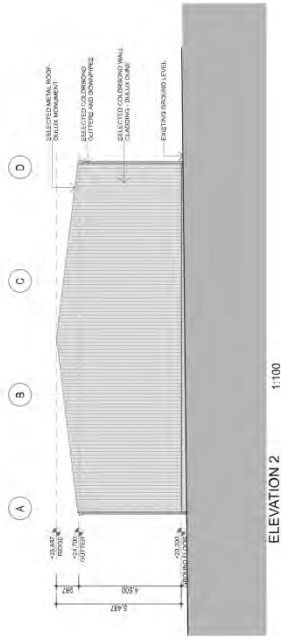
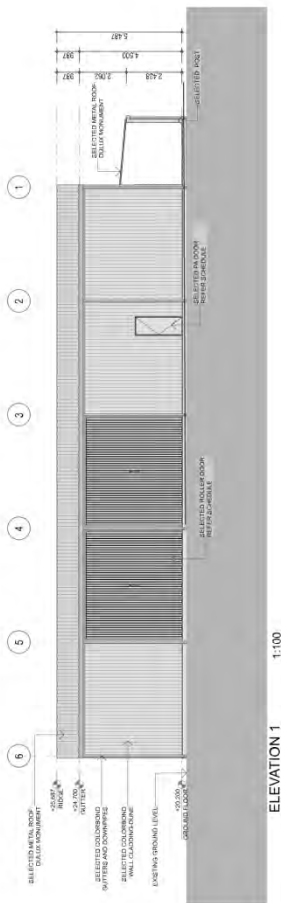




INDUSTRIAL + COMMERCIAL + RESIDENTIAL

GENERAL NOTES

1. REFER TO DRAWING A01 FOR GENERAL NOTES.



STOKLAND SHEDS PTY. LTD
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ICR DESIGN
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PROPOSED SHED
94 BOORALE ROAD
TERREY HILLS NSW
Lot 264
DP 752017

FOR APPROVAL
17052 A.03 A

ITEM 3.6**DA2017/0793 - 22 IAN LANE, NORTH CURL CURL -
ALTERATIONS AND ADDITIONS TO THE EXISTING DWELLING
HOUSE****REPORTING MANAGER****Steven Findlay****TRIM FILE REF****2018/183602****ATTACHMENTS**

- 1** [↓](#) **Assessment Report**
- 2** [↓](#) **Site and Elevation Plans**

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.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

That Development Application No. DA2017/0793 for Alterations and additions to a dwelling house on land at Lot 10 DP 16602, 22 Ian Lane, NORTH CURL CURL be approved in accordance with the recommendations in the assessment report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2017/0793
Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 10 DP 16602, 22 Ian Lane NORTH CURL CURL NSW 2099
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Development Determination Panel
Land and Environment Court Action:	No
Owner:	Sonja Mei Lin Gan
Applicant:	Sonja Mei Lin Gan
Application lodged:	11/08/2017
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	15/08/2017 to 31/08/2017
Advertised:	Not Advertised
Submissions Received:	2
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,791,832.00

ASSESSMENT INTRODUCTION

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

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



Development Control Plan;

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Development Control Plan - B1 Wall Heights
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 10 DP 16602 , 22 Ian Lane NORTH CURL CURL NSW 2099
Detailed Site Description:	<p>The subject allotment is described as 22 Ian Lane, North Curl Curl. The subject site is zoned R2 Low Density Residential.</p> <p>The property is located on the eastern side of Ian Lane and falls to the eastern boundary facing the Headland Reserve (unmade portion of Handoub Parade). The site is irregular in shape, with a street frontage to Ian Lane of 12.235m and a depth of up to 43.93m. The total site area is 495.2m².</p> <p>The property has a fall to the east, with stormwater to continue to be directed to an open Council stormwater channel which traverses the northern boundary.</p> <p>Topographically the site declines from west to east (front to rear) by approximately 15.0 metres. There are rock outcrops present towards the rear of the site.</p> <p>East of the site is Handoub Parade which is a public walkway through land zoned RE1 Public Recreation. Further east of this is steep cliff face and ocean. As such, the subject site enjoys uninterrupted views to the east.</p> <p>The site is currently developed with a three level brick dwelling with a tile roof and a detached carport and garage. Vehicular access to the garage and carport is currently</p>



available from Ian Lane.

Surrounding developments consist of other detached dwellings of varying age, size and construction. The majority of surrounding dwellings have been recently renovated / constructed and present as large multi-storey dwellings.

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant history:

- Development Application DA2000/3803 for Detached Garage and a Carport was determined by Council on the 16 March 2000.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks the consent for the construction of additions and alterations to the existing dwelling house. The proposal includes the following works;

Lower Ground Floor Level (FFL 37.84)

- Minor excavation (for the new internal stairs)
- New internal stairs
- New ensuite
- New family room
- Covered terrace with louvre roof.

Upper Ground Level (FFL 41.28)

- New media room
- Internal alterations to provide for an ensuite and bathroom and minor internal room layout changes
- New roof garden over lower ground floor level family room.



First Floor Level (FFL 44.18)

- New formal entry with an operable louver roof
- New kitchen and pantry/wok area
- New laundry and bathroom
- New study/sitting room and living area
- New dining room extension and covered terrace
- Retaining the existing carport slab, demolish the carport roof and build a new skillion carport roof.

The existing driveway will be retained for access to the existing garage and carport.

The proposal includes the replacement of the existing roof with a low pitched skillion roof with colourbond steel roofing.

External works

- A new retaining wall on the northern elevation for the courtyard will be constructed.
- New courtyard area including landscaping
- New cantilevered stairs to be erected off the retaining wall
- New removable metal grate flooring for the creation of a bin area on the northern boundary
- New masonry fence on the rear boundary, northern and southern side boundary's.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p>Clauses 54 and 109 of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional</p>



Section 79C 'Matters for Consideration'	Comments
	<p>information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 – 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Public Exhibition" in this report.
Section 79C (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.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 2 submission/s from:



Name:	Address:
Mr Sam Maxwell Henderson	24 Ian Lane NORTH CURL CURL NSW 2099
Mrs Melissa Diane Chapman	20 Ian Lane NORTH CURL CURL NSW 2099

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

- Building Height/Envelope
- Visual privacy
- View Loss
- Infill of the courtyard
- Stormwater
- Solar Access

The matters raised within the submissions are addressed as follows:

- **Concern has been raised that the building exceeds the 8.5m height limit which adds to the bulk and scale of the building**

Comment:

This issue has been addressed in detail within the report. However, in summary, the non-compliance occurs as a result of the location of the existing dwelling house and the steep topography of the land. The occurrence of variable land levels and natural rock ledges influences the height of buildings and has caused some non-compliance with the 8.5m height limit, in some sections of a building where the topography is very steep. The height combined with the areas of further side boundary envelope encroachment are considered to have negligible impact on the overall height and bulk of the development and will not have any unreasonable amenity impacts upon surrounding properties. The pattern of buildings with height variations is evident in the surrounding area and the proposal is consistent with other development in nearby streets, such as Phyllis Lane. This issue does not warrant refusal of the application.

