

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a Meeting of the Development Determination Panel will be held in the Walamai Room, Civic Centre, Dee Why

WEDNESDAY 12 DECEMBER 2018



Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 12 December 2018
in the Walamai Room, Civic Centre, Dee Why**

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 28 NOVEMBER 2018

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 28 November 2018 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1 **REV2018/0029 - 27 ALMA STREET, CLONTARF - REVIEW OF DETERMINATION OF APPLICATION DA2018/0747 FOR ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING HOUSE**

REPORTING MANAGER **RODNEY PIGGOTT**

TRIM FILE REF **2018/767457**

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 REV2018/0029 for Review of Determination of Application DA2018/0747 for alterations and additions to an existing dwelling house on land at Lot 7 DP 2610, 27 Alma Street, Clontarf subject to the conditions outlined in the Assessment Report.



REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2018/0029
Responsible Officer:	Benjamin Price
Land to be developed (Address):	Lot 7 DP 2610, 27 Alma Street CLONTARF NSW 2093
Proposed Development:	Review of Determination of Application DA2018/0747 for alterations and additions to an existing dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Nora Cappelen Thiis Hunt Malcolm Gregory Hunt
Applicant:	Malcolm Gregory Hunt
Application lodged:	12/11/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	14/11/2018 to 30/11/2018
Advertised:	Not Advertised
Submissions Received:	1
Recommendation:	Approval
Estimated Cost of Works:	\$ 42,935.00

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.

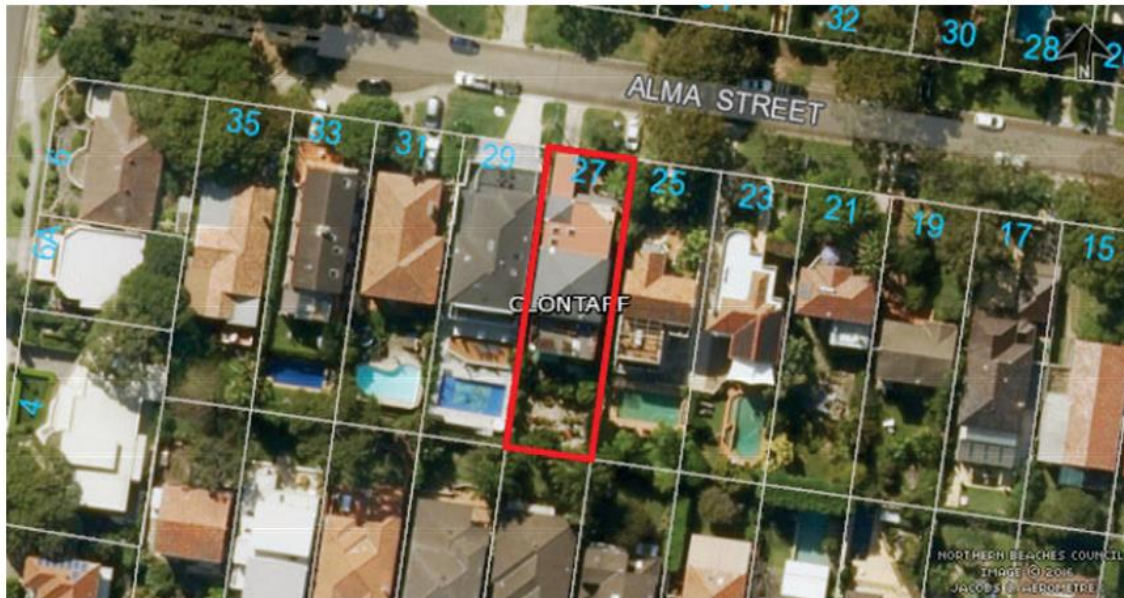
SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 82A - Environmental Planning and Assessment Act 1979 - Section 82A
 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 - 4.1.8 Development on Sloping Sites

SITE DESCRIPTION

Property Description:	Lot 7 DP 2610 , 27 Alma Street CLONTARF NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Alma Street Clontarf.</p> <p>The site is regular in shape with a frontage of 12.19m along Alma Street and a depth of 42.67m. The site has a surveyed area of 518.5m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a part two and part 3 storey dwelling house.</p> <p>The site slopes from north to south and includes a crossfall of 6.87m.</p> <p>The site is landscaped with gardens and ponds. There are no significant landscape features within the vicinity of the development.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one, two and three storey dwelling houses.</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:

DA2018/0747 - Alterations and additions to an existing dwelling house. Refused on the 22 August 2018 for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the bulk and scale of the proposed development is excessive and inconsistent with the objectives of Clause 4.4 Floor Space Ratio of the Manly Local Environmental Plan 2013.
2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed number of storeys is inconsistent with the provisions of Clause 4.1.2 Height of Buildings, with respect to Wall Height of the Manly Development Control Plan 2013.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.5 Open Space and Landscaping of the Manly Development Control Plan 2013.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.8 Development on Sloping Sites of the Manly Development Control Plan 2013.

PLM2018/0005 - A pre-lodgement meeting was held on the 6 February 2018. The proposal under DA2018/0747 was consistent with this advice

PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for the review of the refusal of DA2018/0747 which included the total



enclosure of the existing deck. This application was refused for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the bulk and scale of the proposed development is excessive and inconsistent with the objectives of Clause 4.4 Floor Space Ratio of the Manly Local Environmental Plan 2013.
2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed number of storeys is inconsistent with the provisions of Clause 4.1.2 Height of Buildings, with respect to Wall Height of the Manly Development Control Plan 2013.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.5 Open Space and Landscaping of the Manly Development Control Plan 2013.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.8 Development on Sloping Sites of the Manly Development Control Plan 2013.

The review application has provided revised plans that partially enclose the deck area to address the above reasons of refusal.

The assessment below will assess the reasons for refusal raised by the Development Determination Panel. This assessment adopts the assessment previously conducted under DA2018/0747 for any other matters.

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)(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</p>



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



In accordance with Section 82A of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 82A of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 22 August 2018 and the notice of determination was issued on 29 August 2018. The review was lodged on 12 November 2018 and is to be considered by Development Determination Panel on 12 December 2018, which is within 6 months of the date of determination.

Section 82A(4)(c) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

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

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the S82 review) and the nature of the intended land use remains the same. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 82A (4) (c) of the Act

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited 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:
Ms Annabelle Peri Kitchen	53 Rangers Avenue MOSMAN NSW 2088

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

- Building Bulk
- Privacy
- View Loss



The matters raised within the submissions are addressed as follows:

- **Building Bulk**
Comment: The proposal is a lightweight structure that will not result in any unreasonable bulk or scale within the locality.
- **Privacy**
Comment:
The privacy has been assessed below with regard to clause 3.4.2 Privacy and Security of the Manly DCP 2013 and was found to be satisfactory.
- **View Loss**
Comment:
The loss of views was assessed in the original application and was found to be satisfactory. The modification has halved the size of the enclosure. An assessment has been conducted below and found the development to maintain a reasonable sharing of views.

MEDIATION

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

REFERRALS

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
Height of Buildings:	8.5m	7.16m-7.66m	N/A	Yes
Floor Space Ratio	FSR: 0.4:1 (207.4sqm)	Proposed 0.574:1 (297.5sqm) Previous DA2018/0747 0.63.5:1 (321.7sqm) (measured from the current plans) Existing 0.54:1 (273.7sqm)	43.4%	No

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Requirement:	0.4:1 (207.4sqm)
Proposed:	0.574:1 (297.5sqm)
Is the planning control in question a development standard?	YES
If numerical enter a % variation to requirement	43.4%

Assessment of request to vary a development standard:



The following assessment of the variation to Clause 4.4 - Floor space ratio development standard has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* and an assessment of the request to vary the development standard in accordance with the requirements of Clause 4.6 is provided below:

Clause 4.6 Exceptions to development standards:

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

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

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

Comment:

Clause 4.4 Floor space ratio development standard is not 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.*

(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*
- (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, and*
- (b) *the concurrence of the Secretary has been obtained.*

cl 4.6 (4)(a)(i) (Justification) assessment:

cl 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6 (3) and these are addressed as follows:

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the



objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The Applicant's written request has demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. The Applicant's written request submits that the proposal is consistent in form and scale with adjoining residential development, and will result in no unreasonable amenity impacts to surrounding properties.

In doing so, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land and that the building is of a good design and will protect the amenity of the surrounding built environment therefore satisfying cl 1.3(c)(g) of the EPA Act.



In this regard, the applicants written request has adequately demonstrated the that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

cl 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(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:

In considering whether or not the proposed development will be in the public interest consideration must be given to the underlying objectives of the Floor space ratio development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of cl 4.4 Floor space ratio development standard are:

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

Comment:

The proposed development is for the infill of a small portion of deck with a lightweight sunroom style addition. The development will not significantly add to the bulk of the building nor will it be result in any impacts on the streetscape.

The development satisfies this objective.

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

Comment:

The proposal is within the existing footprint of the existing building and will not result in an unreasonable building density or bulk in relation to the site area. The original application assessed the view loss as a result of the development and found the view sharing to be reasonable. The reasons for refusal of the original application did not include view loss. The proposal is scaled back from the original application and will retain more views from 25 Alma Street. The proposal will not result in any unreasonable view loss or obscure any important landscape or townscape features.

The development satisfies this objective.

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



Comment:

The proposed additions will not significantly add to the bulk or scale of the existing building, result in any unreasonable impacts on amenity and will enhance the amenity of the subject site. The proposal is located over the existing deck area and will maintain an appropriate visual relationship between new development and the existing character and landscape of the area.

The development satisfies this objective.

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

Comment:

The proposal is suitably designed to maintain the privacy and sunlight access of the neighbouring properties. The proposal will also maintain adequate view sharing within the locality. The proposal will minimise adverse environmental impacts on the use and enjoyment of the adjoining land.

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

Comment:

Not applicable.

Conclusion:

The proposed development satisfies the underlying objectives of the Floor space ratio development standard.

Zone objectives

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 proposal will enhance the amenity of the site and will ensure the site continues to provide the housing needs of the community.

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

Comment:

Not applicable

Conclusion:

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



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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. 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 by the Local Planning Panel.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 518.5sqm	Requirement	Proposed	Previous	% Variation*	Complies
4.1.2.1 Wall Height	East: 7.4m (based on gradient 1:6.8)	7.62m - 8m	8.1m	2.9% - 8%	No
	West: 7.2m (based on gradient 1:9)	6.85m - 7.5m	7.7m	4.16%	No
4.1.2.2 Number of Storeys	2	3	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	0.4m	0.8m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East 2.67m West 2.5m (based on wall height)	East 1.825m West 1m	No change	East 31.6% West 60%	No
	Windows: 3m	1m-1.825m	No change	66%-39%	No
4.1.4.4 Rear Setbacks	8m	17.9m	14.26m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (311.1sqm)	50% (262.2sqm)	45% (238sqm)	15.7%	No
	Open space above ground 25% of total open space	13.2%	Nil		
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (104.8sqm)	48.5% (127.2sqm)	No change	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	34.6sqm	Nil	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

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

Description of non-compliance

The Manly DCP 2013 permits a maximum wall height relative to the slope of the land. The proposal does not comply with this control. It is noted that the amended design has greatly reduced the non-compliance with the wall height control. The Manly DCP 2013 also permits a maximum of 2 storeys on this site. The proposal will intensify the existing non-compliance of 3 storeys.

Merit consideration:

The Manly DCP 2013 does not contain objectives relating to this clause but refers to the objectives of clause 4.3 Height of Buildings of the Manly LEP 2013 as having particular relevance. With regard to the consideration for a variation, the development is considered against the relevant Objectives of the Control as follows:

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

Comment:

The proposal is below the existing ridge-line and is consistent with the prevailing building height within the locality. The proposal is designed to be lightweight to ensure it does not significantly add to the bulk or scale of the development site. Furthermore the amended design will ensure the development on the site steps with the topography minimising the scale of development. The proposal will not be visible from the streetscape and will not result in any unreasonable impacts on the streetscape character of the locality.



The development satisfies this objective.

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

Comment:

The amended development has been significantly reduced from the original application. The amended proposal is a lightweight structure that will not significantly add to the bulk or scale of the existing development on the site. The development will not result in an unreasonable bulk or scale of development within the locality.

The development satisfies this objective.

(c) to minimise disruption to the following:

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

Comment:

As discussed above the original application assessed the loss of views and found the view sharing to be reasonable. This was not a reason for refusal of the original application. This assessment adopts the view loss assessment of the original application and notes that the loss of views will be substantially reduced in this application. The development will minimise the disruption of views.

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

Comment:

The submitted shadow diagrams demonstrate that the development will provide adequate solar access to private open spaces and to habitable rooms of adjacent dwellings.

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

Comment:

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.

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

Description of non-compliance

The proposal is non-compliant with the minimum required side setback of the Manly DCP 2013. The development adopts the same setbacks as previously proposed. However, due to the reduced size of the enclosure the area of non-compliance has been greatly reduced.

Merit consideration:

The previous determination did not include setbacks as a reason for refusal. This assessment adopts



the assessment in the previous assessment report under DA2018/0747. In this regard, 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 / is not supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

Description of non-compliance

The development is non-compliant with the Total Open Space control of the Manly DCP 2013. It is noted that the minutes of the Development Determination Panel on the 22 August 2018 specifically raised the removal of the required private open space as an issue for refusal. The Manly DCP 2013 requires 18sqm of private open space to be provided. The proposal complies with this requirement with 24.2sqm attached to the living rooms and 10.4sqm to the front of the dwelling.

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 retain the existing landscaping on the site and does not include the removal of any landscape features.

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 will result in the reduction of above ground open space and maintain the existing open space and landscaped open space at ground level. The proposal does not warrant the requirement for tree planting

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

Comment:

The proposal will enhance the amenity on the site and will not result in any unreasonable impacts on sunlight, privacy or views of the streetscape or nearby properties.

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

Comment:

Suitable conditions are recommended to ensure stormwater is appropriately disposed. The proposal will



maintain the existing porous landscaped areas.

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

Comment:

The proposal will not result in the spread of weeds or the degradation of private and public open space.

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

Comment:

The proposal will maintain the existing wildlife habitat on the site.

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.

4.1.8 Development on Sloping Sites

Description of non-compliance

This clause requires developments to generally step with the site. This clause was included as a reason for refusal for the previous application. In response to this reason, the current application has been pulled back to approximately half the original size. This has resulted in a reduction in non-compliance with the wall height and number of storeys control of the Manly DCP 2013. This will also give the impression of the development gradually stepping down with the fall of the topography.

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 ensure that Council and the community are aware of, and appropriately respond to all identified potential landslip & subsidence hazards.

Comment:

The proposal is located over the existing deck area and will not result in any landslip or subsidence hazards.

Objective 2) To provide a framework and procedure for identification, analysis, assessment, treatment and monitoring of landslip and subsidence risk and ensure that there is sufficient information to consider and determine DAs on land which may be subject to slope instability.

Comment:

There is sufficient information to determine this development application.

Objective 3) To encourage development and construction this is compatible with the landslip hazard and to reduce the risk and costs of landslip and subsidence to existing areas.

Comment:



The proposal will not result in a landslip or subsidence hazard.

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 Development Consent to REV2018/0029 for Review of Determination of Application DA2018/0747 for alterations and additions to an existing dwelling house on land at Lot 7 DP 2610, 27 Alma Street, 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
2 - Site/Site Analysis	Not dated	Raw Concept Designs
6 - Proposed First Floor	Not dated	Raw Concept Designs
7 - North-East Elevation	Not dated	Raw Concept Designs
8 - South-West Elevation	Not dated	Raw Concept Designs
9 - Sections	Not dated	Raw Concept Designs

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.

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 \$1,000 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 WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE



OCCUPATION CERTIFICATE

5. **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)

CONSTRUCTION NOTES:

ALL WORKS TO BE CONSTRUCTED AS PER ENGINEERS SPECIFICATIONS AND COMPLY WITH RELEVANT BCA CODES AND AUSTRALIAN STANDARDS

GUTTERING AND DOWNPIPES TO BE CONNECTED TO EXISTING GRAVITY FEED STORMWATER.

AREA CALCULATIONS

NET SITE AREA:	513.5 SQM
FLOOR AREA EXISTING DWELLING (EXCLUDING STORE, VOID & STAIRWELLS)	
FIRST FLOOR:	116.8 SQM
GROUND FLOOR:	108.4 SQM
LOWER GROUND FLOOR	37.4 SQM
TOTAL	262.6 SQM
PROPOSED ADDITION:	25.3 SQM
TOTAL PROPOSED FLOOR AREA:	287.9 SQM

