

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a Meeting of the Development Determination Panel will be held in the Walamai Room, Northern Beaches Council, Dee Why on

WEDNESDAY 13 JUNE 2018



Ashleigh Sherry
Manager Business Systems and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 13 June 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 23 MAY 2018

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 23 May 2018 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2017/1062 - 97 LAGOON STREET, NARRABEEN - DEMOLITION WORK, CONSTRUCTION OF A RESIDENTIAL FLAT BUILDING AND STRATA SUBDIVISION
REPORTING MANAGER	Steve Findlay
TRIM FILE REF	2018/342595
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant Development Consent to DA2017/1062 for Demolition work, construction of a residential flat building and strata subdivision on land at Lot 4 DP 450303, 97 Lagoon Street, NARRABEEN, subject to the conditions outlined in the Assessment Report.



REPORT TO DEVELOPMENT DETERMINATION PANEL

Meeting held on 13 June 2018

97 Lagoon Street Narrabeen - Demolition work, construction of a residential flat building and strata subdivision

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2017/1062
Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 4 DP 450303, 97 Lagoon Street NARRABEEN NSW 2101
Proposed Development:	Demolition work, construction of a residential flat building and strata subdivision
Zoning:	Warringah LEP2011 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Development Determination Panel
Land and Environment Court Action:	No
Owner:	Christine Ann Simpson
Applicant:	Stephen Simpson Atf The Simple Family Trust
Application lodged:	27/10/2017
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	10/11/2017 to 29/11/2017
Advertised:	11/11/2017
Submissions Received:	3
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,280,533.00

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D19 Site Consolidation in the R3 and IN1 Zone
Warringah Development Control Plan - Appendix 1 Car Parking Requirements

SITE DESCRIPTION

Property Description:	Lot 4 DP 450303 , 97 Lagoon Street NARRABEEN NSW 2101
Detailed Site Description:	<p>The subject site consists of a single allotment located on the eastern side of Lagoon Street, Narrabeen, near the intersection with Tourmaline Street.</p> <p>The site has an area of 455.6 square metres (sqm) with a frontage of 15.2 metres (m) to Lagoon Street and a depth of 29.8m.</p> <p>Existing development on the land consists of a single storey dwelling, carport, outbuildings and ancillary structures. There is a mix of native and non-native medium sized trees on the site but no rock outcrops as the land is within a coastal area containing deep sandy loam soils. The site has a low embankment where it falls to the road kerb at the front but is generally flat across the site. The land is 180m from Narrabeen beach and 160m east of Narrabeen Lagoon and is not subject to flooding. The site is within "Area A" for landslip risk and has a low risk of acid sulfate soils or groundwater intrusion.</p>



Surrounding development consists of a mix of single dwelling houses and residential flat buildings in landscaped settings. Adjoining the southern boundary is residential "townhouse" style unit complex and to the north and east of the site are detached dwelling houses. Development to the west of the site predominantly consists of two-storey detached dwellings. Coastal views are obscured by the surrounding two and three storey development to the east of the site. A group of shops (shop top housing) at North Narrabeen is located 270m north-east of the site in the vicinity of the North Narrabeen Surf Life Saving Club.

Redevelopment in the area is occurring in the R3 Medium Density zone, where opportunities exists to transition from existing older low density housing stock to new medium density apartments.

Map:



SITE HISTORY

Pre-lodgement Meeting No.PLM 2017/0068

A meeting was held with the applicant on 18 July 2017 to discuss demolition and the construction of a residential flat building on the site.

Council's preferred re-development for the site would require consolidation with adjacent properties pursuant to *Part D19 Site Consolidation* of the Warringah DCP in the R3 zone. The PLM notes identify the various non-compliance issues with developing the site in isolation and therefore raised the importance of the applicant submitting detailed information to demonstrate that reasonable effort had been made to achieve consolidation. In summary, the PLM advice concluded that the onus is on the applicant to provide suitable design outcomes to minimize the impact of non-compliances with the built form controls in order to support the merits of the proposal.

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"The proposal involving the existing single lot would need to demonstrate, in detail, that No.97 Lagoon street, developed in isolation, could in effect lead to good design and planning outcomes compared to a well designed larger apartment building that consolidated No.99 Lagoon and No.12 Tourmaline Street as a single re-development."

The advice state that if a DA is lodged, then the proposal is to be submitted with the required information and a suitable building design to be consistent with the PLM notes.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks development consent for demolition of a dwelling house and construction of a two-storey residential flat building containing 3 Units, with basement car parking, landscaping and ancillary site works.

Specifically, the development includes the following:

Basement Level RL6.38

- Car parking for 5 vehicles, including 1 visitor space (a disabled person space is not required);
- Bicycle parking;
- Residential storage areas (including a bulky goods storage area);
- Lift and stairwell access/egress; and
- Rainwater tanks.

Ground Floor Level - RL9.42

- 2 x 2 bedroom* apartments;
- Lift and stairwell access/egress;
- Pedestrian entry lobby;
- Driveway access to basement, landscaping and private courtyards;
- On-site stormwater detention system.

First Floor Level - RL12.52

- 1 x 3 bedroom apartment;
- Lift and stairwell access/egress;

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 4.55 'Matters for Consideration'	Comments
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Section 4.55 'Matters for Consideration'	Comments
Section 4.55 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.55 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.55 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.55 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.55 (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><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 as the development is not subject to the provisions of SEPP 65.</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. Additional information was received with respect to the basement design and carparking layout as shown on the revised architectural plans, dated 20/3/18. The revised plans also made minor changes to improve privacy, reduce overshadowing and reduce building bulk as well as increase landscaped open space area. Due to the minor nature of the changes re-notification is not required pursuant to Part A7 of the WDCP 2011.</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 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 4.55 'Matters for Consideration'	Comments
	<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 as SEPP 65 does not apply.</p>
<p>Section 4.55 (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>	<p><u>Environmental Impact</u></p> <p>The environmental impacts of the development on the natural and built environment are addressed under the Warringah Development Control Plan section of this report.</p> <p>Generally, the subject site is not constrained by any natural features and is not subject to any threatened species, critical habitat, bushfire, heritage or shallow acid sulfate soils. The site is able to drain stormwater to Lagoon Street and the applicant has adequately addressed the issue of OSD requirements. The proposal is supported by Council's Development Engineers subject to appropriate conditions of consent contained within the Recommendation of this report.</p> <p>The proposal is for the construction of a two storey residential flat building (containing 3 dwellings) located within an area zoned R3 Medium Density Residential, which permits the proposed form of residential accommodation. The area is undergoing transition with a variety of housing stock in existence from existing low density residential housing to new medium density developments located within close proximity to the subject site.</p> <p>The proposal is not considered to result in unreasonable impacts to the adjoining and nearby lands, subject to conditions. The development will maintain consistency with the existing pattern of development, maintain the residential use of the site, maintain the reasonable sharing of views. Further, it will not create an unreasonable sense of building bulk that is inconsistent with comparable medium density development in the street. The building will not result in an unreasonable level of overshadowing nor result in any unreasonable level of privacy loss given the setbacks and screening provided. The impacts of privacy and overshadowing are consistent with a medium density urban environment.</p> <p>The subject site is located within close proximity to Narrabeen local centre and associated bus interchange's and stops along Pittwater Road which provide public transport services to the broader Northern Beaches area, Manly and Sydney Central Business District.</p> <p>The development of this site for residential purposes is not considered likely to impact on existing or future opportunities within the zone for public recreation or the use of public open space.</p> <p>Therefore, impacts upon the public domain are considered acceptable. Further, standard conditions of consent would be imposed to ensure the adequate disposal of building and construction waste material</p>



Section 4.55 'Matters for Consideration'	Comments
	<p><u>Social Impact</u> The development is considered satisfactory in terms of potential social impact in the locality considering the residential character of the proposal and that the development will provide greater diversity to the housing stock of the Northern Beaches LGA.</p> <p><u>Economic Impact</u> The proposed development will not have a detrimental economic impact on the locality considering the residential nature of the proposed land use.</p>
Section 4.55 (1) (c) – the suitability of the site for the development	<p>The land use zone of the area as R3 Medium Density Residential is reflective of the desired future character of the area and use of land.</p> <p>The subject site is located in an area that in recent time has undergone a transition from existing low density housing stock to new medium density housing in the form of surrounding complementary and compatible medium density land uses.</p> <p>Lagoon Street is characterised by a mix of low density (single houses) and medium density housing stock (up to 3 storeys). To the immediate north and north west of the site are residential flat buildings, to the immediate east and west of the site are single dwelling houses.</p> <p>In this regard, the development has been designed to a scale that is considered to be of a satisfactory transition to the adjoining residential dwellings and residential flat buildings.</p> <p>Given the proximity of the site to the Warriewood Shopping centre and Pittwater Road to the east, the site is considered suitable for access to services and public transport. In addition, the existing site has access to adequate utility services (water, sewer telecommunication's and electricity etc.)</p> <p>Further, the development maintains a suitable and compatible land use for the site and is not considered to result in unreasonable or adverse impacts on the adjoining properties, subject to appropriate conditions.</p>
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Public Exhibition" in this report. Issues raised in the submissions received have been considered in this report and addressed by amended plans or appropriate conditions where relevant to ensure no unreasonable impact on the local amenity.
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

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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 3 submission/s from:

Name:	Address:
Ms Gwenneth Mary Glover	3 / 93 Lagoon Street NARRABEEN NSW 2101
Barbara Anne Crowe	12 Tourmaline Street NARRABEEN NSW 2101
Michael Clive Smith	2 / 93 Lagoon Street NARRABEEN NSW 2101

The following issues were raised in the submissions:

1. Solar access
2. Lift noise
3. Privacy
4. Overdevelopment
5. Fencing
6. Carparking
7. Health impacts
8. Land devaluation

The matters raised are addressed as follows:

1. Concern that the proposal creates excessive overshadowing across the private open space within No.93-95 Lagoon Street due to the non-compliance with the side boundary envelope, narrow side setbacks and roof shape / bulk.

Comment:

Issues of overshadowing created by the roof form and building bulk were raised with the applicant. The shadow diagrams, dated 30 May 2017, provide sufficient detail in 3D to demonstrate resultant overshadowing and provide a comparison to a compliant two-storey building (concept building outline) on the land for mid winter (June 21). Despite the reduced side boundary setbacks, sufficient changes have been made to the roof design (from the original DA plans dated 27 October 2017) for the building to ensure the proposal is consistent with the *NSW Land & Environment Court* planning principle established under *Benevolent Society v Waverley Council (2010) NSWLEC 1082* and the planning principle is used in this development assessment of solar access.

In summary, the main elements of the Planning Principle state that:

"At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.

The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.

A proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.

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For private open space to be assessed as receiving adequate sunlight, regard should be had of the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity.

Overshadowing by fences, roof overhangs and changes in level should be taken into consideration.

The impact on what is likely to be built on adjoining sites should be considered as well as the existing development."

The applicant has made amendments to the plans to improve solar access by reducing the wall height on the southern elevation to comply with the building envelope, thereby ensuring solar access into the north facing courtyards and living area windows of the adjoining townhouse development at 93-95 Lagoon adjoining the southern boundary.

The revised roof shape shown in the amended plans dated 20 March 2018 reduce the amount of overshadowing to adjacent land. The lift shaft structure remains unchanged and the floor levels of the building are not able to be lowered due the access gradients required for the basement level below. However, the change in the roof form is an appropriate response to the side boundary envelope to prevent unreasonable overshadowing to adjacent land. The revised design is consistent with the approach made by the NSW LEC under the Planning Principle in dealing with solar access.

While consolidation of the site with adjacent land would enable greater side boundary setbacks, the building height, wall height and side boundary envelope / setbacks have been designed to ensure the outcome is consistent with *Part D6 Access to Sunlight* of the WDCP.

2. Concern that there will be lift noise from the lift motor that will disturb the amenity of adjacent neighbours.

Comment:

The lift mechanism is contained within the enclosed lift shaft and a condition is recommended to ensure noise from any plant used for the building (including the lift motor, air conditioners and the like) does not exceed 5 dBA above background noise, measured at the property boundary to neighbouring residences. This issue is appropriately addressed by conditions to ensure no unreasonable noise impact and does not warrant refusal of the development application.

3. Concern that the building will impact privacy on adjacent properties.

Comment:

The proposal has been designed to ensure existing screen trees are retained within the rear setback, as much as practicable, and new landscaping is provided along the eastern, southern and northern setbacks to assist in maintaining privacy to adjacent land. While the ground floor is raised above natural ground, privacy screens are provided along the side elevations where the setbacks are narrower than normally required for a residential flat building.

The upper balcony at the rear of the site is a secondary and small balcony for single unit on the top floor and therefore the principal living area is oriented toward the street to minimize potential overlooking toward the neighbours private open space. The building design also uses a combination of translucent glass and narrow or highlight windows to maintain privacy along the side boundaries.



The potential privacy impacts due to the front entry have been addressed by the use of a privacy screen for the stairs, leading to the first floor from the ground floor and by incorporating a basement level pedestrian entry. As the building contains only three (3) units the likely pedestrian movements to and from the building is consistent that expected within the surrounding area.

In summary, amendments to the plans have been made by the applicant to address neighbours privacy concerns and include:

- a) deleted the entry path from the south side boundary for all entry via the basement;
- b) deleted the upper floor 'bedroom 2' window from 'unit 3' overlooking the southern boundary and townhouse rear yards;
- c) deleted the walkway around the northern side of living areas to upper floor unit 3;
- d) added privacy screens to the rear northeast decks on both lower and upper floors;
- e) introduced a narrow blade wall to restrict overlooking, from 'bedroom 3' of the upper floor unit, sideways over the southern side boundary.

Therefore, this issue has been addressed by the building design element changes and landscaping screening to be provided. The proposed development will not create unreasonable impacts on adjacent land for the zone. Therefore this issue does not warrant refusal of the application.

4. Concern that the proposal is an overdevelopment of the site.

Comment:

The most significant non-compliance with the built form controls relates to the side boundary setbacks. In this regard, the applicant has reasonably satisfied Council that site consolidation is not achievable and therefore the site is constrained to a single lot, enabling only three Units to be proposed. It is concurred that site consolidation would assist in achieving wider setbacks, however the applicant has adjusted the size and scale of the development to maintain the objectives of the side boundary setbacks to ensure an acceptable urban design outcome. In this regard, the proposal has achieved appropriate front and rear setbacks with compliant carparking and provided a landscaped setting around the building with reasonable privacy maintained.

Non-compliances with the side boundary envelope and side setbacks do not create unreasonable overshadowing and the bulk and scale of the building is consistent with other smaller flat buildings in the surrounding area.

Therefore, on a merit assessment of the proposal it is considered that the proposal does warrant refusal for reasons of overdevelopment.

5. Concern that the proposal may require sections of the existing boundary fencing to be replaced at cost to neighbours.

Comment:

The applicant has shown replacement fencing (timber, lapped and capped) where required to assist in maintaining privacy including replacement of dilapidated existing fencing. A condition is recommended that any boundary fence replacement shall be entirely at the applicants expense, as shown on the plans, and subject to relevant considerations under the *Dividing Fences Act 1991*.

Therefore, this issues is addressed by conditions and does not warrant refusal of the application.



6. Concern that the proposal does not have sufficient carparking for 3 Units due to personal car ownership rates.

Comment:

Personal car ownership rates are not able to be applied as a determination of carparking for development proposed is under the Warringah DCP 2011. Parking rates are applied in accordance with Appendix 1 of the DCP and the proposal complies with this, including access and carparking space and aisle dimensions. The provision of additional parking due to higher personal car ownership of particular residents (i.e. multiple cars for a family) is not a relevant determining factor in the merit assessment of the proposal under the DCP.

The proposal complies with the required carparking planning controls and this issue does not warrant special conditions or refusal of the application.

7. Concern that the proposal will cause adverse health impacts on adjacent residents.

Comment:

Environmental impacts that may cause health impacts include excessive dust, excessive noise, out of hours site work, and the like during the demolition and construction phase. These issues are to be controlled by conditions of consent to ensure compliance with acceptable standards for demolition or construction work and to prevent unreasonable amenity impacts.

Therefore, this issue is addressed by conditions and does not warrant refusal of the application.

8. Concern that the proposal will cause a devaluation of adjacent real estate.

Comment:

No evidence has been submitted that redevelopment of the site, would cause a devaluation of the adjacent residential properties. Given that the proposal will not create any unreasonable impacts on solar access or privacy and demonstrates good design principles for landscaping, building bulk and amenity this issue is not assessable against variable economic market considerations for a development application.

Therefore, 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
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p><i>Note: The proposed development may not comply with some requirements of the BCA. Issues such as Type of Construction and</i></p>

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Internal Referral Body	Comments
	<i>Travel distance to Exits may be determined with an alternate solution at Construction Certificate stage.</i>
Environmental Health (Acid Sulphate)	No objection to approval, subject to conditions.
Landscape Officer	The arborist report has been reviewed and landscape plan. No objections are raised, subject to conditions as recommended.
NECC (Development Engineering)	Development Engineering has access the driveway gradients and stormwater engineering issues. No significant objections subject to the engineering conditions as recommended.
Traffic Engineer	<p><u>Traffic Referral Comments</u></p> <p>The 5 onsite parking provision meets Council's development control plan requirements. In terms of sight distance at the driveway exits, the site does not meet section 3.2.4 of the Australian Standards AS2890.1:2004 where a minimum 2.5m by 2.0m sight distance triangle area is required to be kept clear at the property boundary.</p> <p>As the site is quite small for a basement carpark, the applicant has proposed the use of a turntable to access the parking spaces, including the visitor parking space. The report does not detail any information regarding the turntable, operating details, instructions to visitors on using the device, and maintenance plan. The report has provided turning path assessment for parking space no.2 for a B85 vehicle to access in and out of the parking space within a 3 point turn, however no further details have been provided for the other spaces. Further use of a turntable for small basement areas and providing consent for this development of this size and this matter should be considered by the development assessment officer.</p> <p>The site also has provided one disabled space under BCA table 3.5 for a building containing 3 units and it is not considered necessary for a multi-unit dwelling of this size to provide a disabled parking space. It is recommended that this space be reinstated as an additional visitor parking space and the shared zone allocated as an additional bicycle parking area, relocating the two bicycle parking near space no.1 for improved vehicular access.</p> <p>Whilst the proposed development impacts to the surrounding road network is not considered significant, and the site meets the parking provisions as described in WDCP 2011, the development is not supported due to the deficiencies identified.</p> <p><u>Revised Traffic Referral Comments 26/3/2018</u></p> <p>I have reviewed the additional information provided by the applicant and can provide the following comments:</p> <p><u>(i) Driveway sight distance at property boundary</u></p> <p>The lower landscaping is acceptable and will comply to the sight distance requirements of AS2890.1:2004.</p>



Internal Referral Body	Comments
	<p>(ii) <u>Basement carpark layout</u></p> <p>The additional space in the basement aisle now proposes an operation without the use of a turntable. Parking spaces No.3 and No.4 actually requires a 5 turn movement as indicated and this is considered adequate.</p> <p>No objection to approval of the revised proposal, subject to conditions as recommended.</p>
Waste Officer	Location and design of bin room is acceptable. No objection subject to conditions as recommended.

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.
NSW Police - Local Command (CPTED)	The proposal was referred to NSW Police (Local Command) for any comments on crime prevention through environmental design. No comments and no conditions have been received for the referral.

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. The Geotechnical report (No.2017-210) prepared by *Crozier Geotechnical Consultants* has not identified any soils conditions that indicate the presence of contaminating material. Conditions are included to address the appropriate disposal of asbestos materials if present during demolition and to ensure health risk to adjacent land is appropriately managed.



With respect to acid sulfate soils and water table risks the geotechnical report identifies the following minimal risk:

"Considering the site conditions and depth of the ground water table, the proposed excavation is unlikely to intersect AS Soils. As per the guidelines of the NSW Acid Sulfate Soil Manual an Acid Sulfate Management Plan is not required."

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.870327M).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	40	45

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.

Other Service Infrastructure Authorities

The proposal was not required to be referred to the Roads and Maritime Service (RMS) and no other service authority referral issues are raised pursuant to the SEPP.

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: EGL8.03 to RL16.53 (as per survey plan)	8.5m	8.5m	N/A	Yes

building height (or height of building) means:

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

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
5.9 Preservation of trees or vegetation	Yes
5.9AA Trees or vegetation not prescribed by development control plan	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B2 Number of storeys	2 storey	2 storey (Basement is 0.84m above ground level)	N/A	Yes (<1m)
B3 Side Boundary Envelope	North 4m at 45 degrees	Complies (Eaves permitted to encroach)	N/A	Yes
	South 4m at 45 degrees	Encroachment Lift shaft - access structure 2.1m	95%	No*

		Upper wall section Unit 3 0.3m	14%	No*
B5 Side Boundary Setbacks	North 4.5m <i>(POS permitted to 3.5m)</i>	Basement carpark wall 2.0m	N/A	Yes
		Ground Floor building wall 2.0m to 5.1m	up to 55%	No*
		Ground Floor balcony planter box 1.6m	64%	No*
		Ground level private open space yard area 0.0m	100%	No*
		First Floor building wall 3.0m	33%	No*
		First Floor balcony and planter box structure 1.5m	25%	No*
	South 4.5m <i>(POS permitted to 3.5m)</i>	Basement carpark driveway / bike storage 2.0m	N/A	Yes
		Basement stairs, lift and foyer 1.1m to 1.5m	40%	No*
		Ground Floor building wall 2.0m to 2.5m	up to 71%	No*
		Ground level private open space yard area 0.0m	100%	Yes
		First Floor building wall 2.5m to 3.1m	up to 44%	No*
		Lift shaft 2.0m	55%	No*
		Stair, entry landing and privacy screen 1.9m	57%	No*
B7 Front Boundary DA2017/1062	6.5m	Basement	N/A	Yes

Setbacks	(Lagoon Street)	carpark wall 6.5m		
		Basement rain water tank 5.7m	44%	No*
		Basement bin room 3.5m	N/A	Yes
		Driveway planter box structure 3.8m	41%	Yes
		Ground Floor building wall 6.5m - 9.0m	N/A	Yes
		Ground Floor balcony and planter box structure 5.2m	20%	No*
		Ancillary encroachment of private landscaped front yard (above ground OSD permitted)	100% N/A	No* Yes
		First Floor building wall 6.5m - 9.2m	Yes	Yes
		First Floor balcony and planter box structure 5.8m	10%	Yes
B9 Rear Boundary Setbacks	6.0m	Basement carpark wall 6.0m	N/A	Yes
		Ground Floor building wall 6.0m	N/A	Yes
		Ground Floor balcony and planter box structure 4.5m	25%	No*
		Private landscaped rear yard 6.0m	N/A	Yes

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		First Floor building wall 6.0m - 8.5m	N/A	Yes
		First Floor planter box structure 5.4m	10%	Yes
		Building blade wall screen 5.2m	13% ^m	No*
D1 Landscaped Open Space (LOS) and Bushland Setting (Site area 455.6sqm)	50% (227.8sqm)	45.6% (207.7sqm)	8.8% (shortfall of 20.1sqm)	No*

(*)Refer to detailed merit assessment under the relevant Built Form Controls heading within this report.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B2 Number of Storeys	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
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	No	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes

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Clause	Compliance with Requirements	Consistency Aims/Objectives
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D19 Site Consolidation in the R3 and IN1 Zone	No	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
Appendix 1 Car Parking Requirements	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

Description of non-compliance

On the southern elevation the upper section, up to 0.3m of the wall for Unit 3, and the top 2.1m of the lift shaft and part of the privacy screen for the front entry & stairs to Unit 3 encroach within the side boundary envelope.