- **Concern has been raised in relation to the visual privacy on No. 20 Ian Lane**

Comment:

This matter is discussed in detail under Part D8 Privacy in this report. In summary, the proposal has provided design solutions to minimise privacy impacts on the adjoining property. This includes removal of windows along the northern elevation, operable privacy screens, external blinds, high-sill windows and all windows on the southern elevation are opaque glazed windows. The existing internal room layout remains similar with the kitchen and living areas located on the upper ground floor, with bedrooms being located on the lower levels. These are all similar in design to the surrounding sites ensuring low occupancy activity rooms are located on similar levels. This issue does not warrant refusal of the application.

- **Concern is raised that the proposal will result in a loss of views from No. 24 Ian Lane**

Comment:

This matter is addressed elsewhere in this report (refer to Clause D7 - 'Views' under Warringah Development Control Plan).

In summary, the assessment of this application has found that the development achieves



consistency with the planning principles outlined within the Land and Environment Court Case of 'Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC 140' and that the extent of qualitative impact upon view sharing is considered to be moderate and the proposal is reasonable in this instance. Therefore, this matter does not warrant the refusal of the application.

- **Concern has been raised regarding the potential impacts that the infill for the front courtyard will have on the adjoining open water drainage easement**

Comment:

The proposed works have been assessed by a qualified Principal Engineering Geologist and the application has been accompanied by a Geotechnical Site Investigation by Crozier Geotechnical Consultants (dated June 2017). The report has indicated that the proposed works will not result in any Geo-instability and that no further report would be required at this stage for the proposed works. The report also contains specific conditions and recommendations for the placement of the fill. Furthermore, Council Development Engineers have also reviewed the proposal and have no objection to the fill being located adjacent to the open stormwater channel. It is therefore considered that this issue has been addressed and does not warrant amendment or refusal of the application.

- **There is concern regarding the stormwater disposal through the open water stormwater channel**

Comment:

The application has been referred to Council's Development Engineers who have assessed the proposed provisions for stormwater. As discussed in this report, Council Engineers are satisfied with the stormwater provisions, subject to conditions of consent. Therefore, this matter does not warrant the refusal of the application.

- **Concern has been raised regarding the potential increase in overshadowing on No 24 Ian Lane**

Comment:

Detailed shadow diagrams submitted with the application demonstrates the winter solstice on June 21 for 9:00am, 12 midday and 3:00pm. The shadow details provided demonstrate that 3 hours of solar access will be maintained to the private open space of No.24 Ian Lane in compliance with Part D6 Access to Sunlight. Private open space includes the broader area of rear open space and therefore partial overshadowing of the rear deck and pool does not exclude consideration of the full solar access regime for the 21st June. Therefore, this issue has been addressed and does not warrant refusal of the application.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	No objections subject to conditions as recommended.
NECC (Development Engineering)	Development Engineers have assessed the information submitted including concurrence from Council's Stormwater Assets Team and



Internal Referral Body	Comments
	raise no objections to the proposal subject to conditions.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A285944 and 31 July 2017). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No.A285944 and 31 July 2017).

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

Commitment	Required Target	Proposed
Water	40	Pass
Thermal Comfort	Pass	Pass
Energy	40	Pass

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



SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Warringah Local Environmental Plan 2011

Is the development permissible?	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	11.1m	30.6%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
5.9AA Trees or vegetation not prescribed by development control plan	Yes
6.2 Earthworks	Yes



Clause	Compliance with Requirements
6.4 Development on sloping land	Yes

Detailed Assessment

4.3 Height of buildings

Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of Buildings of the Warringah Local Environmental Plan 2011.

4.6 Exceptions to development standards

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard has taken into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement:	8.5m
Proposed:	11.1m
Is the planning control in question a development standard?	YES
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	30.6%

The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the WLEP 2011. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the WLEP 2011 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the WLEP 2011 are:

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

a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development.

Comment:

The proposal is in an area of sloping terrain and surrounding development that generally consists of



two storey and three storey elements on larger or steeper properties. Therefore, the natural topography leads to varying height planes for surrounding development. In this case, the land slopes downward east, with a moderate fall and a noticeably lesser gradient in the upper (western) end and a greater gradient towards the lower (eastern) parts of the site.

The transition between floors contributes to the height non-compliance through the mid-section of the building, particularly along the roof edge for the upper levels. The proposed first floor addition to the existing dwelling will result in a portion of the first floor roof form exceeding the permissible maximum building height. The new works will not exceed the existing overall ridge height of RL48.57 (11.1m) for the existing dwelling, however the variation is increased due to the downward slope of the site towards the east.

The height and scale of the building is compatible with surrounding development which provides sufficient justification to achieve compliance with the objective.

b) to minimise visual impact, disruption of views; loss of privacy and loss of solar access,

Comment:

The alterations and additions to the existing building are an improved contemporary design (compared to the original existing house) with updated materials and finishes on the various existing levels stepping down the site.

The terrace/balcony areas are oriented to the ocean views to the east, coastal views of Long Reef Headland and the coastal area to the south and south east. The non-compliance with 8.5m height plane is concentrated in two sections, one at the rear roofline of the first floor (RL47.17 at 11.1m) and the other at the clerestorey windows (existing RL48.57 at 10.6m). The non-compliance is created by the first floor rear roof with extended eaves to provide increased weather protection to the outdoor terrace.

As discussed elsewhere in this report, the proposed first floor will result in a reduction of water views from the southern adjoining site (see sections: Cl. D7 Views). In summary, the view loss is considered acceptable when assessed against the planning principles established in Tenacity Consulting v Warringah Council.