KEY	
DP	EXISTING DOWNPIPE
DP	PROPOSED DOWNPIPE
---	SEWER
---	WATER
	PROPOSED ADDITION

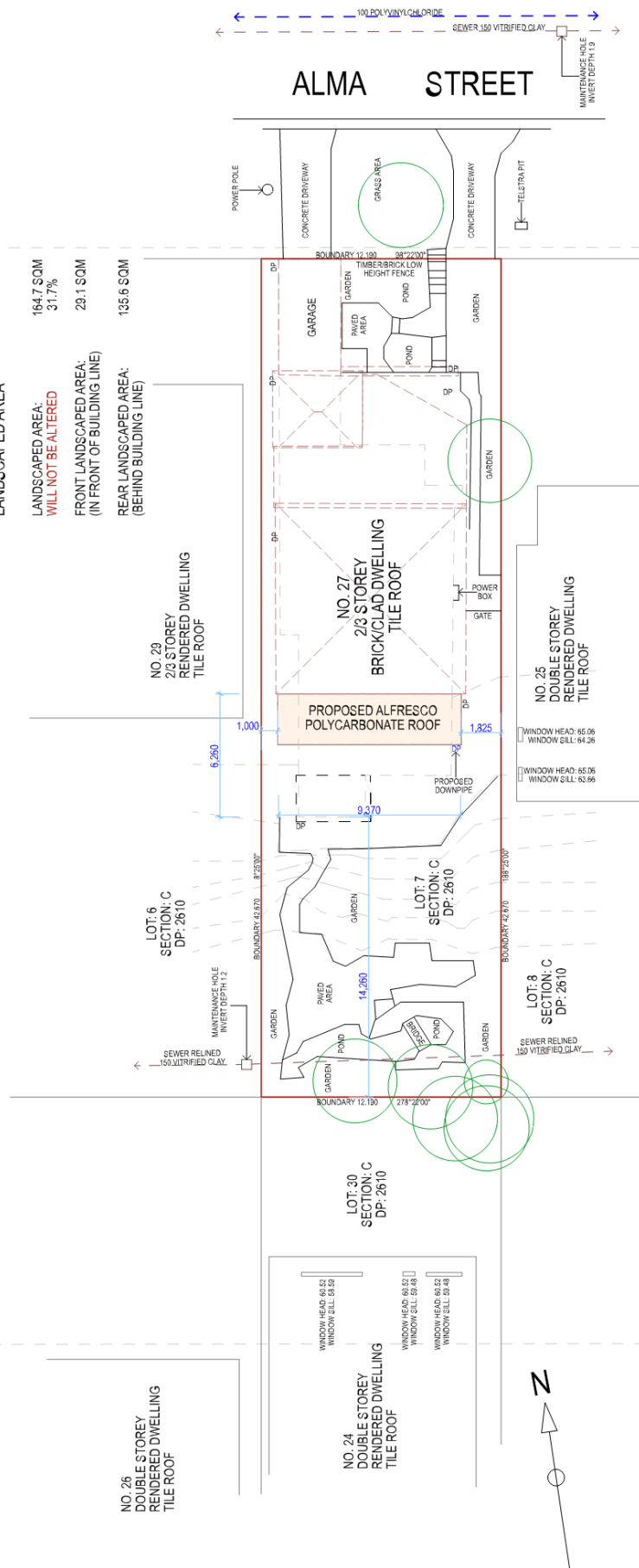
SITE COVERAGE:
230.9 SQM
44.5%

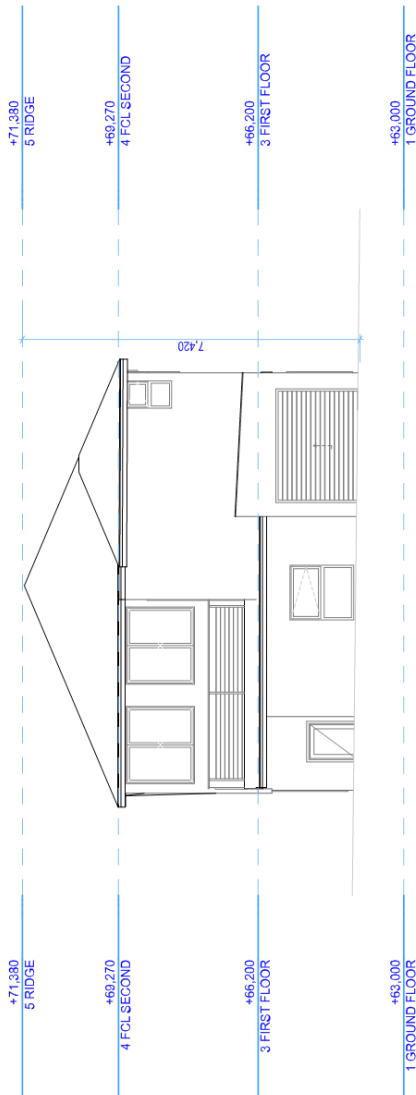
LANDSCAPED AREA

LANDSCAPED AREA:
WILL NOT BE ALTERED

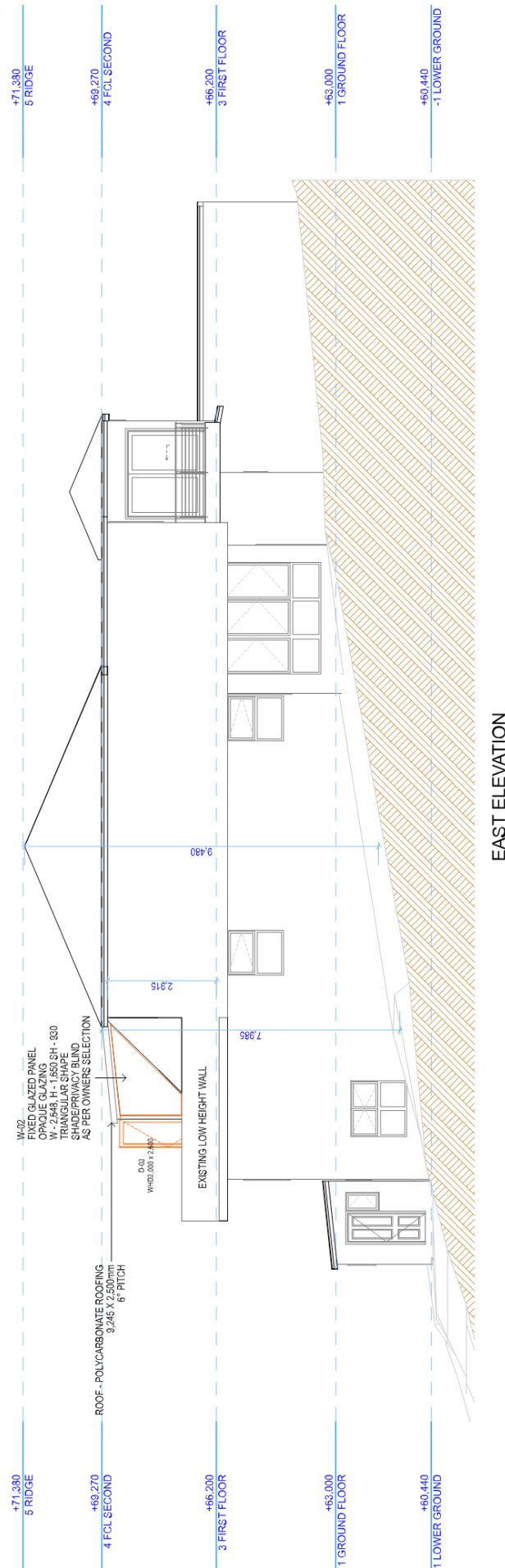
FRONT LANDSCAPED AREA:
(IN FRONT OF BUILDING LINE)

REAR LANDSCAPED AREA:
BEHIND BUILDING LINE) 135.6 SQM





NORTH ELEVATION



EAST ELEVATION



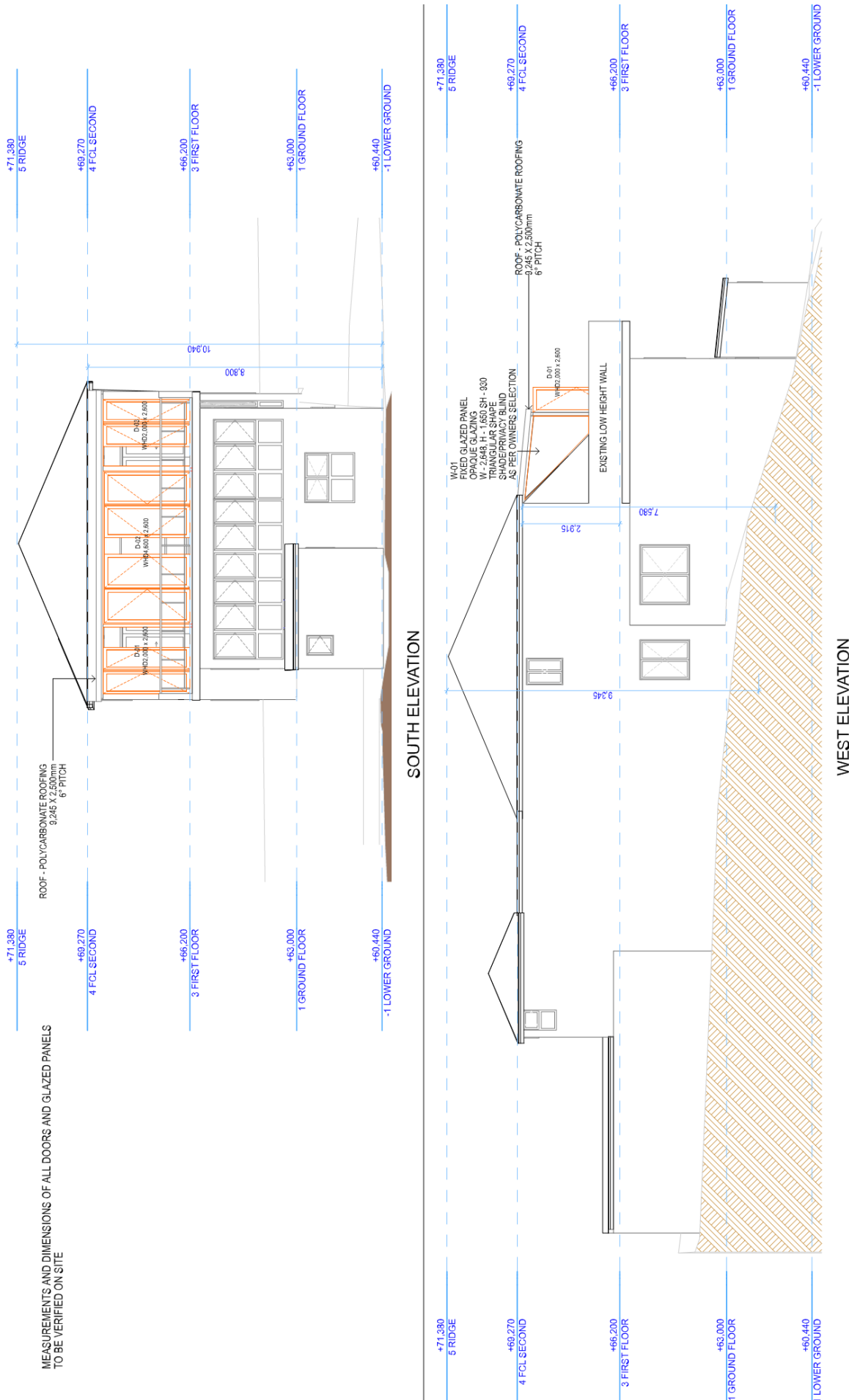
Raw Concept Designs

Clontarf Additions
Nora and Malcolm Hunt
27 Alma Street Clontarf NSW 2033
P 0433 446 510
E malcolmhuntpro@bigpond.com

Raw Concept Designs
ABN 40378478415
P 0416 184 186
E kathy@rawconceptdesigns.com.au
W www.rawconceptdesigns.com.au

General Notes
The Builder shall check all dimensions and levels on site prior to construction.
Notify any areas, discrepancies or omissions to the Designer.
The Designer shall not be held responsible for construction purposes until approval for construction.
Do not scale drawings.
All boundaries and contours subject to survey.

NORTH / EAST ELEVATION



Raw Concept Designs

Clontarf Additions
Nora and Malcolm Hunt
27 Alma Street Clontarf NSW 2033
P 0438 446 510
E malcolmhuntprod@bigpond.com

Raw Concept Designs
ABN 40378478415
P 0416 184 186
E kathy@rawconceptdesigns.com.au
W www.rawconceptdesigns.com.au

General Notes
The Builder shall check all dimensions and levels on site prior to construction.
Notify any areas, discrepancies or omissions to the Designer.
All dimensions are to be used for construction purposes and subject for
Do not scale drawings.
All boundaries and contours subject to survey.

SOUTH / WEST ELEVATION

8

ITEM 3.2	REV2018/0018 - 61 CUTLER ROAD, CLONTARF - REVIEW OF DETERMINATION OF APPLICATION DA2017/1300 FOR DEMOLITION AND CONSTRUCTION OF A NEW DWELLING HOUSE
REPORTING MANAGER	STEVE FINDLAY
TRIM FILE REF	2018/765619
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 **refuse** Review of Determination Application REV2018/0018 for Review of Determination of Application 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.



REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2018/0018
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot B DP 404022, 61 Cutler Road CLONTARF NSW 2093
Proposed Development:	Review of Determination of Application DA2017/1300 for 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 Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Frank Jeremy Hopson Jessica Hee Jin Jun
Applicant:	Jessica Hee Jin Jun
Application lodged:	17/09/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	21/09/2018 to 09/10/2018
Advertised:	Not Advertised
Submissions Received:	5
Recommendation:	Refusal
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

Environmental Planning and Assessment Act 1979 - Section 82A - Environmental Planning and Assessment Act 1979 - Section 8.2
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot B DP 404022 , 61 Cutler Road CLONTARF NSW 2093
Detailed Site Description:	<p>The subject site consists of one allotment located on the eastern side of Cutler Road, Clontarf.</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 under the MLEP 2013 and accommodates a two storey weather board and brick house with tile roof.</p> <p>The site slopes down from the road in a south-eastern direction. The site terrain can be described as gentle to moderate as it descends from street level before flattening out across the rear of the site.</p> <p>Two drainage easements traverse the rear of the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by two and three storey dwelling houses in landscaped settings.</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:

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

The Development Application the subject of this review (DA2017/1300), was recommended for approval and provided to Council's Development Determination Panel on 13 June 2018. The Development Determination Panel resolved to refuse the application for the following reasons:

"1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013, having regard to the requirements and objectives of the control.

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

3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.2 Privacy and Security of the Manly Development Control Plan, having regard to the requirements and objectives of the control.

4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.3 Maintenance of Views of the Manly Development Control Plan, having regard to the requirements and objectives of the control."

PROPOSED DEVELOPMENT IN DETAIL

REV2018/0018

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The proposal is for demolition of the existing dwelling-house and construction of a new dwelling house including the following:

Ground Floor Level

- Cinema
- Sitting Room
- Guest Bedroom with ensuite bathroom
- separate bathroom
- Games Room and wet bar
- Deck and rain tank
- Pool equipment/ plant room
- Lift

First Floor Level

- Dining and Kitchen
- Pantry
- Laundry
- Store
- Toilet
- Entry
- Balcony to north and south
- Lift

Second Floor Level

- Bedroom 1 with walk in robe and ensuite
- Bedroom 2
- Bedroom 3
- Bathroom
- Deck
- Lift

External Components

- Landscaping
- Double garage
- Swimming pool

Amendments to the Proposed Development under S8.2 Request for Review

- Reconfiguration of ground floor including addition of window to wet bar
- Re-configuration of first floor
- Increase in garage width
- Provision of frosted glass to lower 50% of south facing balustrade
- Increase in setback to top floor from 4.85m to 7.6m in order to provide a view corridor at this level

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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



are:

In accordance with Section 8.2 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 8.2 of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on the 13/06/2018 and the notice of determination was issued on 28/06/2018. The review was lodged on and is to be considered by Development Determination Panel on 12/12/2018, which is within 6 months of the date of determination.

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

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

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the S8.2 Review) and the nature of the intended land use remains the same. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirements of Section 8.3 of the Act

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the previous application prepared by Advanced Bushfire Performance solutions, dated May 2017.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Ms Jie Chen	59 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



Name:	Address:
Mrs Louise Anne Mary Lane	6 Castle Rock Crescent CLONTARF NSW 2093
Mr Robert Alexander Clarke Mrs Susan Rhonda Clarke	66 Cutler Road CLONTARF NSW 2093

The following issues were raised in the submissions:

- Geotechnical
- Overshadowing
- Drainage
- Amenity
- Building Height
- View Loss
- Floor Space Ratio
- Development potential and impact on neighbour

The matters raised within the submissions are addressed as follows:

- **Geotechnical**
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 would be imposed in the event of an approval.

This issue does not warrant refusal of the application.
- **Overshadowing**
Comment:
The proposal is compliant with the requirements for Sunlight Access and Overshadowing under the Manly DCP.

This issue does not warrant refusal of the application.
- **Drainage**
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 issue does not warrant refusal of the application.
- **Amenity**
Comment:
As further explained under the sections for Privacy and Maintenance of views in this report, the impact provided by the bulk and siting of the development provides an unreasonable impact for



neighbouring properties. In summary, this is as a result of the building bulk provided within the rear setback (and above the building height, breaching the FSR requirement) and the extent of the first floor balcony facing the neighbour. The original reason for refusal should be maintained.

- **Building Height**

Comment:

As provided in the comments under Clause 4.3 of the MLEP in this report, the request to vary the development standard is not supported. In summary, this is a result of the cumulative impact on views that the building height contributes to. The original reason for refusal should be maintained.

- **View Loss**

Comment:

The proposed development would result in view loss from affected properties that ranges from minor to severe. Given the non-compliance with the development standards (Building height and FSR) and the rear setback control, this results in an unreasonable impact on views. The original reason for refusal should be maintained.

- **Floor space ratio**

Comment:

As provided in the comments under Clause 4.4 of the MLEP in this report, the request to vary the development standard is not supported. In summary, this is a result of the cumulative impact on views that the Floor space ratio contributes to. The original reason for refusal should be maintained.

- **Development Potential and impact on neighbour**

Comment:

Given the orientation of the proposed first floor balcony, the proposed extent to include a non-compliance with the control for total open space above ground is unreasonable. The original reason for refusal should be maintained.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	No additional landscape comments nor conditions are provided over and above the referral comments contained in Trim 2018/538142
NECC (Development Engineering)	The applicant proposed some changes on the building height and size in this review application. The actual building footprint/ impervious area of the development has no significant change. As such, Development Engineering raise no new issue in this review. Please use the comment and condition (Trim 2018/299603) of the original DA 2017/1300.

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Internal Referral Body	Comments

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 956471S_02).

A condition should be included in the requiring compliance with the commitments indicated in the BASIX Certificate in the event of an approval.

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).

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- 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 revised 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.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	10.5m	23.5%	No (see comments)
Floor Space Ratio Site area: 461.6m ²	FSR: 0.4:1 (184.64m ²)	FSR: 0.61:1 (283m ²)	53%	No (see comments)

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	No
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	No
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Building Height

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Description of non-compliance:

Requirement:	8.5m
Proposed:	10.5m
Is the planning control in question a development standard?	YES
If numerical enter a % variation to requirement	23.5%

Assessment of request to vary a Development Standard:

The following assessment of the variation to Clause 4.3 - Height of building development standard has taken into consideration the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 and an assessment of the request to vary the development standard in accordance with the requirements of Clause 4.6 is provided below:

Clause 4.6 Exceptions to Development Standards:

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

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

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

Comment:

Clause 4.4 Floor space ratio development standard is not 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.*

(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*
- (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, and*
- (b) *the concurrence of the Secretary has been obtained.*



cl 4.6 (4)(a)(i) (Justification) Assessment:

cl 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6 (3) and these are addressed as follows:

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has not demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s5)

The objects of this Act are as follows:

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



different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

Applicant's Written Request

The Applicant's written request has not demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. The Applicant's written request submits that the proposal is consistent with the height bulk and scale of surrounding developments and that this meets the desired character for development on sloping sites. The request further submits that the design including stepping down provides an appropriate outcome for views. In conclusion, the request submits that the topography and geometry of the site along with the absence of unacceptable environmental impact provide an acceptability for the variation.

Planners Comments

Although it is noted that the site does have some slope, it is not accepted that there are sufficient environmental planning grounds for a 23% variation, given the potential impact on views and outlook associated with this non-complying aspect of the building. Furthermore, the significant non-compliance with the Floor space ratio and the non-compliance with rear setback shows that the extent of building toward the rear of the site, where the slope and associated non-compliance exist, is an inappropriate development and is symptomatic of an overdevelopment of the site. As a result, topography is not a sufficient environmental planning ground in this instance.

Conclusions on Environmental Planning Grounds

In this regard, the applicant's written request has not demonstrated that the proposed development is not consistent with any of the objects under cl 1.3(c)(g) of the EPA Act above.

In this regard, the applicants written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

cl 4.6 (4)(a)(ii) (Public Interest) Assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(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:

In considering whether or not the proposed development will be in the public interest consideration must be given to the underlying objectives of the Floor space ratio development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of cl 4.3 Height of Building Standard 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 proposal provides for a non-compliant building height toward the rear of the site but presents as a two storey dwelling at the front of the site. This does not have any unreasonable impact on the desired future streetscape character.

The development satisfies this objective.

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

Comment:

The non-compliant building height does not result in a reasonable control of bulk and scale given the associated amenity impact and the presentation of the building from neighbouring properties. The 23.5% variation to the height of building development standard along with a 53% variation to the Floor space ratio development standard does not demonstrate an adequate control of bulk and scale in this situation. This bulk and scale contributes directly to an unreasonable impact on views and outlooks for surrounding properties.

The development does not satisfy this objective.

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

Comment:

The cumulative impact of the view disruption provided by the proposed development results in an outcome in which an appropriate minimisation of impact is not provided. Although the most significant impacts on views are caused by elements of the building that comply with the building height, the overall impact on views which is contributed to by the building height non-compliance is unacceptable. A further analysis of view loss can be found under *Clause 3.4.3 Maintenance of Views* in this report.

The development does not satisfy this objective.

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

Comment:

The proposal is consistent with the numerical requirements for Sunlight access and Overshadowing under the Manly DCP. Given the difficulty provided by the unusual subdivision pattern and the slope of the land, this is a reasonable provision for existing and future development.

(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.

Conclusion:

The proposed development does not satisfy the underlying objectives of the Height of building development standard.

Zone objectives

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 proposal provides for a new dwelling house.

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

Comment:

Not applicable.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low density Residential zone.

cl 4.6 (4)(b) (Concurrence of the Secretary) Assessment:

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. 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 by the Development Determination Panel.

Floor Space Ratio

Description of Non-compliance:

Requirement:	0.4:1 (184.64m ²)
Proposed:	0.61:1 (283m ²)
Is the planning control in question a development standard?	YES
If numerical enter a % variation to requirement	53%

**Assessment of request to vary a Development Standard:**

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard has taken into consideration the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 and an assessment of the request to vary the development standard in accordance with the requirements of Clause 4.6 is provided below:

Clause 4.6 Exceptions to Development Standards:

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

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

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

Comment:

Clause 4.4 Floor space ratio development standard is not 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.*

(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*
 - (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, and*
- (b) the concurrence of the Secretary has been obtained.*

cl 4.6 (4)(a)(i) (Justification) Assessment:

cl 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6 (3) and these are addressed as follows:

- (a) that compliance with the development standard is unreasonable or unnecessary in the*



circumstances of the case, and

Comment:

The Applicant's written request (attached to this report as an Appendix) has not demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

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

Applicant's Written Request

The Applicant's written request has not demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. The Applicant's written request submits that



the undersized nature of the allotment (in accordance with Clause 4.1.3.1 of the Manly DCP) and compliance with the clause provide sufficient environmental planning grounds to justify the variation.