Merit consideration

With regard to the consideration for a variation, the proposal 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 elements of non-compliance with the building envelope are confined to the upper sections of the southern wall, lift shaft and front entry privacy screen. These elements extend from 0.3m to 2.2m within the side boundary envelope. In the absence of being able to achieve site consolidation with adjacent properties to the north and east, the proposal is constrained by the site width (15.2m) and is unable to achieve the wider side setbacks normally required for a two storey flat building that would make compliance with the side boundary envelope achievable. However, the top floor has been setback maintain appropriate visual separation along the side boundary envelope, consistent with the building height. The impact of bulk has been addressed in the design to ensure the development does not unreasonably dominate the streetscape by the use of recessed wall sections and balcony elements as well as changes in external materials.



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

Comment:

The lift shaft is 2.1m wide and forms a minor section of the southern wall but extends 2.2m through the side boundary envelope at the first floor level. Part of the privacy screen for the front entry stair case also extends into the side boundary envelope at first floor level. The applicant has provided detailed shadow diagrams DA-12 & DA-13 to demonstrate compliant solar access to adjacent land of No.93-95 Lagoon Street and No.12 Tourmaline Street. Due to neighbours concerns with elements of the proposed building that encroach within the building envelope, amended plans were submitted by the applicant. The revised plans (Issue A-4 dated 20 March 2018) will reduce overshadowing and amend the roof style such that it now conforms more closely to the building envelope. A minor section of the southern wall (0.3m) the roof eaves and the top 2.2m of the lift shaft outside the side boundary envelope. The changes to the plans ensure no unreasonable impact on light, solar access and privacy to adjacent land.

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

Comment:

The site is generally level except for a minor embankment along the street frontage. However, the height of the land above road level does not enable a steeper gradient to the basement carpark and therefore the height of the basement partly above ground level influences the non-compliance with the side boundary envelope for the upper level. The roof design however has been amended to substantially reduce non-complying elements protruding within the side boundary envelope.

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 s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B5 Side Boundary Setbacks

Description of non-compliance

The controls require a minimum setback to the side boundary of 4.5m. The proposal involves setbacks to the building wall of 2.0m to 5.1m along the northern elevation and 2.5m to 3.1m for the northern elevation which does not comply with the control.

- **Basement level:** Entry, stairs, lobby and lift are setback 1.1m from the southern side boundary (bin room permitted).
- **Ground floor level:** Private open space terraces are up to 2.0m from the side boundary and private open space (private garden area) at natural ground level is up to the boundary. (Entry, stair, landing are less than 1.0m above ground level and permitted). The lift shaft is 1.1m from the side boundary and extends above 1.0m in height through to the roof.

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- First floor level: Entry, stair, landing, privacy screen and lift are setback 1.1m from the southern side boundary.

The DCP allows for variations to the side boundary setback as follows:

All development:

- *Light fittings, electricity or gas meters or other services infrastructure and structures not more than 1 metre above ground level (existing) (including steps, landings, pedestrian ramps and stormwater structures) may encroach beyond the required setback up to 2 metres from a side boundary; and*
- *Entrance and stair lobbies at ground floor level may encroach the required setback up to 2 metres from a side boundary.*

R3 - Basement carparking structures, and private open space:

- *Variations will be considered for existing narrow width allotments, where compliance is unreasonable in the context of surrounding medium density development for basement carparking and private open space.*

Basement car parking may extend:

- *Up to 2 metres from the side boundary, and*
- *No more than 1 metre above ground level (existing)*

Private open space may extend:

- *Up to 3.5 metres from a side boundary*

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 encroachment of the side boundary setback does not significantly reduce the development's ability to provide areas of deep soil landscaping. The assessment of the application has found the amount of landscaped open space to be satisfactory despite the shortfall in the numerical area of required landscaped open space (as per the WDCP definition). Grouped and linear planting is provided within the side setback areas within deep soil zones to maintain a landscape setting and screen planting for the building.

- ***To ensure that development does not become visually dominant.***

Comment:

The provision of ground level private open space within the side setbacks is a practical benefit to the two (2) ground floor units to enhance the amenity of those private open space areas. The low density of the development, being three (3) residential units only provides a scale that is commensurate with other larger residential houses, on single lots, in the vicinity of the site. The ground level area acts as an extension of the living space of the ground floor unit and does not



compromise the landscape setting of the building and screen planting within the side setback. Selected landscape planting is of a suitable height and density to soften and partly screen the building when viewed from adjacent land.

- ***To ensure that the scale and bulk of buildings is minimised.***

Comment:

The main footprint of the building is 17.3m long and 11.8m wide with substantial recessed sections for the top floor area and terraces for each floor. Thus the bulk and scale of the building is broken up along the side planes to address this objective due to the reduced wall setbacks. While the proposal includes significant variations to the side setbacks for the side walls of the building and ancillary elements, the use of landscape planting, articulation, building materials, and windows assists to ensure the visual impact of the building is minimized.

- ***To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.***

Comment:

Adequate physical separation is provided between the adjacent buildings to maintain a reasonable level of privacy, amenity and solar access appropriate to the medium density zone and DCP controls. The ground level private open space and terraces and other elements of the building do not cause an unreasonable impact on privacy. The building does not create unreasonable impacts in terms of solar access to the south or east for adjacent land.

- ***To provide reasonable sharing of views to and from public and private properties.***

Comment:

The development does not create any unreasonable impacts on the sharing of views to and from public and private properties.

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

Description of non-compliance

The control requires development to be setback 6.5m from the front boundary. Variations to the control include a basement water tank structure which is setback 5.7m, and a landscape planter structure, private open space and balcony structure for Unit 1 extending within the front setback up to 3.8m.

Merit consideration:

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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 building elements that are within the front setback are minor in nature and ancillary to the basement structure which is located substantially below ground level and along the front edge of the terrace for unit 1. The terrace also has a stairway that enable access to the garden area in front of the building. This grassed area is a stormwater detention basin and cannot be modified by the unit occupants. Overall, the non-complying elements have no significant impact on the sense of openness created along the site frontage.

There are no variations at first floor level for the building walls. However, a planter box edge is used to create a balustrade feature to the front balcony. The planter box is 0.4m deep and set above floor height (at the balustrade) to maintain a sense of openness to the terrace for Unit 3.

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

Comment:

The basement water tank is located partly below ground level and is screened by the front landscaped area. A minimum 1.0m of soil depth for the landscaped planter has been provided over the basement carpark entry and assists to maintain landscape elements across the full width of the site when viewed from the street. In addition, the carpark is wholly contained below the footprint of the residential area of the ground floor and does not detract from the visual continuity of the street.

The proposed variations on the ground floor level are minor in nature and the replacement landscape elements are consistent with maintaining the visual continuity and pattern of buildings and landscape elements in the street.

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

Comment:

The encroaching elements are minor structures and are generally appropriate to the ground level and basement level, with landscape spaces adjacent. Landscape planting includes a mix of deep soil grassed areas, small to medium shrubs and small trees appropriate to the coastal environment.

In this regard, the landscaping proposed will ensure the development does not have an adverse impact on the visual quality of the Lagoon Street streetscape and public spaces.

- ***To achieve reasonable view sharing.***



Comment:

The site is within a built up area and does not benefit from any significant coastal views due the density of surrounding 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.

B9 Rear Boundary Setbacks

Description of non-compliance

The control requires a rear setback of 6.0m. A blade wall in the south-east corner of the building is setback 5.3m and the terrace for Unit 2 is setback 5.1m

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 opportunities for deep soil landscape areas are maintained.***

Comment:

Deep soil landscape planting is provided (as shown on plan DA-15, dated 27 October 2017) and the selected existing trees of "T9, T10 and T11" are to be retained within the 6.0m rear setback area of the site. The minor encroachments of the rear terrace and stairs (Unit 2) and the blade wall at the south-east corner of the building do have an unreasonable impact on deep soil landscape area within the rear setback.

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

Comment:

The proposal does not include any additional structures, ancillary to the building within the rear yard that may restrict landscape planting or soil depth, such as ancillary concrete structures. The main wall of the building is setback 6.0m and the minor elements of the blade wall and edge of the rear balcony are minor encroachments that do not unreasonably reduce the sense of openness of the rear yard.

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

Comment:

The rear terrace is above ground level by 0.847m and therefore has a set of stairs to access the rear yard. The encroachment for the rear terrace is 0.9m and a shallow planter box is also shown that forms part of the balustrade. A privacy screen is shown for the northern edge of the terrace and a blade wall at the south-east corner of the building are minor encroachments within



the rear setback area and do not add unreasonable height and bulk to the building.

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

Comment:

The depth of the site at 29.9m constitutes a site constraint as the land is generally flat with only a minor embankment at the road frontage. This requires a development response to comply with driveway gradients that requires the basement to be partly out of the ground and causes the ground floor to also be partly above ground. The building design responds to this by incorporating additional privacy elements at the rear, including the blade wall at the south east corner and privacy screening for the rear terraces. The encroachments are minor and do not unreasonably compromise the rear setback.

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

Comment:

The application includes the replacement of boundary fencing with lapped and capped fencing, where required to assist in maintaining ground level privacy for neighbouring properties. The ground floor level is elevated above natural ground level due to the basement area below, however the terrace for Unit 2 is located on the northern side of the building and a secondary balcony at the rear is provided for Unit 3. Dense planting is provided at ground level within private open space areas to restrict use of the setback area and provide additional privacy for the ground floor.

Deep soil landscaping will be maintained within the 6.0m rear setback to assist in maintaining landscape screening and privacy for neighboring properties of No.12 and No.99 Tourmaline Street as well as No.93-95 Lagoon Street.

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.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The control requires a minimum 50% of the site area to be landscaped open space. The development involves 45.6% (207.7sqm) of the total site area as landscaped open space. This represents a variation of 8.8% or 20.1sqm.

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 demonstrates that the front, side and rear setback areas have been designed to ensure a landscape setting and a quality and quantity of planting to enhance the appearance of the building. This will maintain the local streetscape character and assist to soften the visual impact of the development through the inclusion of a mix of planting including shrubs and small to medium sized trees. Planting along the front setback includes lawn areas, coastal plants and screen hedge planting to enhance the streetscape.

- ***To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.***

Comment:

The natural vegetation within the site will be significantly altered for the development, however trees T4, T9, T10, T11 and T13 are to be retained as per the Demolition Plan (DA-21) and Arborist Report (RTC-15017). There are no areas of threatened species, significant topographical features or significant areas of remnant vegetation on the site. The Landscape Plan indicates a comprehensive replacement planting regime to enhance the landscaped setting for the building. Tree and shrub planting is to be provided which varies in mature height from 1.2m to 10m, including the retention of one existing tree at the rear of the site.

The proposed planting includes a shortfall in the required 50% landscape area. However, it is noted that front, side and rear setbacks include areas that are at least 2.0m wide (except for the main entry path) and will have deep soil zones of 1.0m or more.

- ***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:

The proposed planting to be located within the front, side and rear setback areas includes a mix of shrubs and small to medium sized trees and native palms which achieve a mature height of between 1.2m to 10.0m. Refer to 'Landscape Plan DA-15' & 'Planting Schedule DA16' dated 27/10/2017, prepared by *GartnerTrovato*. The spacing of the trees around the perimeter of the site softens the visible building bulk. Given the proposed height of trees to be retained and new plants shown on the planting schedule, landscaping will be of scale and density commensurate with the proposed building height, bulk and scale. Dense planting areas are used in suitable locations for the ground level, including adjacent terrace balconies to break up wall structures and soften the appearance and screen the exterior of the building.

- ***To enhance privacy between buildings.***

Comment:

The development includes areas of dense landscaping located around the perimeter of the site which, in-conjunction with the physical window locations and fixed privacy screens, will provide adequate screening between buildings. The landscape plan indicates small to medium sized



trees to be planted around the perimeter of the site which achieve a height of between 1.2m to 10m at maturity which will further assist to provide adequate screening / landscape setting to the development when viewed from surrounding and adjoining properties.

- ***To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.***

Comment:

Each of the ground floor apartments have terraces that are elevated above ground level but include stair access to the front and rear garden. Thus Unit 1 and Unit 2 have access to lawn areas that provide alternative open space for recreational opportunities for occupants. The first floor apartment (Unit 3) has a large main balcony facing the street and a small secondary balcony at the rear. All terraces have screens on the side elevations to reduce privacy impacts on adjacent land.

In addition to the above, the site is located close to nearby recreational areas such as parkland's within the North Narrabeen beachfront reserve and Narrabeen Lagoon to the east and north of the site. It is anticipated that occupants will utilise public facilities external to the property to supplement their recreational needs that are not possible within the site.

- ***To provide space for service functions, including clothes drying.***

Comment:

The plans do not indicate any areas allocated at ground level specifically for clothes drying. However, the terrace areas are large enough to enable domestic clothes drying without unreasonably restricting the use of the terrace. Further, it is considered that sufficient internal areas and domestic facilities will be provided for service functions such as clothes drying.

- ***To facilitate water management, including on-site detention and infiltration of stormwater.***

Comment:

The development has been reviewed by Council's Development Engineers having regard to the provisions for stormwater management and has raised no objections to the proposed stormwater system subject to conditions included in the recommendation of this report. The stormwater detention system is within the front lawn area and therefore must be retained as lawn and garden area. The site is also within an area containing deep sandy loam soils and therefore the land has good stormwater infiltration capability within the setback areas, despite the shortfall in compliant landscape open space.

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.

D19 Site Consolidation in the R3 and IN1 Zone



Merit consideration

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

- ***To encourage lot consolidation to allow efficient use of land.***

Comment:

The objective of this clause is to encourage lot consolidation to ensure the orderly and efficient use of land, in line with the objects of the *Environmental Planning and Assessment Act 1979*. The applicant has provided evidence of a written offer to purchase No.99 Lagoon Street. The owner of No.99 Lagoon Street has responded that the offer should be well above market value to encourage a sale (enabling lot consolidation). The applicant has provided a further detailed site consolidation outline to demonstrate that the willingness of the owner of No.99 Lagoon Street to sell has been exhausted and consolidation is no longer feasible.

The applicant has demonstrated that a thorough and robust effort to satisfy this objective has been undertaken.

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

Comment:

While site consolidation would assist to improve carpark access and setbacks for a single development across 2 or 3 adjacent lots, this has not been feasible to achieve. Therefore, the applicant has sought to demonstrate that a smaller "boutique" apartment development can still be carried out in a manner that is a good outcome for the site and surrounding land.

The applicant has demonstrated some innovative measures to address the numerous non-compliances with the built form controls. This includes design measures to minimize or address issues of privacy, setback encroachments, overshadowing, landscaped areas, building bulk and building envelope due to unsuccessful attempts to consolidate. The applicant demonstrated that adjacent sites fronting Tourmaline Street will still be able to be redeveloped for medium density use.

- ***To avoid lot sterilization.***

Comment:

Failure to consolidate with No.99 Tourmaline Street does not prevent that land from being developed in a similar manner for medium density use as per the subject site. This has been illustrated in the concept plans and design report, prepared by *Gartner Trovato*, dated 18 May 2018.

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 s1.3 of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

Appendix 1 Car Parking Requirements



The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Residential Flat Buildings	· 1 space per 1 bedroom dwelling	0	0	0
	· 1.2 spaces per 2 bedroom dwelling	2.4	2	-0.4
	· 1.5 spaces per 3 bedroom dwelling	1.5	2	+0.5
	· 1 visitor space per 5 units or part of dwellings	1	1	0
Total		4.9 (5)	5	Complies

Clause C3 of WLEP 2011 requires that adequate off-street car parking is to be provided within the subject property boundaries in accordance with the use provisions of Appendix 1. A disabled persons parking space is not required for the building under the *Building Code of Australia* or the *Disability Discrimination Act 1992* as the building has a continuous path of travel to the street with internal lift access and the building is not intended for short term occupancy.

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 s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly 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 \$ 1,280,533		
Contributions	Levy Rate	Payable
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Total Section 94A Levy	0.95%	\$ 12,165
Section 94A Planning and Administration	0.05%	\$ 640
Total	1%	\$ 12,805

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

The proposed apartment building is a permissible use within the R3 Medium Density Zone. The proposal is consistent with the transition occurring to the housing stock in the vicinity of the site, whereby older single dwellings on lots are being taken up for medium density re-development. Such redevelopment however is preferred to occur with site consolidation to ensure the orderly and economic use of land and provide appropriate housing yield. In this case, the applicant has been unable to achieve site consolidation and has opted for a small scale "boutique" flat building appropriate for the site. In doing so, the applicant has addressed the requirements relating to site consolidation and redevelopment for medium density use *WDCP* and the *NSW LEC Planning Principle*.

Being a smaller single site, the applicant has had to ensure an appropriate design response to address height & setback controls, landscaping, pedestrian access, waste management, privacy, overshadowing, visual bulk, traffic and parking, stormwater and a built form to ensure a suitable design for the physical site attributes and surrounding amenity.

The most significant variations to the development controls relate to the side setbacks, building envelope and landscaped open space. The applicant has addressed the non-compliances by delivering a design that maintains the objectives of those controls. On balance, the design response is appropriate to ensure acceptable design outcomes that does not cause unreasonable amenity impacts on adjacent land or an undesirable precedent for a medium density re-development on a single lot.



Potential amenity impacts arising from non-compliances with front, side and rear setbacks and landscape open space controls have been considered in detail and do not warrant refusal of the application.

The public submissions received have been addressed within this report and those issues raised have been considered in the context of the development proposal and likely impacts. Submissions included concerns raised in respect of solar access, lift noise, privacy overdevelopment fencing, carparking, health impacts and land devaluation. These matters have been considered in detail pursuant matters for consideration under the EP&A Act 1979 and the relevant local planning controls. The issues raised do not warrant refusal of the application and the issues have been addressed by conditions, where appropriate.

In summary, the proposal is supported, subject to conditions to ensure a good planning outcome. This includes conditions to address lift noise, fencing, dilapidation risk, external materials, landscaping and privacy.

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 DA2017/1062 for Demolition work, construction of a residential flat building and strata subdivision on land at Lot 4 DP 450303, 97 Lagoon Street, NARRABEEN, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA-02 Basement Plan	20.3.2018	Gartner Trovato Architects
DA-03 Ground Floor Plan	20.3.2018	Gartner Trovato Architects
DA-04 Level 1 Plan	20.3.2018	Gartner Trovato Architects
DA-05 North Elevation	20.3.2018	Gartner Trovato Architects
DA-06 East Elevation	20.3.2018	Gartner Trovato Architects
DA-07 South Elevation	20.3.2018	Gartner Trovato Architects
DA-08 West Elevation	20.3.2018	Gartner Trovato

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		Architects
DA-09 Section A	20.3.2018	Gartner Trovato Architects
DA-10 External Finishes	20.3.2018	Gartner Trovato Architects
DA-21 Demolition Plan	27.10.2017	Gartner Trovato Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
SW1 Stormwater Management Plan	20.10.2017	Barrenjoey Consulting Engineers
DA-20 Gutter Crossing & Driveway Section	27.10.2017	Gartner Trovato Architects
DA-22 Excavation Sediment Control Plan	27.10.2017	Gartner Trovato Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Basix 870327M	26.10.2017	Gartner Trovato Architects
Arboricultural Assessment & Development Impact Report RTC-15017	24.10.2017	Raintree Consulting
Geotechnical Site Investigation 2017-210	12.10.2017	Crozier Geotechnical
BCA Assessment Report 108678-BCA-r1	11.10.2017	BCA Logic

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
DA-15 Landscape Plan*	27.10.2017	Gartner Trovato Architects
DA-16 Plant Species Schedule	27.10.2017	Gartner Trovato Architects

*Landscape plan to be updated to correspond with the Architectural plans dated 20.3.2018

Waste Management Plan		
Drawing No.	Dated	Prepared By
Waste Management Report - 97 Lagoon Street	27.10.2017	Antony Westwood

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:

(i) The southern wall of the building shown as material cladding "D", below RL15.10 metres (m), shall be weatherboard cladding to match the exterior walls "A" shown on the approved plans.

(ii) New "lapped and capped" timber paling fencing is to be provided as shown on the approved plans at the Applicant's expense and no cost to adjacent owners where any replacement fencing is required.

(iii) Fencing along the front boundary sandstone clad wall is not to exceed RL9.1m, as shown on the approved plans.

Details demonstrating compliance are to be shown on the Construction Certificate plans and submitted to the Principal Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts in accordance with WLEP2011 and WDCP. (DACPLB02)

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) All sound producing lift plant, door motors, air conditioning machinery or fittings and the like, to service the building must not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room (s) consistent with the *Environment Protection Authority's NSW Industrial Noise Policy* and/or *Protection of the Environment Operations Act 1997*.

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 \$ 1,280,533.00		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 12,165.06
Section 94A Planning and Administration	0.05%	\$ 640.27
Total	1%	\$ 12,805.33

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.