The development as a whole and the area encroaching above the 8.5m height limit will not give rise to any unreasonable or detrimental privacy and solar access impacts.

c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

Comment:

The non-compliance is created by the existing house position and topography of the site. The subject site is located within an established residential area and is adjoined by dwellings of a similar scale to the north, south and west. Given the compatibility of the development with surrounding sites, as discussed above, it is considered that the proposed first floor addition will have no adverse impact on the scenic quality of the Northern Beaches coastal and bush environment.



d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities;

Comment:

The proposed dwelling house additions and its height are consistent with newer residential development on sloping sites in Ian Lane. In achieving a single level at the front of the site, the dwelling floor plate extends outwards over the rock ledge towards the rear of the site which contributes to the non-compliance with the height plane. The new works will not exceed the existing overall ridge height of RL48.57, however the greatest area of variation occurs as a result of the siting of the existing dwelling combined with the sloping topography of the site.

The visual impact of the non-compliant section of the building is not readily perceptible and as such will not present any adverse visual impact when viewed from surrounding public land such as the coastal area and the public walkway located at the rear of the site.

It is considered that the proposal satisfies this objective

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R2 Low Density Residential zone.

The underlying objectives of the R2 Low Density Residential zone:

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

Comment:

The subject application does not seek to change the existing use of the site as 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:

The proposal does not seek to introduce any other land uses for other facilities and services for the community

It is considered that the development satisfies this objective.

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



Comment:

The proposed development does not result in a net reduction of the existing provision of landscaped open space on the subject site. The landscape plan accompanying the application shows additional plantings that will contribute to the landscape character of the area. It is considered that the area exceeding the height control will not be detrimental to the landscape setting.

It is considered that the development satisfies this objective.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the WLEP 2011?

(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.

Comment:

In consideration of whether an appropriate degree of flexibility in enforcing the building height control is justified in this particular circumstance, a review of the area of non-compliance has been undertaken.

Enforcing compliance with the building height control would have a negligible difference compared to the proposed in terms of solar access, privacy, views and the visual impact of the development. Further to this, enforcing compliance with the control may require a redesign of the proposal by virtue of a redistribution of the floor area that could entail constructing over the existing western portion of the existing dwelling. If this circumstance were to occur, it is likely that it would have a greater environmental and amenity impact than that of the proposed development.

Thus, in this circumstance, it is considered to there are sufficient environmental planning grounds to justify a degree of flexibility to the WLEP 2011 4.3 Height of Buildings development standard.

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Comment:

In the circumstances of the site conditions, the proposed building design creates a non-compliance with the 8.5m due to the new first floor rear roof with extended eaves to provide increased weather protection to the existing outdoor terrace. The requested variation to the development standard does not cause any unreasonable or detrimental environmental or amenity impacts. It is considered that by enforcing compliance with the control, an alternative design with a reconfigured floor area could achieve greater numerical compliance, but would have a significantly greater impact by virtue of privacy, amenity, views and visual impact.

Therefore, the proposal is suitable to achieve the desired architectural outcome with flexibility and



ensures no unreasonable impact on surrounding properties.

(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.

(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.

Comment:

In the circumstances of the site topography and location of the existing dwelling house, compliance with the 8.5m is unnecessary and unreasonable. The non-compliance is limited to the rear (eastward) elements of the clerestorey and terrace roof areas where the building steps on the site to accommodate the slope in response to the existing building and horizontal floor plane. With the recommended conditions, there is no unreasonable impact on views, solar access or the amenity of adjacent land.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

Comment:

The applicant has provided a Statement of Environment Effects and Clause 4.6 (dated August 2017), detailing the matters to be demonstrated for the variation to the height limit and addressing the objectives of the zone.

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

Comment:

For reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone in the WLEP 2011.



(b) the concurrence of the Director-General has been obtained

Comment:

Planning Circular PS 17-006 dated 15 December 2017, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation to a numerical standard is not greater than 10%. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the 19.4% Development Standard cannot be assumed and accordingly, the application is to be determined by the Development Determination Panel.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	10.3m	43%	No
B3 Side Boundary Envelope	45 degrees at 5m (North)	Breach of envelope for length of 14m at a height of up to 4.3m	up to 86%	No
	45 degrees at 5m (South)	Breach of envelope for length of 10.8m at a height of up to 4.2m	up to 84%	No
B5 Side Boundary Setbacks	0.9m North	0.9m to 1.7m	N/A	Yes
	0.9m South	0.9m to 2.3m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	1.5m (Existing garage)	Existing no change	No
		1.5m (Carport roof)	76%	No
		8.8m (New entry stairs)	N/A	Yes
		11.2m (New entry)	N/A	Yes
B9 Rear Boundary Setbacks	6m	6m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	21% (104sqm)	47.5%	No

Compliance Assessment

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



Clause	Compliance with Requirements	Consistency Aims/Objectives
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance



The proposed development includes a wall height of 10.3 metres, which represents a 43% variation to the control.

It is important to note that the site does exceed a 20% slope from east to west.

Merit consideration:

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

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

The proposed wall height variation is similar to that already exhibited by the existing dwelling. The proposed variation is confined to the north-eastern elevation, first floor living room extension as well as the south east area of the first floor dining room. The wall extension is sufficiently articulated to ensure minimisation of the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes. The development will be of a similar scale to that of the existing structure, articulated by the levels and roofing on the eastern elevation. It is therefore considered that the visual impact of the development has been minimised.

- *To ensure development is generally beneath the existing tree canopy level*

Comment:

Given the location and topography of the subject site and the views enjoyed over the subject and adjacent dwellings, trees with substantial canopy levels are seldom present as they would severely impact upon the views enjoyed from the properties on Ian Lane. While there are no significant canopy trees on the site, the building as proposed is consistent with the pattern of surrounding sites that have been developed for larger style homes. The adjacent reserve to the east forms a backdrop to the site with the existing trees on the adjacent public reserve. Additional landscape planting is to be provided at the rear (east side) of the house to maintain a landscape setting. Therefore, it is considered consistent with the objective.

- *To provide a reasonable sharing of views to and from public and private properties.*

Comment:

The non-compliance with wall height on the northern elevation of the building will have minimal impact on view sharing from nearby public land or surrounding private property as the setback to the eastern boundary is 8.3m and adjacent properties have wide viewing angles to the north (toward Dee Why coastal area). As a result of the sloping land and orientation of the dwellings, it is considered that a reasonable sharing of views to and from public and private properties will be achieved. Further to this, elsewhere in this report is a detailed assessment of Building Height (see Cl. 4.3 of the WLEP 2011) and View Loss (see Cl. D7 of the WDCP 2011).