Planners Comments

In doing so, the applicant's written request has not demonstrated that the proposed development is an orderly and economic use and development of the land and that the building is of a good design and will protect the amenity of the surrounding built environment therefore satisfying cl 1.3(c)(g) of the EPA Act.

Conclusions on Environmental Planning Grounds

In this regard, the applicants written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

cl 4.6 (4)(a)(ii) (Public Interest) Assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(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:

In considering whether or not the proposed development will be in the public interest consideration must be given to the underlying objectives of the Floor space ratio development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of cl 4.4 Floor Space Ratio Development Standard are:

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

Comment:

The proposal is for a dwelling that presents as a two storey building from the street. Along with the reasonable side setbacks at the front of the site, this provides a bulk and scale that is consistent with the existing and desired streetscape character.

The development satisfies this objective.

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

Comment:

The proposal provides for a 53% variation to the Floor space ratio development standard in which a portion of this floor space within a non-complying rear setback provides moderate to severe loss of a



harbour view for the neighbouring property. As a result, the bulk on the site is not adequately controlled to ensure that the development does not obscure important features.

The development does not satisfy this objective.

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

Comment:

The area is characterised by development which provides corridors for views toward the harbour for neighbouring properties. This development would result in a substantial disruption to the view corridor currently enjoyed by the neighbouring property at 59 Cutler Road (as further discussed under Clause 3.4.3 Maintenance of Views).

The development does not satisfy this objective.

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

Comment:

The proposed bulk and scale of the development relates to the excessive floor space and results in a development that does not minimise its impacts on privacy or views. In particular, the development would have an unreasonable impact on the views for 59 Cutler Road and an unreasonable impact on privacy for the neighbouring dwelling at 6 Castle Rock Crescent. This relates to the extent of the dwelling situated towards the rear of the site and the associated first floor balcony which will result in overlooking and the excessive floor space within the rear setback which will have a moderate to severe impact on the view corridor for No. 59 Cutler Road.

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

Comment:

Not applicable.

Conclusion:

The proposed development does not satisfy the underlying objectives of the Floor space ratio development standard.

Zone objectives

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 proposal provides for a dwelling house.

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



residents

Comment:

Not applicable.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low density Residential zone.

cl 4.6 (4)(b) (Concurrence of the Secretary) Assessment:

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. 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 by the Development Determination Panel.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 461.6m²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	North: 8m (based on gradient 1:4+)	10.4m	30%	NO (see comments)
	South: 8m (based on gradient 1:4+)	10.6m	32.5%	NO (see comments)
4.1.2.2 Number of Storeys	2	3	50%	NO (see comments)
4.1.3 Floor space ratio	0.4:1 based on 950sqm lot size/ site area (380m ²)	0:3:1 (283m ²)	N/A	YES
4.1.4.1 Street Front Setbacks	6m	0m	100%	NO (see comments)
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 3.47m (based on wall height)	8.7m (to dwelling)	N/A	YES
	1.4m (to garage)	1.75m (garage)		YES
	South: 3.53m (based on wall height)	2m-3.21m	N/A	NO (see comments)
	Windows: 3m	3m	N/A	YES
4.1.4.4 Rear Setbacks	8m	3.73m	53%	NO (see comments)

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		(first floor)		comments)
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	62% (290m ²)	N/A	YES
	Open space above ground 25% of total open space (72.5m ²)	27% (81m ²)		NO (see comments)
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (116m ²)	64% (185m ²)	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	6.55m	N/A	NO (see comments)
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	1.2m	N/A	NO (see comments)
	1m curtilage/1.5m water side/rear setback	0.1m/0.4m/ front setback	N/A	NO/NO/NO (See comments)
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	YES

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	No	No
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	No	
3.4.3 Maintenance of Views	No	No
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	No	No
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	No
4.1.3 Floor Space Ratio (FSR)	Yes	No
4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
4.1.5 Open Space and Landscaping	No	No
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle	No	Yes

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Clause	Compliance with Requirements	Consistency Aims/Objectives
Facilities)		
4.1.9 Swimming Pools, Spas and Water Features	No	No
5.4.1 Foreshore Scenic Protection Area	No	Yes

Detailed Assessment

3.4.2 Privacy and Security

Issue

The proposal involves a balcony on the southern elevation that would cause an unreasonable impact on privacy. This is as a result of overlooking due to the extent, orientation and design of the balcony.

It is noted that a recessed design has not been provided in a manner that is consistent with Clause 3.4.2.2b) below:

"Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy."

The proposal is also non-compliant with the control for open space above ground under the Manly DCP. The provision is for 25% (72.5m²) and the proposal exceeds this, being 27% (81m²).

Merit consideration:

The development is considered against the objectives of the clause as follows:

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

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

Comment:

The proposal involves a balcony at the first floor level and on the southern elevation that would result in an unacceptable privacy impact for the neighbouring property at 6 Castle Rock Crescent. The non-compliance with the control for open space above ground level and the design of the balcony results in an unacceptable outcome for privacy. In particular, the size of balcony with an orientation directly toward the neighbouring property will result in acoustical and visual privacy issues in terms of the relationship between living areas and private open space.

As such, the proposal does not meet this objective.

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

Comment:



The proposed southern balcony is orientated toward the harbour water views. However, this orientation is also directly toward the living spaces of the neighbouring property to the south and along with the extent of the balcony, will result in a poor balance and loss of amenity.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal provides appropriate openings so as to encourage awareness of neighbourhood security.

The proposal meets this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

3.4.3 Maintenance of Views

Description of non-compliances relating directly to view loss

The proposal involves a 53% (98.36m²) variation to Floor Space ratio under the MLEP 2013.

The proposal involves a 23.5% (2m) variation to Height of building under the MLEP 2013.

The proposal involves a non-compliant rear setback of 3.73m². The rear setback control is 8m and thus the proposal involves a 53% variation.

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.

Comment:

The proposal provides a first floor level that extends from the front boundary toward the rear, a distance of 19.5m to cover 81% of the side boundary. This results in a rear setback non-compliance and also relates to the floor space ratio non-compliance. The outcome of this extension of building and floor space into the rear setback is that there is an unreasonable loss of view corridor for the neighbouring property at 59 Cutler Road. Views to the harbour from adjoining properties are generally in a southerly direction and so a more balanced provision of building in the southern rear setback of the subject site would provide a better outcome for view sharing. Instead, the extension of 81% of the building across the main boundary in which views are accessed in the area (along with the non-compliances with the planning controls) does not demonstrate adequate view sharing.

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

**Views Planning Principle established by the NSW Land and Environment Court**

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

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

Comment:

57 Cutler Road

The views that will be affected from this property are water views of Middle Harbour to the southwest filtered by the existing vegetation and residential dwellings. The proposed dwelling height would be close to the land-water interface from a standing eye level and as a result, the land-water interface would be lost from sitting position at parts of the living areas (see Photo 1).



Photo 1: Taken from the first floor balcony (adjoining living room) of 57 Cutler Road

59 Cutler Road

The views that will be affected will be extensive water views of middle harbour and land-water interface views across the harbour.

When comparing the proposed development against the existing development, the first floor element at
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the rear would be higher and would provide a greater disruption to the water and land-water interface views than the existing development.



Photo 2: Taken from No. 59 Cutler Road looking directly south over the subject site

66 Cutler Road

The neighbour at 66 Cutler Road obtains extensive water views over the top of the subject site. There

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would be no loss of land-water interface view but as a result of the proposed height of the building there would be some loss of water view.

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:

57 Cutler Road

The water views obtained from this property are from a front deck, a rear deck and a living room. At these locations there would be loss of water view from standing and seated position as well as loss of land water interface from sitting position. These views are all obtained across the side boundary.

59 Cutler Road

The views to be affected at this property are both water and land-water interface views from both a standing and sitting position. These views are obtained over a side boundary, from a living room and balcony.

66 Cutler Road

The water views to be affected from this property are obtained over the front boundary from the balcony and the living room in both a sitting and standing position.

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

Comment:

57 Cutler Road

This property enjoys a substantial view corridor to the south. The proposal will have a substantial impact on the water and land-water interface views to the south-west. However, the partial nature of the views (as a result of existing vegetation) along with the retention of land water interface views at standing position leads to rating of a minor-moderate impact.

59 Cutler Road

The views to be affected from this property are substantial water and land-water interface views looking directly south. The views impacted are from a living room and at standing position, leading to a rating of a moderate to severe impact.

66 Cutler Road



Although over a front boundary, as a result of the extensive water views retained from the living area of this property, the impact is minor-moderate.

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

Comment:

The non-compliances inherent in this application, including Floor space ratio, rear setback and building height contribute to a view loss that ranges from minor to severe. The multiple breaches of the planning controls, combined with the direct impact that those breaches translate into in relation to view loss, results in a view sharing outcome that is contrary to the principles established by the NSW Land and Environment Court.

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:

The non-compliance with the development standards of Building height and Floor Space ratio results in an impact on the views of surrounding properties that is unreasonable and unacceptable. As a result, the bulk that is proposed by this development would result in a view creep that is beyond reasonable.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

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

Description of non-compliance

The proposal involves non-compliant wall heights up to 10.4m on the northern elevation and 10.6m on the southern elevation. Given the slope of the site, the control for wall height on each elevation is 8.0m.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the objectives of the Clause 4.3 of the Manly LEP (as stated by the Manly DCP as being particularly relevant to this paragraph):

(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 non-compliant wall heights toward the rear of the site, but provides compliant wall heights and presents as a two storey dwelling at the front of the site. This does not have any unreasonable impact on the desired future streetscape character.

The development satisfies this objective.

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

Comment:

The non-compliant wall heights do not allow for a reasonable control of bulk and scale given the associated amenity impact and the presentation of the building from neighbouring properties. Along with the non-compliant wall height, the 23.5% variation to height of building along with a 53% variation to the Floor space ratio development standard is not represent an adequate control of bulk and scale in this situation. This bulk and scale contributes directly to an unreasonable impact on view loss and outlook for the area.

The development does not satisfy this objective.

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

Comment:

The cumulative impact of the view disruption caused by the proposed development, results in an outcome in which an appropriate minimisation of impact is not provided. Although the most significant impacts on views are caused by elements of the building that comply with the wall height, the overall impact on views, which is contributed to by the building wall height non-compliance is unacceptable. A further analysis of view loss can be found under Clause 3.4.3 Maintenance of Views in this report.

The development does not satisfy this objective.

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

Comment:

The proposal is consistent with the numerical requirements for Sunlight Access and Overshadowing under the Manly DCP. Given the difficulty provided by unusual subdivision pattern and the slope of the land, this is a reasonable provision for existing and future development.

The development satisfies this objective.

(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.

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 not supported, in this particular circumstance.

4.1.3 Floor Space Ratio (FSR)

Complies with the control for 'Exceptions to FSR for undersized lots' but does not comply with objectives. See comments under Clause 4.6 MLEP 2013

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

Description of non-compliance

The proposal involves non-compliant front, side and rear setbacks.

The proposed southern setback is 2.0m to 3.21m which are non-compliant with the control of 3.53m.

The proposed front setback involves a Nil setback which is non-compliant with the numerical control of 6.0m.

The proposed rear setback provides for 3.73m which is non-compliant with the control of 8.0m.

Merit consideration:

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

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

Comment:

The proposal provides for a garage at the front boundary and a dwelling setback from the street with landscaping in between. The existing streetscape is characterised by a variety of front presentations in regards to dwelling houses and associated car parking. As a result of this varied form, the proposed front presentation of car parking at the street along with a two storey dwelling reasonably setback from the street (and with landscaping), provides an adequate outcome for the spatial proportions and character of the area.

The proposal does not satisfy this objective.

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 for a non compliant rear setback which contributes to unreasonable amenity impact. In particular, this non-compliance with the rear setback control contributes to the moderate to severe obstruction from the neighbouring property at 59 Cutler Road. It is further noted that greater compliance with this control would directly relate to a greater view corridor being retained toward the harbour.

The proposal does not satisfy this objective.

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

Comment:

Although the subject lot is unusual in shape, the extent of building proposed to include a non-compliant Floor Space ratio of 53% and significant rear setback non-compliance results in a siting that is inadequate. In particular, the extent of the building from the front of the site to the rear provides a lack of opportunity for adequate view corridors. Additionally, the siting and extent of the balcony at the first floor provide unreasonable impact on privacy.

The proposal does not satisfy this objective.

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 compliant landscaped area and landscaping to the street ensures that natural features in the area would be reasonably provided for and maintained.

The proposal satisfies this objective.

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

Comment:

The Bushfire report prepared by Advanced Bushfire Performance solutions, dated May 2017 provides that the development is not within 'Flam zone' and provides for recommendations if the proposal was to be approved.

The proposal satisfies this objective.



Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

Description of non-compliance

The proposal provides 81sqm of open space above ground which is 27% of the total open space. This is non-compliant with the control of 25% (maximum).

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 provides for a compliant landscaped area under the Manly DCP. This would provide appropriate opportunity for landscape features and vegetation.

The proposal satisfies this objective.

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

Comment:

The proposal provides for a compliant landscaped area and compliant total open space under the Manly DCP. This includes a landscaped area at ground level to the north of the proposed dwelling which provides opportunity for tree planting and maintenance of existing vegetation..

The proposal satisfies this objective.

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

Comment:

The non-compliance with the control for open space above ground contributes to an unsatisfactory privacy impact. In particular, the given the orientation of the space at the southern side setback of the second level, the extent of open space above ground leads to an unreasonable opportunity acoustical and overlooking privacy impact.

The proposal does not satisfy this objective.



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

Comment:

The proposal provides compliant landscaped area and subject to conditions for stormwater this objective would be satisfied.

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

Comment:

The proposal provides no unreasonable opportunity for the spread of weeds.

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

Comment:

The proposal provides compliant landscaped area under the Manly DCP which maximises potential for wildlife in this circumstance.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent a relevant objective 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 not supported, in this particular circumstance.

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

Description of non-compliance

The proposal provides for a garage width of 6.55m at the front of the site.

Merit consideration:

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

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

The proposal would provide for two car parking spaces for a dwelling house and would provide adequate access.

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

Comment:

The proposal provides for compliant off street parking under the Manly DCP.



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

Comment:

As a result of the varied nature of the streetscape and varied character in the vicinity along with the landscaping to the front of the site, the proposed car parking would reasonably minimise visual impact.

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

Comment:

The proposed car parking does not provide for any extensive excavation.

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

Comment:

The proposed crossing would provide for the compliant number of two car parking spaces.

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

Comment:

The proposal provides for landscaping to surround the garage and includes landscaping to the rear of the garage. This is an appropriate integration of landscaping.

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

Comment:

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.

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

The proposal provides for non-compliant setbacks to the water edge and pool concourse.

The proposal is also inconsistent with the control requiring pools to be within the rear setback.

**Merit consideration:**

Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;

Comment:

Although the swimming pool is reasonably separated from neighbouring living areas, the associated concourse (balcony) which extends toward the rear of the site would have an unreasonable privacy impact on the neighbour. As a result of being connected to the swimming pool, this area has a high potential for acoustical privacy impact on these areas.

The proposal does not satisfy this objective.

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

Comment:

Given the varied nature of the street along with the proposed screening and landscaping, the pool would not have an adverse impact on the street, despite being within the front setback.

The proposal satisfies this objective.

Objective 3) To integrate landscaping; and

Comment:

The proposed landscaping to the front of the lot would ensure the pool have no negative visual impact on the streetscape.

The proposal satisfies this objective.

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

Comment:

The proposed swimming pool would have the potential to be used as an emergency water resource.

The proposal satisfies this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not 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.

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No REV2018/0018 for the Review of Determination of Application DA2017/1300 for demolition and construction of a new dwelling house on land at Lot B DP 404022,61 Cutler Road, CLONTARF, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.4 Floor Space Ratio of the Manly Local Environmental Plan 2013.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Manly Local Environmental Plan 2013.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.9 Foreshore Scenic Protection Area of the Manly Local Environmental Plan 2013.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.2 Privacy and Security

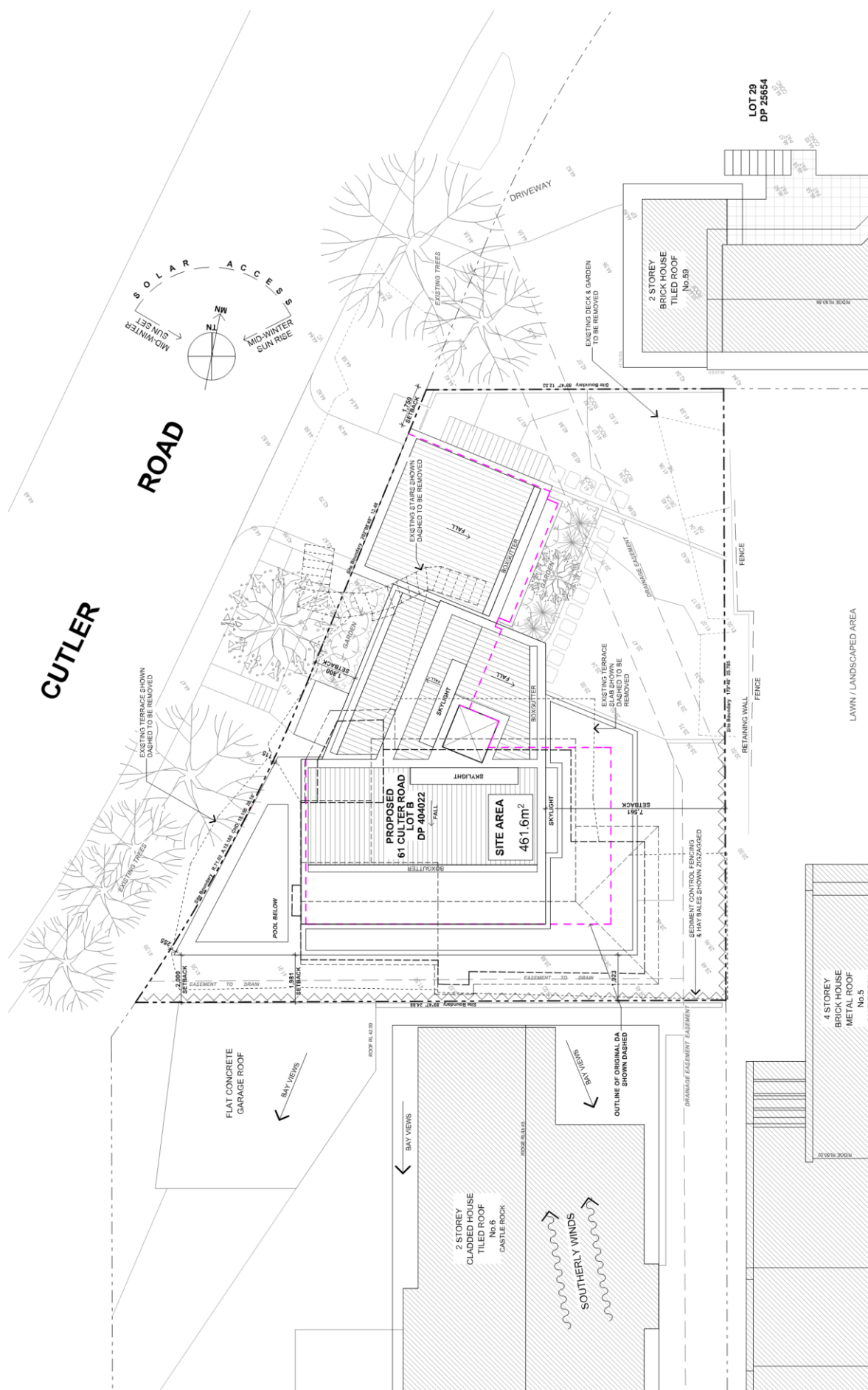
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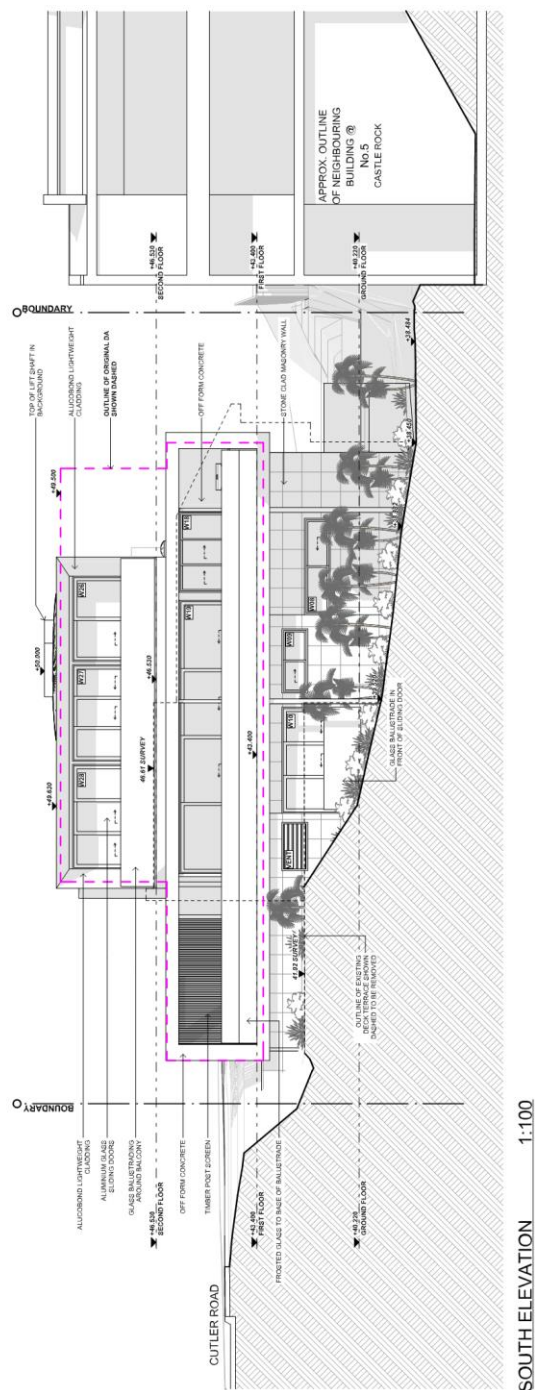
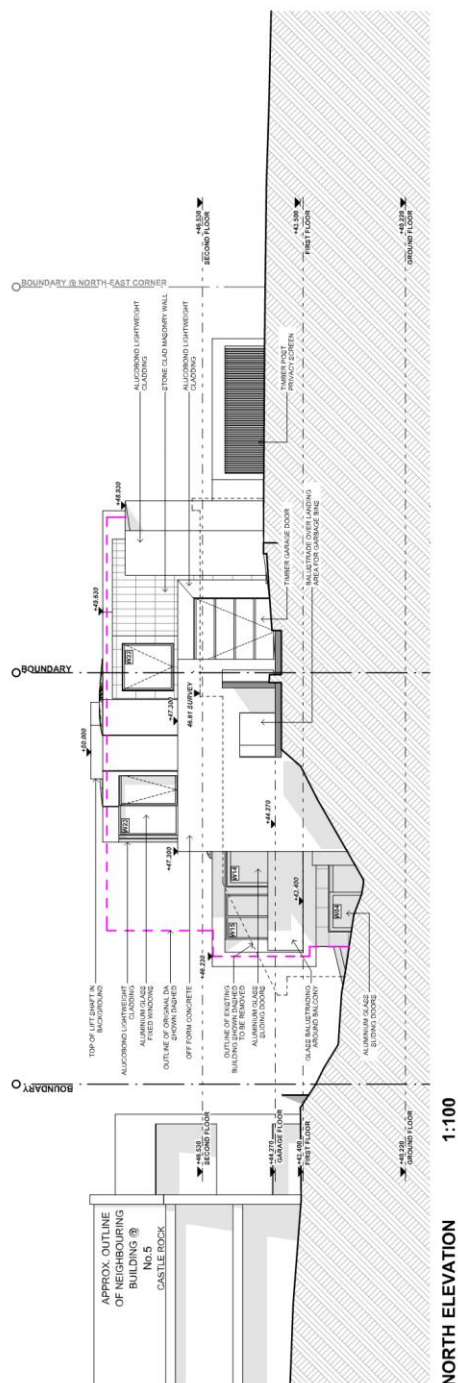
of the Manly Development Control Plan .