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

7. **On-site Stormwater Detention Compliance Certification**

Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Northern Beaches Council's "On-site Stormwater Detention Technical Specification" and the concept drawing by Barrenjoey Consulting Engineers PTY LTD, drawing number 170915-SW1 Rev A dated 20 October 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)

8. **Pump-Out System Design for Stormwater Disposal**

The design of the pump-out system for stormwater disposal will be permitted for drainage of basement areas only, and must be designed in accordance with Council's Stormwater Drainage Policy. Engineering details demonstrating compliance with this requirement and certified by an appropriately qualified and practising hydraulic engineer.

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

Reason: To ensure adequate provision is made for the discharge of stormwater from the excavated parts of the site. (DACENC04)

9. **Stormwater Disposal**

Plans indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments, shall be submitted prior to the issue of the Construction Certificate. The plans must indicate the provision of a rainwater tank in accordance with the BASIX certificate. Stormwater shall be conveyed from the site to the kerb and gutter in Lagoon Street.

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 disposal and stormwater management and compliance with the BASIX requirements, arising from the development. (DACENC07)

10. **Dilapidation Report / Survey**

A pre-construction / demolition Dilapidation Report is to be prepared by a suitably qualified person to record and address potential dilapidation risk to adjacent land (sharing a common boundary), including any other adjacent structures deemed necessary by the Accredited Certifier. The report is to also record the condition of public assets / infrastructure within the road reserve in front of the site.

A photographic survey of adjoining private properties (as appropriate) detailing the physical condition of those properties, both internally and externally, including such items as walls, ceilings, roof, structural members and other similar items, SHALL BE submitted to Accredited

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Certifier prior to the issue of a Construction Certificate. This survey is to be prepared by an appropriately qualified person. On completion of the excavation and building works and prior to occupation of the building, a certificate prepared by the appropriately qualified person to the effect that no damage has resulted to adjoining premises, is to be provided to the Principal Certifying Authority.

If damage is identified by the appropriately qualified person which is considered to require rectification, the damage shall be rectified or a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible and prior to a final Occupation Certificate being issued. All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant **MUST DEMONSTRATE**, in writing, to the satisfaction of Accredited Certifier that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed.

The pre-construction / demolition dilapidation report must be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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.

The pre-construction / demolition dilapidation report must be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's Infrastructure (DACENCPC1)

11. **Compliance with Standards**

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

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

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

Advice to Applicants: At the time of determination in the opinion of Council, the following (but not limited to) Australian Standards are considered to be appropriate:

- (a) AS2601.2001 - Demolition of Structures**
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
- (e) AS 4970 - 2009 'Protection of trees on development sites'***
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking**
- (g) AS1668 The use of mechanical ventilation

*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website

http://www.humanrights.gov.au/disability_rights/buildings/good.htm

**Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to. (DACPLC02)



12. Waste and Recycling Requirements

Details demonstrating compliance with Warringah Development Control Plan – Part C9 Waste Management, including the required Warringah Waste Management Plan, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with Warringah Development Control Plan – Part C9 Waste Management, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.
(DACWTC01)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

13. 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)

14. Tree protection

(a) Existing trees which must be retained:

- i) All trees not indicated for removal on the approved plans (T2, T4, T9, T10, T11, T13) , 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)

15. Tree removal within the road reserve

i) This consent includes approval to remove the following trees located within the road reserve:

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Species	Location
1 x <i>Eucalyptus microcorys</i> (Tallowood)	Lagoon Street road reserve forward of property and clear of any services.

ii) Removal of approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor.

iii) Details of currently approved tree contractors can be obtained from Northern Beaches Council Public Trees Section prior to removal.

Reason: Public liability

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. **Vehicle Crossings**

The provision of normal low profile vehicle crossing 3.3m metres wide in accordance with Northern Beaches Council Drawing No A4-3330/3 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)

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. **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.

19. **Requirement to notify about new contamination evidence**

Any new information revealed during demolition and excavation works that has the potential to alter previous conclusions about site Acid Sulphate Soil details shall be immediately notified to the Council and the Principal Certifying Authority.

Reason: To protect human health and the environment. (DACHPEDW1)

20. **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

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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)

21. Protection sites of significance

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)

22. Waste/Recycling Requirements (Waste Plan Submitted)

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan.

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided. (DACWTE01)

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

23. 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)

24. 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
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to the issue of any interim / final Occupation Certificate.

Reason: To identify encumbrances on land. (DACENF02)

25. Reinstatement of Kerb

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

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

Reason: To facilitate the preservation of on street parking spaces. (DACENF03)

26. 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 Warringah Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Warringah 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)

27. 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)

28. Positive Covenant for the Maintenance of Stormwater Pump-out Facilities

A Positive Covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the property title to ensure the on-going maintenance of the stormwater pump-out facilities on the property being developed.

Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the Land & Property Information Department.

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 adequate provision is made for the stormwater pump out system to be



maintained to an appropriate operational standard. (DACENF11)

29. 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)

30. Creation of Positive Covenant and Restriction as a User

Where any conditions of this Consent require the creation of a positive covenant and/or restriction as a user, the original completed request forms, (Department of Lands standard forms 13PC and/or 13RPA), shall be submitted to Warringah Council for authorisation.

A certified copy of the documents shall be provided to Warringah Council after final approval and registration has been affected by the "Department of Lands".

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of a Interim / Final Occupation Certificate.

Reason: To identify encumbrances on land. (DACENF14)

31. Required Planting

Trees shall be planted in accordance with the following schedule:

No. of Trees Required.	Species	Location	Pot Size
All Trees/Palms	As indicated on Landscape Plan Dwg No. DA-15 A dated 27-10-2017 prepared by Gartner Trovato	As indicated on the Landscape Plan	As indicated on the Landscape Plan

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)

32. Garbage and Recycling Facilities

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

Door adjacent to garage door must not be locked at any time and able to be latched in an open



position.

Door on the waste bin room and bulky waste bin room must be removed.

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

Reason: To prevent pollution of the environment and to protect the amenity of the area.
(DACPLF03)

33. **House / Building Number**

House/building number is to be affixed to the building / property entry point to be readily visible from the public domain.

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

Reason: Proper identification of buildings. (DACPLF04)

34. **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.

35. **Sydney Water**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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 compliance with the statutory requirements of Sydney Water. (DACPLF08)

36. **Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with Warringah Development Control Plan – Part C9 Waste Management

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 waste and recycling facilities are provided. (DACWTF01)

37. **Waste/Recycling Compliance Documentation**

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled. (DACWTF02)

38. **Positive Covenant for Waste Services**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to provide access to the waste storage facilities prior to the issue of an Interim/Final Occupation Certificate. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities (DACWTF03)

39. **Authorisation of Legal Documentation Required for Waste Services**

The original completed request form (Department of Lands standard form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land. (DACWTF04)

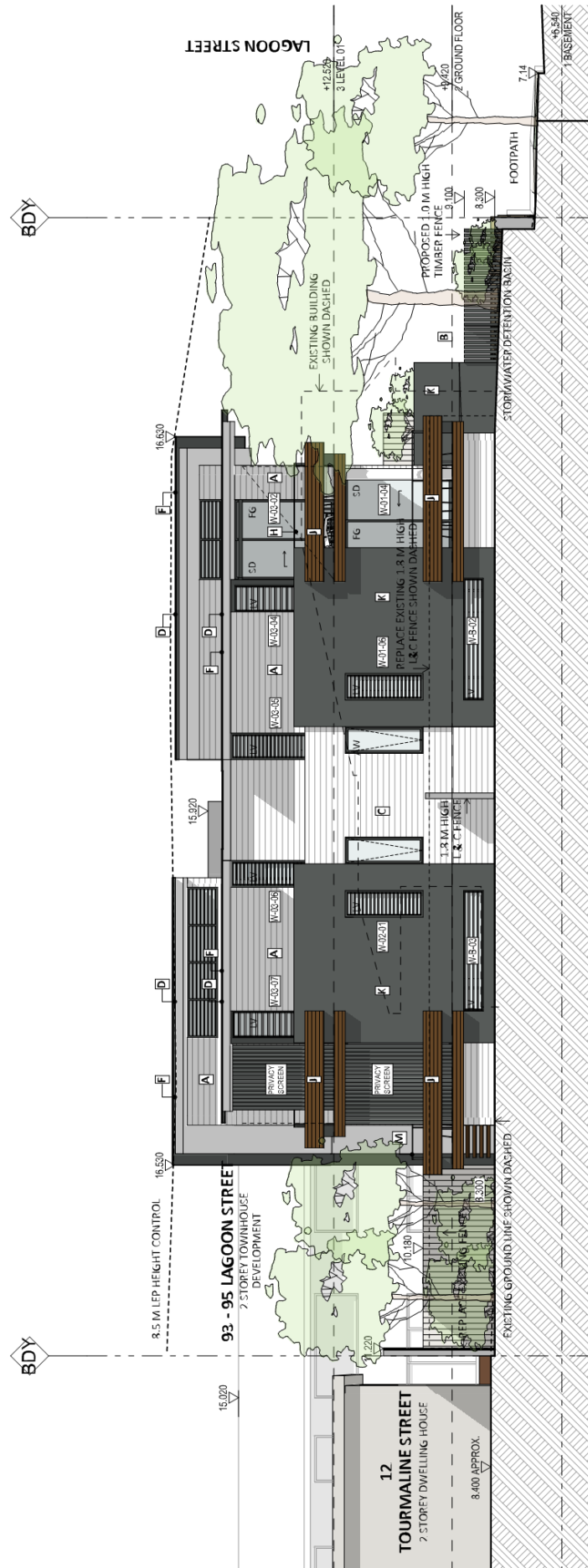
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

40. **Strata Subdivision**


















































































Any Strata Subdivision of the building is to ensure landscaping areas within the side setbacks within the western (front), eastern (side) and southern (side) setbacks for the building are maintained as common property on Title. These areas may be permitted to have "exclusive use" where appropriate for the ground floor occupants. Use of these areas must not interfere with the services functions or access to services within the landscaped areas of the site.

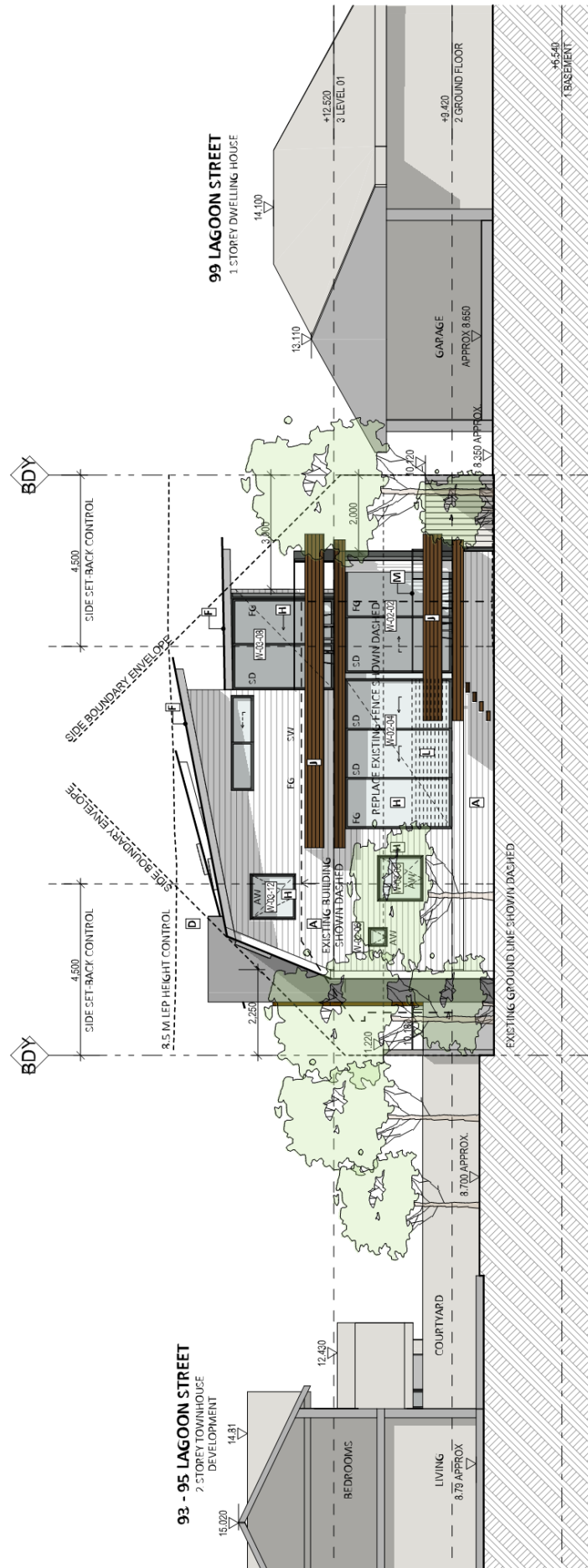
Reason: To prevent privatization of landscape open space within minimum setback areas. (DACPLGOG1)





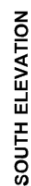
NORTH ELEVATION

EXTERIOR FINISHES LEGEND		WINDOW SASH LEGEND	
	WEATHERBOARDS, PAINT FINISH, RESENE "HALF BLACK WHITE"		AWNING WINDOW
	SANDSTONE CLADDING, RANDOM SIZE, BUSH HAMMERED FINISH		GLASS LOUVRES
	TEXTURED OFF-FORM CONCRETE, CLEAR SEAL FINISH		FIXED GLASS
	METAL DECK POOF, LVLIGHTS "SPANDEK", COLORBOND "RACALTY"		SLIDING GLASS DOOR
	FIBRE CEMENT SOFFIT LINING, PAINT FINISH RESENE "HALF BLACK WHITE"	ALUMINIUM FRAMING WITH DARK GREY FINCH TO ALL WINDOWS	
	EXTERNAL STEEL, PAINT FINISH RESENE "CLIFF FACE GREY"		OPERABLE SKYLIGHT
	VERTICAL TIMBER BATTEN SCREEN, CLEAR SEAL FINISH		SLIDING WINDOW
	EXTERNAL FABRIC BLIND, CHARCOAL GREY COLOUR		SWING GLASS DOOR
	1.2 M HIGH L&C FENCE		
	REPLACE EXISTING 1.2 M HIGH L&C FENCE SHOWN DASHED		
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EAST ELEVATION

EXTERIOR FINISHES LEGEND		WINDOW SASH LEGEND	
<input type="checkbox"/> WEATHERBOARDS, PAINT FINISH, RESENE "HALF BLACK WHITE"	<input type="checkbox"/> FIBRE CEMENT SOFFIT LINING, PAINT FINISH RESENE "HALF BLACK WHITE"	<input type="checkbox"/> TIMBER CLADDING, CLEAR SEAL FINISH	<input type="checkbox"/> SKY OPERABLE SKYLIGHT
<input type="checkbox"/> SANDSTONE CLADDING, RANDOM SIZE, BUSH HAMMERED FINISH	<input type="checkbox"/> EXTERNAL STEEL, PAINT FINISH RESENE "CLIFF FACE GREY"	<input checked="" type="checkbox"/> OFF-FORM CONCRETE, PAINT FINISH RESENE "CLIFF FACE GREY"	<input type="checkbox"/> LV GLASS LOUVRES
<input type="checkbox"/> TEXTURED OFF-FORM CONCRETE, CLEAR SEAL FINISH	<input type="checkbox"/> VERTICAL TIMBER BATTEN SCREEN, CLEAR SEAL FINISH	<input type="checkbox"/> SS WIPE BALUSTRADE TO BCA REQ.	<input type="checkbox"/> FG FIXED GLASS
<input type="checkbox"/> METAL DECK POOF, LYAGHTS "SPANDEK", COLORBOND "RASCALY"	<input type="checkbox"/> EXTERNAL FABRIC BLIND, CHARCOAL GREY COLOUR	<input type="checkbox"/> STEEL HANDRAIL TO BCA REQ.	<input type="checkbox"/> SD SLIDING GLASS DOOR
		ALUMINIUM FRAMING WITH DARK GREY FINISH TO ALL WINDOWS	
		LAKES	
		3 APARTMENTS	
		37 LAGOON STREET, MARRABEN NSW	
		FOR STEPHEN SIMPSON	
		AT THE SIMPLE FAMILY TRUST	
		DATE: 27-10-2017	
		20-05-2018	
		EAST ELEVATION	
		SCALE: 1:100	
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		A-4	

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ITEM 3.2	DA2017/1300 - 61 CUTLER ROAD, CLONTARF - DEMOLITION AND CONSTRUCTION OF A NEW DWELLING HOUSE
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2018/339007
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

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 and floor space ratio standard.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant Development Consent to DA2017/1300 for Demolition and construction of a new dwelling house on land at Lot B DP 404022, 61 Cutler Road, CLONTARF, subject to the conditions outlined in the Assessment Report.



REPORT TO DEVELOPMENT DETERMINATION PANEL

Meeting held on 13 June 2018

61 Cutler Road Clontarf - Demolition and construction of a new dwelling house

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2017/1300
Responsible Officer:	Luke Perry
Land to be developed (Address):	Lot B DP 404022, 61 Cutler Road CLONTARF NSW 2093
Proposed Development:	Demolition and construction of a new dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Local Planning Panel
Land and Environment Court Action:	No
Owner:	Frank Jeremy Hopson Jessica Hee Jin Jun
Applicant:	Frank Jeremy Hopson Jessica Hee Jin Jun
Application lodged:	20/12/2017
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	22/12/2017 to 29/01/2018
Advertised:	Not Advertised
Submissions Received:	4
Recommendation:	Approval
Estimated Cost of Works:	\$ 945,450.00

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

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.1 Streetscapes and Townscapes
 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 - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot B DP 404022 , 61 Cutler Road CLONTARF NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Cutler Road, Contarf.</p> <p>The site is irregular in shape with a frontage of 28m along Cutler Road and a depth of 24.88m along the southern boundary and 12.53 along the northern boundary. The site has a surveyed area of 461.6m².</p> <p>The site is located within the R2 Low Density Residential zone from WLEP 2011 and accommodates a two storey weather board and brick house with tile roof.</p> <p>The site slopes down from the road in a southeastern direction. The site terrain can be describe as gentle to moderate as it descends from street level before flattening out across the rear of the site.</p> <p>The are no known threatened species on site.</p> <p>Two drainage easements traverse the rear of the site.</p>

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Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by two and three storey dwelling houses in landscaped settings.

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant applications for this site:

DA1995/93: Development Consent approved 14/07/1995 for additions and alteration to the existing dwelling including a second storey addition

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

PROPOSED DEVELOPMENT IN DETAIL

The application seeks approval for demolition of the existing dwelling and construction of a dwelling house with a double garage and swimming pool.

Specifically, the works will involve the following:

Ground Floor:

- Cinema
- Sitting Room
- Guest Bedroom
- Games Room and Deck

First Floor:

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- Double Garage
- Living, dining and Kitchen
- Balcony
- Pool

Second Floor:

- Bedroom 1 & Ensuite
- Bedroom 2 & 3
- Bathroom
- Deck

Ancillary landscaping is also proposed.

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: **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:
Jie Chen	59 Cutler Road CLONTARF NSW 2093
Mr Robert Alexander Clarke	66 Cutler Road CLONTARF NSW 2093
Mr John Rowland Grice	57 Cutler Road CLONTARF NSW 2093
Bartier Perry Lawyers	10/77 Castlereagh Street SYDNEY NSW 2000

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

- Geotechnical
- Overshadowing
- Drainage
- Amenity
- Building Height
- View Loss
- Floor Space Ratio

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The matters raised within the submissions are addressed as follows:

- **Geotechnical**
Concern is raised that the proposed development is positioned close to the southern shared boundary with No.6 Castle Rock Crescent and that given the proximity of the dwelling on the adjoining property, further geotechnical investigation is required.

Comment:

The Geotechnical Report submitted with the development application has been reviewed by Councils Development Engineer. The detail within the report is considered acceptable.

A condition has been included within the recommendation of this report that a pre-dilapidation report be prepared for the adjoining property at No.6 Castle Rock Crescent prior to works commencing on site.

This is not a reason for refusal.

- **Overshadowing**
Concern is raised in regards to the 3D shadow analysis provided by the Application, which does not include certification. Further, concern is also raised the the shadow impacts on No. 6 Castle Rock Crescent are unreasonable.

Comment:

It is noted that additional 3D shadow analysis was provided by the applicant in response to the concerns detailed within a number of submissions. Certification of the 3D shadow analysis was requested by Council and provided by the Applicant on 02/05/2018.

Concern is raised in regards to the accuracy of the 3D shadow analysis and the use of the temporary sail shade on the adjoining property to depict the extent of the existing shadow cast. For this reason, the shadow diagrams submitted with the development application referenced A.09 have not been used for analysis against the Clause 3.4.1 of the Manly DCP 2013. The 2D shadow diagrams that are certified by a qualified architect are therefore considered sufficient for this analysis.

Having regard to the additional shadow cast from the proposed development, the proposal is consistent with the relevant Clauses in section 3.4.1 of the Manly DCP 2013 specifically, the proposal will not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June).

This is not a reason for refusal.

- **Drainage**
Concern is raised that the application does not include on-site stormwater detention and that the increase in runoff to the south will have significant impacts on the property at No. 6 Castle Rock Crescent.

Comment: A report entitled 'Removal of requirement for OSD' prepared by FJA Consulting Engineers was prepared on behalf of the applicant and submitted with the DA documents. The DA is accompanied by a stormwater plan. Councils Development Engineer has reviewed the proposal including the specialist reporting stormwater design and has considered the proposal satisfactory in accordance with Councils specifications for stormwater drainage.



This is not a reason for refusal.

- **Amenity**
Concern is raised in regard to acoustic and visual privacy due to the amount of glazing and balconies along the southern elevation which has direct impacts on the property at No. 6 Castle Rock Crescent. Concern is also raised that the proposed development should include a side boundary fence along the southern shared boundary of the site to provided visual relief.

Comment:

An assessment of the side setback has been addressed in detail elsewhere within this report (Refer to Clause 4.1.4.2 - Side Setbacks). In summary, the assessment concludes that the proposed side boundary setback of 2.0m to the southern side boundary of the property is consistent with the relevant Objectives of Clause 4.1.4 in that it will not result in unreasonable privacy impacts or overshadowing.

In respect to acoustic privacy, its reasonable to expect some noise from neighboring properties and in this case, balconies within this residential setting. The proposed separation from the side boundary and the residential nature of the use will not result in unreasonable acoustic impacts on the adjoining property at No. 6 Castle Rock Crescent.