- *To minimise the impact of development on adjoining or nearby properties.*

Comment:

The proposed variation is influenced by the current height established by the existing dwelling, which is consistent with that of the adjoining and nearby properties. Therefore, the impact of the development is considered to be effectively minimised.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Comment:

The proposed alterations and additions to the existing dwelling house are constrained by the siting of the existing property above the existing ground surface and the sloping topography of the site. The current dwelling house development is mainly proposed over the existing footprint of the dwelling and so does not include any substantial excavation of the natural form. It is considered that the development will retain its response to the site topography and natural landform.

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Comment:

The proposed alterations and additions are of a contemporary residential style with a new flat roof form and wider terraces. Variation and visual interest (including roof top garden terraces) is provided by a building design which steps down the site to provide an innovative modern design response to the steep terrain and pattern of development surrounding the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B3 Side Boundary Envelope

Description of non-compliance

The northern side boundary envelope encroachment is a triangle shape, which extends for a length of up to 14 metres at a height of up to 4.3 metres (86% variation). However, it is important to note that the northern elevation encroachment is largely existing. The additional encroachment areas are a result of the new first floor terrace roofing and terrace extension (i.e. the louvered privacy screen). The additional encroachment area associated with the proposal is 2.7 metres long and 2.7 metres wide, and represents a 54% variation.

The southern side boundary envelope encroachment, extends for a length of 10.8 metres at a height of up to 4.2 metres (84% variation). The southern elevation shows the area of additional side boundary



encroachment due to the increase in the length of the dining room (2.7 metres) over the existing terrace area, and the new first floor terrace roofing. The additional encroachment area associated with the proposal is 2.7 metres long and 2.7 metres high, and represents a 54% variation.

Merit consideration

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

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

Comment:

The existing dwelling currently does not comply with the side boundary envelope control due to the siting of the existing building combined with the steep topography. The building presents as single storey to the front and steps down the slope of the site to present as three storeys from the public reserve in the rear. The northern and southern elevation includes a number of different sized windows, differing external finishes and a varying roof height, which provides a sufficient degree of articulation to soften the impact of the built form. The lower ground, ground, and first floor extension incorporates and continues the existing step in the levels to ensure that the additional visual impact is further minimised.

Additionally, the terrace area on the southern elevation will have the operable louvered screen removed by condition to ensure the terrace maintains an open feel to provide visual relief from the built form. The finish and design of the louvered privacy screen on the northern elevation, will create elements of visual interest. The design has incorporated sufficient design features to ensure that the development does not become visually dominant by virtue of height and bulk.

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

Comment:

The dwelling provides sufficient side boundary setbacks, with the exception of the existing carport, to ensure that adequate light, solar access and privacy is retained for adjoining properties. The shadow diagrams that accompany the application demonstrate consistency with Part D6 Solar Access and therefore access to sunlight is considered satisfactory. The lower ground and first floor terraces includes a floor to ceiling louvered privacy screen to ensure that reasonable levels of privacy are retained. The terraces that adjoins the ground floor and second floor are addressed in Part D8 Privacy.

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

Comment:

The proposal does not include any unreasonable level of excavation nor does it seek to reshape the existing topography. The existing building floor levels are split between different levels to



ensure the dwelling steps down the site between the upper garage level and between floors. Therefore, the non compliances to the northern and southern building envelope associated with this application are minimal and respond to the existing slope where the building steps down the steeper terraced section of the site. Therefore, the proposal it is considered satisfactory in responding to the natural land form of the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B7 Front Boundary Setbacks

Description of non-compliance

The existing garage building is located within the front boundary setback area at a distance of 1.5m from the front boundary. There are no changes proposed to the existing garage.

The existing adjoining carport will have a new flat roof installed and will be setback at a distance of 1.5m from the front boundary.

This represents a variation of up to 76.9% (4.5m) to lan Lane.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The proposed development maintains the existing setback of 1.5m to the proposed new roof of the carport which retains the level of openness to lan Lane. This existing garage and driveway currently covers most of the front setback with hard surface / building. The existing carport will enable of the space between the carport and the dwelling house to remain open with pedestrian access, to the new courtyard garden area and provide for a new more direct alignment to the dwelling house. The forward position of the garage and carport is existing and is necessary to protect the large rock outcrop behind the front setback that is a prominent feature of the site.

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

Comment:

The front setback area along lan Lane is dominated by buildings and/or car parking structures of dwellings that have a frontage to the laneway. The front half of the property contains a steep rock outcrop that is prominent in the streetscape. Given the site has an existing garage and carport



located in the front setback, the replacement carport roofing will result in an overall enhancement of the visual quality of the street, therefore the proposal is consistent with this objective.

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

Comment:

The proposed replacement of the carport roofing is not inconsistent with the existing and predominant building setback in the street and therefore has negligible impact on the visual quality of Ian Lane streetscape or nearby public spaces. Therefore the proposal is consistent with this objective.

- *To achieve reasonable view sharing.*

Comment:

The new carport roofing will have no adverse impact on views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The control requires a minimum of 40% of the total site area to be landscaped open space.

The proposed development provides 21% (104sqm) of the total site as landscaped open space which represents a variation of 47.5% (94.08sqm).

However, it is noted that the existing landscape open space is 20.6% (102.5sqm), hence there is a net increase in landscaped area through the removal of redundant paving within the central courtyard.

Merit consideration

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

- *To enable planting to maintain and enhance the streetscape.*

Comment:

The Landscape Plan submitted with the application (refer to Landscape Plan Issue D prepared by Paul Scrivener Landscape Architecture) indicates that the front courtyard, roof garden and rear setback areas will provide landscaping which will act to maintain and enhance the local character



and improve and soften the visual appearance of the development.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment:

The site has been altered over the residential history of the allotment. There are no threatened species, significant topographical features or vegetation identified on site. The landscape plan indicates substantial landscape planting to be introduced to the site in particular within the front courtyard and rear setback.

The planting is considered to be an improvement and an overall increase on the existing provision.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment:

Proposed landscaped areas are generally confined to the front courtyard, roof garden and rear setback areas of the site. These areas are of a sufficient size to allow the establishment of low lying shrubs, medium high shrubs and canopy trees that, at a mature age, would be of a size and density to mitigate the height, bulk and scale of the building.