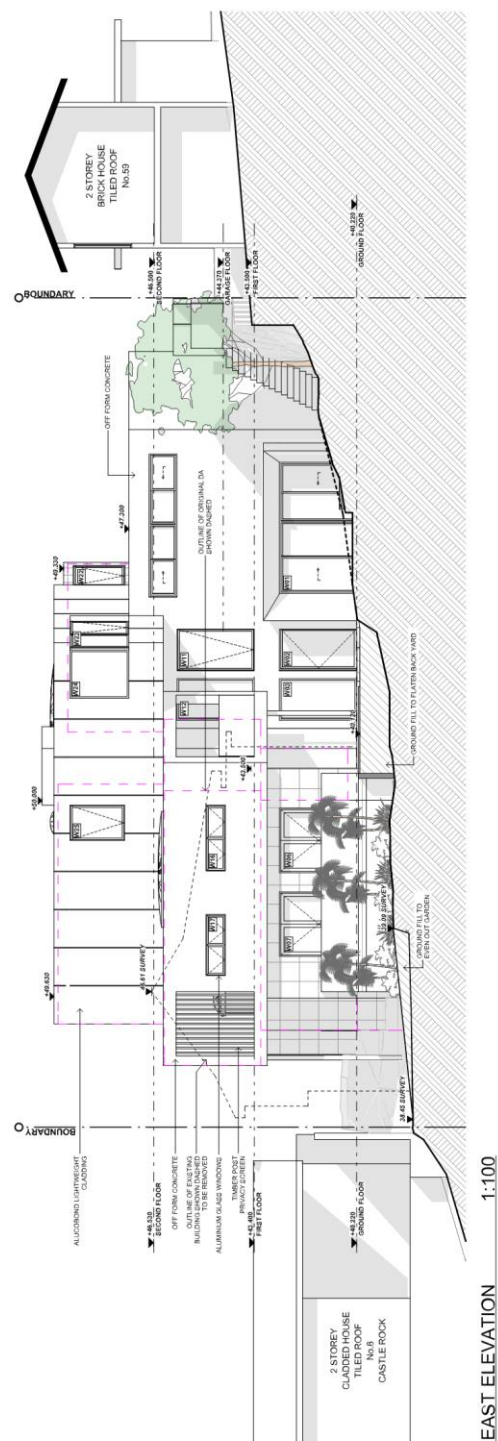
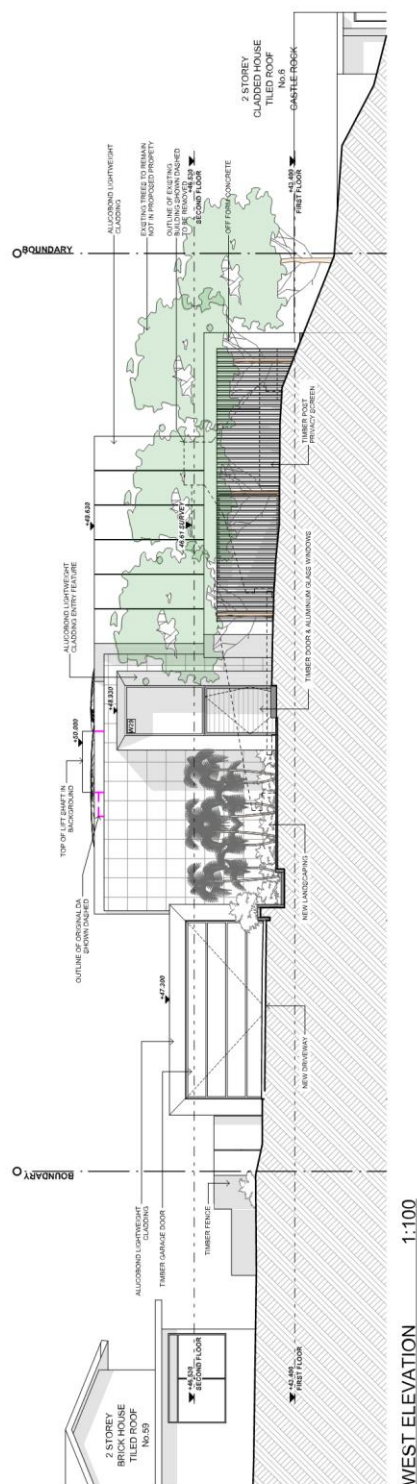
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.3 Maintenance of Views of the Manly Development Control Plan .
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) of the Manly Development Control Plan.
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.3 Floor Space Ratio (FSR) of the Manly Development Control Plan.
9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan.
10. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.5 Open Space and Landscaping of the Manly Development Control Plan.
11. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.9 Swimming Pools, Spas and Water Features of the Manly Development Control Plan.



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SITE PLAN

[illegible]

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ITEM 3.3	DA2018/1366 - 3 STEINTON STREET, MANLY - ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING HOUSE
REPORTING MANAGER	STEVE FINDLAY
TRIM FILE REF	2018/765660
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 floor space ratio.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant Development Consent to DA2018/1366 for alterations and additions to an existing dwelling house on land at Lot B DP 956360, 3 Steinton Street, Manly subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1366
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot B DP 956360, 3 Steinton Street MANLY NSW 2095
Proposed Development:	Alterations and additions to an existing dwelling house
Zoning:	Manly LEP2013 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Leah Joy Waldie
Applicant:	Leah Joy Waldie Leah Joy Waldie
Application lodged:	17/08/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	23/08/2018 to 10/12/2018
Advertised:	Not Advertised
Submissions Received:	0
Recommendation:	Approval
Estimated Cost of Works:	\$ 302,000.00

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 Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 4.1.3 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

SITE DESCRIPTION

Property Description:	Lot B DP 956360 , 3 Steinton Street MANLY NSW 2095
Detailed Site Description:	<p>The subject property is commonly known as 3 Steinton Street, Manly and legally known as Lot B in DP 956360. The site is located on the southern side of Steinton Street and has a rear boundary which is visible from Whistler Street. The property is rectangular in shape and has a frontage of approximately 5m to Steinton Street and an approximate depth of 31m and an overall site area of 148.2m². The property currently contains a single storey terrace which does not have any vehicular access. This terrace is the second in a row of 6, early Twentieth Century single storey terraced dwellings, built in c.1903. It is also located within the Pittwater Road Conservation Area for heritage under the Manly LEP 2013.</p> <p>The surrounding area includes residential terraces and other medium density development which exist along the southern side of Steinton Street. It also includes residential flat buildings, backpacker's accommodation and a service station. The subject site is also in close vicinity to the foreshore, being Manly Beach and its associated parklands.</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:

DA79/2016 - Alterations and additions to the existing dwelling refused by NBIAP on 16 June 2016.

The reasons for refusal of this application were as follows:

1. The proposed development contravenes the aims of the MLEP 2013 contained within Clause 1.2 (2) (i), (2)(iv), (2)(ii) and (2)(e) of the MLEP 2013; having regard to Section 79C (1) (a) (i) of the Environmental Planning and Assessment Act 1979.
2. The proposed development exceeds the Floor Space Ratio development standard contained within Clause 4.4 of the MLEP 2013 without adequate justification; having regard to Section 79C (1) (a) (i) of the Environmental Planning and Assessment Act 1979.
3. The proposed development contravenes the objective (b) for heritage conservation contained within Clause 5.10(1) of the MDCP 2013 (Amendment 7); having regard to Section 79C (1) (a) (i) of the Environmental Planning and Assessment Act 1979.
4. The proposed development contravenes objectives (2), (5) and (7) in relation to Streetscapes and Townscapes provided by Clause 3.1 of the MDCP 2013 (Amendment 7); having regard to Section 79C (1) (a) (iii) of the Environmental Planning and Assessment Act 1979.
5. The proposed development contravenes objectives (1), (2) (3) and (4) in relation to Heritage Conservation provided by Clause 3.2 of the MDCP 2013 (Amendment 7); having regard to Section 79C (1) (a) (iii) of the Environmental Planning and Assessment Act 1979.
6. The proposed development contravenes objectives (1) and (2) in relation to Amenity provided by Clause 3.4 of the MDCP 2013 (Amendment 7); having regard to Section 79C (1) (a) (iii) of the



Environmental Planning and Assessment Act 1979.

7. The proposal development contravenes objectives (1), (3), (4) contained within Clause 4.1 of the MDCP 2013 (Amendment 7) in relation to Residential development controls; having regard to Section 79C (1) (a) (iii) of the Environmental Planning and Assessment Act 1979.

8. The proposed development does not comply with the wall on boundary dimensions required by Clause 4.1.4.3 of the MDCP 2013 (Amendment 7); having regard to Section 79C (1) (a) (iii) of the Environmental Planning and Assessment Act 1979.

9. The proposed development does not comply with the rear setback required by Clause 4.1.4.4 of the MDCP 2013 (Amendment 7); having regard to Section 79C (1) (a) (iii) of the Environmental Planning and Assessment Act 1979.

10. The proposed development does not comply with the total open space required by Clause 4.1.5.1 of the MDCP 2013 (Amendment 7); having regard to Section 79C (1) (a) (iii) of the Environmental Planning and Assessment Act 1979.

11. The proposed development does not comply with the private open space required by Clause 4.1.5.3 of the MDCP 2013 (Amendment 7); having regard to Section 79C (1) (a) (iii) of the Environmental Planning and Assessment Act 1979.

12. The proposed development does not comply with the requirements of first floor roof and additions outlined in Clause 4.1.7.1 of the MDCP 2013 (Amendment 7); having regard to Section 79C (1) (a) (iii) of the Environmental Planning and Assessment Act 1979.

13. The proposal is considered to be unsuitable for the site in that the proposed development is out of character with the existing streetscape and heritage context along Steinton Street and within the Pittwater Road Conservation Area and Foreshore Scenic Protection Area; having regard to Section 79C (1) (c) of the Environmental Planning and Assessment Act 1979.

14. The proposed development is incompatible with the character of the area having regard to Sections 79C(1)(a)(i), 79C(1)(a)(iii), 79C(1)(c) and 79C(1)(d) of the Environmental Planning and Assessment Act 1979.

15. The proposed development is not considered to be in the public interest having regard to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979.

DA346/2016 - Alterations and additions to the existing dwelling was withdrawn by the applicant on 1 March 2017.

The application provided for a similar proposal to the previous development application (DA79/2016) and as a result a letter was sent requesting withdrawal of the application raising similar issues as above.

It is noted that the current development application provides for a significant reduction in the size to the first floor. This is reflected by the proposed Floor space ratio being reduced from 1.26:1 (187.3m²) from the original application to 0.9:1 (138m²) in the current application.

PROPOSED DEVELOPMENT IN DETAIL

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The proposed development is for alterations and additions to the existing semi-detached dwelling including:

Ground Level

- Bathroom
- Stairwell
- Bathroom
- New windows to kitchen
- Doorway to laundry
- Window to the rear

First Floor

- Skylight to ground floor roof
- 2 bedrooms
- Bathroom
- Study
- Walk in robe
- Louvered windows
- Skytubes

External

- New brick or block wall to the Boundary

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the</p>



Section 4.15 Matters for Consideration'	Comments
	<p>building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <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>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the</p> <p>DA2018/1366</p>	<p>The site is considered suitable for the proposed</p> <p>Page 6 of 26</p>



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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject 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

Internal Referral Body	Comments
Strategic and Place Planning (Heritage Officer)	<p>Referral comments – heritage (21/09/2018)</p> <p>Further to a review of available documents and a site visit</p> <p>The site of proposed development is not heritage listed, however, it is in the relative vicinity of listed items, and in the Pittwater Road conservation area.</p> <p>Given the nature of the proposal, the separation between sites, and the nature of significance of the items, it is assessed that impact on heritage values will be within acceptable limits.</p> <p>Based on the above, I have no objection to this proposal from heritage perspective, however, I recommend these conditions:</p> <ul style="list-style-type: none"> - Roof ridge of the addition is to be lowered to match the roof ridge of the house, and - Other elements of the addition are to be adjusted accordingly. <p>Referral comments - heritage (27/09/2018)</p>



Internal Referral Body	Comments
	<p>Further to a review of available documents and a site visit.</p> <p>The site of proposed development is not heritage listed, however, it is in the relative vicinity of listed items, and in the Pittwater Road conservation area.</p> <p>Given the nature of the proposal, the separation between sites, and the nature of significance of the items, it is assessed that impact on heritage values will be within acceptable limits.</p> <p>(Note: During the assessment process, I was considering lowering the ridge height, however, I was contacted by the applicant who argued that this lowering will impose additional costs on the project. I have subsequently considered these additional factors and special circumstances:</p> <ul style="list-style-type: none"> - the property is part of a row of conjoined residences, thus there appears to be some benefit in keeping floor levels of the addition as proposed; - the benefit of lowering the ridge is also relatively small (in heritage terms); - the lowering truly would imply some additional costs on the applicant, through new/updated plans and potentially additional construction costs. <p>On balance, I have concluded as follows:)</p> <p>Based on the above, I have no objection to this proposal from heritage perspective.</p> <p><u>Assessment officer comment</u></p> <p>Costs incurred by the applicant to provide a suitable development are not a relevant planning concern. However, the original heritage referral provided that there was no objection to the proposal, however, changes were recommended. As a result of the original lack of objection to the proposal from the Heritage Officer and Council's adopted Development Application Management Policy that discourages allowing amendments, the proposed form is adequate from a Heritage perspective and further amendments are not acceptable for this application.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>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.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment,



many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A241042_04).

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.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	6.4m	11m	N/A	Yes.
Floor Space Ratio Site area: 151.7m ²	FSR: 0.75:1 (113.775m ²)	FSR: 0.9:1 (138m ²)	21.3%	No, see comments.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance:

Requirement:	0.75:1 (113.78m ²)
Proposed:	0.9:1 (138m ²)
Is the planning control in question a development standard?	YES
If numerical enter a % variation to requirement	21.3%

Assessment of request to vary a Development Standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard has taken into consideration the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 and an assessment of the request to vary the development standard in accordance with the requirements of Clause 4.6 is provided below:

Clause 4.6 Exceptions to Development Standards:

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,



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

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

Comment:

Clause 4.4 Floor space ratio development standard is not 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.

(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

(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, and

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

cl 4.6 (4)(a)(i) (Justification) Assessment:

cl 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6 (3) and these are addressed as follows:

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

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

Applicant's Written Request

The applicant's written request has demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. The Applicant's written request submits that the proposal has been designed in a manner that is responsive to both the existing and emerging character in the street. This includes a balanced transition with other similar first floor additions in this row of houses. The request also submits that in this area, being a medium density zone, the buildings are generally two storey with little separation, the additions will fit into this character.

Planners Comment

In doing so, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land and that the building is of a good design and will protect the amenity of the surrounding built environment therefore satisfying cl 1.3(c)(g) of the EPA Act.

Conclusions on Environmental Planning Grounds

In this regard, the applicants written request has adequately demonstrated the that there are sufficient



environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

cl 4.6 (4)(a)(ii) (Public Interest) Assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(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:

In considering whether or not the proposed development will be in the public interest consideration must be given to the underlying objectives of the Floor space ratio development standard and the objectives of the R3 Medium Density Residential zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of cl 4.4 Floor Space Ratio Development Standard are:

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

Comment:

The proposal involves a first floor addition at the rear of the existing terrace building and this has a setback of 10.7m to the rear boundary. This compliant rear setback to the first floor addition ensures that the development provides a reasonable presentation of bulk and scale to the side street at the corner, Whistler Street. Along with the inset behind the existing front building façade at Steinton Street, this provides an appropriate presentation in the streetscape and heritage conservation area. It is also noted that this is greater rear setback than to the similar approved structure at 7 Steinton Street and this shows the structure would not be overbearing in regard to this style.

The development satisfies this objective.

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

Comment:

The proposed rear addition to the terrace building is at a first floor level with little physical separation but also a lack of windows in other built form in the vicinity. As a result, when the existing built form is considered in terms of obscurement of features, there will be little increase in obscurement caused by the proposed addition. Along with the compliant rear setback to the top floor, this provide a situation in which the corridor to the rear provides a reasonable circumstance for viewing of landscape and townscape features.

The development satisfies this objective.