The proposal does not include a side boundary fence. It is noted that the ground floor level of property at No. 6 Castle Rock Crescent is setback 0.23m from the shared side boundary and that the 1st floor overhangs the shared boundary by 0.69m. In this regard, the proposed development has limited the number of windows at ground floor level so as not to cause any unreasonable overlooking or privacy impacts. The two windows included at ground floor level (W09 AND W08) will service a bathroom and bedroom, both of which are considered low trafficable.

A fence is not a requirement of the proposed development.

This is not a reason for refusal.

- **Building Height, Bulk and Scale**
Concern is raised that the proposed building exceeds the development standard and is excessive in terms of building bulk and scale.

Comment:

The matter regarding building height is addressed elsewhere in this report (refer to Clause 4.6 - Exceptions to the development standards).

In summary, the proposed building height is consistent with the underlying objectives of the zone and the objectives for the height of buildings standard. The applicants written request also provides justification for the contravention of the development standard and is therefore considered acceptable.

In regards to bulk and scale, the proposed dwelling house will appear as two storey when viewed from the streetscape. Specific concern was raised from the property at 6 Castle Rock Crescent which is located on the low side of the subject site and shares the southern boundary with the property at 61 Cutler Road. The dwelling at No. 6 Castle Rock Crescent is setback 0.23m from the southern shared boundary with 61 Cutler Road and is orientated south to capture the water views.

The property at No. 6 Castle Rock Crescent appears as single storey at the rear shared



boundary and as it descends down the slope of the site to the south, increases to two storeys. The roof ridge height of No. 6 Castle Rock is RL 43.43 while the first floor level of the proposed development has an RL height of 43.50 and the Second floor level being RL46.50. The RL levels for the proposed development confirm that the first and second floor level of the proposed development will look over the roof or the adjoining property at No. 6 Castle Rock Crescent.

Having regard to the above, the proposed development will not result in unreasonable bulk and scale impacts on the property at No. 6 Castle Rock Crescent. Levels one and two of the proposed development will sit above the existing ridge height of No. 6 Castle Rock Crescent toward the water.

This is not a reason for refusal.

- **View Loss**
Concern is raised that the proposal will result in a loss of views from No. 66, 59, 57 and 55 Cutler Road.

Comment:

This matter is address elsewhere within this report (see Clause 3.4.3 Maintenance of Views).

In summary, the assessment of this application has found that the development achieves consistency with the planning principles outlined within the Land and Environment Council 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 minor and the proposal is reasonable in this instance.

This is not a reason for refusal.

- **Floor Space Ratio**
Concern is raised that the proposed development exceeds the floor space ratio development standard and is excessive.

Comment:

This matter is addressed elsewhere in this report (refer to Clause 4.6 - Exceptions to the development standards).

In summary, the proposed floor space ratio is consistent with the underlying objectives of the zone and the objectives for the floor space ratio standard. The applicants written request also provides justification for the contravention of the development standard and is therefore considered acceptable.

This is not a reason for refusal.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
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Internal Referral Body	Comments
Landscape Officer	Council's Landscape Officer has no objections to the proposal subject to conditions.
Landscape Officer	Council's Landscape Officer has no objections to the proposal subject to conditions.
NECC (Development Engineering)	Council's Stormwater and Floodplain section has commanded the overland flow on the subject site. In this regard, Development Engineer has no objection to the application subject to the following conditions of consent.
NECC (Stormwater & Floodplain Engineering – Flood risk)	The proposal for demolition and construction of a new dwelling house is within the Flood Planning Level of the draft Manly to Seaforth Flood Study. Subject to conditions, the proposal complies with flood related clauses of the Manly LEP and Manly DCP

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)

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
DA2017/1300				



Height of Buildings:	8.5m	10.7m	25%	No
Floor Space Ratio	FSR:0.40:1	FSR: 0.63:1	57%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.11 Bush fire hazard reduction	N/A
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.3 Flood planning	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Clause 4.3 Height of Buildings Development Standard

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

Requirement:	8.5m
Proposed:	10.5
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	25%

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

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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 subject site is located on the low southern side of Cutler Road. At the steepest eastern section of the site, the proposal exceeds the 8.5m height control by 2m and relates to the upper portion of the second level.

At Street level, the proposal will appear as two storeys which is consistent with development within the streetscape. The site while on the low side of Cutler Road, slopes down approximately 6m from the level of the street before flattening out toward the rear of the site (eastern boundary). As you proceed east of the site, the topography starts to rise, seeing the adjoining dwellings to the east of the site sit above the proposed dwelling house.

In this regard, the proposed building height is consistent with the topographic landscape and the prevailing building height within the sites vicinity.

b) to control the bulk and scale of buildings,

Comment:

The overall scale and height of the building is consistent with the surrounding and nearby development located within the R2 Low Density Residential zone and will be consistent with the height of buildings that adjoin the site to the east.

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 area of non-compliance is contained to the rear portion of the building foot print and relates to the rear section of the upper floor level including Bedroom 2 and 3 as well as the adjoining bathroom on the second floor of the development. The area of non-compliance will be largely unseen from the public domain due to the topography of the site.

The view impact assessment submitted with the development application includes 3-D modelling of the potential view impacted from the property at No 59 Cutler Road located to the rear of the site. As a result of the submissions received, Council requested the Applicant to establish height poles on site, certified by a registered surveyor in order to fully assess the extent of view loss from adjoining properties.

A detailed assessment of potential view impact as a result of the proposal is included within this



report under Part 3 General Principles of Development. In summary, the properties at No. 57, 59 and 66 Cutler Road will have their views affected as a result of the proposal by a minor degree. The views impacted are close and distant water views.

The proposed aligns with the concept of view sharing and will ensure adjoining properties enjoy views of both the highly valued land and water interface and the close and distant water views. The development does not result in any unreasonable disruption to views to, from or across the site, adjacent sites or 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:

An analysis of the shadow diagrams reveals that there will be some increases in shadowing of adjoining properties as a result of the proposed development, however, the extent of proposed shadowing is within that permitted under the numeric requirements of Council's MDCP.

No.6 Castle Rock Crescent to the south is affected, with the proposal overshadowing portions of the dwelling and private open space (deck) at 12noon. However, the main living room and private open space will receive suitable access to sunlight at 9am and 3pm during the winter solstice.

Having regard to the above, the proposed development will achieve suitable access to sunlight to adjoining properties included private open space and habitable rooms.

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 site is not within a recreation or environmental protection zone. This objective is not applicable.

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 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 proposed development represents a form of low density residential development which will continue to service the community housing needs.

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 is for a residential dwelling. This objective is not applicable.

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

Comment:

The proposal is for a residential dwelling within a landscaped setting. Suitable landscaping is proposed within the site and along the site boundaries and consists of dense hedging and four (4) trees and grasses areas. The proposal does not include the removal of established trees.

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 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 variation is consistent with this control as it provides an appropriate degree of flexibility in applying the Height of Buildings Development Standard to the development.

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

Comment:

The proposed variation will achieve a residential built form that is of a high quality design; is compatible with surrounding and nearby development and that does not result in any unreasonable visual or amenity impacts.

(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:

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The Applicants written request outlines the reasons as to why compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development as follows:

- *"The maximum permissible height of 8.5m is only exceeded for a small portion of the roof as highlighted in Figures 15 and 916.*
- *The minor non-compliance is due to the topography at the rear of the site not following the natural ground level.*
- *The non-compliance is considered a technical breach of the height limit due to the topography and excavation works, rather than a design breach.*
- *The proposed flat roof retains the traditional style of the streetscape.*
- *The proposed height is generally consistent with the heights along the eastern side of Cutler Road.*
- *The proposal maintains the required front and rear setback requirements and is consistent with the existing streetscape.*
- *There will be minimal impacts on views and vistas from both public and private places. This is supported by a View Loss Analysis report accompanying this application.*
- *The proposed development does not result in any significant adverse impacts on the amenity of the adjoining, adjacent or properties in terms of solar access, visual bulk and privacy."*

The applicants written request has satisfactorily addressed the matters required under Clause 4.6 of MLEP 2013 and in doing so has provided an assessment of the proposal against the objectives of the R2 Low Density Residential zone and Clause 4.3 - Height of Buildings Development Standard under MLEP 2013. The Applicant's written request is therefore valid and can lawfully be relied upon to vary the Development Standard.

The breach will not cause any unreasonable visual impact when viewed from adjoining properties or the public domain. The building is compatible with the height and form of surrounding and nearby development and will fit comfortably within its surroundings. The overall design of the building is of a high quality and will add to the visual interest of the Cutler Road streetscape.

(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:

Subclause 3 has been adequately addressed (see 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 R2 Low Density Residential zone in the MLEP 2013.

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

Comment:

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 Height of Buildings Development Standard is assumed subject to determination through Councils Development Determination Panel.

Clause 4.4 Floor Space Ratio

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

Requirement:	0.40:1
Proposed:	0.63:1
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	57%

The proposal must satisfy the objectives of Clause 4.4 Floor Space Ratios, 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 Floor space ratio limitation pursuant to Clause 4.4 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 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

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

Comment:

The proposed dwelling will appear as two storey from the streetscape which is consistent

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with the streetscape character.

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

Comment:

The bulk and scale of the proposed development will not result in any unreasonable privacy, overshadowing or amenity impacts. In addition to this, the proposed built form responds appropriately to the site constraints and will not reduce the highly valued headland and land and water interface views obtained from surrounding properties.

The bulk and scale is therefore considered reasonable and appropriate to the site and will not obscure important landscape and townscape features.

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

Comment:

The proposed development represents a high quality design that is not out of character with the existing low density residential development within the vicinity of the site.

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

Comment:

As mentioned previously, despite the degree of non-compliance with the prescribed Floor Space Ratio, the proposed development will not result in unreasonable amenity impacts on adjoining properties or the public domain. The proposal has been designed to retain highly valued views from adjoining properties. The articulation of the dwelling will also ensure that sufficient solar access is maintained to adjoining properties.

Overall, the proposal will not result in unreasonable impacts on the use or enjoyment of adjoining land or the public domain.

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

Comment:

The proposal is for low density residential development. This objective is 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 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 proposed development represents a form of low density residential development which will continue to service the community housing needs.

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 is for a residential dwelling. This objective is not applicable.

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

Comment:

The proposal is for a residential dwelling within a landscaped setting. Suitable landscaping is proposed along the site boundary and consists of dense hedging and four (4) trees. The proposal does not include the removal of established trees.

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 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 non-complying element of the proposed development is a 57% excess over the maximum FSR standard of 0.40:1. This numerical breach is considered acceptable as it is the outcome of a well balanced urban design solution on a steep site to achieve maximum site yield without adversely impacting on the local character of the area.

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

Comment:

The proposed variation will achieve a residential built form that is of a high quality design; is compatible with surrounding and nearby development and that does not result in any unreasonable visual or amenity impacts.

- (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 Applicants written request outlines the reasons as to why compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development as follows:

- *"The maximum permissible FSR is only exceeded by 86.5m² or 13% of the maximum permissible FSR.*
- *The overall design of the building is for a three-storey building that presents as two-storeys to Cutler Road and is consistent with the 3 storey DCP requirements.*
- *Landscaping areas on site will meet the DCP requirements.*
- *There will be minimal impacts on views and vistas from both public and private places. This is supported by a View Loss Analysis report accompanying this DA.*
- *The proposed development does not result in any significant adverse impacts on the amenity of the adjoining, adjacent or properties in terms of solar access, visual bulk and privacy."*

The applicants written request has satisfactorily addressed the matters required under Clause 4.6 of MLEP 2013 and in doing so has provided an assessment of the proposal against the objectives of the E4 Environmental Living zone and Clause 4.3 - Height of Buildings Development Standard under MLEP 2013. The Applicant's written request is therefore valid and can lawfully be relied upon to vary the Development Standard.

Despite the numerical non-compliance, the breach in its extent does not cause any unreasonable visual impact when viewed from adjoining properties or the public domain. The building is compatible with the height, bulk and scale of surrounding and nearby development and will fit comfortably within its surroundings.

It is noted that the site area (461.6m²) is less than the minimum lot size requirement on the LEP Lot Size Map. In accordance with Area T on the LEP Lot Size Map, a minimum lot size of 950m² applies to this site. In this regard, the MDCP states that the extent of any exception to the LEP FSR development standard pursuant to clause 4.6 is to be no greater than the achievable FSR for the lot size of 750m² in Area T. The FSR calculation for the proposed development based on a minimum lot size of 750m² would result in an FSR of 0.39:1 which is compliant with the numerical requirement (0.40:1). In considering the undersized nature of the lot, strict compliance with the FSR numerical requirement is considered unreasonable.

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(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:

Subclause 3 has been adequately addressed (see 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 R2 Low Density Residential zone in the MLEP 2013.

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

Comment:

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 Floor Space Ratio Development Standard is assumed subject to determination through Councils Development Determination Panel.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 461.6m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	N: 8m (based on gradient 1:4.9)	10.9m	36%	No
	W: 8m (based on gradient 1:4.9)	10.7m	33%	No

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4.1.4.1 Street Front Setbacks	Variable building line	0-1.8m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	3m (based on wall height)	1.9m/2m	37%	No
	Windows: 3m	3m (minimum)	N/A	Yes
4.1.4.4 Rear Setbacks	8m	2.2m - 4.1m	N/A	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (280.56m ²) of site area	62.1% (290.4m ²)	N/A 11%	Yes
	Open space above ground 25% (72.6m ²) of total open space	27% (81m ²)		No
4.1.5.2 Landscaped Area	Landscaped area 40% (116m ²) of open space	63.7% (185m ²)	N/A	Yes
	2 native trees	0 trees	100%	No
4.1.5.3 Private Open Space	18sqm	158.2sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6m	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	1.2m	N/A	No
	1m curtilage/1.5m water side/rear setback	0.1m/2.3m	N/A	No
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 General Principles of Development	Yes	Yes
3.1 Streetscapes and Townscapes	No	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.2 Energy Sources and Systems	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes

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Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9.3 Proportion of Total Open Space	Yes	Yes
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

Description of non-compliance

The proposal includes a front timber post fence (privacy screen) along the front boundary of the site. The fence is 1.5m-2.4m in height (due to the topography of the site) and measures a length of 8.4m in order to screen the pool.

The proposed height exceeds the required 1.5m height for front fences and will result in a variation of 60%.

Merit consideration:

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

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

Comment:

The proposed timber post fence will be semi transparent and is proposed along the length of the pool as it relates to the front boundary. The fence is therefore only 8.4m in length and will act as a privacy screen.



The materials and limited length of the fence will ensure the proposed screen will not negatively impact on the streetscape of Cutler Road.

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

Comment:

Retaining walls are a common element along the northern high side of Cutler Road. Limited fencing is present along the southern low side of Cutler Road to which the site relates.

In this regard, the limited length of the fence and its proposed materials is considered acceptable. The fencing combined with the soft landscaping within the front setback will complement the existing streetscape.

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

Comment:

As mentioned previously, the fence will act as a privacy screen to the pool and is limited to 8.5m in length along the front boundary. The timber batten fencing proposed is therefore considered acceptable.

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 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

As a result of the public exhibition of the development application Council received four submissions raising view loss as a concern. These submissions came from the following properties:-

- 55 Cutler Road, Clontarf;
- 57 Cutler Road, Clontarf;
- 59 Cutler Road, Clontarf; and
- 66 Cutler Road Clontarf.

It should be noted that height poles were established on site and certified by a qualified surveyor. The height poles established on site illustrate the highest point of the proposed dwelling and were requested to assist in the assessment of the proposal and the potential impact on views. In addition to this, the Applicant submitted 3D modeling of the potential view loss from the property to the rear of the site at 59 Cutler Road, Clontarf.

This assessment below takes into account the impact on views from the properties at No. 57 Cutler Road, 59 Cutler Road and 66 Cutler Road. The views obtained from the property at 55 Cutler Road have been reviewed and assessed as a result of photos obtained from the property. The photos taken from the property were from ground floor level, at the path along the side boundary and bedroom. The photos taken from the ground floor bedroom and path demonstrate the location of the height poles which clearly sit below the existing tree canopy. The property enjoys water views from the balcony and



living room at first floor level which are unaffected by the proposed development. The distant water views obtained from 55 Cutler Road are not affected by the proposal.

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.*
- 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).*
- 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 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:

57 Culter Road, Clontarf

The views to be affected from this property are of distant water views of Middle Harbour to the southwest filtered by the existing tree canopy and residential development.



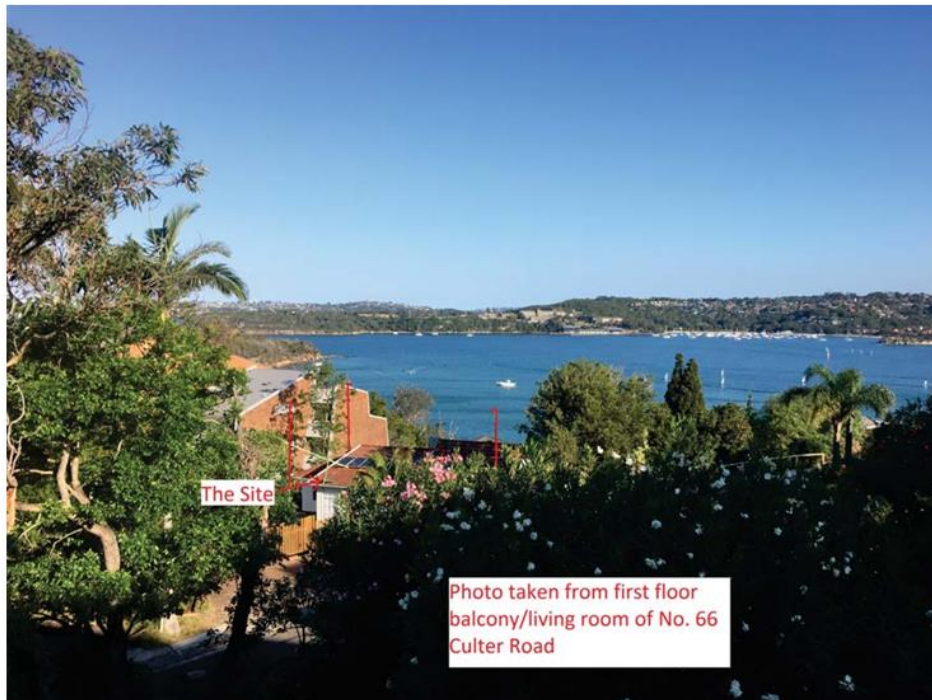
59 Cutler Road, Contarf

The views to be affected from this property are of partial land and water interface views of Middle Harbour and Cobblers Bay which are heavily filtered by existing vegetation and residential development.



66 Cutler Road Clontarf

The views to be affected from this property are close water views of Middle Harbour.



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:

57 Culter Road, Clontarf

The distant water views from this affected property are obtained over a side boundary from the balcony located at the rear of the dwelling from both seated and standing position in a southwest direction. This distant water view can also be obtained from the adjoining living room from both standing and seated position. A secondary balcony is also located adjacent to the southwestern side boundary of the property. Views from the secondary balcony are obtained across a side boundary in a southwestern direction and include heavily filtered distant water views obtained from standing position.

59 Cutler Road, Contarf

The filtered distant water and land interface views from this affected property are obtained over a site boundary from the living room and balcony at standing and seated position in a south and southwest direction.

66 Cutler Road Clontarf

The close water views from this affected property are obtained over the front boundary from the balcony and the living room in both a seated and standing position in a southern direction.

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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:

57 Culter Road, Clontarf

This property enjoys close and distant water views of Middle Harbour, distant water and land interface views of Balmoral (including the Bathers Pavilion), and partial land and water interface views of Cobblers Bay from both balconies and the adjoining living room, in a southwest direction.

While the proposed development will result in a loss of the distant water views (in part) currently filtered by existing vegetation and development in a southwest direction, the dwelling occupants will continue to enjoy the existing highly valued land and water interface views and distant water views from both standing and seated position from the balconies and the living room.

Given the partial loss of distant water views, the extent of the impact is considered to be minor.

59 Cutler Road, Contarf

This property enjoys partial distant water views at ground floor level which are filtered by the existing dwelling house at No. 61 Cutler Road the mature trees along the southern boundary of the site. In addition to this, filtered distant water and land interface views can also be obtained from both standing and seated position at the level one south facing balcony and living room. Again, these views are heavily filtered by mature trees.

While the proposed development, particularly the upper floor level of the proposed dwelling will result in a partial loss of the filtered water and land interface views, the dwelling occupants will continue to enjoy the filtered water and land interface views via the view corridor will be maintained between the proposed dwelling house and the rear boundary of the site.

Given the partial loss of filtered distant land and water interface views, the extent of the impact is considered to be minor.

66 Cutler Road Clontarf

This property enjoys close and distant water views of Middle Harbour, distant water and land interface views of Balmoral Beach and Cobblers Beach, as well as distant land and water interface views of Middle Head from both the balcony and the adjoining living room, in a south and southeast direction.

While the proposed development will result in a loss of the close water views of Middle Harbour, the dwelling occupants will continue to enjoy the existing highly valued land and water interface views and distant water views from both standing and seated position from the balcony and living room.

Given the partial loss of close water views, the 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 proposed dwelling house will not result in unreasonable view loss impacts despite the significant non-compliances with a suite of built form controls as prescribed within the planning policies of the MLEP2013 and the MDCP2013.

The irregular shape of the site combined with the site's topography and constraints (drainage easement) represents a number of challenges for development. While the proposed development exceeds the maximum floor space ratio and maximum height of buildings by more than 10% and is non-compliant with the wall height; number of storeys; side setback and soft landscaping controls, the creation of a larger built form than anticipated under the current planning controls will not reduce key headland and highly valued land and water interface views from the adjoining neighbours.

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.

Overall the proposal is considered appropriate for the site and, is considered acceptable in this instance.

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

Description of non-compliance

The proposal is non-compliant with the 8m wall height control (for sites with a gradient greater than 1:4) as applied to the western and northern elevation of the proposed dwelling.

The proposal is also non-compliant with the number of storeys. Two storeys is permitted whereas 3 storeys is proposed.

The proposal is also non-compliant with the height of buildings control. This has been assessed and addressed within Section 4.6 Variation to the Development Standard within this report.