- *To enhance privacy between buildings.*

Comment:

The development includes significant landscaping and proposed screening vegetation located within the front courtyard. Landscaping is also proposed within the rear setback which, in conjunction with the spatial separation provided between buildings will provide adequate privacy between buildings within this established residential area.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment:

The proposed development will provide adequate areas of opportunity for outdoor recreation for the dwelling occupants. The front courtyard and the rear setback area is to be landscaped providing a landscaped private open space area for the use of dwelling occupants.

- *To provide space for service functions, including clothes drying.*

Comment:

The site contains adequate space for service functions, clothes drying and the like to service the



domestic needs of the occupants. The landscape plan shows suitable pathway connections and access to ensure practical access for maintenance and use of service areas.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

The proposal has been reviewed by Council's Development Engineer, having regard to provisions for stormwater management and has raised no objections to the proposed stormwater system subject to conditions included in the recommendation of this report.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D7 Views

A submission regarding view loss have been received from the adjoining property to the south, No. 24 Ian Lane. No submission regarding view loss was received from the adjoining property to the north No. 20 Ian Lane.

The impact on views on No. 24 Ian Lane have been considered by the applicant in its documentation submitted with this application (refer to Photo Montage Drawing prepared by Watershed Design Pty Ltd).

The assessment takes into account the impact on the views from No. 24 Ian Lane.

It was determined that the views from No.20 Ian Lane would not be affected by the proposal, as the orientation of the dwelling and the views from this property are to the north and north-east. Therefore, no view analysis is required.

Merit consideration

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

- *To allow for the reasonable sharing of views.*

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are



valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment to Principle 1:

No. 24 is the property to the south of the subject site and its view is at a broad angle, and across a side and rear boundary. The views which will be affected from No.24 are towards the north and north east of Long Reef Beach (land and water interface), Long Reef Golf Course, Long Reef Headland and to the south and south west expansive ocean views. These views are shared views.

The property that is most affected is No.24 Ian Lane. Accordingly a site inspection was made from that site to evaluate the views available. The assessment revealed headland views, ocean views and coastal fringe views. The general focal interest is toward Long Reef Headland, with the coastal interface and ocean horizon beyond.

Other properties adjacent the site also have expansive views especially from the upper levels, and view sharing is maintained.

The proposed development will impact a portion of ocean water views from No.24. Whilst a portion of the ocean view is lost due to the proposal, significant views of Long Reef Beach (land and water interface), Long Reef Golf Course and Long Reef Headland from 24 Ian Lane are maintained to the north.

Therefore, whilst it is considered that the No.24 does have extensive and valuable views, the proposed development will not obscure, block nor interfere with any iconic views.

2. What part of the affected property are the views obtained

"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".

Comment to Principle 2:

The views from the property at No.24 Ian Lane are obtained from the upper level of the dwelling (kitchen, living and dining room). The views of the ocean and horizon to the east will not be affected. The views to the north are over the side boundary and are views of Long Reef Beach (land and water interface), Long Reef Golf Course, and Long Reef Headland. These views are from a sitting and standing position.

It is important to note that the view lines of these significant areas are over the side boundary which are slightly obscured due to existing development from other structures such as buildings, roofing, fencing, and chimneys.

While the main views across the site are over a side boundary (side views), and the rear



boundary, due to the subdivision pattern, these are valuable views because the dwellings are configured to capitalise on the coastal north and north easterly outlook, not a street outlook. The applicant has provided view information that indicates the principal views from 24 Ian Lane are maintained from the upper storeys side windows and rear terraces.

3. Extent of impact

"The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating".

Comment to Principle 3:

The subject proposal is to be built over the existing building footprint while extending the building footprint within some view lines. No 24 Ian Lane has ocean, beach and headland views obtained from the majority of the internal spaces on the upper floor, kitchen, dining and lounge area. These rooms currently enjoy views to the north and north-east of Long Reef Beach (land and water interface), Long Reef Golf Course, Long Reef Headland and expansive uninterrupted ocean views to the east.

The views from 24 Ian Lane that will be affected are over the northern side boundary from the upper floor and impact a broad view of the ocean. The views available from different standing / sitting positions from the upper storey level will generally be maintained, so the impact is minor.

The ocean view to the north-east is the view most impacted by the proposal. It is considered that views of the ocean will be obstructed by the eastern area of the proposal and in this regard it is considered that the extent of the view loss will be moderate.

The view from the rear of the site of the ocean to the horizon will not be impacted. It is considered that the views of the horizon and ocean are more valuable than views of just the ocean and in this regard the extent of the view loss will be negligible.

No room or part of No.24 will be impacted upon in a way that the existing availability of views will be significantly changed. The dwelling will still retain expansive and panoramic views towards the north and north east, and the proposed addition will only block out a portion of the existing ocean surface.

Therefore, given the moderate loss of ocean views to the north-east, retention of existing ocean and horizon views to the south, and retention of views to the north and east of Long Reef Beach (land and water interface), Long Reef Golf Course, Long Reef Headland, the overall extent of the impact is considered to be minor.

4. Reasonableness of the proposal that is causing the impact

"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with



the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

Comment to Principle 4:

The subject development exceeds the maximum allowable height of buildings in some portions (largely the first floor roof form). This non-compliance has been assessed in detail under Cl. 4.3 and 4.6 of WLEP 2011 of this report and in summary, the non-compliance is considered justified.

The element of the proposal causing the view impact is generally the forward edge of the building and roof lines.

It is considered that in this circumstance, enforcing strict compliance with the development standard would result in a negligible difference in terms of view loss compared to what is existing. As discussed elsewhere in this report, enforcing compliance could result in a redesign that could potentially have a greater impact on views by virtue of a redistribution of the floor space to a more sensitive area of the site. Thus, a design that achieves compliance with the height control could be proposed, however this may result in greater view loss.

Amendments to the existing design were considered, including a deletion of the clearstorey windows and lowering of the roof. However, from a review of the site photos and photo montage provided by the Applicant (refer to Photo Montage Drawing prepared by Watershed Design Pty Ltd), it is considered that these amendments would not result in any significant improvement to views and would be detrimental to the internal amenity of the occupants of the proposed dwelling house.

Overall, the view impact is regarded as minor. However, a condition will be imposed to remove the louvered privacy screen on the southern elevation of the first floor terrace as this will also cause unnecessary view loss.

The proposal responds appropriately to the available views through the provision of appropriate view corridors, setbacks and building articulation to ensure highly valued views are retained and the impact on properties in terms of view loss is minor.