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

Comment:

The proposed first floor addition and rear extension is to an existing terrace building in a medium density area characterised by a mix of low to higher density development. In the immediate vicinity, development is characterised by one and two storey development. Given the reasonable rear setback and the variance of development bulk in the area, this addition will be present reasonably in the area.

The development satisfies this objective.

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

Comment:

The proposal provides a compliant rear setback to the top level and provides rear additions that provide a reasonable extent and physical separation from neighbouring properties, given the area is zoned as medium density residential.

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

Comment:

Not applicable.

Conclusion:

The proposed development satisfies the underlying objectives of the Floor space ratio development standard.

Zone Objectives

The underlying objectives of the R3 Medium Density Residential zone

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

Comment:

The proposal provides alterations and additions to the existing dwelling.

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

Comment:

The proposal provides alterations and additions to the existing dwelling.

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

Comment:

Not applicable.



- To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.

Comment:

The proposed addition provides a suitable upgrade to the existing dwelling in that the presentation of dwelling suitably minimises presentation on bulk and impact on amenity.

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

Comment:

Not applicable.

Conclusion:

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

cl 4.6 (4)(b) (Concurrence of the Secretary) Assessment:

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. 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 by the Development Determination Panel.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 151.7m ²	Requirement	Proposed	Complies
4.1.2.1 Wall Height	West: 6.5m	5.8m	Yes
	East: 6.5m	6.3m	Yes
4.1.2.2 Number of Storeys	2	2	Yes
4.1.3 Floor Space Ratio	0.75:1 Based on 250m ²	0.55:1 (138m ²)	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Consistent with prevailing setback	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	West: 1.93m	0-0.9m	No (see comments)
	East: 2.1m	0m	No (see comments)
	Windows: 3m	0.9m	No (see comments)
4.1.4.4 Rear Setbacks	8m	4.4m (proposed dining	No (see

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		area) 10.7m (top floor)	comments)
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS2	Open space 50% of site area (75.85m ²)	26.3% (20m ²)	No (see comments)
4.1.5.2 Landscaped area	30% (6m ²)	50% (10m ²)	Yes
4.1.5.3 Private Open Space	18m / 12sqm per dwelling	20sqm	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 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
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Description of non-compliance

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The proposal is numerically non-compliant with controls for side setback, setback to windows and window setback to the boundary.

Merit consideration:

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

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

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

Comment:

The proposed first floor extension has a compliant rear setback which ensures this additional floor space is aligned similarly to the neighbouring properties to maintain the character of built form and private open space in the vicinity. The proposed windows are minimised in size and located to ensure that there would not be any unreasonable opportunity for overlooking.

The proposed openings at the ground floor are also reasonable as a result of the potential for the dividing fence to minimise overlooking impact.

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

Comment:

In this instance, the design and siting of new areas is appropriate so as to not require additional screening. It is noted that additionally screening on this site in which the lot is narrow could cause other unreasonable amenity impact.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal maintains outlook to the neighbourhood from windows in the dwelling and also maintains the front entrance. This provides appropriate provision for opportunity to be aware of neighbourhood security.

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.

4.1.3 Floor Space Ratio (FSR)

It is noted that the proposal is compliant with exception for FSR undersized lots under the Manly DCP. However, the proposal is non-compliant with the development standard and comments are provided for this under the Manly LEP.



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

Description of non-compliance

The proposal is non-compliant with the western and eastern side setbacks. The proposed western setback is Nil to 0.9m. The proposed eastern setback is Nil.

There are new windows to the boundary that are setback 0.9m from the side, this is within the setback requirement of 3.0m.

The proposal is non-compliant with the rear setback requirement of 8.0m. The setback to the proposed dining area is 4.4m. It is noted that the top floor has a compliant rear setback (10.7m).

Merit consideration:

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

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

Comment:

The proposal provides for a first floor addition and rear extension within a medium density residential zone. As a result of the compliant rear setback to the top level and the compliance with exception for Floor space ratio for undersized lots, the proposal provides a presentation of spatial proportions and bulk that is reasonable. Additionally, the first floor is located behind the front façade to be visually recessive from Steinton 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:

Although, there is provision of windows within the requirement for setback to the side boundary, the design and location of these windows will provide adequate privacy. Additionally, the compliant and reasonable rear setback to the first floor addition ensures that appropriate amenity can be provided for surrounding uses. This includes a compliant provision of Sunlight Access and Overshadowing and a corridor of open area to maintain vistas.

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



Comment:

The proposed first floor addition and rear extension can be provided to have a reasonable presentation in the area and not have any unreasonable amenity impact. Given the narrow lot and undersized nature of the site, this is a reasonable siting.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal maintains landscaping to appropriately provide for natural features to the site.

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

Description of non-compliance

The proposal is non-compliant with the control for total open space of 50%. The proposal provides for 26.3% of total open space with 50% of this area being landscaped.

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 maintains landscaping and vegetation to the rear and this is reasonable given the existing non-compliance with the requirement for total open space.



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

Comment:

The proposal provides for 50% of total open space to be landscaped area and this is reasonable given the character of the area and the style of landscaping of lots in the immediate vicinity.

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

Comment:

The open corridor provided to the rear of the site that includes a landscaped area and compliant rear setback to the top storey, ensures that appropriate amenity is provided to surrounding sites given the small nature of the site and the medium density zoning of the area.

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

Comment:

Given the existing nature of the site, retention of landscaping and the majority of the alterations and additions being above ground, the water infiltration will be appropriate and the proposal will minimise stormwater runoff. This is also assisted by the compliant landscaped area in accordance with the Manly DCP.

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

Comment:

The proposal does not provide any unreasonable opportunity for the spread of weeds.

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

Comment:

The corridor to the rear will provide appropriate opportunity for wildlife.

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 inconsistent 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 DA2018/1366 for Alterations and additions to an existing dwelling house on land at Lot B DP 956360, 3 Steinton Street, 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
DA2018/1366



Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DWG001SP- Site Plan	16/06/2018	Bo Piotrowski
DWG002A- Ground Floor Plan (Alterations)	Issue B- 12/06/2018	Bo Piotrowski
DWG003A- Proposed First Floor Plan	Issue B- 12/06/2018	Bo Piotrowski
DWG004A- Proposed Roof Alterations Plan	Issue B-12/06/2018	Bo Piotrowski
DWG005A- Elevations 1	Issue B- 12/06/2018	Bo Piotrowski
DWG006A- Elevations 2	Issue B- 12/06/2018	Bo Piotrowski

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Concept Plan	16/07/18	Bo Piotrowski

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.

2. Amendments to the approved plans

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

- o Notation is to be made that the section of the wall at the eastern boundary and adjacent to the rear outdoor area is to be no higher than 1.8m.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land. (DACPLB02)

3. Prescribed Conditions

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



- (iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative Requirement (DACPLB09)

4. General Requirements

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



Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a



safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

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

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

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

FEES / CHARGES / CONTRIBUTIONS

5. Security Bond

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

6. **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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

7. **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.

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

8. **Stormwater Disposal**

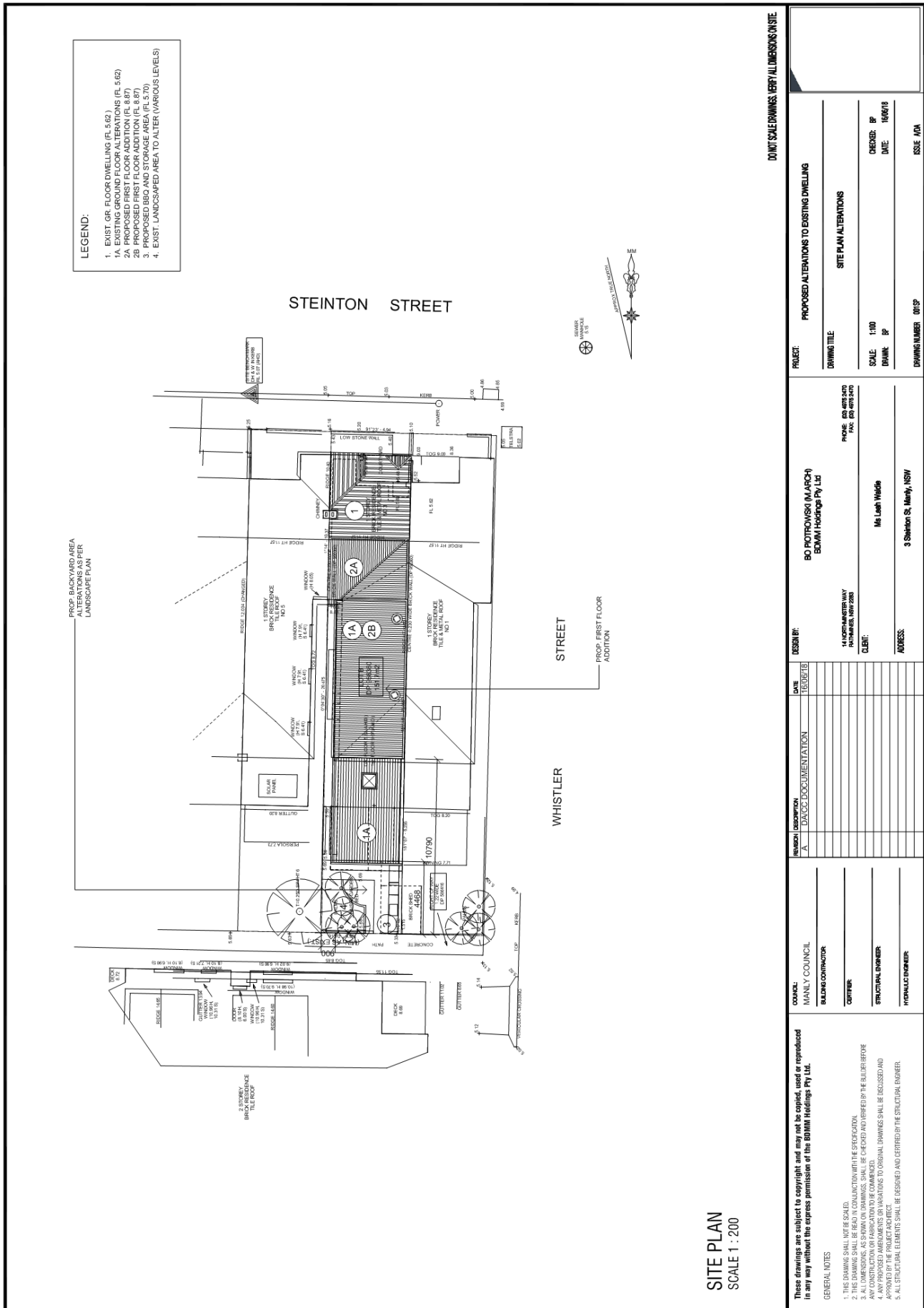
The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

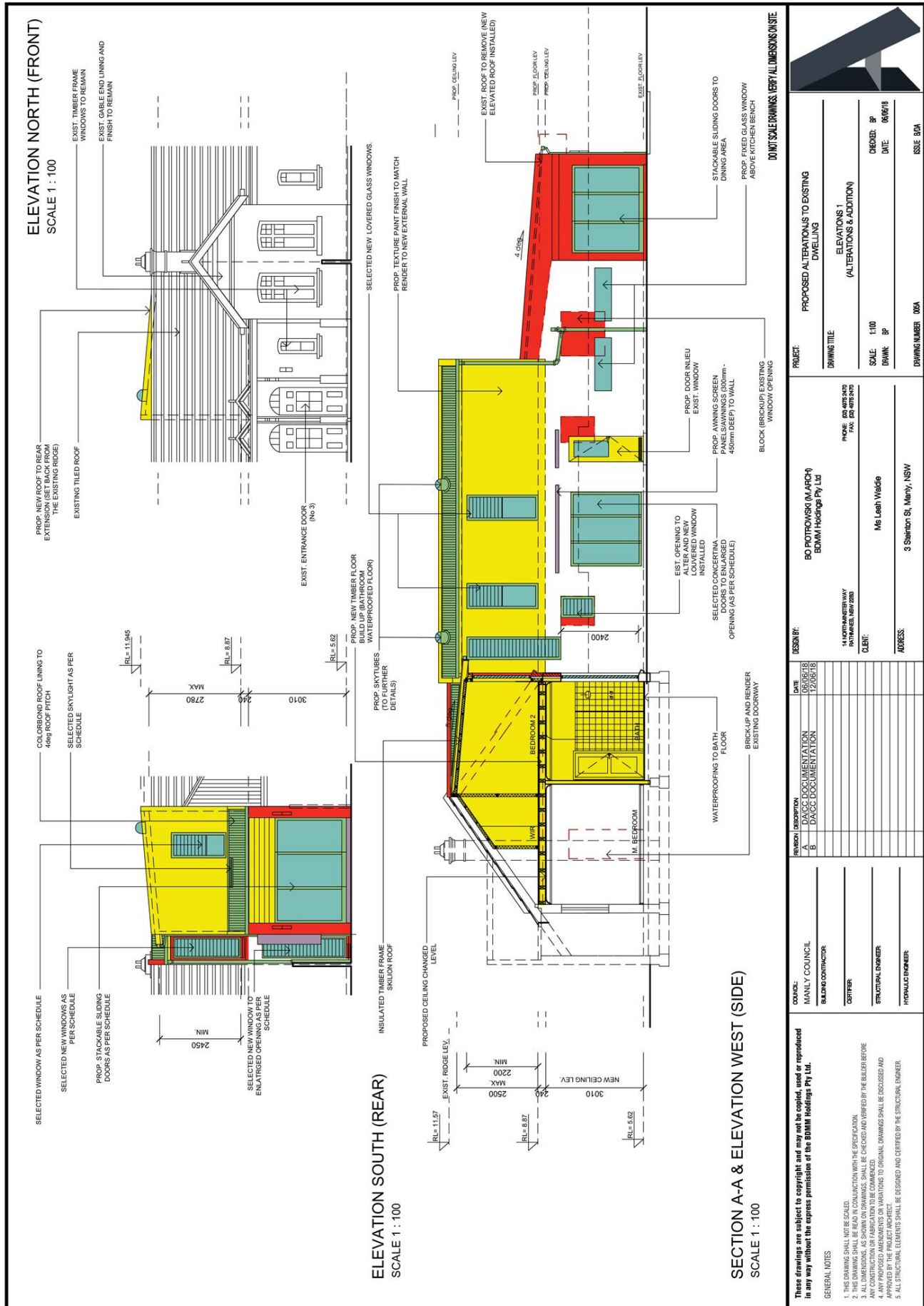
Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

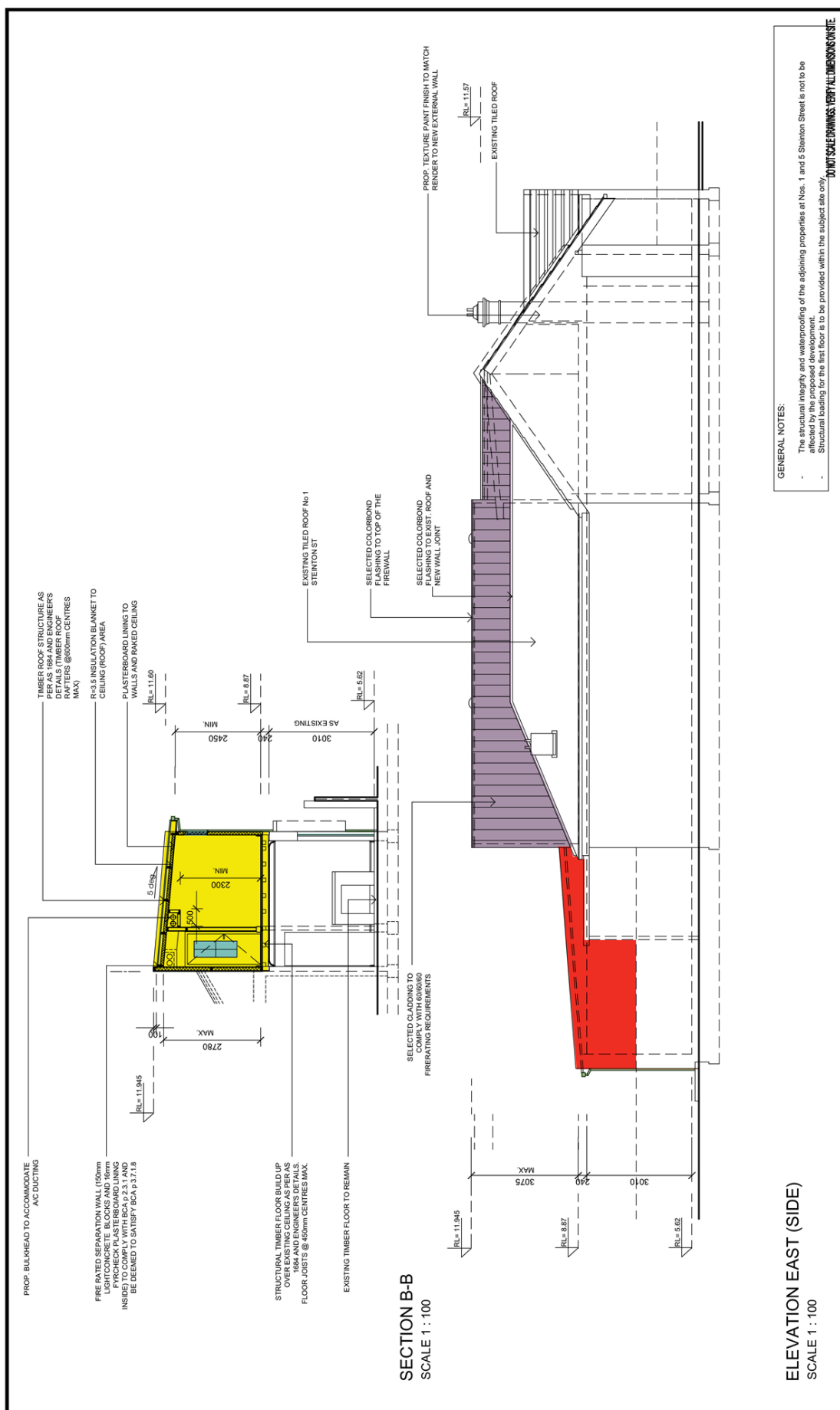
Note: The following Standards and Codes applied at the time of determination:


- (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)







<p>These drawings are subject to copyright and may not be copied, used or reproduced in any way without the express permission of the BOMM Holdings Pty Ltd.</p> <p>GENERAL NOTES</p> <ol style="list-style-type: none">1. THIS DRAWING SHALL NOT BE SCALED.2. THIS DRAWING SHALL BE READ IN CONJUNCTION WITH THE SPECIFICATION.3. ALL DIMENSIONS, AS SHOWN ON DRAWINGS, SHALL BE CHECKED AND VERIFIED BY THE BUILDER BEFORE COMMENCEMENT OF WORK.4. ANY PROPOSED AMENDMENTS ON VARIATIONS TO ORIGINAL DRAWINGS SHALL BE DISCUSSED AND APPROVED BY THE PROJECT ARCHITECT.5. ALL STRUCTURAL ELEMENTS SHALL BE DESIGNED AND CERTIFIED BY THE STRUCTURAL ENGINEER.	<p>COUNCIL: MANLY COUNCIL</p> <p>BUILDING CONTRACTOR:</p> <p>CERTIFIER:</p> <p>STRUCTURAL ENGINEER:</p> <p>HYDRAULIC ENGINEER:</p>	<table><tr><td>REVISION</td><td>DESCRIPTION</td><td>DATE</td></tr><tr><td>A</td><td>AS DOCUMENTATION</td><td>12/06/18</td></tr><tr><td>B</td><td>AS DOCUMENTATION</td><td>12/06/18</td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr></table>	REVISION	DESCRIPTION	DATE	A	AS DOCUMENTATION	12/06/18	B	AS DOCUMENTATION	12/06/18																						<p>DESIGN BY: BO PROTHORSKI (MARCH) BOMM Holdings Pty Ltd</p> <p>14 NORTH MANSTER WAY PARRAMATTA, NSW 2666</p> <p>CLIENT: Ms Leah Walde</p> <p>ADDRESS: 3 Sharnston St, Manly, NSW</p>	<p>PROJECT: PROPOSED ALTERNATIVES TO EXISTING DWELLING</p> <p>DRAWING TITLE: ELEVATIONS 2 (ALTERNATIVES & ADDITION)</p> <p>PHONE: 020 4975 2470 FAX: 020 4975 2470</p> <p>SCALE: 1:100 DRAWN: SP</p> <p>CHECKED: SP DATE: 06/09/18</p> <p>DRAWING NUMBER: 000A ISSUE FOR:</p>	
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ITEM 3.4	DA2018/1599 - 124 WOODLAND STREET, BALGOWLAH - ALTERATIONS AND ADDITIONS TO A SEMI-DETACHED DWELLING
REPORTING MANAGER	STEVE FINDLAY
TRIM FILE REF	2018/765639
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 floor space ratio.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority grant Development Consent to DA2018/1599 for alterations and additions to a semi-detached dwelling on land at Lot 2 DP 549424, 124 Woodland Street, Balgowlah subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1599
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 2 DP 549424, 124 Woodland Street BALGOWLAH NSW 2093
Proposed Development:	Alterations and additions to a semi-detached dwelling
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Roslyn Clare Bluett
Applicant:	Roslyn Clare Bluett
Application lodged:	28/09/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	03/10/2018 to 19/10/2018
Advertised:	Not Advertised
Submissions Received:	1
Recommendation:	Approval
Estimated Cost of Works:	\$ 216,750.00

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.