Merit Consideration

Clause 4.1.2 provides that the objectives for height of buildings under the Manly LEP are particularly relevant when considering the above numerical non-compliance's. The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

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 subject site is located on the low southern side of Cutler Road. At the steepest eastern section of the site, the proposal includes a wall height of 10.7m-10.9m.

At Street level, the proposal will appear as two storeys which is consistent with development within the streetscape. The site while on the low side of Culter Road, slopes down approximately 6m from the level of the street before flattening out toward the rear of the site (eastern boundary). As you proceed east of the site, the topography starts to rise, seeing the adjoining dwellings to the east site above the proposed site and proposed dwelling.

In this regard, the proposed building height is consistent with the topographic landscape and the prevailing building height within the sites vicinity, particularly when viewed from the street.

b) to control the bulk and scale of buildings

Comment:

The overall scale and height of the building is consistent with the surrounding and nearby development located within the R2 Low Density Residential zone and will be consistent with the height of buildings that adjoin the site to the east. The upper floor level of the dwelling has been recessed from the outer walls at Level one to reduce the bulk and scale when viewed from adjoining properties and to maintain view corridors. In addition to this, the topography of the site will see the proposed dwelling appear as two storey from the street which is consistent with development within the streetscape and the desired future character.

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 comprehensive view loss assessment has been undertaken as part of this assessment (see Section 3.4 Amenity of this report). The area of non-compliance is contained to the rear portion of the building foot print, which due to the topography of the site, will be largely unseen from the public domain. The area of non-compliance relates to the rear section of the upper floor level including Bedroom 2 and 3, as well as the adjoining bathroom on the second floor of the development.

In summary, the proposed aligns with the concept of view sharing and will ensure adjoining properties enjoy views of both the highly valued land and water interface and the close and distant water views. The development does not result in any unreasonable disruption to views to, from or across the site, adjacent sites or 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:

An analysis of the shadow diagrams reveals that there will be some increases in shadowing of adjoining properties as a result of the proposed development, however, the extent of proposed shadowing is within that permitted under the numeric requirements of Council's MDCP.

No.6 Castle Rock Crescent to the south is affected, with the proposal overshadowing portions of the dwelling and private open space (deck) at 12noon. However, the main living room and private open



space will receive suitable access to sunlight at 9am and 3pm during the winter solstice.

Having regard to the above, the proposed development will achieve suitable access to sunlight to adjoining properties included private open space and habitable rooms.

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 site is not within a recreation or environmental protection zone. This objective is not applicable.

4.1.3 Floor Space Ratio (FSR)

The proposal is non-compliant with the Floor Space Ratio prescribed in Clause 4.4 of the MLEP 2012. An assessment of the proposal and its numerical non-compliance with this clause is address else where within this report (see Section 4.6 Variation to the Development Standard). The matters contained to Part 4.1.3 Floor Space Ratio (including consideration given to undersized lots) is addressed in Section 4.6 of this report.

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

Description of non-compliance

The proposal seeks a variation to the side set back control applied to the southern boundary of the site

The proposed dwelling has a wall height of 7.6m (maximum) to the roof of the first storey and 10.7m to the roof of the second storey at the northern elevation. The proposed dwelling therefore requires a building setback of 2.5m for ground and first floor and 3.5m to the second storey.

The proposed dwelling has been set back 1.9m-2.3m at ground and first floor level. A 3.3m setback has been applied at second floor level.

Merit consideration:

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

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

Comment:

The southern orientation of the adjoining property at No. 6 Castle Rock Crescent combined with the fact that the property and dwelling is located on the low side of 61 Cutler Road will see the proposed dwelling look directly over the ridge height of No.6 Castle Rock Crescent.

In addition to the above, the existing built form on site has been built 0.7m-1.2m to the southern shared boundary with No. 6 Castle Rock Crescent. The proposal will therefore increase the existing setback to Cutler Road, therefore enhancing the streetscape.



For the reasons outlined above, the proposed non-compliance is considered acceptable as suitable separation is provided to the residential dwelling to the northeast when considering orientation and privacy. The proposal increases the side setback to the southern boundary and therefore will maintain and enhance the streetscape with viewed from Cutler Road.

Objective 2) To ensure and enhance local amenity by:
providing privacy;
providing equitable access to light, sunshine and air movement; and
facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.
defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and
facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.

Comment:

As mentioned previously within this report, the proposed RL's for the first and second storey of the development are RL 43.50 and RL 46.50. The Ridge height of the adjoining property at No. 6 Castle Rock Crescent is RL 43.43. As the dwelling at No.6 Castle Rock Crescent sits at a lower level than that of the subject site, and is orientated south, the proposed windows and balconies afforded to the northern elevation of the proposed dwelling will not result in any unreasonable privacy impacts to the adjoining property.

Having regard to the above, the proposed development is designed to retain the privacy of adjacent properties, while maintaining adequate access to sunlight and air. For this reason, the side set back variation is considered acceptable. As such, the proposed development is consistent with the relevant amenity objectives above.

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

Comment:

The proposed development will not result in unreasonable privacy or amenity impacts on adjoining properties and is therefore considered to achieve suitable separation between adjoining properties. In this regard, the variation is consistent with this control as it provides an appropriate degree in flexibility in applying the side setback Development Control to the development.

Objective 4) To enhance and maintain natural features by:
accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;
ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and
ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.

Comment:

The development includes suitable landscaping measures along the boundary of the site and includes areas of deep soil landscaping within the front and rear yard of the site. For this reason, the proposed dwelling will not unduly detract from the context of the site or adjoining foreshore.

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



Comment:

Suitable separation is provided between adjoining properties.

The bushfire assessment report (including Bushfire Protection Measures) have been included within the conditions recommended within this report.

The proposal is considered to satisfy this objective.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The control requires no more than 25% (72.6m²) of open space above ground. The proposal includes 81m² which equates to 27% in open space above ground. This represents a variation of 11%.

Merit consideration:

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

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

Comment:

The proposal will not result in the removal of important landscape feature, mature trees or 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.

Comment:

The proposal is compliant with the numerical requirement for total open space of site area and landscaped area.

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

Comment:

As mentioned previously within this report, the proposal has been designed to ensure there are no unreasonable amenity impacts on surrounding properties. The proposal also meets the concept of view sharing through maintaining the highly values land and water interface views from surrounding properties.

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



minimise stormwater runoff.

Comment:

Suitable areas of porous landscaping is proposed on site including the landscaping along the site boundaries and the grassed lawn areas proposed at the rear of the dwelling.

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

Comment:

No weed species are proposed as part of the landscaping.

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

Comment:

No wildlife habitat or wildlife corridors will be impacted as part of the proposed development.

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

4.1.10 Fencing

The proposed 1.8m-2.4m fence proposed along the front boundary of the site exceeds the 1.5m permissible fence height. The proposed fence height has been assessed against the streetscape objectives in Section 3.1 of this report.

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;

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- 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 DA2017/1300 for Demolition and construction of a new dwelling house on land at Lot B DP 404022, 61 Cutler Road, CLONTARF, 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
A.01 Issue A	December 2017	Gartner Trovato Architects
A.03 Issue A	December 2017	Gartner Trovato Architects
A.04 Issue A	December 2017	Gartner Trovato Architects
A.05 Issue A	December 2017	Gartner Trovato Architects
A.06 Issue A	December 2017	Gartner Trovato Architects

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A.07 Issue A	December 2017	Gartner Trovato Architects
A.08 Issue A	December 2017	Gartner Trovato Architects
A.12 Issue A	December 2017	Gartner Trovato Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Investigation Report	1/12/2017	Greywacke Geotechnics
Bushfire Assessment Report	May 2017	Advanced Bushfire Performance Solutions

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
A.10 Issue A	December 2017	Gartner Trovato Architects

Waste Management Plan		
Drawing No.	Dated	Prepared By
Waste Management Plan	26/12/2017	Unknown

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 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 \$2,000 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

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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. **Stormwater Disposal**

Engineering Plans certified by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. The stormwater plan must be designed in accordance with Council's Policy "S190 Stormwater Control" and Manly Specification for on site Stormwater Management 2003. Stormwater shall be conveyed from the site to Council's drainage system subject to Stormwater Drainage Application.

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 disposal and stormwater management arising from the development. (DACENC06)

6. **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)

7. **Structures Located Adjacent to Council Pipeline or Council Easement**

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Water Management Policy; in particular Section 6 - Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification.
<https://www.warringah.nsw.gov.au/sites/default/files/documents/policies-register/environment/water-management-policy/2016-011845-water-management-policy-current.pdf>. Any proposed landscaping within a Council easement or over a drainage system is to consist of ground cover or turf only (no trees are permitted).

Structural details prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: Protection of Council's Infrastructure (DACENC21)

8. **Flooding**

In order to protect property and occupants from flood risk the following is required:

A report prepared by a suitably qualified engineer is required to certify that the proposed

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development will have no impact on flooding to neighbouring properties.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

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)

12. Sewer / Water Quickcheck

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre prior to works commencing to determine whether the development will affect any Sydney Water asset's sewer and water mains, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.

Please refer to the website www.sydneywater.com.au for:

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- Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
- Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
- Or telephone 13 20 92.

Reason: To ensure compliance with the statutory requirements of Sydney Water. (DACPLC12)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

13. 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

14. Vehicle crossing

The provision of a vehicle crossing 5.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/5 EL 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

15. 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)

16. Maintenance of Sediment

Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped

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to the Principal Certifying Authority's satisfaction.

Reason: To ensure sediment controls are effective

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

17. Reinstatement of Kerb

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

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

Reason: To facilitate the preservation of on street parking spaces. (DACENF03)

18. Certification of Structures Located Adjacent to Council Pipeline or Council Easement

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Water Management Policy; in particular Section 6 - Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification.

<https://www.warringah.nsw.gov.au/sites/default/files/documents/policies-register/environment/water-management-policy/2016-011845-water-management-policy-current.pdf>

A statement of compliance is to be prepared by a suitably qualified Civil Engineer and submitted to the Certifying Authority for approval prior to the issue of the Occupation Certificate.

Reason: Protection of Council's Infrastructure (DACENF11)

19. Post-Construction Dilapidation Survey

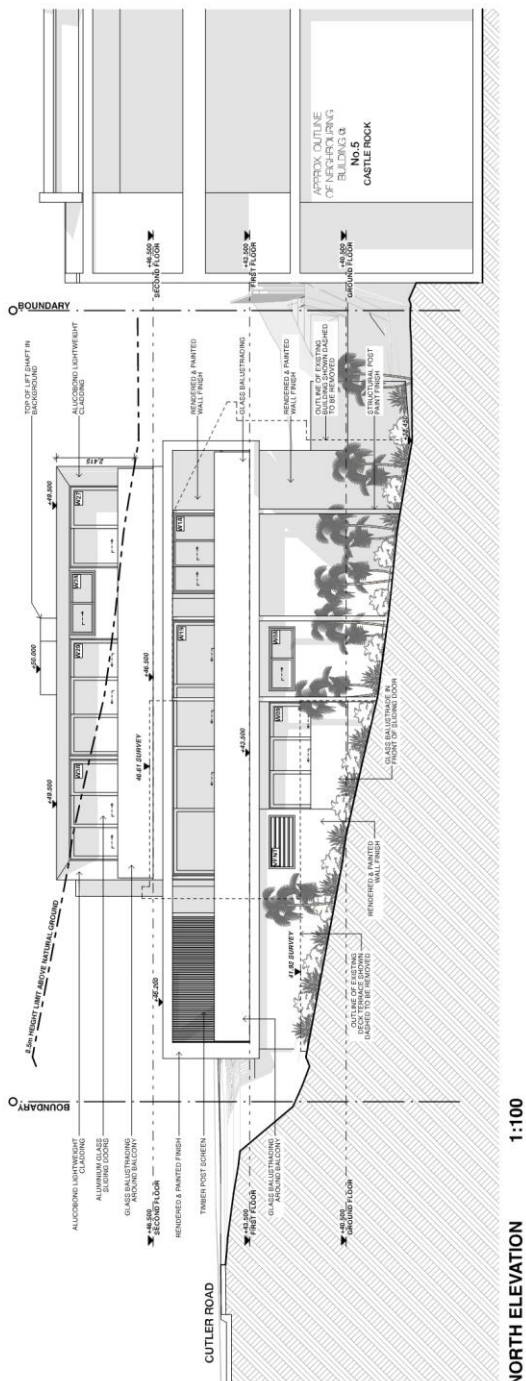
A post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines 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 damaged to Council's stormwater infrastructure is 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)





Date	Issue	Description	Date	Issue	Description
19/12/17	A	DATE SUBMISSION			

The builder shall check and certify that the drawings are in accordance with all laws and provisions to the Architect. Do not scale the drawings. Drawings shall not be used for any other purpose unless issued by the Architect for construction.

GARTNERTROVATO

A R C H I T E C T S

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 WINDYBUSH NSW 2150
 P 0293 475 8975 FAX 0293 475 8976
 E GARTNERTROVATO@GMAIL.COM AU

Project: House 61 / Lot B
 Cutler Road, Comart 2093

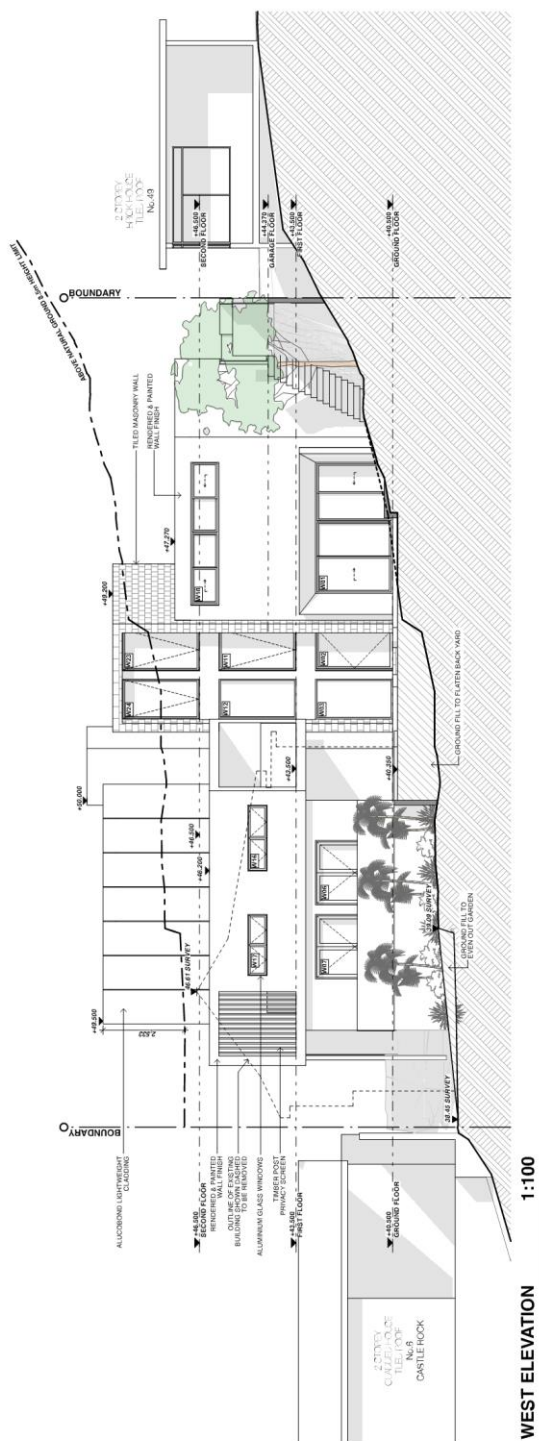
Client: Haggson

Development Application
 NORTH & SOUTH ELEVATION

Drawn/Designed: LT 165 Date: DEC 2017

Project Number: 1728 Scale: 1:100 @ A0

Drawing No.: A.06 Issue: A

[illegible]

ITEM 3.3	DA2018/0284 - 24A DARLEY ROAD, MANLY - USE OF PREMISES AS A BUSINESS PREMISES (TATTOO PARLOUR)
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2018/341156
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant Development Consent to DA2018/0284 for Use of premises as a business premises (tattoo parlour) on land at Lot 2 DP 222572, 24 A Darley Road, MANLY, subject to the conditions outlined in the Assessment Report.



REPORT TO DEVELOPMENT DETERMINATION PANEL

Meeting held on 13 June 2018

24 A Darley Road Manly - Use of premises as a business premises (tattoo parlour).

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/0284
Responsible Officer:	Benjamin Price
Land to be developed (Address):	Lot 2 DP 222572, 24 A Darley Road MANLY NSW 2095
Proposed Development:	Use of premises as a business premises (tattoo parlour).
Zoning:	Manly LEP2013 - Land zoned R3 Medium Density Residential
Development Permissible:	No
Existing Use Rights:	Yes
Consent Authority:	Development Determination Panel
Land and Environment Court Action:	No
Owner:	King Hung So Lai Fun So
Applicant:	Jason Winston Kousal
Application lodged:	26/02/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	01/03/2018 to 19/03/2018
Advertised:	Not Advertised
Submissions Received:	9
Recommendation:	Approval
Estimated Cost of Works:	\$ 5,000.00

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

Manly Development Control Plan - 4.4.3 Signage

SITE DESCRIPTION

Property Description:	Lot 2 DP 222572 , 24 A Darley Road MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the south-western side of Darley Road.</p> <p>The site is regular in shape with a frontage of 5.3m along Darley Road and a depth of 17.9m. The site has an area of 101.2m².</p> <p>The site is located within the R3 Medium Density Residential zone and accommodates a single storey commercial building.</p> <p>The site is generally flat.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by mixed use one two, three storey buildings and four storey commercial and residential buildings including residential flat buildings shop top housing and semi-detached dwellings.</p>

Map:



SITE HISTORY

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

DA203/2015 for Change of use to a hair dressing salon, shop fitout and signage - This application was subject to the hours of operation 8:30am - 8pm Monday to Wednesday, 8:30 - 9pm Thursdays, 8:30 - 8pm Fridays, 8:30 - 7pm Saturdays and 9:30 - 5pm Sundays

DA87/1997 for Mixed Business

Application 10/1971 for Renewal Shopfront

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes signage, fitout and use of the premises as a Business Premises (Tattoo Parlour) with hours of operation of 10am to 6pm Monday to Sunday (inclusive).

The proposed premises will include a waiting area, three work stations, office/meals area, kitchen, storeroom and WC.

There is no existing parking on the site and there is no ability to provide any in this application. This is consistent with the commercial premises to the south of the development site.

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:

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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	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<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 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 matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> 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	(i) Environmental Impact

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Section 4.15 Matters for Consideration'	Comments
the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment are addressed under the 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

- **Does the existing use satisfy the definition of "existing use" under the Environmental planning and Assessment Act, 1979 (the 'Act')?**

Section 106 of the Act defines an existing use as meaning:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered.

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment:



During a search of Councils records the earliest consent found was 10/1971 for the renewal of the Shopfront. The building was approved as a Mixed Business on the 11th April 1997 under existing use rights. Councils records indicate the premises was used as a lawful use prior to the commencement of the Manly LEP 2013 on 5 April 2013.

2. Was the use of the building granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The building has been lawfully used as a commercial premises for an extended period of time. During a search of Councils records the earliest consent found was 10/1971 for the renewal of the Shopfront. Since this time it is evident that the premises was used for commercial purposes until the present day. Most recently the premises was approved as a Hair Dressing Salon under DA203/2015. The use of the building as a commercial premises was commenced prior to the coming into force of the Manly Local Environmental Plan 2013.

3. Has the use of the building been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

Councils records indicate that the use of the building in accordance with the consent was carried out prior to the coming into force on which the provision having the effect of prohibiting the use commenced. The applicant submitted a rental agreement and a statutory declaration that demonstrates the premises was used as a business premises within 12 Months of lodgement of the application.

- **What is "the land on which the existing use was carried out" for the purposes of cl 42(2) (b) of the Environmental Planning and Assessment Regulation 2000 ("the Regulation")?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: "that if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose".

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles which should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the court in this case will have general application in dealing

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with Development Applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

The proposal will not impact on the bulk and scale of the existing development.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment:

The proposal will utilise the existing building and will not impact the existing bulk and scale of this building.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

The proposal has been assessed in accordance with the Manly DCP 2013 below. Any non-compliance has been assessed in accordance with the objectives of that control and found to be satisfactory.

The subject site is located within a strip of shops that have been used as commercial premises for an extended period of time. The proposed hours of operation of the premises are from 10am to 6pm Monday to Sunday. The existing premises was approved with hours similar of those proposed in the current application. There is no history of noise complaints for the operation of the existing premises. The proposed hours are consistent with those approved previously on the site and the adjoining properties. Furthermore the use of the premises will not result in any significant noise generating activities. The proposed hours of the premises are reasonable and will not result in any unreasonable impacts on the visual or acoustic privacy of the locality.

The NSW Police Northern Beaches Local Area Command advised that they do not support the application, but do provide advice for measures that could be included if any approval was recommended. The comments provided raised issue with the siting of the Tattoo Parlour due to these premises historical links to crime. For the purpose of this application the development is considered to be a business premises. Council cannot assume this premises will generate criminal behaviour and



therefore cannot refuse an application on this basis. The submission by the NSW Police Northern Beaches Local Area Command raised that the Tattoo Parlours Act and Regulations require licensing of operators at these premises and provide powers to the Police to inhibit criminal activity in this industry. This legislation will ensure the proposal does not result in any criminal activity or unreasonable impacts on the adjoining land.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

The proposal will achieve adequate internal amenity for patrons and employees of the business.

Additional Matters

The NSW Police Northern Beaches Local Area Command classified the application as a restricted premises. The Manly LEP 2013 defines a restricted premises as follows:

"restricted premises means premises that, due to their nature, restrict access to patrons or customers over 18 years of age, and includes sex shops and similar premises, but does not include a pub, hotel or motel accommodation, home occupation (sex services) or sex services premises."

The Children and Young Persons Care and Protection Act 1998 makes it an offence to tattoo the skin of a person under the age of 18 without gaining the consent of a parent in writing, s230. Conversely, this Act permits patrons under the age of 18 to use the services with consent from a parent. There is also no restriction on access to the premises for people under the age of 18. As such it is not considered to be accurately classified as a restricted premises.

The proposal will be a building which an occupation, profession or trade is carried out for the provision of services directly to members of the public on a regular basis. As such it is more closely defined as a business premises which is defined under the Manly LEP 2013 as follows:

"business premises means a building or place at or on which:

- (a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or
- (b) a service is provided directly to members of the public on a regular basis, and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital."