Given the above, it is considered that the proposal allows for the reasonable sharing of views.

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

Comment:

The subject development presents a modern architectural dwelling that enhances the streetscape and the character of the area. The proposed roof is of a contemporary style, and the proposed flat roof assists in maintaining views for adjoining properties. The retention of single storey level at the front and on the higher portion of the site assist to also maintain view lines from adjacent land.

- *To ensure existing canopy trees have priority over views.*

Comment:

There are no trees causing any significant obstruction to views. The application does not propose



the removal of any existing canopy trees for the benefit of improving views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D8 Privacy

Privacy and the potential for overlooking was considered in the assessment of this application in conjunction with a site visit.

Impacts in relation to No. 20 Ian Lane (property to the north of the subject site)

The alterations and additions proposed will improve the privacy for No. 20 Ian Lane. The neighbouring northern site has private open space at the rear of the first floor level which is angled away from the subject site.

There are existing windows on the northern elevation of the subject site that have views into areas of No. 20 Ian Lane. The alterations will remove the windows on the northern side of the first floor level. The existing terrace on the first floor level will be extended to the east by 0.6m. There is currently no privacy screen on the northern boundary of the terrace area. The proposal involves the installation of operable louvered privacy screens to the northern side of the first floor terrace to remove any unreasonable impacts and improve the privacy to the site.

The windows of Bedroom 2 and Bedroom 3 on the ground floor level will have the addition of operable louvered privacy screens. This combined with the opaque glazing on the two additional windows on the northern elevation will improve and maintain privacy.

Privacy and overlooking from the Lower Ground Floor level will largely be obstructed by virtue of the difference in levels between the lower ground level and the levels of No.20. The existing window in Bedroom 4 will have a louvered privacy screen installed, as will the lower ground floor level terrace. The privacy screens, combined with the height difference and distance to the neighbouring private open space will mitigate any impact.

It is important to note that there is no terrace on the ground floor level of the proposed development.

Overall, the design solution is considered to be reasonable and satisfies the requirements of D8 Privacy.

Impacts in relation to No. 24 Ian Lane (property to the south of the subject site)

The alterations and additions proposed will improve the privacy for No. 20 Ian Lane. All windows on the southern elevation will be opaque glazing and external blinds are to be installed over the family room window on the lower ground floor level.

The operable privacy screen proposed to be erected on the southern elevation of the First Floor Level terrace is to be deleted by condition to allow for view sharing, and to lessen the impact of building bulk. The removal of this screen will not impact the privacy of No. 24 as the main area of recreation for the terrace is located on the northern side of the site. Also, the terrace width on the southern side is 0.9m, thus creating an area which will be a low traffic area.



Overall Comments on Privacy

In a dense urban environment like the subject and surrounding sites, complete privacy is an unrealistic expectation, and it is considered that the proposal has been designed to retain a high level of privacy and thus amenity to adjacent properties.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is inconsistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Warringah Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$ 1,791,832		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 17,022
Section 94A Planning and Administration	0.05%	\$ 896
Total	1%	\$ 17,918

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah 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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2017/0793 for Alterations and additions to a dwelling house on land at Lot 10 DP 16602, 22 Ian Lane, NORTH CURL CURL, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site and Roof Plan DA02 I-1	10/8/2017	Watershed Design
First Floor Plan DA03 I-1	10/8/2017	Watershed Design
Ground Floor Plan DA04 I-1	10/8/2017	Watershed Design
Lower Ground Floor Plan DA05 I-1	10/8/2017	Watershed Design
Section AA DA06 I-1	10/8/2017	Watershed Design
Section BB and CC DA07 I-1	10/8/2017	Watershed Design
East Elevation DA08 I-1	10/8/2017	Watershed Design
Northern Elevation DA09 I-1	10/8/2017	Watershed Design
Southern Elevation DA10 I-1	10/8/2017	Watershed Design
Western Elevation (Ian Lane) DA11 I-1	10/8/2017	Watershed Design
Ground and Lower Floor Landscape Plan Issue D	3/8/2017	Paul Scrivener Landscape Architecture
First, Ground, and lower Ground Floor Planting Plan Issue D	3/8/2017	Paul Scrivener Landscape Architecture



Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Report on Geotechnical site investigation for 22 Ian Lane North Curl Curl	June 2017	Crozier Geotechnical Consultants
Arboricultural Impact Report 22 Ian Lane North Curl Curl	June 2017	Landscape Matrix Pty Ltd

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

Waste Management Plan		
Drawing No.	Dated	Prepared By
Waste Management Plan	11/8/2017	Sonja Gan

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

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

2. Amendments to the approved plans

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

- The operable louvered screen on the southern elevation located adjacent to the first floor rear terrace area is to be deleted.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land. (DACPLB02)

3. Prescribed Conditions

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- 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);
- A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:



- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
- (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (iii) stating that unauthorised entry to the work site is prohibited.

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

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative Requirement (DACPLB09)

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) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) 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.
- (d) 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.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) 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.

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

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

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

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Council Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Northern Beaches Council Section 94 Development Contributions Plan	
Contribution based on a total development cost of \$ 1,791,832.00	



Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 17,022.40
Section 94A Planning and Administration	0.05%	\$ 895.92
Total	1%	\$ 17,918.32

The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with Northern Beaches Council's Development Contributions Plan.

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 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, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

7. **Works Bonds**

(a) Construction, Excavation and Associated Works Bond (Drainage)

A Bond of \$20,000 as security against any damage to Council's stormwater drainage infrastructure within Ian Lane and development site as part of this consent.

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, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.



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

Reason: To ensure adequate protection of Councils infrastructure. (DACENZ01)

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

8. Overland flow certification

An overland flow study is required to determine the 1 in 100 year ARI water level in the Council open channel located along the northern boundary of the development site and any potential overland flows traversing the property. Furthermore, the flood study is to consider the potential flooding of the site from the floodwaters on Ian Lane. Cross sections detailing the 1 in 100 year ARI water surface level are to be provided at appropriate intervals.

Appropriate blockage factors must be applied to any grated covers positioned within the 1 in 100 year ARI overland flow path.

It must be noted that the finished floor levels for the development are to have a freeboard of 500mm above the 1 in 100 year ARI water surface level. The overland flow levels of the receiving water must be indicated on the drainage layout plan (if applicable). Water surface profiles are to be detailed for the existing and proposed conditions for the development site as well as both upstream and downstream of the development site. The Hec-Ras computer program is preferred for this application. Runoff from the developed site must not cause a detrimental effect on any property. This may require the retention (and possible expansion) of existing surface flow paths.