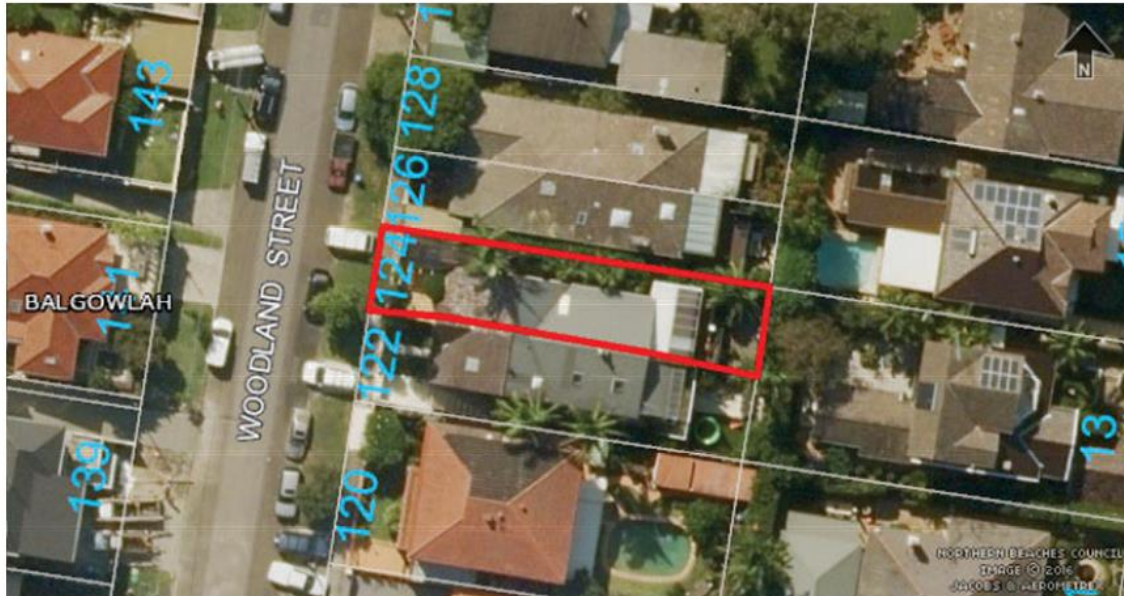
SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.4.2 Privacy and Security
 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

SITE DESCRIPTION

Property Description:	Lot 2 DP 549424 , 124 Woodland Street BALGOWLAH NSW 2093
Detailed Site Description:	<p>The subject site consists of an allotment located on the eastern side of Woodland Street.</p> <p>The site is regular in shape with a frontage of 7.7m along Woodland Street and a depth of 35.3m. The site has a surveyed area of 259.3m².</p> <p>The site is located within the R1 General Residential zone and accommodates a dwelling house on site.</p> <p>The site has a slope from the front of the property to the rear, being approximately 3m.</p> <p>The site has vegetation/landscaped area to the northern setback.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential development.</p>

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

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

PROPOSED DEVELOPMENT IN DETAIL

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

Lower Ground Floor

- Conversion of Laundry into meeting room and bathroom
- Addition of office with wetbar
- Deck

Ground Floor

- Alterations to deck and to stairs attached to deck
- Alterations to existing kitchen and dining area including addition of sitting area to dining area and laundry to kitchen area

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

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 David Ainslie Yeates	122 Woodland Street BALGOWLAH NSW 2093

The following issues were raised in the submissions:

- Concern for roof which extends over the balcony at the rear of the dwelling and potential impact on overshadowing.



The matters raised within the submissions are addressed as follows:

- **Concern for roof which extends over the balcony at the rear of the dwelling and potential impact on overshadowing.**

Comment:

The proposal complies with the numerical controls for Sunlight Access and Overshadowing under the Manly DCP, 2013 and the proposal is compliant with the development standard for building height. As such, the proposed roof covering of the deck area is satisfactory.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The landscape component of the proposal is acceptable, subject to protection of existing trees and vegetation shown on the site plans and including the existing street tree.</p> <p>Council's Landscape section have assessed the application against the controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>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.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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



SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A324427).

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.

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
DA2018/1599				



Height of Buildings:	8.5m	6.95m	N/A	Yes.
Floor Space Ratio Site area: 259.3m ²	FSR: 0.5:1 (129.65m ²)	FSR: 0.65:1 (169.5m ²)	30.7%	No, see comments.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Requirement:	0.5:1 (129.65m ²)
Proposed:	0.65:1 (169.5m ²)
Is the planning control in question a development standard?	YES
If numerical enter a % variation to requirement	30.7%

Assessment of request to vary a Development Standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard has taken into consideration the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 and an assessment of the request to vary the development standard in accordance with the requirements of Clause 4.6 is provided below:

Clause 4.6 Exceptions to Development Standards:

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

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

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

Comment:

DA2018/1599

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Clause 4.4 Floor space ratio development standard is not 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.*

(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*
 - (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, and*
- (b) the concurrence of the Secretary has been obtained.*

cl 4.6 (4)(a)(i) (Justification) Assessment:

cl 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6 (3) and these are addressed as follows:

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written



request under cl 4.6 must be "environmental planning grounds" by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

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

Applicant's Written Request

The Applicant's written request has demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. The Applicant's written request submits that a compliant Floor space ratio is constrained by the existing development on site. Along with this, the siting at the rear and below the existing roof form will ensure the development maintains a compatible relationship with other development in the area and will not cause unreasonable amenity impact.

In doing so, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land and that the building is of a good design and will protect the amenity of the surrounding built environment therefore satisfying cl 1.3(c)(g) of the EPA Act.

In this regard, the applicants written request has adequately demonstrated the that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

cl 4.6 (4)(a)(ii) (Public Interest) Assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:



(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:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor space ratio development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of cl 4.4 Floor Space Ratio Development Standard are:

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

Comment:

The proposal provides for additions to the rear including additional floor space within the existing envelope and the addition of a rear deck as well as alterations to an existing deck. These changes would not be readily visible from the street and as a result the proposed bulk and scale will be appropriate given the existing and desired character.

The development satisfies this objective.

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

Comment:

The location of the additional floor space within the existing building footprint will ensure that the bulk provided will not provide any unreasonable obscurement of landscape or townscape features.

The development satisfies this objective.

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

Comment:

The proposed additions are to the rear and include a rear setback of 7m-8m to the dwelling and 4-6m the proposed decks. Additionally, landscaped area is added to the front of the property and maintained at the side setback. This ensures a reasonable open corridor at the rear of the site and a reasonable presentation of landscaping throughout the site.

The development satisfies this objective.

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

Comment:



As a result of the floor space being located predominantly within the existing building envelope and to an existing level, the proposal would have no unreasonable impact on amenity. It is noted that the proposal is compliant with the requirements for Sunlight Access and Overshadowing under the Manly DCP.

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

Comment:

Not applicable.

Conclusion:

The proposed development satisfies the underlying objectives of the Floor space ratio development standard.

Zone Objectives

The Underlying Objectives of the R1 General Residential zone

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

- Comment:

The proposal provides alteration and additions to an existing dwelling.

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

- Comment:

The proposal provides alteration and additions to an existing dwelling house.

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

- Comment:

Not applicable.

Conclusion:

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

cl 4.6 (4)(b) (Concurrence of the Secretary) Assessment:

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development



standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. 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 by the Development Determination Panel.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 259.3m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	North: 6.5m	5.3m	N/A	Yes
	South: 6.5m	5.7m	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.5m	N/A	Yes
4.1.3 Floor Space Ratio	0.5:1 based on 300m ² lot size. (150m ²)	0.565:1 (169.5m ²)	13%	No (see comments under LEP)
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 1.77m (based on wall height)	1m	N/A	No (see comments)
	South: 1.9m	0m	N/A	No (see comments)
	Windows: 3m	1m	N/A	No (see comments)
4.1.4.4 Rear Setbacks	8m	4-6m (to decks) 7m-8m (to dwelling)	N/A	
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (142.62m ²)	30.8% (80m ²)	N/A	No (see comments)
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (28m ²)	81.2% (65m ²)	N/A	Yes
4.1.5.3 Private Open Space	18m	18sqm	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas) DA2018/1599	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.6 Accessibility	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)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Description of non-compliance

The proposal is non-compliant with the side setbacks being 1.0m from the northern setback and Nil from the southern setback.

The proposal also includes windows within 3.0m of the side boundary at the north.

Merit consideration:

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

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

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

Comment:

The proposal includes alterations to the existing rear deck, the addition of a deck at lower ground level to the rear and the addition of windows at the rear and side (north) elevation. As a result of the location of the floor space within the existing building footprint, the existing vegetation surrounding the site and the reasonable separation to neighbouring living spaces, the proposal reasonably minimises loss of



privacy.

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

Comment:

The provision of new windows to the side and rear boundaries provides a reasonable outcome for amenity without the need for screening which may contribute to an unreasonable impact. It is also noted that there is an improvement in privacy impact for the top level deck in comparison to the existing situation as the extent of usable deck area on the southern boundary has been reduced due to the reconfiguration of the stairs. As a result of the reduction in impact from this existing situation and the potential impact on sunlight access, a privacy screen is not required by condition in this circumstance.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal maintains entrances and openings at the front of the dwelling and also provides openings at the rear. This provides a reasonable opportunity to provide awareness of neighbourhood security.

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.

4.1.3 Floor Space Ratio (FSR)

See comments under Manly LEP 2013.

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

Description of non-compliance

The proposed development involves setbacks of 1.0m and Nil at the north and south boundaries respectively. This is non-compliant with the controls of 1.77m and 1.9m.

The proposal is also non-compliant with the control for setbacks to windows, being 1.0m from the boundary with the control of 1.0m.

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 proposal provides for additions to the rear including the enclosure of an area within the existing envelope and the addition of a rear deck as well as alterations to an existing deck. These changes would not be readily visible from the street and as a result the proposed presentation will be appropriate given the existing and desired character. Additionally, the proposal provides a compliant landscaped area under the Manly DCP.

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 a result of the majority of the proposal being confined to the existing footprint and envelope along with the adequate physical separation from neighbouring living areas, there would not be an unreasonable impact on amenity. This includes the provision of compliant Sunlight Access and Overshadowing under the Manly DCP.

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

Comment:

The proposed siting of the additional floor space and deck area is at a location to the rear of the site that will not have an unreasonable presentation in the street and would not provide 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 proposal provides landscaped area to be compliant with the control under the Manly DCP as well as maintaining landscaping to the side and improving landscaping to the front and rear. This provides an adequate retention an enhancement of natural features.

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

Description of non-compliance

The proposal provides for 30.8% (80m²) which is non-compliant with the control of 55% of site area (142.62m²).

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 provides compliant landscaped area under the Manly DCP and includes improved landscaping at the front and rear of the site. This provides a positive outcome for landscape features and vegetation.

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

Comment:

The proposal is compliant with landscaped area under the Manly DCP and provides landscaped area at the northern side, front and rear. This is an appropriate maximisation of 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:

The proposed open space area at the rear of the dwelling ensures that there is an appropriate corridor to provide physical separation from neighbouring properties which results in a reasonable amenity outcome. In particular this area ensures compliance with sunlight controls under the Manly DCP and provides a minimisation of impact on visual and acoustical privacy.

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

Comment:



The proposal is for alterations and additions to the existing dwelling and includes improved landscape area to the front and rear of the site. As such infiltration is maximised and stormwater runoff is adequately minimised.

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

Comment:

The proposal does not provide any unreasonable opportunity for the spread of weeds.

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

Comment:

The proposed corridors including landscaping at the front, rear and side of the development

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

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.

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 DA2018/1599 for Alterations and additions to a semi-detached dwelling on land at Lot 2 DP 549424, 124 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 Concept Plan	8 August 2018	Action Plans
DA05- Proposed Ground Floor Plan	8 August 2018	Action Plans
DA06- Proposed Lower Ground Floor Plan	8 August 2018	Action Plans
DA07- North/East Elevation	8 August 2018	Action Plans
DA08- West Elevation	8 August 2018	Action Plans
DA09- Long/ Cross Section	8 August 2018	Action Plans

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.



2. **Amendments to the approved plans**

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

- The proposed wet bar in the office is to be deleted.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure the lower floor area is not capable of being operated as a separate domicile. (DACPLB02)

3. **No Approval for Land Use**

No approval is granted under this Development Consent for any land use, other than the existing dwelling on site. This includes that no approval is granted for a secondary dwelling or dual occupancy under this consent.

Reason: To ensure compliance with the relevant Local Environmental Plan. (DACPLB04)

FEES / CHARGES / CONTRIBUTIONS

4. **Security Bond**

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

5. **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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

6. **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.

7. **Tree and vegetation protection**

A) Existing trees and vegetation shall be retained as follows:

i) all trees and vegetation within the site not impacted by development, excluding exempt trees under the relevant planning instruments of legislation,

ii) all other trees and vegetation located on adjoining properties,

iii) all road reserve trees and vegetation.

B) Tree protection shall be undertaken as follows:

i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4,

ii) any tree roots exposed during excavation with a diameter greater than 25mm within the TPZ must be assessed by an Arborist. Details including photographic evidence of works undertaken shall be submitted by an AQF Level 5 Arborist to the Certifying Authority,

iii) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,

iv) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorized by the Project Arborist on site,

v) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,

vi) should either or both iv) and v) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures provided. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority.

C) Tree protection shall be specifically undertaken to protect the existing street tree as follows:

i) 1.8m high construction fencing shall be erected for the duration of the works, and shall be placed at least 1m away from the trunk in all directions, with less distance from the trunk permitted along the kerb face where access shall be maintained ensuring car doors may be



opened safely.

Reason: to retain and protect significant planting on development and adjoining sites.

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

8. 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.

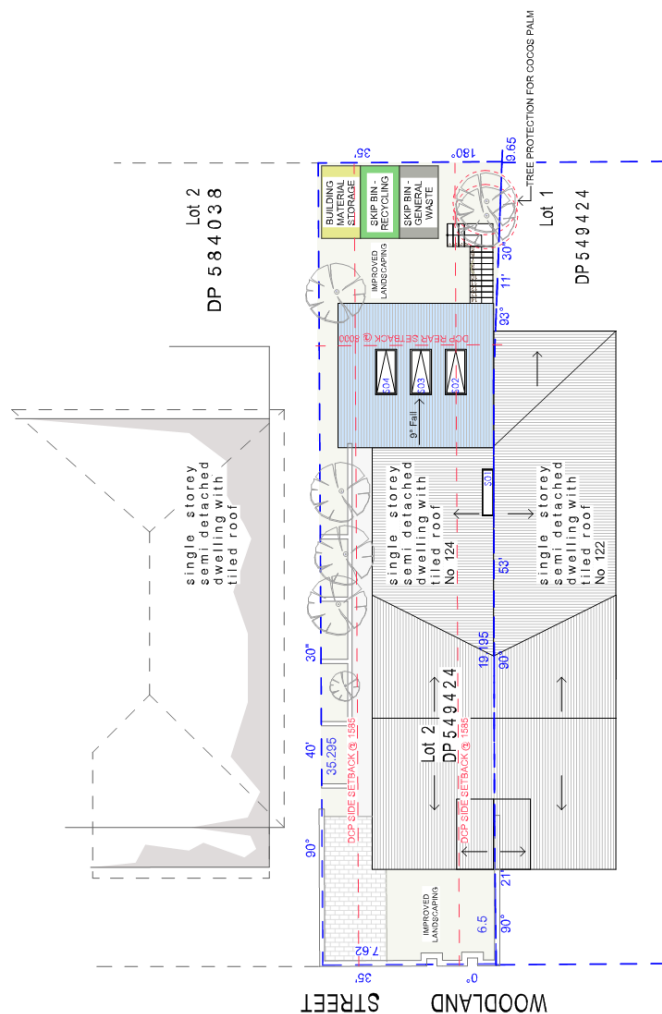
Note: The following Standards and Codes applied at the time of determination:

- (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.

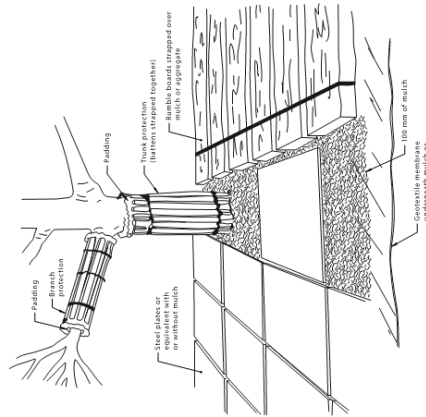
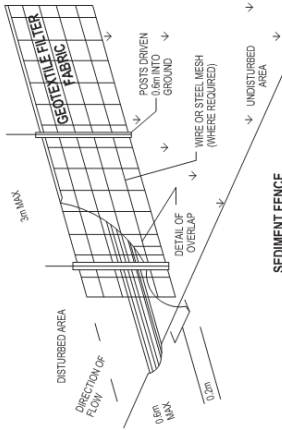
Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)

SEDIMENT NOTE :
1. ALL EROSION AND SEDIMENT CONTROL MEASURES TO BE INSPECTED AND MAINTAINED DAILY BY THE SITE MANAGER.
2. MINIMISE DISTURBED AREAS. REMOVE EXCESS SOIL FROM THE SITE ESPECIALLY DURING THE MOVEMENT OF MATERIALS AND STOCKPILES.
3. ALL MATERIAL STOCKPILES TO BE CLEAR FROM DRAINAGE LINES AND FOOTPATHS. WITHIN THE SEDIMENT FENCE AREA.
4. DRAINAGE TO BE CONNECTED TO STORMWATER AS SOON AS POSSIBLE. IF STORED ON SITE, IT MUST BE FILTERED BEFORE RELEASING INTO STORMWATER SYSTEM OR WATERWAYS.
5. ROADS AND FOOTPATHS TO BE SWEEP DAILY.

DUST CONTROL :
TO REDUCE DUST GENERATED BY WIND ACTION, THE REMOVAL OF THE TOP SOIL IS TO BE MINIMISED. TO PREVENT DUST GENERATION, WATERING DOWN OF THE SITE ESPECIALLY DURING THE MOVEMENT OF MATERIALS AND STOCKPILES IS TO BE MAINTAINED. TO MINIMISE DUST, KEEP THE SURFACE WET TO MINIMISE DUST. CONSTRUCT A GRAVEL ENTRY/EXIT POINT USING BLUE METAL AND RESTRICT ALL VEHICLE MOVEMENTS WITHIN THE SITE TO A MINIMUM. ENSURE WIND BREAKS, SUCH AS EXISTING FENCES ARE MAINTAINED DURING THE CONSTRUCTION PHASE UNTIL NEW LANDSCAPING IS PROVIDED OR REINSTATE. PREVENT DUST BY COVERING STOCKPILES.