The existing use of the premises as a hair dressing salon also fits the definition of a business premises. As such this application does not require the change of use of the premises.

Conclusion

The use has been approved prior to the commencement of any EPI and therefore, is a lawful use. Subsequently, the use can be retained under the current EPI (MLEP 2013).

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 9 submission/s from:

Name:	Address:
Mrs Kate Maffett	5 Baines Crescent TORQUAY NSW 3230
Anonymous	N/A
Mr James McIntosh	
Withheld	MANLY NSW 2095
Mrs Margaret Caskey	5 Marshall Street MANLY NSW 2095
Mr Paul Patrick Janavicius	7/14-16 Victoria Parade MANLY NSW 2095
Withheld	MANLY NSW 2095
Ms Sally Beerworth	1 Fairlight Street NSW
LOUISE ADAMS	

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

- Site suitability of development due to association of Tatto Parlours with criminal activities.
- Request deferment of submission period to allow for comment on police referral
- Parking
- Inconsistency with R3 Medium Density Residential zone objectives
- Tattoo Parlour is a restricted premises
- Insufficient natural surveillance, should consent be granted conditions should be imposed to ensure the safety of the locals.
- Signage not in keeping with the heritage nature of the building/ non-compliance with Manly DCP 2013 controls.
- Impact on street amenity

The matters raised within the submissions are addressed as follows:

- Site suitability of development due to association of Tatto Parlours with criminal activities.
Comment:
For the purpose of this application the development is considered to be a business premises. Council cannot assume this premises will generate criminal behaviour and therefore cannot refuse an application on this basis. The submission by the NSW Police Northern Beaches Local Area Command raised that the Tattoo Parlours Act and Regulations require licensing of operators at these premises and provide powers to the Police to inhibit criminal activity in this industry. This legislation coupled with the recommendations within the referral from the police will ensure the proposal does not result in any unreasonable impacts within the locality.
- Request deferment of submission period to allow for comment on police referral
Comment:
Deferment of this application for consideration of the submission by the NSW Police Northern Beaches Local Area Command by concerned parties is not warranted. This application will be referred to the Northern Beaches Development Determination Panel for determination where an opportunity to address the panel will be provided.

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- Parking
Comment:
In accordance with the Manly DCP 2013, the proposal will not generate any further requirement for parking on the site. None of the commercial premises provide on site parking and as the intensity of use the proposal remains consistent no additional parking is required.

- Inconsistency with R3 Medium Density Residential zone objectives
Comment:
The proposal is within a commercial premises that was granted consent prior to the coming into force of the Manly LEP 2013. The proposal relies on existing use rights and has been assessed in accordance with the planning principle established in Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71. The assessment found that the proposal will not result in any unreasonable impacts on the locality..

- A Tattoo Parlour is a restricted premises
Comment:
The Manly LEP 2013 defines a restricted premises as follows:
"restricted premises means premises that, due to their nature, restrict access to patrons or customers over 18 years of age, and includes sex shops and similar premises, but does not include a pub, hotel or motel accommodation, home occupation (sex services) or sex services premises."

The Children and Young Persons Care and Protection Act 1998 makes it an offence to tattoo the skin of a person under the age of 18 without gaining the consent of a parent in writing, s230. Conversely this Act permits patrons under the age of 18 to use the services with consent from a parent. There is also no restriction on access to the premises for people under the age of 18. As such it is not considered to be accurately classified as a restricted premises.

The proposal will be a building which a profession or trade is carried out for the provision of services directly to members of the public on a regular basis. As such it is more closely defined as a business premises which is defined under the Manly LEP 2013 as follows:
"business premises means a building or place at or on which:
(a) *an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or*
(b) *a service is provided directly to members of the public on a regular basis, and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital."*

- Insufficient natural surveillance, should consent be granted conditions should be imposed to ensure the safety of the locals.
Comment:
The NSW Police Northern Beaches Local Area Command have assessed the natural surveillance and provided recommendations to ensure adequate security. The recommendations have been incorporated into this consent.

- Signage not in keeping with the heritage nature of the building/ non-compliance with Manly DCP
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2013 controls.

Comment:

Councils Heritage Officer has reviewed the application and was satisfied that it would not result in any unreasonable impacts on the heritage value of the building or the area. The signage has been assessed in accordance with the Manly DCP 2013 and was found to be satisfactory.

- Impact on street amenity

Comment:

The proposed hours of operation of the premises are from 10am to 6pm Monday to Sunday. Furthermore the use of the premises will not result in any significant noise generating activities. The proposed hours of the premises are reasonable and will not result in any unreasonable impacts on the acoustic privacy of the locality. Smoking near buildings is governed by separate regulations. Loitering is not a planning consideration, any illegal behaviour should be referred to the Police.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments	
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as these however may be determined at Construction Certificate Stage.</p>	
Environmental Health (Food Premises, Skin Pen.)	Was sufficient documentation provided appropriate for referral?	NO
	Are the reports undertaken by a suitably qualified consultant?	NO
	Have you considered the following?	YES
	<p>• Review Statement of Environmental Effects, consider ongoing use:</p> <ul style="list-style-type: none"> - Food Premises, use AS 4674 and Food Standards Code and BCA (re ventilation and toilets). Consider location of mechanical ventilation (AS 1668) and grease traps - Backpackers/Boarding House, use 	

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Internal Referral Body	Comments
	<p>Public Health Act and Local Gov Regulations and BCA.</p> <ul style="list-style-type: none"> - Mortuary, use Local Gov Regulations - Skin penetration acupuncture, tattoo, beauty salon, use Local Gov Regulations - Public pool, use Public Health Act - Childcare, use AS 4674 (kitchen) and BCA toilets <ul style="list-style-type: none"> • Consider waste disposal. All new food shops should have waste stored in rooms. • Consider impact of noise, hours of operation, outdoor seating, location of equipment, times of deliveries, noise management plans, acoustic reports etc. • Shop top housing must have separate waste storage for residential and commercial. EH&P don't look at residential waste areas or collection. <p>General Comments</p> <p>The application proposes change of use from an existing hair dresser (vacant premises) to a tattoo studio. The application form advises that the proposed Hours of Operation are intended to be from 10am to 6pm, seven days a week.</p> <p>ENVIRONMENTAL HEALTH ASSESSMENT:</p> <p>The Environmental Planning and Assessment Act 1979 (EP&A Act) and the Protection of the Environment Operations Act 1997 (POEO Act) require that authorities examine and take into account matters affecting the environment when making decisions about development and activities. It is considered that the application is currently unable to be supported as insufficient information has been provided to enable a proper and complete assessment. The following matters have been considered:</p> <ul style="list-style-type: none"> • the likely impacts of the development including environmental impacts • the suitability of the site for the development • submissions made following neighbourhood notification • the public interest <p>On 14 March 2018 I discussed the application with Benjamin Price, Planner, and the following matters were raised:</p> <p>(1) It is requested that Council's Development Assessment team confirm that a tattoo parlour is a permitted use within the Manly LEP Land Use Zone R3 Medium Density Residential at the proposed location – 24a Darley Road. Manly.</p> <p>(2) The following additional information is necessary in order to properly consider the application specifically relating to the proposed change of use from a hair dressing premises to a Tattoo Parlour:</p> <p>(a) Referral of the application to NSW Police for assessment.</p> <p>(b) An Acoustic Report in relation to existing and future noise</p>

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Internal Referral Body	Comments
	<p>impacts.</p> <p>The NSW Police referral assessment and the Acoustic Report may impose mitigation that requires physical measures such as noise barriers, enclosures etc. The aesthetics of these structures will need to be considered as part of the overall development assessment process.</p> <p>Referral to NSW Police:</p> <p>It is observed that a referral of the application to the NSW Police has not yet been carried out by Council. A NSW Police referral will consider the suitability of the site for the development in accordance with the <i>Matters for Consideration</i> of the Environmental Planning & Assessment Act (previously Section 79c).</p> <p>It is recommended that the Development Application is referred to NSW Police in order to assess the proposal for the change of use from hair dresser to a tattoo studio. The NSW Police will also determine whether the proposed licensing and operation of the business is suitable for approval in accordance with the Tattoo Parlours Act 2012 and the Tattoo Parlours Regulation 2013.</p> <p>The Act and Regulations require compliance with matters including the granting of operator licences and a tattooist licences. The Operator licence authorises the licensee to carry on a body art tattooing business (whether on his or her own behalf or on behalf of another person) at the premises specified in the licence in accordance with the Act and the conditions of the licence. A tattooist licence authorises the licensee to perform body art tattooing procedures in accordance with the Act and the conditions of the licence.</p> <p>The outcome of the NSW Police referral and assessment will include recommendations which will then guide Council's overall assessment of the application with regard to the suitability of the site for the development.</p> <p>It is requested that the completed NSW Police assessment of the application be referred back to Environmental Health Officer's for further consideration of the change of use from hair dresser to a tattoo studio.</p> <p>Acoustic Assessment and Report:</p> <p>The application documents and construction/fitout plan do not address the management of acoustic impacts regarding the proposed use of the premises as a tattoo premises. Residential premises are located within the neighbourhood including existing shop top housing in direct vicinity. A review of the written submissions that have been received by Council (following</p>

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Internal Referral Body	Comments
	<p>notification of the application) include concerns referencing the potential for residential noise impacts.</p> <p>It is considered that an acoustic assessment is required to be performed by suitably qualified and experienced persons to review the application documents and prepare an Acoustic Report in accordance with the NSW Environmental Protection Authority Noise Guide for Local Government, dated May 2013. The guide contains advice on dealing with noise from commercial or small industrial premises. The guide is used to develop appropriate procedures and policies for dealing with local noise issues. The planning considerations in the guide also aim to prevent potential noise problems from occurring.</p> <p>The guide advises that changing land-use patterns in the area may lead to new noise impacts or may exacerbate existing noise impacts. This can occur owing to:</p> <ul style="list-style-type: none"> • new residential development being located close to existing noisy activities • new or intensified noisy activities being located close to existing residential areas • changing expectations of residents about the amenity of a local area <p>When a noise producing development (such as a tattoo parlour) is proposed a noise impact assessment is warranted. The capacity to review the acoustic report will assist Council in its decision making and (if approval is suitable) ensure that appropriate control measures are integrated into the development regarding preventing, minimising and/or controlling noise impacts.</p> <p>In accordance with the NSW Environmental Protection Authority <i>Noise Guide for Local Government</i> (dated May 2013) information provided in an Acoustic Report should include at least the following:</p> <ol style="list-style-type: none"> (1) the name and qualifications or experience of the person(s) preparing the report (2) the project description, including proposed or approved hours of operation (3) relevant guideline or policy that has been applied (4) results of background and any other noise measurements (5) meteorological conditions and other relevant details at the time of the measurements (6) details of instruments and methodology used for noise measurements (including reasons for settings and descriptors used, calibration details) (7) a site map showing noise sources, measurement locations and potential noise receivers (8) noise criteria applied to the project (including offensive noise) (9) noise predictions for the proposed activity (10) a comparison of noise predictions against noise criteria (11) a discussion of proposed mitigation measures, the noise



Internal Referral Body	Comments		
	<p>reduction likely and the feasibility and reasonableness of these measures (12) how compliance can be determined practically (13) recommendations and conclusions incorporating monitoring, evaluation and review (14) development of an Environmental Management Plan which will be used to establish clear goals and best management practices relating to noise generated during ongoing operation of the business.</p> <table border="1" data-bbox="579 763 1276 824"> <tr> <td data-bbox="579 763 1074 824">Recommendation</td><td data-bbox="1082 763 1276 824">REFUSAL</td></tr> </table> <p>Comments completed by: Robina Bramich Date: 14/3/2018</p> <p>ADDITIONAL COMMENTS 29.5.2018 The application has been referred back to Environmental Health following the Police comments and a request to review if an Acoustic report was essential. It is noted that the Police are not in favor of approval. Environmental Health with this type of application is concerned with Skin Penetration Legislation and Noise if hours of use are excessive of loud music or Alcohol is proposed. Having clarified that the only issue for us is hygiene related we can issue a non objection on Health Issues - subject to conditions. It is noted that the applicant has already lodged a registration form for Skin Pen. Anthony Foy EHO 29.5.2018</p> <p><u>Planning Comments</u> It is noted that Councils Environmental Health Officers withdrew the request for an Acoustic report. This is supported as the proposed tattoo parlour will not generate excessive noise due to everyday operations. Furthermore the hours of operation of 10am to 6pm are consistent with the nearby properties and will not result in any unreasonable impact on the acoustic privacy of the neighbouring properties.</p>	Recommendation	REFUSAL
Recommendation	REFUSAL		
Strategic & Place Planning (Heritage Officer)	<p>The place subject to DA is a heritage item. Further to site visit, it appears that no heritage fabric survives below the awning. The use itself does not imply any heritage impact in its own right. Based on the above, I have no objections to this proposal from heritage perspective. Kind Regards</p>		

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Internal Referral Body	Comments
	<p>Zoran Popovic heritage adviser</p> <p><u>Planning Comments</u></p> <p>The recommended conditions from the Police were provided to Councils Heritage Adviser. The Heritage Adviser raised no objection to the conditions.</p>

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.
NSW Police - Local Command (CPTED)	<p>The Police advised Council that they do not support this operation and raised the following issues:</p> <p>Police believe that the proposal of a Tattoo Parlour at this location is in direct conflict as to the type of businesses and community in which it is to operate within.</p> <p>The proposal is a business premises and is located in a strip of commercially used shops. The lawful use of the premises will not result in any unreasonable impact on the business or community in which it is to operate. Council cannot assume in assessing this application that it will generate crime or be linked to Criminal behaviour. There is specific legislation that regulates Tattoo Parlours. This is the appropriate avenue to address criminal behaviour.</p> <p>Tattoo Parlours are restricted premises.</p> <p>The Manly LEP 2013 defines a restricted premises as follows:</p> <p><i>"restricted premises means premises that, due to their nature, restrict access to patrons or customers over 18 years of age, and includes sex shops and similar premises, but does not include a pub, hotel or motel accommodation, home occupation (sex services) or sex services premises."</i></p> <p>The Children and Young Persons Care and Protection Act 1998 makes it an offence to tattoo the skin of a person under the age of 18 without gaining the consent of a parent in writing, s230. Conversely, this Act permits patrons under the age of 18 to use the services with consent from a parent. There is also no restriction on access to the premises for people under the age of 18. As such it is not considered to be accurately classified as a restricted premises.</p> <p>The proposal will be a building which a profession or trade is carried out for the provision of services directly to members of the public on a regular basis. As such it is more closely defined as a business premises which is defined under the Manly LEP 2013 as follows:</p> <p><i>"business premises means a building or place at or on which:</i> (a) <i>an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the</i></p>

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External Referral Body	Comments
	<p><i>public on a regular basis, or</i> <i>(b) a service is provided directly to members of the public on a regular basis,</i> <i>and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital."</i></p> <p>Close relationship with crime and outlaw motorcycle groups As discussed above, Council cannot assume that this will be the case. Their is legislation designed to inhibit this type of activity.</p> <p>If it were to be approved Police would require as a condition:</p> <p><i>"Surveillance:</i> <i>CCTV cameras to be installed both inside and outside the premises.</i> <i>Coverage:</i> - <i>all internal areas accessible to the public except for toilets/ bathrooms</i> - <i>outside the premises covering the footpath to Victoria Parade and toward Ashburner Street</i> <i>The CCTV system should be recording 24 hours a day.</i> <i>The CCTV should be stored/ kept for a minimum of 30 days.</i> <i>The resolution should be at minimum 15 frames per second.</i> <i>The CCTV should be able to adequately identify the face of a person beyond reasonable doubt.</i> <i>The CCTV must be provided within 24 hours of request by a Police Officer or relevant Council employee.</i> <i>The CCTV system should be accessible by all staff on site at all times.</i></p> <p><i>Access Control/ Security:</i> <i>Police require that should this use be permitted the operator install panic alarms at the front reception desk/ counter area.</i> <i>Should there be staff at the premises after hours, they should be equipped with a portable panic alarm which when pressed will alert emergency services/ Police.</i> <i>Tattoo Parlours are also at risk of armed hold up or aggravated break and enters. These security measures would be in place to reduce the risk but also ensure adequate response by Police.</i></p> <p><i>Roller shutters should be installed at the entry/ front of the premises.</i> <i>The shutters must be used to secure the premises once business/ trade has ceased and all persons are no longer on the premises.</i> <i>This reduces the risk of break and enters to the property, significant malicious damage, for example, by deliberate fire etc."</i></p> <p>The recommended conditions have been included as conditions of consent.</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 64 - Advertising and Signage

Clauses 8 and 13 of SEPP 64 require Council to determine consistency with the objectives stipulated under Clause 3(1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 1.

The objectives of the policy aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

In accordance with the provisions stipulated under Schedule 1 of SEPP 64, the following assessment is provided:

Matters for Consideration	Comment	Complies
1. Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The proposal will reface the existing signage on the site. The proposed signage will not result in any unreasonable impacts on the character of the locality.	YES
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The proposal will reface the existing signage and is consistent with signage within the locality.	YES
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The proposal is located within the Manly Town Centre heritage conservation area and is listed as local heritage item I124. Councils heritage officer has reviewed the proposal and raised no objection. The proposal is also located within the foreshore scenic protection area. The proposal will not result in any unreasonable impact on the visual aesthetic amenity of the locality.	YES
3. Views and vistas Does the proposal obscure or compromise important views?	No	YES
Does the proposal dominate the skyline and reduce the quality of	No	YES



vistas?		
Does the proposal respect the viewing rights of other advertisers?	Yes, the proposal has adequate regard to the viewing rights of other advertisers.	YES
4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The proposal will utilise the existing signage. The proposal is of an appropriate form to ensure no unreasonable impact on the streetscape.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	Yes, the signage design will provoke visual interest within the locality.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The proposal will reface the existing signage.	YES
Does the proposal screen unsightliness?	Not applicable, there is no unsightliness on the site that requires screening.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	No	YES
5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The proposal will reface the existing signage which is compatible with the scale, proportion and characteristics of the building.	YES
Does the proposal respect important features of the site or building, or both?	The proposal will not result in the degradation or demolition of any important features of the building or the site.	YES
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposal utilises the existing signage.	YES
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	N/A	YES
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	N/A	YES
Can the intensity of the illumination be adjusted, if necessary?	N/A	YES
Is the illumination subject to a curfew?	N/A	YES
8. Safety Would the proposal reduce the safety	No, the proposal is of an appropriate design to ensure the safety for any public road, pedestrians	YES

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for any public road, pedestrians or bicyclists?	or bicyclists.	
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	No	YES

Accordingly, the proposed signage is considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be consistent with the provisions of the SEPP and its underlying objectives.

Manly Local Environmental Plan 2013

Is the development permissible?	No
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

No proposed change to principal development standards.

Compliance Assessment

Clause	Compliance with Requirements
5.10 Heritage conservation	Yes
6.9 Foreshore scenic protection area	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 101.2m ²	Requirement	Proposed	% Variation*	Complies
4.4.3 Signage	Max. 2 identification signs	2	N/A	Yes
4.4.3.3 Control for Particular Development Types	Fascia signs - i) must not project above or below awning - ii) must not extend more than 0.3m from fascia end of awning - iii) must not extend beyond 0.6m within the vertical projection of the kerb line	i) Complies ii) Complies iii) Does not comply	N/A	No
	Top hamper signs - i) must not extend more than 0.2m beyond any building alignment - ii) must not extend below the level of the head of the doorway or window above which it is attached - iii) must not be more than 3.7m above the ground.	i) Complies ii) Complies iii) Complies	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: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.8 Waste Management	Yes	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.3 Security Shutters	Yes	Yes
4.2.5.4 Car Parking and Access	Yes	Yes
4.4.3 Signage	No	Yes
5 Special Character Areas and Sites	Yes	Yes
5.1.1 General Character	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

4.4.3 Signage

Description of non-compliance

The proposal is not compliant with Clause 4.4.3.3 as the fascia comes within 0.6m within the vertical projection of the kerb line.

Merit Consideration

With regard to the non-compliance, a detailed assessment with regard to the objectives has been conducted below.

Objective 1) To ensure that advertising does not detract from the scenic beauty and amenity of the Municipality; harmonises with its surroundings and the buildings to which they are attached.

The proposal is of an appropriate form and design so as to ensure it is consistent with the character of the locality. The proposal will not result in any unreasonable impacts on the scenic beauty or amenity of the municipality.

Objective 2) To minimise the visual impact by encouraging fewer more effective signs that may otherwise degrade the existing and likely future quality of residential environments or result in excessive, unnecessary signage, visual clutter and

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The proposal will reface the existing signage and will not result in excessive signage on the site.

Objective 3) To permit building and business identification signs which communicate the facilities (including tourist facilities), amenities, goods and services in local and neighbourhood centres which do not interfere with the streetscape or amenity of residents.

The proposed signage will identify the business while ensuring no unreasonable impact on the streetscape or amenity of residents.

Objective 4) Signs should enhance the distinctive urban character and scenic amenity of the Municipality and contribute to the atmosphere of the streets in local and neighbourhood centres and should be designed in sympathy with both the building to which it is attached and any adjoining buildings, taking into account the architectural styles and finishes of buildings in local and neighbourhood centres.

The proposed signage is adequately designed to ensure no unreasonable impacts on the urban character or the scenic amenity of the municipality.

Objective 5) To prevent signage from impacting on the presentation of the heritage item or area to the general public on heritage items and conservation areas.

Councils heritage officer assessed the application and raised no objection.

Objective 6) To ensure all signage is of high standards of graphic and textural content.

The proposal is of an appropriate standard to maintain the character of the locality.

Objective 7) To encourage co-ordinated advertising in the Industrial Zone by the use of appropriately sized street numbers and complex names, and the use of directory boards to identify multiple unit complexes, so as to reduce adverse impact on the streetscape and confusion to traffic.

Not applicable

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

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.