Any measures required to protect the development and adjoining properties from surface stormwater inundation must be detailed in this Study.

The details are to be prepared by a suitably qualified and Civil Engineer, who has membership to the Engineers Australia and registered with National Engineers Register.

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

Note: If the details/drainage plans, when compliant with Northern Beaches Council's PL 850 Water : Water Management Policy cause inconsistencies with other parts of an approval i.e. architectural or landscaped plans a modification(s) to the development may be required.

Reason: Requirement of Council's PL 850 Water : Water Management Policy (DACENPC1)

9. Pre-Construction Dilapidation Survey

A pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at <https://www.warringah.nsw.gov.au/sites/default/files/documents/general-information/stormwater-and-development/2014-119050-guidelines-preparing-dilapidation-survey-council-stormwater-assets-april-2014.pdf>

The pre-construction / demolition dilapidation report must be submitted to Council for



approval and the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's Infrastructure (DACNEC20)

10. **Compliance with Standards**

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

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

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

11. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

12. **Tree protection**

(a) Existing trees which must be retained

- i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
- ii) Trees located on adjoining land

(b) Tree protection

- i) No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site. (DACLAC01)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

13. **Maintenance of Road Reserve**

The public footways and roadways adjacent to the site shall be maintained in a safe condition



at all times during the course of the work.

Reason: Public Safety. (DACENE09)

14. **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 Certifying Authority.

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

15. **Trees Condition**

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

- (a) A general decline in health and vigour.
- (b) Damaged, crushed or dying roots due to poor pruning techniques.
- (c) More than 10% loss or dieback of roots, branches and foliage.
- (d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- (e) Yellowing of foliage or a thinning of the canopy untypical of its species.
- (f) An increase in the amount of deadwood not associated with normal growth.
- (g) An increase in kino or gum exudation.
- (h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
- (i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of Trees. (DACLAEO3)

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

a) All rock outcrops outside of and below the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

b) Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features (DACLAEOG1)

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

17. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian



Standards and Codes by a suitably qualified person.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)

18. Overland flow certification

A certification from a suitably qualified and Civil Engineer, who has membership to the Engineers Australia and registered with National Engineers Register stating that all measures required to protect the development and adjoining properties from surface stormwater inundation as detailed in the approved Study have been satisfactorily implemented/constructed.

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

Reason: Requirement of Council's PL 850 Water : Water Management Policy (DACENFP01)

19. Required Planting

Trees shall be planted in accordance with the following schedule:

No. of Trees Required.	Species	Location	Minimum Pot Size
All trees	As indicated on Lower Ground Floor Planting Plan Sheet 2 Issue D prepared by Paul Scrivener	As indicated on the Landscape Plan	25 litre

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To maintain environmental amenity. (DACLAF01)

20. Post-Construction Dilapidation Survey

A post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at <https://www.warringah.nsw.gov.au/sites/default/files/documents/general-information/stormwater-and-development/2014-119050-guidelines-preparing-dilapidation-survey-council-stormwater-assets-april-2014.pdf>

The post construction dilapidation report must be submitted to the Council for review and the Certifying Authority prior to the issue of the Occupation Certificate. Any damages to Council's stormwater infrastructure are to be rectified in accordance with Council's technical specifications prior to the release of the security bond.

Reason: Protection of Council's Infrastructure (DACNEF11)



21. **Waste Management Confirmation**

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority 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.

22 Ian Lane,
North Curl Curl
Site & Roof Plan

TITLE	ADDRESS
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AGENT	SUBJECT
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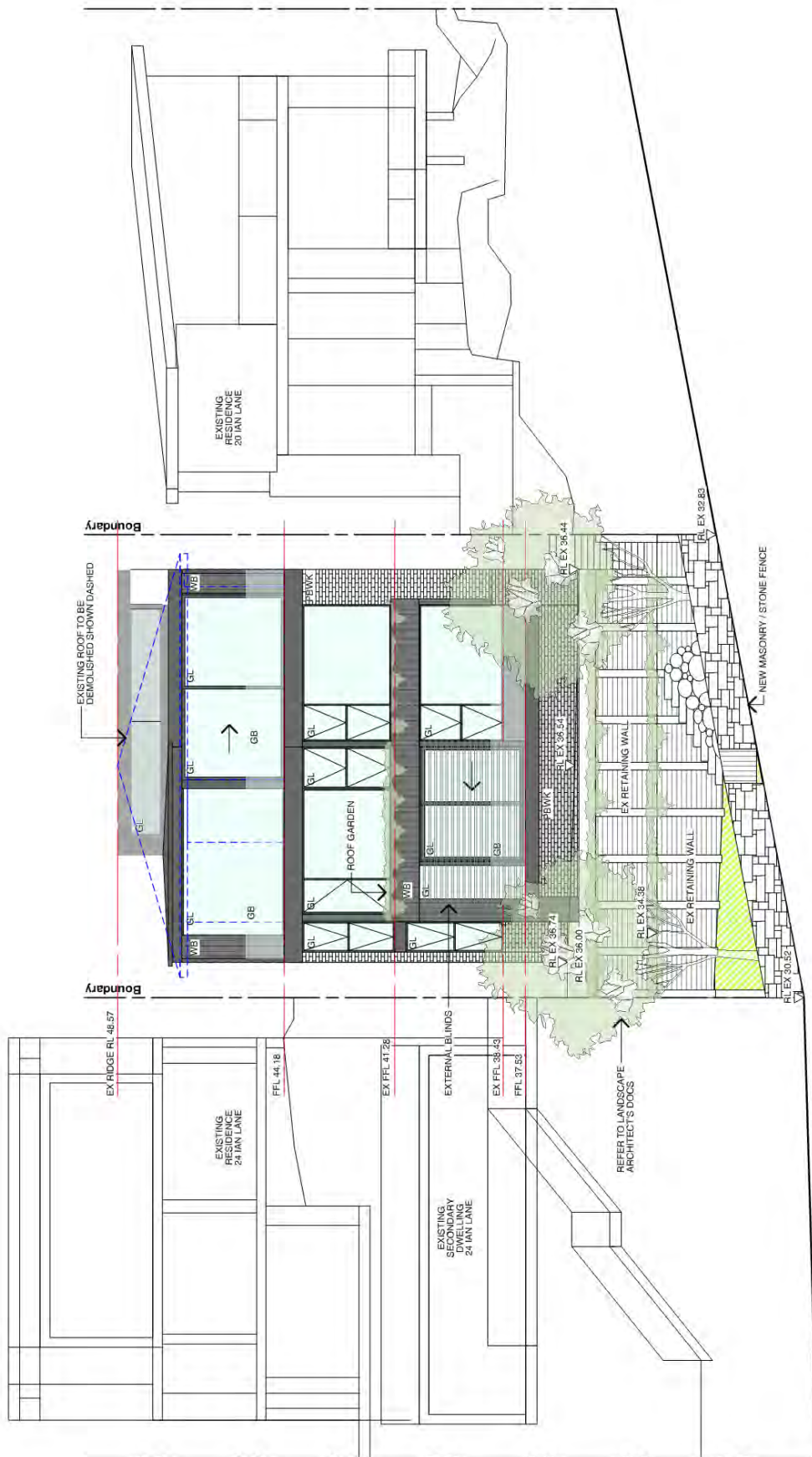
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- Any discrepancies to be brought to the Architect's attention.
- Do not issue under this drawing for any other purpose.
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WATERSHED
DESIGN
architecture
interiors
landscapes
Phone: 02 9377 1074 Fax: 02 9376 0525 info@watersheddesign.com.au