SEDIMENT FENCE



TREE PROTECTION

STOCKPILES :
ALL STOCKPILES ARE TO BE KEPT ON-SITE WHERE POSSIBLE. ANY MATERIALS PLACED ON THE FOOTPATHS OR NATURE STRIPS REQUIRE COUNCIL'S PERMISSION.
ALL STOCKPILES ARE TO BE PLACED AWAY FROM THE DRAINAGE LINES AND STREET GUTTERS. IT IS BEST TO LOCATE THESE ON THE HIGHEST PART OF THE SITE IF POSSIBLE. PLACE WATERPROOF COVERING OVER STOCKPILES TO PREVENT DUST.
IF REQUIRED PROVIDE DIVERSION DRAIN & BANK AROUND STOCKPILES.

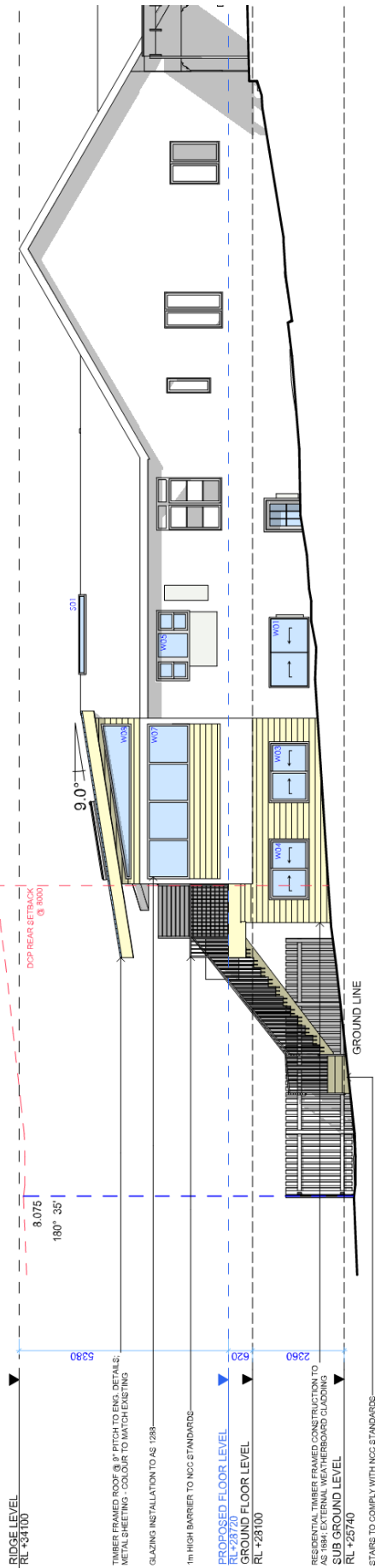
GUTTER PROTECTION :
PROVIDE PROTECTION TO DOWNHILL GRATE IN GUTTER BY MEANS OF SAND BAGS OR BLUE METAL WRAPPED IN GEOTEXTILE FABRIC WHEN SOIL OR SAND BAGS ARE PLACED IN THE SEDIMENT FENCE. THE MATERIAL SHOULD BE RELOCATED BACK TO THE SITE FOR DISPOSAL.

NOTE: ALL PROPOSED STORMWATER TO CONNECT WITH EXISTING

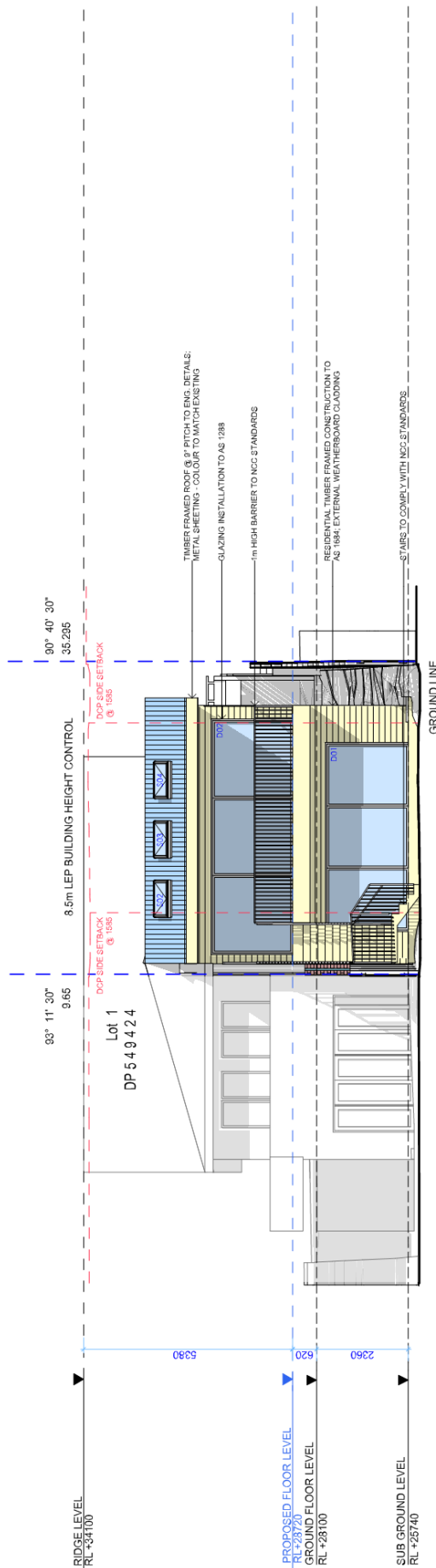
SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT / STORMWATER CONCEPT PLAN
1:200 @ A3

ACTION PLANS m: 0426 957 518 e: operations@actionplans.com.au w: www.actionplans.com.au		REV. DATE COMMENTS DRWN	NOTES This drawing is the copyright of Action Plans and shall not be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise without the written permission of Action Plans. All levels and dimensions are to be checked and confirmed on site before any work commences. Components shall be checked and confirmed on site before any work commences. Use figured dimensions.	LEGEND NEW FLOOR AREA NEW WET FLOOR AREA METAL ROOFING TIMBER CONCRETE BRICKWORK METAL EXISTING DEMOLISHED	CLIENT Razlyn Bluntt PROJECT ADDRESS 124 woodland street Belgawiah	DRAWING NO. DA02 DATE Wednesday, 8 August 2018	DRAWING NAME SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT / STORMWATER CONCEPT PLAN SCALE 1:200 @ A3

8.5m LEP BUILDING HEIGHT CONTROL



NORTH ELEVATION
1:100 @ A3



EAST ELEVATION
1:100 @ A3

REV.	DATE	COMMENTS	DRWN	NOTES	LEGEND	CLIENT	DRAWING NO.	DRAWING NAME
A	01/06/19	INITIAL DESIGN PLAN	LSP	This drawing is the copyright of Action Plans and shall not be reproduced or included in any other documents without the written permission of Action Plans. All levels and dimensions are to be checked and confirmed on site prior to construction work, making of shop drawings or fabrication of components. Do not scale on drawings. Use figured dimensions.	TIMBER WEATHERBOARD FACE BRICKWORK METAL CONCRETE	Rachyn Blunt	DA07	NORTH / EAST ELEVATION
B	06/07/18	FIRST DESIGN AMENDMENT	LSP		METAL ROOFING TILED ROOFING RENDER EXISTING			
C	18/07/18	SECOND DESIGN AMENDMENT	LSP					
D	08/08/18	ON DOCUMENTATION	LSP					

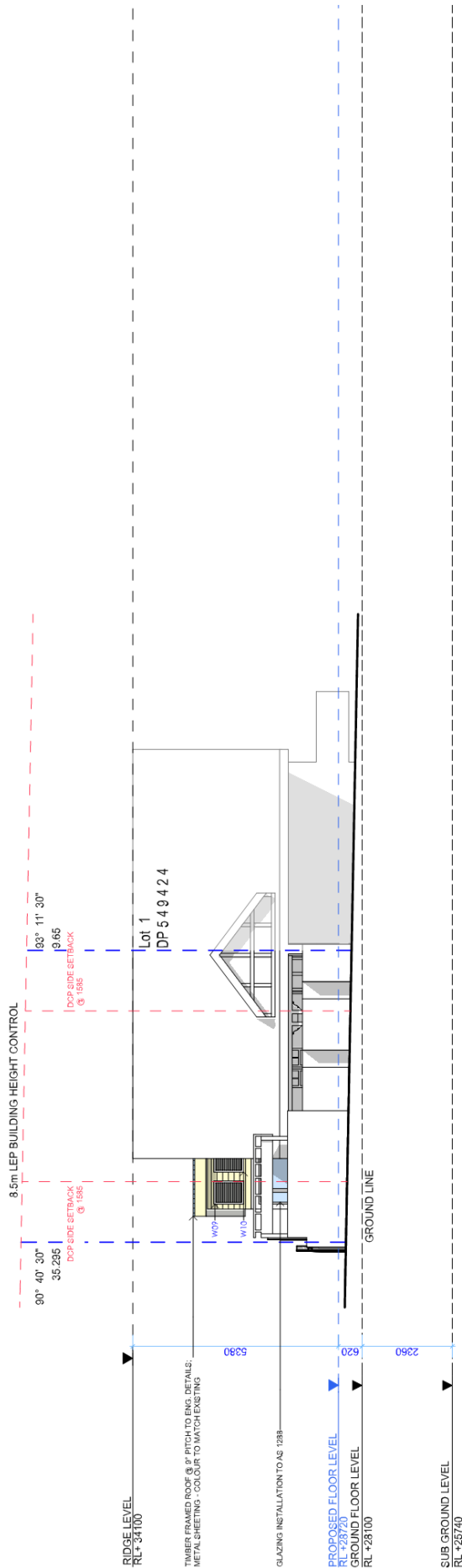
ACTION PLANS

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e: operations@actionplans.com.au
w: www.actionplans.com.au


SCALE
1:100 @A3

DATE
Wednesday, 8 August
2018

PROJECT ADDRESS
124 woodland street
Belgawiah



WEST ELEVATION
1:100 @ A3

 <p>ACTION PLANS m: 0426 957 518 e: operations@actionplans.com.au w: www.actionplans.com.au</p>				<p>REV.</p> <p>A</p> <p>B</p> <p>C</p> <p>D</p>	<p>DATE</p> <p>01/06/19</p> <p>05/07/19</p> <p>19/07/19</p> <p>09/08/19</p>	<p>COMMENTS</p> <p>INITIAL DESIGN PLAN</p> <p>FIRST DESIGN AMENDMENT</p> <p>SECOND DESIGN AMENDMENT</p> <p>ON DOCUMENTATION</p>	<p>DRWN</p> <p>LSP</p> <p>LSP</p> <p>LSP</p> <p>LSP</p>	<p>NOTES</p> <p>This drawing is the copyright of Action Plans and shall not be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the written permission of Action Plans.</p> <p>All levels and dimensions are to be checked and confirmed on site prior to construction. All work, making of shop drawings or fabrication of components, shall be done in accordance with the dimensions shown on drawings. Use figured dimensions.</p>	<p>LEGEND</p> <p>TIMBER WEATHERBOARD FACE BRICKWORK METAL CONCRETE</p> <p>METAL ROOFING TILED ROOFING RENDER EXISTING</p>	<p>CLIENT</p> <p>Raelyn Bluett</p> <p>PROJECT ADDRESS</p> <p>124 woodland street Balgowlah</p>	<p>DRAWING NO.</p> <p>DA08</p> <p>DATE</p> <p>Wednesday, 8 August 2018</p> <p>SCALE</p> <p>1:100 @A3</p>	<p>DRAWING NAME</p> <p>WEST ELEVATION</p>
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ITEM 3.5 **DA2018/1290 - 2 TOURMALINE STREET, NARRABEEN -
ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING
HOUSE**

REPORTING MANAGER **STEVE FINDLAY**

TRIM FILE REF **2018/767489**

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 **refuse** Review of Determination Application DA2018/1290 for alterations and additions to an existing dwelling house on land at Lot B DP 377414, 2 Tourmaline Street, Narrabeen subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1290
Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot B DP 377414, 2 Tourmaline Street NARRABEEN NSW 2101
Proposed Development:	Alterations and additions to an existing dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Tony Ian Nicol
Applicant:	Micris Design Pty Ltd
Application lodged:	01/08/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	08/08/2018 to 23/08/2018
Advertised:	Not Advertised
Submissions Received:	3
Recommendation:	Refusal
Estimated Cost of Works:	\$ 732,000.00

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

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Development Control Plan - B1 Wall Heights
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D9 Building Bulk
 Warringah Development Control Plan - D11 Roofs
 Warringah Development Control Plan - D12 Glare and Reflection
 Warringah Development Control Plan - E4 Wildlife Corridors

SITE DESCRIPTION

Property Description:	Lot B DP 377414 , 2 Tourmaline Street NARRABEEN NSW 2101
Detailed Site Description:	<p>The subject site is legally identified as Lot B in DP 377414, and is known as 2 Tourmaline Street Narrabeen. The site located within the R2 Low Density Residential zone.</p> <p>The subject property is located immediately south of Tourmaline Street, with Collaroy-Narrabeen Beach adjoining the site on the eastern boundary.</p> <p>The overall site area is 569.1m². The subject site has a northern street frontage to Tourmaline Street of 36.27 metres, a eastern boundary dimension of 15.71 metres, southern boundary dimension of 36.345 metres, and a western boundary dimension of 15.635 metres.</p> <p>The surface of the site is relatively flat with the site being previously excavated for the lower ground floor. The Lower Ground Floor Level of the existing dwelling has a finished floor level of 7.6m AHD, and is below the natural ground level, separated by a retaining wall with a crest level of 8.2m AHD. The Ground Floor finished floor level is 9.9m AHD.</p> <p>The site currently contains a two level dwelling house, with lawned area in the eastern area of the site adjoining the vegetated sand dunes of Collaroy/Narrabeen beach.</p> <p>Surrounding sites consist of a range of dwelling types,</p>

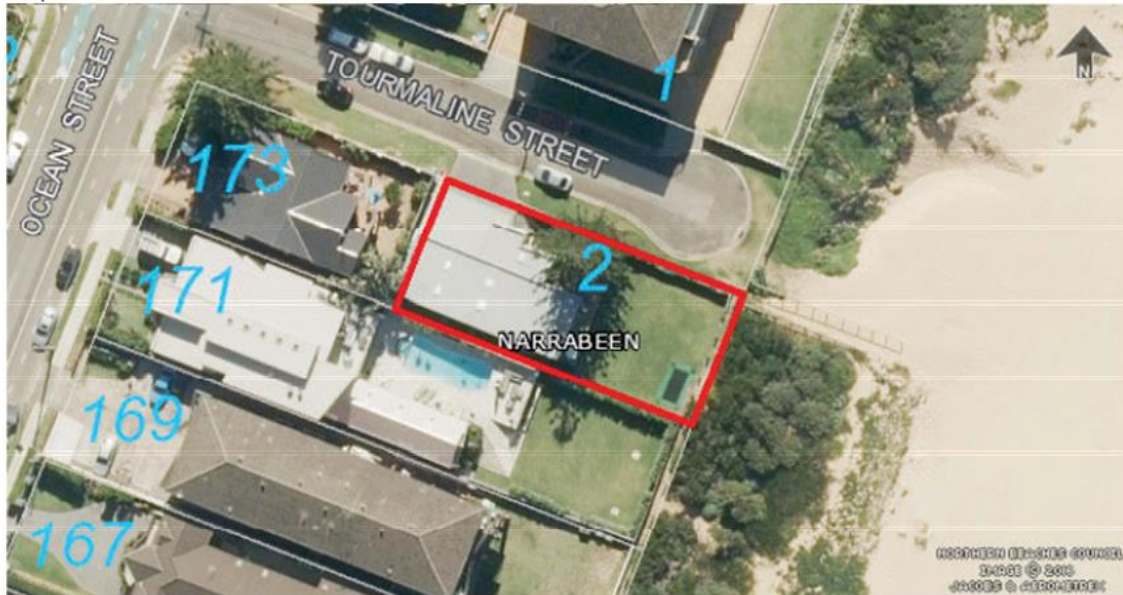
DA2018/1290

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including single dwelling house, dual occupancy and residential flat buildings. The site to the south and the west contains two storey dwelling houses, with the site to the north being a three storey residential flat building on the opposite side of the street.

Map:



SITE HISTORY

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

- Application number **DA2018/0238** for Alterations and additions to a dwelling house, for a proposal similar to the current application, was lodged on the 16/02/2018 and withdrawn from Council on the 14/05/2018 due to a number of areas of non-compliance. The areas of non-compliance included the building height, wall height, side boundary envelope, landscape open space, access to sunlight, privacy, building bulk and view sharing.
- Building Application number **317/86** for Alterations and additions to a dwelling house was approved by Council on the 10/02/1986.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for alterations and additions to the existing dwelling house. The proposal includes the following works;

Lower Ground Floor Level (FFL 7630)

- No works proposed

Ground Level (FFL 9870) DA2018/1290



- Demolition of the overhang to the garage and the northern garage wall
- Garage extension to allow for two vehicles
- New internal stairs
- New entry door
- Minor internal alterations

First Floor Level (FFL 13020)

- New bedroom, walk in wardrobe and en-suite
- New sitting room
- New rear balcony

The proposal includes the replacement of the existing flat roof with a curved roof.

External Works

- Removal of artificial lawn and paved paths
- New access stairs from the lower ground floor to the proposed first floor
- New access stairs from the lower ground floor to the ground floor
- New stone letterbox

The existing driveway will be retained for access to the existing garage.

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	Warringah 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>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p>Clauses 54 and 109 of the EP&A Regulation 2000, Council requested</p>



Section 4.15 Matters for Consideration'	Comments
	<p>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 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>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. In summary the proposal involves the following impacts, privacy, building bulk and scale that creates amenity and view loss, and additional overshadowing which are unsatisfactory for the reasons discussed below.</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>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered unsuitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>This assessment has found the proposal to be contrary to the relevant requirement(s) of the WDCP 2011. There are non-compliances/inconsistencies with the planning controls in relation to setbacks, building envelope, bulk and scale, view loss that will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be</p>



Section 4.15 Matters for Consideration'	Comments
	contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject 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:
Mr George Marner Colvin Smith	173 Ocean Street NARRABEEN NSW 2101
Mrs Kathleen Kerrie Amy Hayes	30 Addison Road INGLESIDE NSW 2101
Hendrik Pieter Laubscher	171 Ocean Street NARRABEEN NSW 2101

The following issues were raised in the submissions:

- Loss of Views
- Building Height
- Loss of Privacy
- Building Bulk
- Overshadowing
- Inaccuracies of Information
- Unapproved Building Renovations

The matters raised within the submissions are addressed as follows:

- **Concerns are raised that the proposal will cause unreasonable loss of views from No.171 and No.173 Ocean Street Narrabeen**

Comment:

The submissions received from No.171 and No.173 Ocean Street Narrabeen, both solely object to the proposal on the grounds of view loss. A detailed view loss assessment as per the Planning Principles established in the Land and Environment Court case Tenacity Consulting v Warringah Council is included in this report which addresses the above-mentioned concern. This issue is discussed in detail under Clause D7 in this report. In summary, the proposal does not demonstrate a reasonable sharing of views.



The submissions are supported and accordingly, this matter is included as a reason for refusal.

- ***Concern that the building height is excessive and creates amenity impacts on the surrounding properties***

Comment:

There is concern that the building height is not reflective of the actual building height due to the lower ground floor siting below natural ground level.

In the case *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 and *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189 it is made apparent that the measure of existing building height should relate to the levels and natural topography of the site, and not relate to artificially modified levels (such as those achieved through excavation). Therefore, in measuring the natural ground level of a site, reliance must be placed upon known levels of the site which can be relied on to extrapolate the natural slope of the land.

Therefore, for the purpose of this assessment, natural ground level is extrapolated from survey points around the perimeter of the site as detailed on the architectural plans accompanying the application. In measuring the building height using this methodology, the development does not comply with the building height standard of 8.5m, being 8.6m measured from natural ground level.

This minor height variation has been discussed in detail under Part 4.6 Exceptions to development standards, and pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011.

Accordingly, this matter is included as a reason for refusal.

- ***Concerns are raised that the proposal will impact on the privacy levels of the southern adjoining property at No. 171 Ocean Street Narrabeen***

Comment:

This matter is discussed in detail under the Part D8 Privacy section in this report. In summary, the proposal does not incorporate design solutions to minimise privacy impacts on the southern adjoining property. However conditions could be applied to maintain a satisfactory level of privacy and to No. 171 Ocean Street.

Therefore, this issue does not warrant refusal of the application.