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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 DA2018/0284 for Use of premises as a business premises (tattoo parlour). on land at Lot 2 DP 222572, 24 A Darley Road, MANLY, 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
Shop Layout Development Application	N.D.	Free Spirit Tattoo Jason Kousal

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

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

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

2. Compliance with Other Department, Authority or Service Requirements

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



Other Department, Authority or Service	EDMS Reference	Dated
NSW Police	Police Referral	24/05/2018

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other Department, Authority or Body's. (DACPLB02)

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

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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)

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

5. Skin Pen – Fit Out

The construction and fit-out of the skin penetration premises must comply with the following:-

- Public Health Act 2010
- Public Health Regulation 2012
- Australian Standard: AS 2182 –1998 – Sterilizers – Steam – Bench top.
- Australian Standard, AS 2773.2 – 1999 Ultrasonic cleaners for health care facilities – Bench top.

Reason: To ensure compliance with legislation and to protect public health and safety.

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

6. Registration of Skin Penetration Premises

The premises must be registered with the Council and an inspection of Hygiene Standards as required by the Public Health Regulation, prior to Occupation Certificate being issued.

Reason: To ensure safety and hygiene standards comply with Legislation.

7. Fire Safety Matters

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Interim / Final Occupation Certificate.

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000. (DACPLF07)

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

8. Amenity

The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, waste water, waste products, or other harmful products.

Any music played not being audible outside of the premises.

Hours of operation being restricted "normal business" hours as approved by Council.

Reason: To ensure the surrounding area and people within the neighbourhood are not affected adversely and to ensure compliance with the Protection of the Environment Operations Act 1997.



9. **Sharps**

Sharps - must be placed in to a sharps container immediately after use. The container must comply with the requirements of AS 4261:1994 'Reusable container for the collection of sharp items used in human and animal medical applications' if they are reusable, or if they are not reusable AS 4031:1992 'Non-reusable containers for the collection of sharp medical items used in health care areas'. Sharps containers must never be overfilled and be securely sealed with a lid before disposal. A contract for the specialized removal and safe disposal of sharps containers shall be current.

Reason: To ensure compliance with the legislation and the protection of the health and safety of staff, patients and the community. (DACHPGOG5)

10. **Skin Pen – Operation**

Skin Pen – [Operation](#)

The ongoing operation of the skin penetration premises type and all associated equipment must be maintained in accordance with the following:

- Public Health Act 2010
- Public Health Regulation 2012
- Australian Standard: AS 2182 –1998 – Sterilizers – Steam – Bench top.
- Australian Standard, AS 2773.2 – 1999 Ultrasonic cleaners for health care facilities – Bench top.

Reason: To ensure compliance with legislation and to protect public health and safety.

11. **Hours of Operation**

The hours of operation are to be restricted to:

- Monday to Sunday – 10am to 6pm.

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained. (DACPLG08)

12. **Deliveries and Waste Collection**

Deliveries and waste collection must only occur during the following hours:

- Monday – Saturday: 6:00am – 8:00pm
- Sundays and Public Holidays: 8:00am – 8:00pm

Reason: To minimise disruption to neighbouring properties. (DACPLGOG1)

13. **Noise**

The premises shall not produce noise levels of more than 5dBa above background noise measured at the nearest residential window/opening at any time.

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Reason: To ensure the amenity of the neighbouring properties.(DACPLGOG2)



DARLEY RD



ELEVATION - FRONTAGE
(INCL. PROPOSED SIGNAGE)

ITEM 3.4	DA2018/0250 - 179 WOODLAND STREET, BALGOWLAH - ALTERATIONS AND ADDITIONS TO THE EXISTING DWELLING HOUSE.
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2018/339030
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

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 Council as the consent authority grant Development Consent to DA2018/0250 for Alterations and additions to the existing dwelling house on land at Lot A DP 14809, 179 Woodland Street, BALGOWLAH, subject to the conditions outlined in the Assessment Report.



REPORT TO DEVELOPMENT DETERMINATION PANEL

Meeting held on 13 June 2018

179 Woodland Street Balgowlah - Alterations and additions to the existing dwelling house.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/0250
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot A DP 14809, 179 Woodland Street BALGOWLAH NSW 2093
Proposed Development:	Alterations and additions to the existing dwelling house.
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Georgina Elizabeth Brett
Applicant:	Georgina Brett
Application lodged:	20/02/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	23/02/2018 to 12/03/2018
Advertised:	Not Advertised
Submissions Received:	1
Recommendation:	Approval
Estimated Cost of Works:	\$ 150,475.00

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)
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taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.1.5.1 Minimum Residential Total Open Space Requirements

SITE DESCRIPTION

Property Description:	Lot A DP 14809 , 179 Woodland Street BALGOWLAH NSW 2093
Detailed Site Description:	<p>The subject site consists of an allotment located on the western side of Woodland Street.</p> <p>The site is regular in shape with a frontage of 10.975m along Woodland Street and a depth of 40.845m. The site has a surveyed area of 446.4m².</p> <p>The site is located within the R1 General Residential zone and accommodates a dwelling on site.</p> <p>The site has a slight slope, being 3-4 metres from the rear down to Woodland Road. There is landscaping and planting to the front and rear of the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by dwelling houses on both sides of Woodland Street.</p>

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:

- BA312/95- Additional garage determined by Council on 11 September 1995.
- DA282/99 for storeroom on 2 August 1999.
- CDC2018/0008- Alterations and additions to the existing dwelling including first floor addition

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for alterations and additions to the existing dwelling including:

Lower Ground Floor

- New lift

Ground Floor

- New lift

First Floor

- Addition of master bed with robe and ensuite, bathroom, study and lift.

External

- Bin storage



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	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the 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. his clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the</p>



Section 4.15 Matters for Consideration'	Comments
	consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. 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.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

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 1 submission/s from:

Name:	Address:
Mr Neil O'Shea	181 Woodland Street BALGOWLAH NSW 2093

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

- Request for internal floor plans to be made available



The matters raised within the submissions are addressed as follows:

- Request for internal floor plans to be made available
Comment:
Phone call was made to submitter to explain reasons internal floor plans are not made available online (privacy legislation) and to explain the situation with the existing alfresco, in that no change was proposed. The submitter was provided specific details of the proposal and subsequently provided an email of no objection to the proposal.

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)

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	9.475m	11.47%	No.
Floor Space Ratio Site Area: 446.4m ²	FSR: 0.5:1 (223.2m ²)	FSR: 0.456:1 (203.5m ²)	N/A	Yes.

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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
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes

Detailed Assessment

4.6 Exceptions to development standards

The following is an assessment of the variation to Clause 4.3 - Height of building:

Requirement:	8.5m
Proposed:	9.475m
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	11.47%

The proposal must satisfy the objectives of 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 involves an extension of the approved first floor to the front of the site (approved under CDC2018/0008). As this extension is maintained within the existing building envelope and the presentation in terms of bulk and number of storeys from the street will be similar to approved, the proposal would provide and maintain a desirable outcome in the streetscape. It is

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also noted that the proposal is in a streetscape which has a mix of 1,2 and 3 storey buildings.

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

Comment:

The proposed first floor extension is setback from the side and front walls of the ground floor to provide a modulation which presents appropriately in the street and has no unreasonable amenity impact. The compliant floor space ratio under the Manly LEP 2013 and the compliant front setback under the Manly DCP 2013 also ensure the proposal would reasonable control bulk and scale, despite the height non-compliance.

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 proposal is not in close proximity to water or iconic features which provide significant views. As such, the non-compliant height would not result in any unreasonable disruptions to 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 proposal is compliant with the controls for access sunlight under 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 non-compliance, consideration must be given to its consistency with the underlying objectives of the R1 General Residential zone.

The underlying objectives of the R1 General Residential zone:

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

Comment:

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The proposal maintains the residential use of the site.

It is considered that the development satisfies this objective.

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

Comment:

The proposal will maintain the use as dwelling house which contributes to the variety of types and densities.

It is considered that the development satisfies this objective.

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

Comment:

Not applicable.

It is considered that the development is not inconsistent with this objective.

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. The structure would also be at the same level as the approved storey under CDC2018/0008 but non-complaint with the building height control due to the slope of the land.

(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 an addition of building 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 a justification for the variation to the Height of Buildings development standard including a response to the above as follows:

"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 additions and alterations to an existing dwelling, which are constrained by the siting of the existing building and 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 proposed works have been designed to respect the sloping topography of the site.*
- 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 existing overall building height and sloping topography of the site, the proposed new works will be up to approximately 9.475m in height.

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

- Compliance with the height control is constrained by the siting of the existing excavated garage and sloping topography of the site.*
- The proposed development is designed to respect the sloping topography of the site. The development 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 newer 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 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."

(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: 446.4m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	North: 6.9m (based on gradient 1:15)	7.1m	2.9%	No
	South: 7.1m (based on gradient 1:10)	7.9m	11.3%	No
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	1.1m	N/A	Yes
4.1.4.1 Street Front	Prevailing building	11.65m,	N/A	Yes

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Setbacks	line / 6m	consistent with prevailing setback		
4.1.4.2 Side Setbacks	North: 2.37m (based on wall height)	1.569m	-33.8%	No
	South: 2.63m (based on wall height)	1.753m	-33.3%	No
4.1.4.4 Rear Setbacks	8m	7.4m (to existing) 17m (to proposed)	N/A	Yes (to proposed)
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	35.8% (160sqm)	N/A	No but as existing and no change to building envelope.
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	75% (120sqm)	N/A	Yes.
4.1.5.3 Private Open Space	18m	30sqm	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes (existing)

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.1.1.1 Complementary Design and Visual Improvement	Yes	Yes
3.1.1.2 Front Fences and Gates	Yes	Yes
3.1.1.5 Garbage Areas	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.2.1 Wall Height	No	Yes
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Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.2.2 Number of Storeys	No	Yes
4.1.2.3 Roof Height	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.4.1 Street Front setbacks	Yes	Yes
4.1.4.2 Side setbacks and secondary street frontages	No	Yes
4.1.4.4 Rear Setbacks	Yes	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements	No	Yes
4.1.5.2 Landscaped Area	Yes	Yes
4.1.5.3 Private Open Space	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes

Detailed Assessment

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

Description of non-compliance

The proposal is non-compliant with the control for wall height with the requirement 6.9m at the north with the proposed as 7.1m and 7.1m at the south with the proposed as 7.9m. The proposed number of storeys for 3 is non-compliant with the control for 2.

Merit consideration

Clause 4.1.2 provides that the objectives for height of buildings under the Manly LEP are particularly relevant when considering the above numerical non-compliances. 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 involves an extension of the approved first floor to the front of the site (approved under CDC2018/0008), in a location that is down slope so that wall heights are higher than the rear. As this extension is maintained within the existing building envelope and the presentation in terms of bulk and number of storeys from the street will be similar to approved, the proposal would provide and maintain a desirable outcome in the streetscape.



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

Comment:

The proposed first floor extension is setback from the side and front walls of the ground floor to provide a modulation which presents appropriately in the street and has no unreasonable amenity impact. The compliant floor space ratio under the Manly LEP 2013 and the compliant front setback under the Manly DCP 2013 also ensure the proposal would reasonable control bulk and scale, despite the wall height and storey non-compliance.

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 proposal is not in close proximity to water or iconic features which provide significant views. As such, the non-compliant height would not result in any unreasonable disruptions to 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 proposal is compliant with the controls for access sunlight under 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.

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

Description of non-compliance

The proposal is non-compliant with the control for side setbacks with the control for the north side setback being 2.37m and the proposed being 1.569m whilst the control for the south setback is 2.63m and the requirement is 1.753m.

Merit consideration:

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

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

Comment:

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The proposed first floor extension would result in a maintained compliance with floor space ratio and front setback. These compliances in combination with the setback of the first floor from the ground floor would result in a development provides adequate spacing and character 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.

Comment:

The proposal provides appropriate locations and design of new windows to ensure an appropriate outcome for privacy. This includes highlight windows at the northern elevation and one larger window on the southern elevation which is separated adequately from private open space and living areas of the adjoining property. The proposal is compliant with the controls for sunlight under the Manly DCP and the setbacks of the first floor from the existing ground floor would also assist in maintaining appropriate amenity.

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

Comment:

The proposed first floor extension is maintained within the existing building envelope and includes walls which are setback from the existing ground floor. Given the compliance of the proposal with front and rear setbacks as well as floor space ratio, the dwelling is sited so as to have an appropriate outcome for amenity as well as an appropriate presentation to the street.

Objective 4) To enhance and maintain natural features by:

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

Comment:

There are no proposed changes to natural features or open space. The proposed non-complaint setbacks do not relate to the maintenance or enhancement of natural features on site in this circumstance due to the works being within the existing building envelope.

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



Comment:

Not applicable.

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

4.1.5 Open Space and Landscaping

The proposed open space remains as existing and the proposal for a first floor extension (as alterations and additions only) does not provide a situation or nexus in which compliance can be reasonably required.

4.1.5.1 Minimum Residential Total Open Space Requirements

The proposed open space remains as existing and the proposal for a first floor extension (as alterations and additions only) does not provide a situation or nexus in which compliance can be reasonably required.

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 Development Consent to DA2018/0250 for Alterations and additions to the existing dwelling house, on land at Lot A DP 14809, 179 Woodland Street, BALGOWLAH, 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
DA02- Site/ Roof/ Sediment/ Erosion/ Waste Management/ Stormwater Management Plan	Tuesday 6 February, 2018.	Action Plans
DA04- Proposed Lower Ground Floor Plan	Tuesday 6 February, 2018.	Action Plans
DA06- Proposed Ground Floor Plan	Tuesday 6 February, 2018.	Action Plans
DA08- Proposed First Floor Plan	Tuesday 6 February, 2018.	Action Plans
DA09- North/ East Elevation	Tuesday 6 February, 2018.	Action Plans
DA10- South/West Elevation	Tuesday 6 February, 2018.	Action Plans
DA11 - Long/ Cross Section	Tuesday 6 February, 2018.	Action Plans

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

DA2018/0250

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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. 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

3. Security Bond

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A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security 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

4. **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.

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

6. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

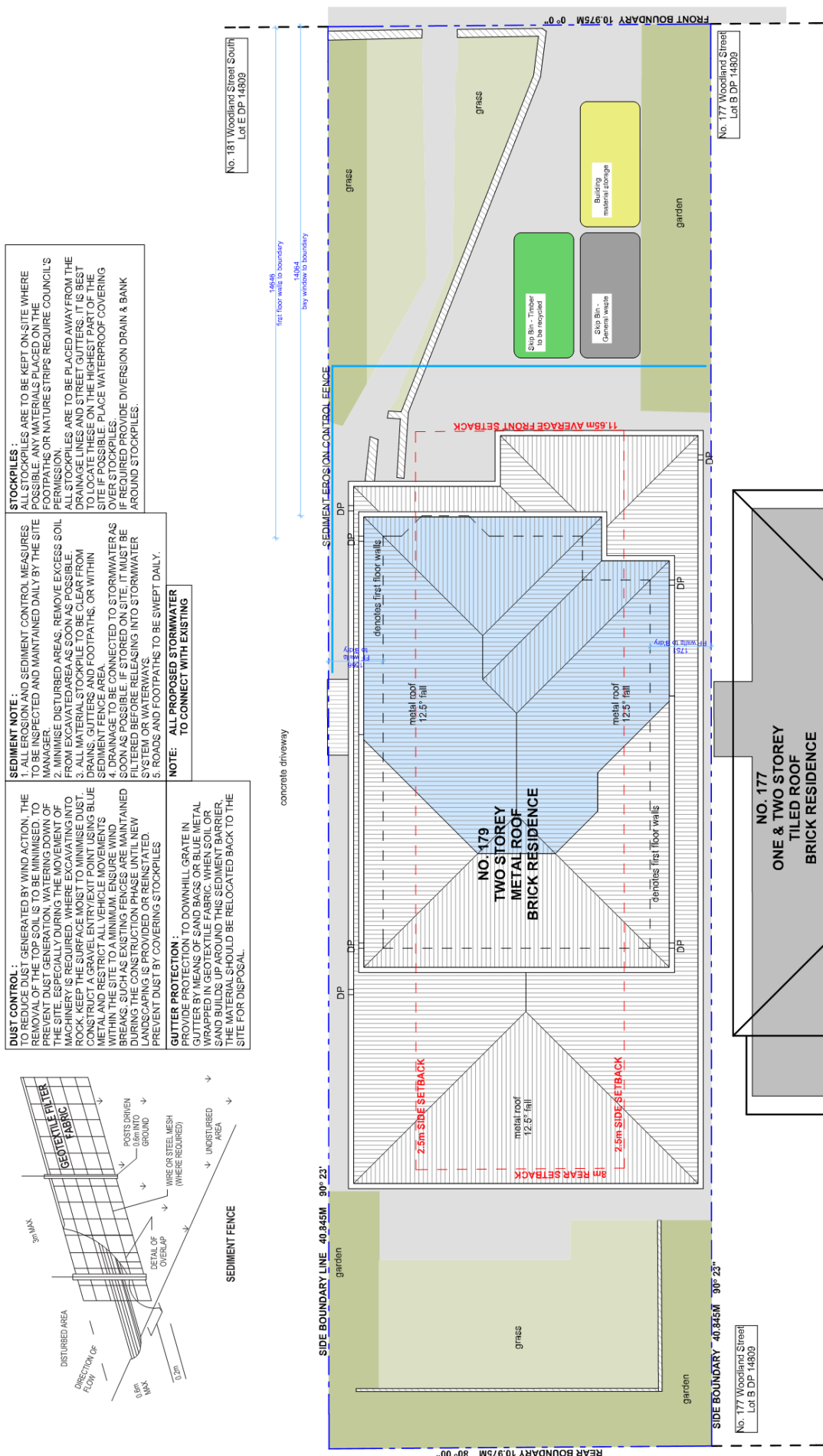


Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Note: The following Standards and Codes applied at the time of determination:

- (a) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003 - Plumbing and drainage - Stormwater drainage
- (b) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003/Amdt 1 - 2006 - Plumbing and drainage - Stormwater drainage
- (c) National Plumbing and Drainage Code.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)



SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT / CONCEPT STORMWATER PLAN

1:100 @ A3











REV.	DATE	COMMENTS	DRWN
A	201117	DA SUBMISSION	AL

ACTION PLANS

Phone: 0403957518
Email: design@actionplans.com.au
Web: www.actionplans.com.au



LEGEND

	NEW FLOOR AREA		CONCRETE
	NEW WET FLOOR AREA		BRICKWORK
	METAL ROOFING		METAL
	TILED ROOFING		EXISTING
	TIMBER		DEMOLISHED

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Do no scale on drawings. Use figured dimensions.

REV.	DATE	COMMENTS	DRWN
A	29/11/17	DA SUBMISSION	AL

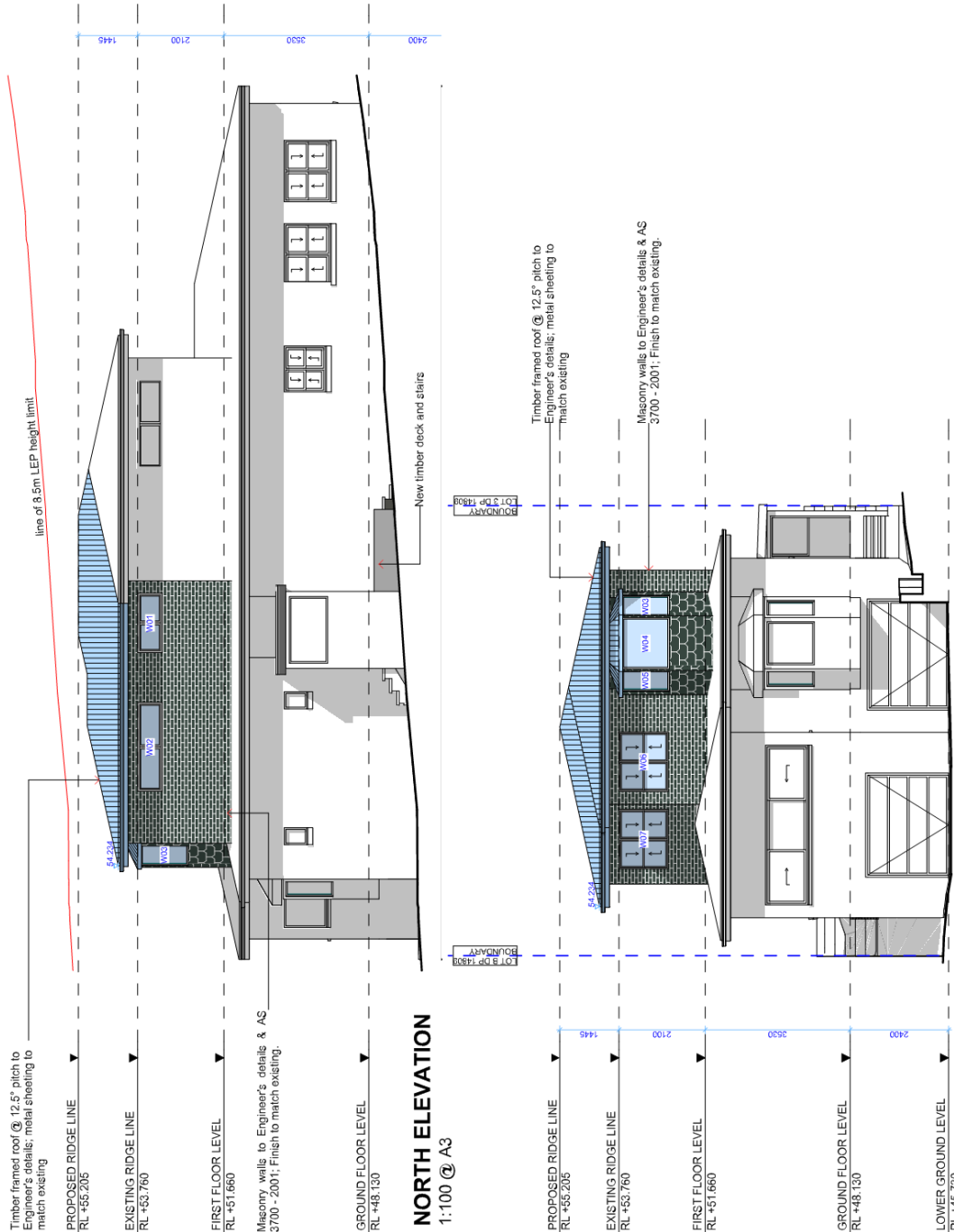
DRAWING NAME
SITE / ROOF / SEDIMENT
EROSION / WASTE
MANAGEMENT / STORMWATER
CONCEPT PLAN