CLIENT	PROJECT
Sonja Gan	Alterations & Additions
ADDRESS	TITLE
22 Ian Lane, North Curl Curl	East Elevation

JOB NO	16017	DRAWING NO	DA08
DRAWN	EH	ISSUE	1
CHECKED	MK		
SCALE	1:100		



WATERSHED
DESIGN
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PHONE: 02 9877 1076, FAX: 02 9676 0625, info@watersheddesign.com.au

REVISIONS		date
no	amendment	10.09.17
1	DA ISSUE	

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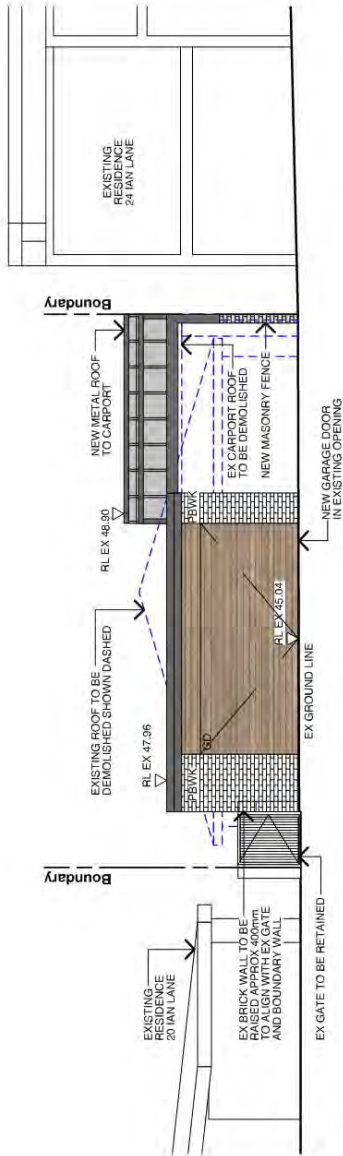
WATERSHED
DESIGN
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Phone: 02 9977 1074 Fax: 02 9976 0625 info@watersheddesign.com.au

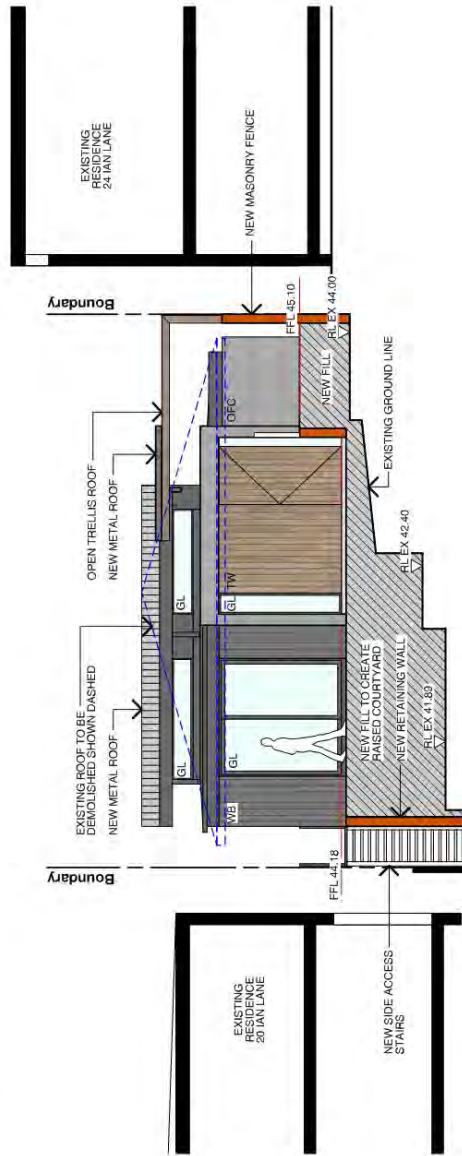
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Any discrepancy is to be brought to the Architect's attention. Use free dimension in preference to scaling. Only scale under direction from Architect. Builder to examine site and verify conditions and dimensions. Drawing and plan are the property of the Architect. Client to provide all necessary data for the drawings. Transfer of the license is prohibited. Architect reserves the right to terminate the license. Reproduction of the drawing in whole or part is prohibited without the written consent of the Architect. Any loss or damage (incl. consequential damage) caused to the recipient of electronic data, by its direct or indirect use, is not the liability of the architect. The architect is not responsible for the use of electronic data. Contract is governed by the Architect.



WEST ELEVATION (IAN LANE)



WEST ELEVATION AT ENTRY

NOTES:
1. Any discrepancies to be brought to the Architect's attention.
2. All figures are approximate and should be used as a guide only.
3. The drawings are intended to be used for information only.
4. The drawings are not to be used for any other purpose.
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DESIGN
architecture
interiors
landscapes
Phone: 02 9377 0771 Fax: 02 9376 0625 info@watersheddesign.com.au

CLIENT: Sorja Gan
PROJECT: Alterations & Additions
ADDRESS: 22 Ian Lane, North Curl Curl
TITLE: West Elevation

JOB NO	16017	DRAWING NO	DA11
DRAWN	EH	CHECKED	MK
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