DRAWING NO.
DA02

DATE
Tuesday, 6 February
2018

CLIENT
GEORGINA BRETT

PROJECT ADDRESS
1779 WOODLAND RD,
BALGOWLAH NSW
2093



ACTION PLANS

m: 0403357518
e: des@actionplans.com.au
w: www.actionplans.com.au

REV.	DATE	COMMENTS	DRWN
A	22/11/17	DATE SUBMISSION	AL

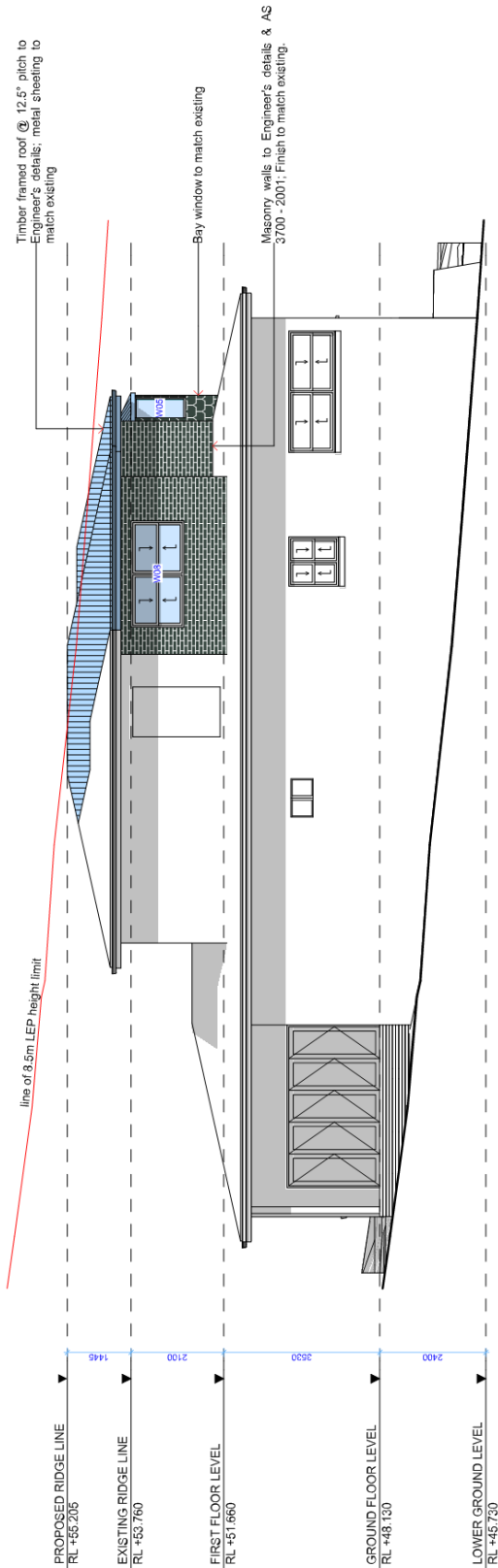
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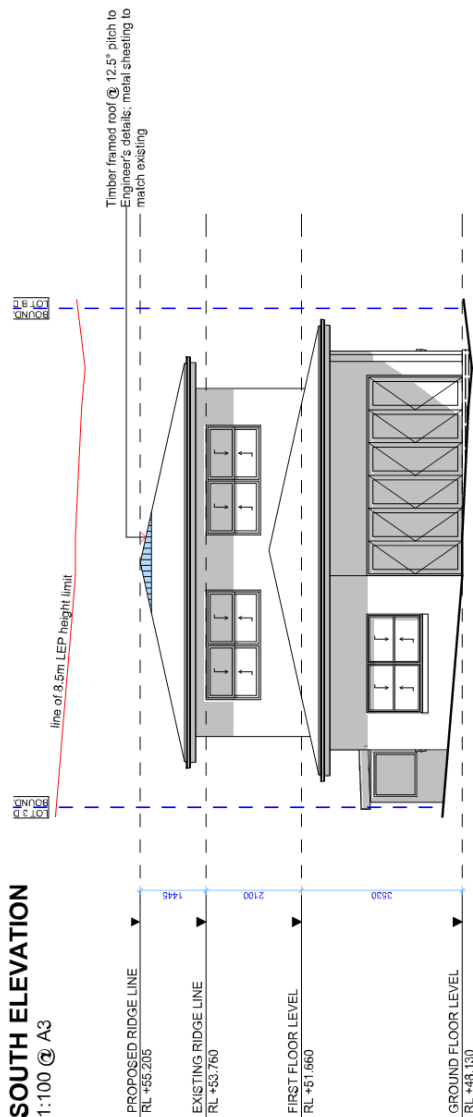
All levels and dimensions are to be checked and confirmed with the relevant authorities before any work, making of shop drawings or fabrication of components.

Do not scale on drawings. Use figured dimensions.

LEGEND	CLIENT	DRAWING NO.	DRAWING NAME
TIMBER	GEORGINA BRETT	DA09	NORTH / EAST ELEVATION
WEATHERBOARD	PROJECT ADDRESS	DATE	SCALE
FACE BRICKWORK	173 WOODLAND RD,	Tuesday, 6 February	1:100 @ A3
METAL	BALGOGLAH NSW	2018	
CONCRETE	2003		
METAL ROOFING			
TILED ROOFING			
RENDER			
EXISTING			



SOUTH ELEVATION
1:100 @ A3



WEST ELEVATION
1:100 @ A3



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REV.	DATE	COMMENTS	DRWN
A	22/11/17	DATE SUBMISSION	AL

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All levels and dimensions are to be checked and verified on site prior to construction. If any discrepancy is found, the designer shall be notified immediately. No work shall be done on drawings. Use figured dimensions.

LEGEND	CLIENT	DRAWING NO.	DRAWING NAME
TIMBER WEATHERBOARD FACE BRICKWORK METAL CONCRETE	GEORGINA BRETT	DA10	SOUTH / WEST ELEVATION
METAL ROOFING TILED ROOFING RENDER EXISTING	PROJECT ADDRESS	DATE	SCALE
	173 WOODLAND RD, BALGOWLAH NSW 2093	Tuesday, 6 February 2018	1:100 @ A3

ITEM 3.5

**MOD2018/0089 - 30 ARTHUR STREET, FAIRLIGHT -
MODIFICATION OF DEVELOPMENT CONSENT DA0144/2014
GRANTED FOR ALTERATIONS AND ADDITIONS TO AN
EXISTING DWELLING HOUSE**

REPORTING MANAGER

Rodney Piggott

TRIM FILE REF

2018/341172

ATTACHMENTS

- 1** [↓](#) **Assessment Report**
- 2** [↓](#) **Site Plan and Elevations**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant approval to Modification Application No. Mod2018/0089 for Modification of Development Consent DA0144/2014 granted for Alterations and additions to an existing dwelling house on land at Lot 6 DP 4449, 30 Arthur Street, FAIRLIGHT, subject to the conditions outlined in the Assessment Report.



REPORT TO DEVELOPMENT DETERMINATION PANEL

Meeting held on 13 June 2018

30 Arthur Street Fairlight - Modification of Development Consent DA0144/2014 granted for Alterations and additions to an existing dwelling house

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0089
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 6 DP 4449, 30 Arthur Street FAIRLIGHT NSW 2094
Proposed Development:	Modification of Development Consent DA0144/2014 granted for Alterations and additions to an existing dwelling house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Jennifer May Harvey
Applicant:	Jennifer May Harvey Benjamin Harvey
Application lodged:	26/02/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	28/02/2018 to 16/03/2018
Advertised:	Not Advertised
Submissions Received:	0
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 Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot 6 DP 4449 , 30 Arthur Street FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject property is located on the northern side of Arthur Street and has an area of 323.9m². The site is rectangular in shape with frontage of 9.145m to Arthur Street to the south, corresponding rear boundary to the north and respective side boundary length of 35.425m to the east and west. Existing development on the site comprises a single storey dwelling house with rear deck and spa in the north-east corner. An existing driveway is located adjacent the eastern boundary within the front setback.</p> <p>A two (2) storey dwelling house adjoins the properties eastern boundary at No. 28 Arthur Street. A one (1) and two (2) storey dwelling at No. 32 Arthur Street is located to the west of the site.</p>

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:

Application 10.2014.144.1 (DA144/2014- Part 2) for Alterations and additions to an existing dwelling including a first floor addition, internal reconfiguration and additions to the front on the ground floor was approved by DAU on 04/02/2015. A Section 96(2) (DA144/2014- Part 2) modification was approved on 6/05/2015.

Application 10.2008.405.1 for Alterations and additions to the existing dwelling including vehicle hardstand and driveway was approved by delegated authority on 05/05/2009.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for modification to the consent granted under DA144/2014 for alterations and additions to the existing dwelling house. These include:

- Delete condition ANS02 which required the proposed first floor to be setback 1150mm from the boundary.
- Modify condition DA1 to replace approved plans with modified plans related to the eastern setback.
- Aligning garage with ground floor study
- Removal of window to bedroom
- Change to balcony and bedroom configurations
- Converting bathroom to ensuite
- Converting ensuite to deck
- Reconfiguration of stairs and laundry
- Deletion of first floor study



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 DA144/2014, in full with the exception of the required condition for the eastern side setback, 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 DA144/2014.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or	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.



Section 96(1A) - Other Modifications	Comments
(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

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</p>



Section 79C 'Matters for Consideration'	Comments
	<p>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 matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> 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 of the application Council received no submissions.

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

A BASIX certificate has been submitted with the application (see Certificate No. A194809_02).

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

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	8.5m	8.5m	0%	Yes.
Floor Space Ratio Site area: 323.9m ²	FSR: 0.6:1 (194.34m ²)	FSR: 0.64:1 (However subject to condition which would reduce FSR)	FSR: 0.588:1 190.4m ²	N/A	Yes.

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Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 323.9m ²	Requirement	Approved	Proposed	Complies
4.1.2.2 Number of Storeys	2	2	2	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Consistent with prevailing setback	Consistent with prevailing setback	Yes
4.1.4.2 Side Setbacks	East: 2.4m (based on wall height)	1.15m (first floor)	0.1m-0.9m	No, see comments.

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 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2.2 Number of Storeys	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.4.1 Street Front setbacks	Yes	Yes
4.1.4.2 Side setbacks and secondary street frontages	No	Yes

Detailed Assessment

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

MOD2018/0089

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Description of non-compliance

The proposal is non-compliant with the control for the east side setback being 0.1m-0.9m proposed. The control for side setback at the east elevation is 2.4m.

Merit consideration:

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

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

Comment:

The subject site is located on a street that has relatively narrow lots, which generally result in setbacks that are non-compliant with the Manly DCP 2013. However, the two storey dwellings generally have first floors which are setback from ground floor walls. The proposal for a non-compliant setback at the eastern boundary is therefore reasonable due to the modulation of this first floor which assists in sufficiently reducing the presentation of bulk to the street and providing a consistent built form in the streetscape.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed modification involves a bedroom to the front of the dwelling which is proposed to be within the setback previously provided by condition ANS01. As a result of the location of this proposed bedroom and its limitation to the front of site, local amenity will be reasonably protected. There would be no direct overlooking as a result of windows being located adjacent and the proposal maintains compliance with the controls for Sunlight Access and Overshadowing under the Manly DCP, 2013.

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

Comment:

The siting of the proposed extensions are to the side of the dwelling and modulated efficiently so as to provide a situation in which the development would be consistent with the character of the street and would not cause any unreasonable amenity impact.

Objective 4) To enhance and maintain natural features by:



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

Comment:

The proposed modification maintains open space for natural features as approved.

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

Comment:

Not applicable.

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

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. Mod2018/0089 for Modification of Development Consent DA0144/2014 granted for Alterations and additions to an existing dwelling house on land at Lot 6 DP 4449,30 Arthur Street, FAIRLIGHT, 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
S96- 01- Amendment A- Site Plan	7.09.2017	Simon Rosewell Pty Ltd
S96- 02- Amendment A- Plans	7.09.2017	Simon Rosewell Pty Ltd
S96- 03- Amendment A- Elevations 1	7.09.2017	Simon Rosewell Pty Ltd
S96- 04- Amendment A- Elevations 2	7.09.2017	Simon Rosewell Pty Ltd

c) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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



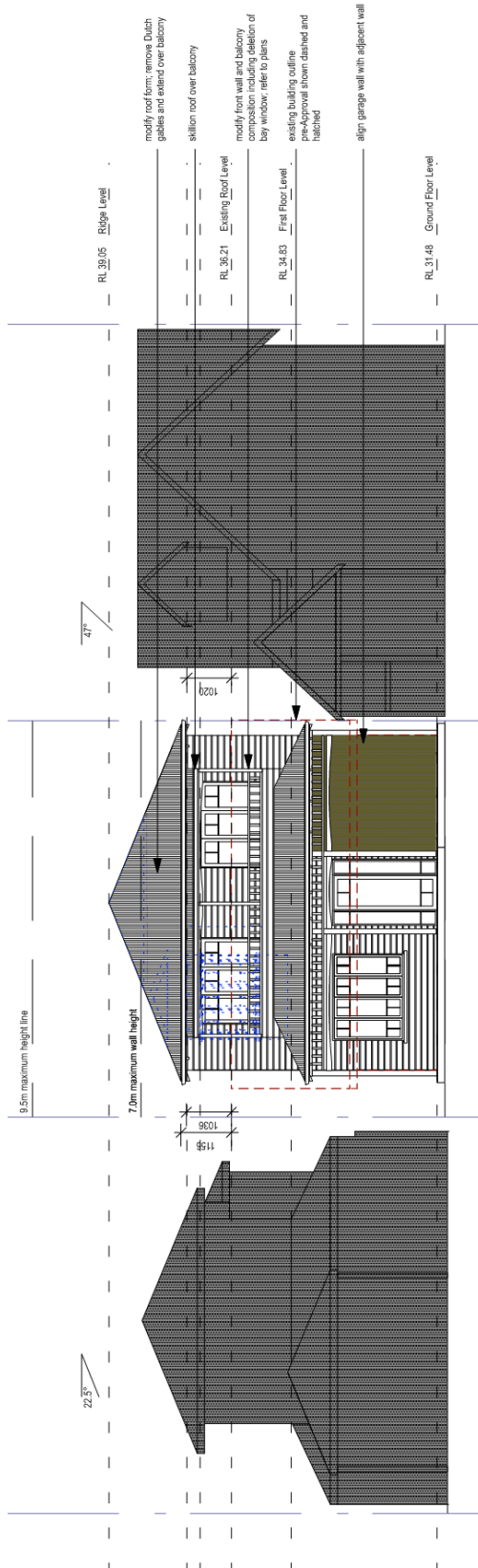
Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

B. Delete Condition ANS02 which read as follows:

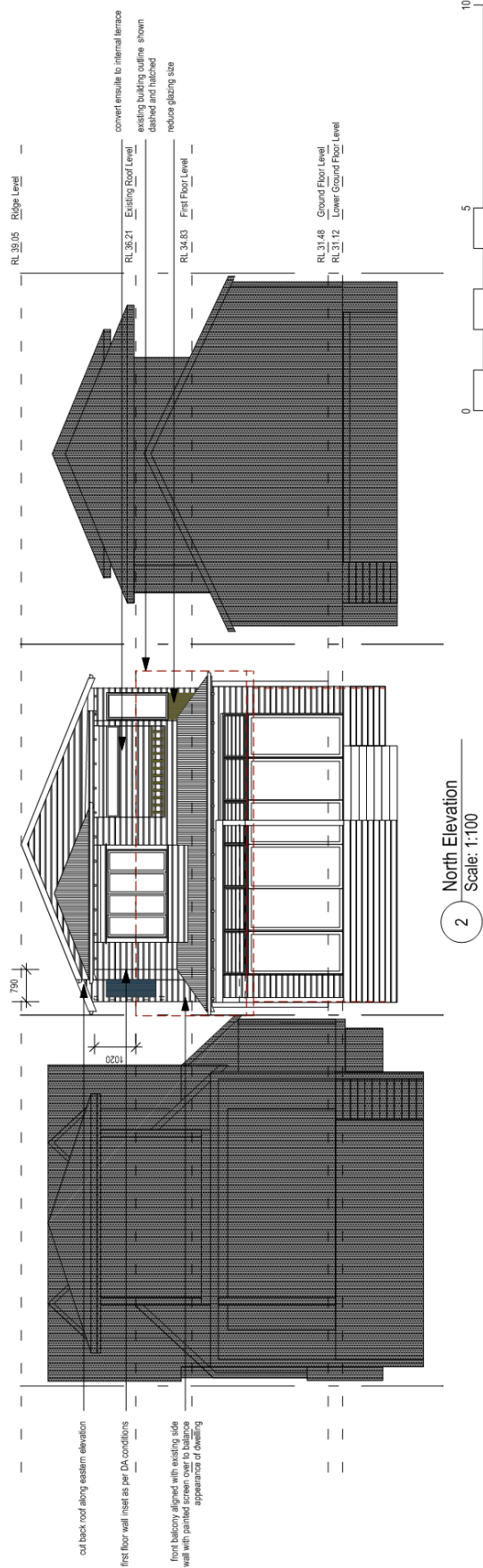
The eastern wall to the first floor is to have a setback of 1150mm and the internals modified accordingly. The area above the garage, laundry and kitchen is to be roofed. Plans are to be amended accordingly prior to the issue of a Construction Certificate.

Reason: To reduce the amenity impacts of the adjoining property to the east.





1 South Elevation
Scale: 1:100



2 North Elevation
Scale: 1:100

ALTERATIONS & ADDITIONS

30 ARTHUR STREET, FAIRLIGHT

B & J HARVEY

JOB NO 1012 DWG NO S96 03 AMENDMENT A

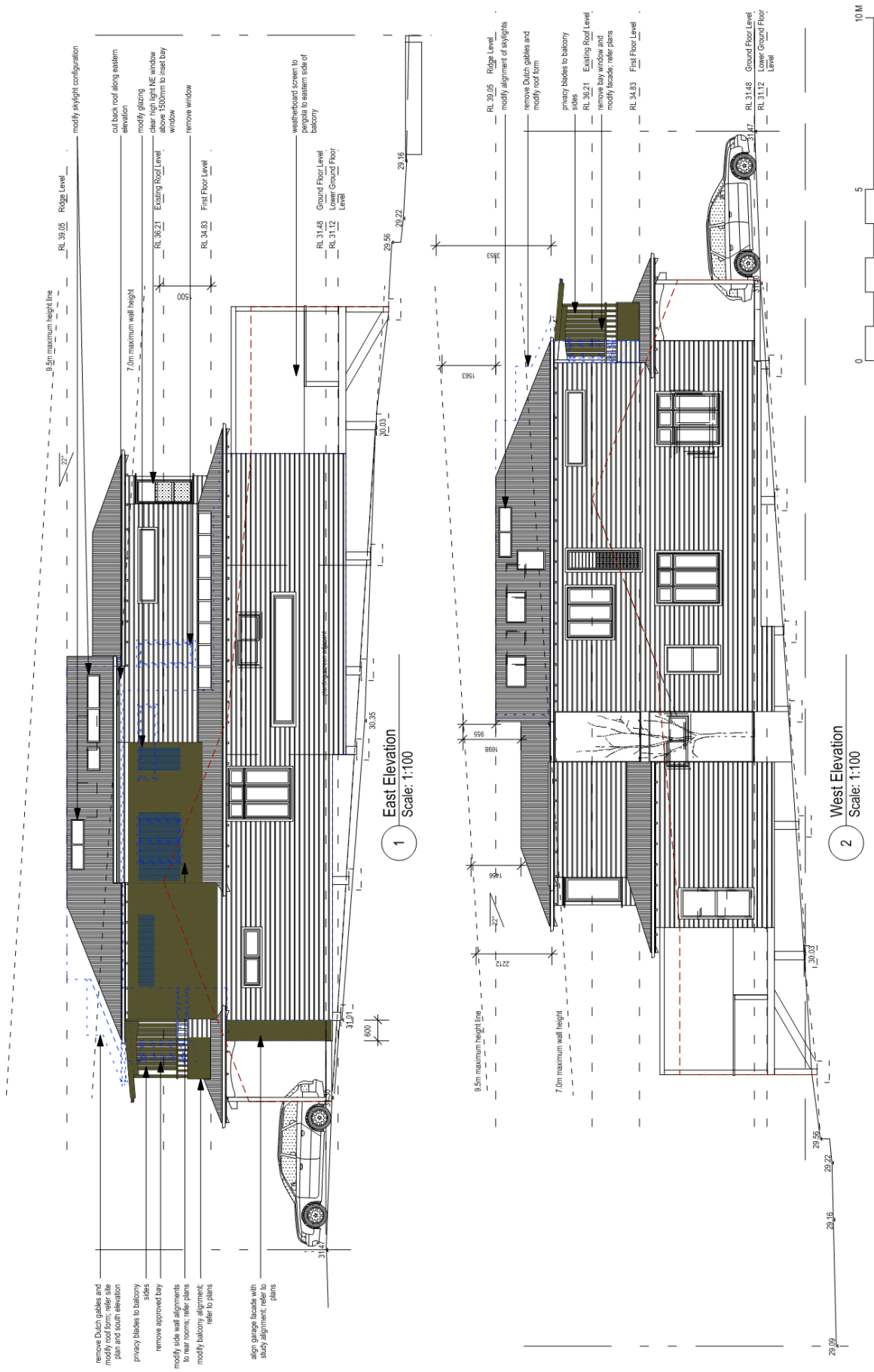
TITLE ELEVATIONS 1

SCALE 1:100

DATE PRINTED 07.09.17

SIMON ROSEWELL PTY LTD architecture • design • project management

Comply with relevant Authorities requirements
Comply with the Building Code of Australia
Comply with all relevant Australian Standards
Dimensions in millimetres.
Confirm all dimensions on site
Use figured dimensions only.
In discrepancy exists notify architect.
If in doubt ask.
Copyright in all documents and drawings prepared by the architect and in any drawings or designs shall remain the property of the architect or of creation vest with the architect.



ALTERATIONS & ADDITIONS
30 ARTHUR STREET, FAIRLIGHT
B & J HARVEY

JOB NO	DWG NO	AMENDMENT	TITLE	SCALE	DATE PRINTED
1012	S96 04	A	ELEVATIONS 2	1:100	07.09.17
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Comply with relevant Authorities requirements
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