- ***Concern is raised that the proposal displays unreasonable building bulk that impacts the amenity of surrounding sites***

Comment:

This matter is discussed in detail under the Part D9 Building Bulk section in this report. In summary, the proposal does not incorporate design solutions to minimise bulk and scale of the development on the adjoining properties. The proposal seeks benefit from a first floor addition that sits across the ground floor existing building footprint and hence the visual impact. This design solution is not considered to be an appropriate response to the sites location and siting relative to adjoining properties, in that the front setback and envelope will have a significant bearing on the overall height and bulk of the development, such that it will have an unreasonable amenity impact upon surrounding properties.



Therefore, the assessment of the application has found that the development does not satisfy the objectives of Part D9 Building Bulk of the WDCP 2011.

Accordingly, this matter is included as a reason for refusal.

- ***Concerns are raised that the proposal creates unreasonable overshadowing of adjoining properties***

Comment:

Detailed shadow diagrams were submitted with the application demonstrating the shadows for the the winter solstice on June 21 for 9:00am, 12 midday and 3:00pm. The shadow details provided demonstrate that 3 hours of solar access will be maintained to the private open space of the adjoining sites in compliance with Part D6 Access to Sunlight.

Notwithstanding the assessment of the application has found that breaches of the built form controls under WDCP 2011 contribute to unnecessary overshadowing of the southern and western neighbour's private open space. In this regard, overshadowing impacts could be improved through a more skillful design changes to the proposal.

However, as the proposal complies with Part D6 Access to Sunlight, it does not warrant refusal of the application.

- ***Concerns are raised that there are inaccuracies in the shadow diagram, and architectural plans submitted***

Comment:

The survey plan was prepared by an appropriately qualified professional (Map Surv dated 24/09/2017), and the architectural plans and shadow diagrams have been prepared by Micris Design Pty Ltd. Councils has reviewed the documentation and is satisfied the details are correct.

Accordingly, this matter does not warrant the refusal of the application.

- ***Concerns are raised that there are unapproved works existing on the subject site***

Comment:

The concern relates specifically to the existing garage that encroaches into the previously approved 6.7m setback. However, a search of Councils records indicate that the existing garage was approved in 1986.

There may be unauthorised works that have been undertaken on the subject site dwelling house without approval, such as the conversion of the garage, and a bathroom on the lower ground floor. This matter has been referred to Council Building Compliance department for their assessment.

The application relates to the first floor addition which does not rely on the areas which are subject to an investigation. Therefore refusal of the application is not warranted under the circumstances.

MEDIATION

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

REFERRALS

DA2018/1290

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Internal Referral Body	Comments
Landscape Officer	<p>The plans indicate retention of 1 x <i>Araucaria heterophylla</i> (Norfolk Island Pine) adjacent to the existing building, which is supported.</p> <p>However concern is raised regarding impacts of the works on the Tree Protection Zone and Structural Root Zone of the tree due to excavation for retaining walls and impacts on the existing canopy of the upper storey addition and consequential impacts of scaffolding, etc required to be erected during construction.</p> <p>No Arboricultural Impact Assessment was sighted with the application.</p> <p>It is considered that insufficient information has been provided to be satisfied that impacts on the tree are acceptable.</p> <p>At this stage, the proposal is not supported with regard to landscape issues. If additional information is provided regarding the issues raised above, further assessment can be undertaken.</p> <p>Planners comments: Due to insufficient information this issue will form a reason for refusal.</p>
NECC (Bushland and Biodiversity)	<p>Council's Bushland and Biodiversity section considers the Development Application to be consistent with the following Warringah DCP 2011 Controls:</p> <p>Part E The Natural Environment E1 Preservation of Trees or Bushland Vegetation E2 Prescribed Vegetation E3 Threatened Species, Populations, Ecological Communities listed under State or Commonwealth legislation, or High Conservation Habitat E4 Wildlife Corridors E5 Native Vegetation E6 Retaining Unique Environmental Features E7 Development of Land Adjoining Public Open Space</p>
NECC (Coast and Catchments)	<p>The proposed development has been considered against the requirements of the Coastal Zone Management Plan for Collaroy-Narrabeen Beach and Fishermans Beach. It is supported subject to conditions confirming that the works will be designed and constructed in accordance with the coastal engineering report prepared by Horton Coastal Engineering Pty Ltd demonstrating that the portion of the proposed development seaward of the minimum setback for development on conventional foundations is founded on deep piles.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>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.</p>



ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 878867S_02 and 31 July 2018). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 878867S_02 and 31 July 2018).

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

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

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

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).

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- 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.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) *if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) *the proposed development:*
 - (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
 - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
 - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and*

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*future
coastal
hazards.*

Comment:

The proposal will not cause an adverse impact on the relevant matters described above.

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment:

The proposal will not cause an adverse impact on the relevant matters described above in subclause (1).

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

Comment:

The proposal will avoid adverse impact on the relevant matters described above.

14 Development on land within the coastal use area

- (1)
- (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform*



- for members of the public, including persons with a disability,
- (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
- (b) is satisfied that:
- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposal will not cause an adverse impact on the relevant matters described above.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.6m	1.2%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No
5.5 Development within the coastal zone	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes
6.5 Coastline hazards	Yes



Detailed Assessment

4.6 Exceptions to development standards

The site is subject to an 8.5m height control measured from existing ground level pursuant to the definition of building height under Clause 4.3 WLEP 2011. In the circumstances of this assessment, it is important to note that the site has been excavated to a depth of up to approximately 1.3m below the natural ground level.

In the case *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 and *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189 it is made apparent that the measure of existing building height should relate to the levels and natural topography of the site, and not relate to artificially modified levels (such as those achieved through excavation).

Therefore, in measuring the natural ground level of a site, reliance must be placed upon known levels of the site which can be relied on to extrapolate the natural slope of the land. In the circumstances of this case, it is evident that the natural landform prior to any development would likely rise in a east - westerly direction away from Collaroy/Narrabeen beach. This is further evidenced by the gradient and levels of the surrounding road and properties.

Therefore, for the purpose of this assessment, natural ground level is extrapolated from survey points around the perimeter of the site as detailed on the architectural plans accompanying the application. In measuring the building height using this methodology, the development does not comply with the building height standard of 8.5m, being 8.6m measured from natural ground level.

4.6 Exceptions to Development Standards

Description of non-compliance:

Requirement:	8.5m
Proposed:	8.6m
Is the planning control in question a development standard?	YES
If numerical enter a % variation to requirement	1.2%

Assessment of Request to vary a Development Standard:

The following assessment of the variation to Clause 4.3 - Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Clause 4.6 Exceptions to Development Standards:

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

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

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



Comment:

Clause 4.3 Height of buildings development standard is not 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.

(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

(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, and

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

Clause 4.6 (4)(a)(i) (Justification) Assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

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

Applicants Written Request

The Applicant's written request (attached to this report as an Appendix) has not demonstrated that the objectives of the development standard are achieved.

Planners Comment

In doing so, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Conclusions on Environmental Planning Grounds

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:



'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

"Reasons for Clause 4.6 Variation Consideration

- *Streetscape – The visual quality of the streetscape is to be enhanced with the new additions to the northern facade off Tourmaline Street as it will accentuate a modern design to complement the existing dwelling and other dwellings within the vicinity.*
- *Setback - The eastern and western boundaries have not been compromised to suit this new addition to the property. The proposed first floor deck and roof is in line with the side and front building lines to create a seamless finish to the dwelling. In addition the proposal is not out of character for the neighbourhood.*
- *Bulk & Scale is maintained for the area the ground & first floor decks and new first floor roof is in keeping with the overall bulk and scale from Tourmaline Street.*
- *Site Access & Circulation is to remain consistent with the existing property and therefore will not be changed to suit this proposal.*
- *Openness - A sense of openness has been created as the proposed design creates flow between the internal & the external non-habitable zones."*

In the circumstances of the relatively flat site conditions, compliance with the development standard of 8.5m while continuing to allow for a consistent architectural style throughout the entire building, is not considered unreasonable.



Whilst the building height variation is minor and is confined to the rear section of the roofline over the first floor deck area, when combined with the variations to the front setback, wall height, and side boundary envelope, it creates unreasonable building bulk and moderate to severe view loss. Hence, the proposal significantly affects the amenity of the adjacent land.

Therefore, the proposal is unreasonable within its context due to the significant amenity impacts, including view loss to the surrounding sites.

Consequently, it is concluded that the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard (as required by cl 4.6 (3)(b)) when full building height compliance could be achieved, nor that the addition is of a good design that will reasonably protect and improve the amenity of the surrounding built environment. Therefore, the proposal does not satisfy cls 1.3 (g) of the EPA Act.

Clause 4.6 (4)(a)(ii) (Public Interest) Assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(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:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the WLEP 2011 are:

a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Comment:

The site is in an area of relatively flat terrain and the surrounding development is generally one, two and three storeys. The presence of a dwelling that is part 2 / part 3 storey is not unique within the Tourmaline Street streetscape, or in the general area of the subject site. The site to the south and west are both two storey dwelling houses, with Collaroy/Narrabeen beach adjoining the site to the east.

In this case, the proposed curved roof over the first floor balcony exceeds the height limit, however it could be accurately surmised that the height and scale of the development is consistent and compatible with surrounding and nearby development and satisfies this objective.

b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Comment:

It is noted that the non-compliance with the height requirement is in itself not detrimental to view loss, privacy or solar access. It is however found that the design of the proposal will have adverse amenity



impacts on the adjoining properties, with regards to view loss, visual privacy, solar access and visual bulk.

Therefore, the proposal is found to be inconsistent with this objective.

c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

Comment:

The development is not found to result in an adverse impact on the scenic quality of the Northern Beaches bush environment and therefore satisfies this objective.

d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,

Comment:

The development is not found to have any adverse or unreasonable visual impact when viewed from any surrounding public places, and therefore satisfies this objective.

Zone Objectives

The underlying objectives of the R2 Low Density Residential zone are:

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

Comment:

The site will continue to cater for providing housing for the community.

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 development is within a residential zone and accommodates a residential landuse.

It is considered that the development satisfies this objective.

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

Comment:

The new work is located within the existing building footprint, and maintains the existing eastern landscaped setback to the Collaroy/Narrabeen beach. Therefore, the proposal does not adversely affect the landscaped setting for the building.

It is considered that the development satisfies this objective.



Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. 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 by the Development Assessment Panel.

Warringah Development Control Plan

Built Form Controls

The subject site is treated as corner allotment located on Tourmaline Street and a waterway reserve, Collaroy/Narrabeen Beach. Whilst the foreshore building line setback is not applicable to the subject site, the assessment of the application for purpose of applying the applicable setback controls to the site is taken the boundary fronting the waterway reserve as rear boundary , and the side boundaries to be southern and western sides of the site.

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	up to 8m	11.1%	No
B3 Side Boundary Envelope	4m West	Encroachment of up to 1.0m for a length of 11m	25%	No
	4m South	Encroachment of up to 0.8m for 6.5m, and encroachment up to 0.4m for 10.5m	20% 10%	No No
B5 Side Boundary Setbacks	0.9m West	0.9m Garage 1.9m - 2.1m First Floor	N/A N/A	Yes Yes
	0.9m South	1.4m - 2.4m First Floor	N/A	Yes
B7 Front Boundary Setbacks	6.5m	0.6m Garage 0.0m Roofing 3.1 - 3.7m First floor	90.7% 100% up to 52.3%	No No No
B9 Rear Boundary Setbacks	6m	13.3m First Floor Balcony 10.7m Access Stairs	N/A N/A	Yes Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	37% (211.5sqm)	7.5%	No



Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	No
B3 Side Boundary Envelope	No	No
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	No
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	No	No
D8 Privacy	No	Yes
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	No	No
D12 Glare and Reflection	No	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E9 Coastline Hazard	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

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The proposal has a wall height of up to 8.0m, which does not comply with the maximum wall height of 7.2m, representing a variation of 11.1%.

Merit consideration:

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

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

The wall height is influenced by the existing excavation of the lower ground floor and the design of the curved shaped roof for the proposed first floor. The proposed curved roof design will be visually dominating when viewed from the adjoining properties.

Additionally, the proposed western facade of the first floor addition lacks any articulation or visual interest and is a blank 3.0m high, 10.5m wide wall with no openings, stepping, or change of material which is considered to be a poor design outcome and contributes to excessive visual impact when viewed from adjoining properties.

Accordingly, the development is not consistent with this objective.

- *To ensure development is generally beneath the existing tree canopy level*

Comment:

Given the location of the subject site and the views enjoyed over the subject and adjacent dwellings, trees with substantial canopy levels are seldom present as they would severely impact upon the views enjoyed from the properties on Tourmaline Street and neighbouring Ocean Street. However, currently existing on the site is a large Norfolk Island pine to be retained as part of the proposal.

Therefore, the proposed first floor addition will remain generally beneath the existing tree canopy level and hence is consistent with the objective.

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

Comment:

The proposed wall height will result in unreasonable and detrimental view loss from adjoining properties and public spaces given the height and setbacks of the development.

It is considered that the overall wall height of 8m, and the floor to ceiling height of the proposed first floor of up to 3.547m significantly impacts the reasonable sharing of views from adjoining private properties. The provision of view sharing is discussed later in this report under Part D7.

Accordingly, the development is not consistent with this objective.



- *To minimise the impact of development on adjoining or nearby properties.*

Comment:

The non-compliance with the wall height will result in unreasonable and detrimental impacts upon adjoining properties by virtue of visual impact, privacy, overshadowing or view loss.

The proposal has not been designed to break up the western wall plane by stepping in the side elevation as the wall height increases and does not include elements to improve visual interest and articulation.

Accordingly, the development is inconsistent with this objective.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Comment:

The proposed addition does not propose any excavation to the natural land form. It is acknowledged that the site is constrained by virtue of the previously excavated lower floor area.

In order to comply with the requisite built form controls of the WDCP 2011, development is envisaged to respond to the topography in order to minimise non-compliance and excessive visual impact. Such is not the case for this application.

The proposal seeks benefit from a first floor addition that sits across the majority of the ground floor existing building footprint, which results in a significant visual impact. This design solution is not considered to be an appropriate response to the site's topography and location in that the wall height will have a significant bearing on the overall height and bulk of the development, such that it will have an unreasonable impact on the amenity of adjoining properties.

Accordingly, the development is inconsistent with this objective.

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Comment:

The proposal includes a curved arc shaped roof for the upper storey that enables a 3.547m ceiling height for the proposed first floor.

It is considered that the proposed roof design has a significant impact on surrounding properties by virtue of its height and potential glare, in that the proposed colourbond colour is "natural white".

This roof design will be visually dominating when viewed from the adjoining properties. The roof design also has direct impact on the view loss to adjoining properties.

Therefore, the roof design is inconsistent with this objective.

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



with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

B3 Side Boundary Envelope

Description of non-compliance

The proposed development encroaches the side boundary envelope of 4m and 45 degrees on both the southern and western elevations as follows:

- **South Elevation** (2 sections of wall) - Encroachment of 0.8m for a length of 6.5m (20% variation) and encroachment of up to 0.4m for 10.5m (10% variation); and
- **West Elevation** - Encroachment up to 1.0m and for a length of 11.0m (25% variation).

Merit consideration

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

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

Comment:

The areas of encroachment are located on the southern and western portion of the building. Given the substantial scale of these non-compliances, it is considered that they will have a significant impact on the overall height and bulk of the development and unreasonable impacts on the amenity of adjoining properties.

The proposed western facade of the first floor addition lacks any articulation or visual interest and is a blank 3.m high, 10.5m wide wall with no openings, stepping, or change of material which is considered to be a poor design outcome and contributes to excessive visual impact when viewed from adjoining properties.

The proposed southern elevation encroachment runs for the entire length of the building, being 17.0m. Whilst an attempt to break up the southern facade has been made with windows and a step in of 1.0m, the encroachment creates an unreasonable building bulk and scale and therefore amenity impact particularly to the southern adjoining property.

Therefore, the proposal is inconsistent with this objective.

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

Comment:

The submitted shadow diagrams A-017 to A-019 drawn by Micris Design demonstrate compliance with solar access requirements of the Warringah DCP 2011. However, the envelope variation creates unnecessary overshadowing of the southern and western neighbour's private open space.



The proposed development also results in adverse privacy impacts on the southern side by virtue of the inadequate spatial separation between buildings.

Therefore, the proposal is inconsistent with this objective.

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

Comment:

The proposal does not incorporate design solutions that respond to the sites topography, so to minimise bulk and scale of the development on the adjoining properties. The proposal seeks to maximise the size and extent of the first floor addition by siting across the majority of the ground floor existing building footprint and hence the significant visual impact.

This design solution is not considered to be an appropriate response to the sites location and siting relative to adjoining properties, in that the envelope breach will have a significant bearing on the overall height and bulk of the development, such that it will have an unreasonable impact upon the amenity of adjoining properties.

Therefore, the proposal is inconsistent with this objective.

Having regard to the above assessment, it is concluded that the proposed development is not consistent with the relevant objectives of WLEP 2011 / 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.

B7 Front Boundary Setbacks

Description of non-compliance

The existing garage is located within the front boundary setback area at a distance of 1.1m from the front boundary, with the roofline sited 0.8m from the front boundary which does not comply with the minimum requirement of 6.5m.

The proposed garage extension is situated on a 0.626m setback, with the associated roofing being on a nil setback to the front boundary. This represents a variation of 90.7% and 100% respectively to Tourmaline Street.

The proposed first floor level is situated on a front setback of 3.1m to 3.7m. This represents a variation of up to 52.3%.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The existing dwelling house has a integrated into the ground floor design. The proposal includes



reducing the front setback of the garage by approximately 0.48m to provide an increased length which is over the existing hardstand driveway area.

The existing sense of openness is maintained at ground floor thereby maintaining the existing front setback distances of 2.2m to 6.796m.

There is no boundary fencing proposed for the Tourmaline Street front boundary. The landscaped corridor from the dwelling house to the adjoining Collaroy/Narrabeen Beach area remains unchanged and visible from Tourmaline Street.

Therefore, given the minor change to the front setback of the garage, combined with the existing front setbacks and open style soft landscaped area, it is found that there is minimal impact to the existing sense of openness.

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

Comment:

The front setback of the site is currently dominated by the garage parking structure. Given the site has an existing garage located forward of the front setback, the minor addition to ensure the garage can accommodate a standard car, will result in a very minor change to the overall visual quality of the street view. Therefore, the garage addition is consistent with this objective.

The associated garage roofing is proposed to be extended to the front boundary (100% variation). This is not consistent with the visual continuity or the pattern of building in the street. Therefore, the roofline should provide a greater front setback to ensure there is sufficient spatial distance between the front boundary and the associated roofline. This could be undertaken via conditions, and is therefore not a reason for refusal.

The first floor addition is retaining the existing visual continuity and pattern of buildings, being atop of the existing footprint. The adjoining building to the west currently provides a smaller setback of approximately 2.6m to Tourmaline street.

Therefore, the variation in the first floor is consistent with maintaining the visual continuity and pattern of buildings in the street.

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

Comment:

It is important to note that the context of the site is largely determined by the siting of the existing dwelling house. The proposed minor change to the existing garage will not negatively detract from the existing visual quality of the streetscape.

In order to reduce the visual impact of the garage extension within the front boundary setback, it is recommended that the associated roofing provide a greater front setback to ensure there is sufficient spatial distance between the front boundary and the roofline. Conditions could be applied to maintain a satisfactory front setback.

The proposal does not incorporate design solutions to minimise the bulk and scale of the development and the impact on the streetscape. The proposal seeks to benefit from a first floor addition that sits across the majority of the ground floor existing building footprint which will



result in a significant visual impact. This design solution is not considered to be an appropriate response to the sites location and siting relative to adjoining public and private properties, in that the front setback will have a significant bearing on the overall height and bulk of the development, such that it will have an unreasonable impact upon the amenity of adjoining properties.

Therefore, the development is inconsistent with the control.

- *To achieve reasonable view sharing.*

Comment:

The new ground floor garage addition and associated roofing will have no additional adverse impact on views.

However, there will be an adverse impact on views as a result of the proposed first floor front setback variation. This issue is discussed in more detail under clause D7 in this report.

The views affected are particularly valuable in the context of the view sharing principles, and are across a side boundary. Design changes could be undertaken, such as an increase in the front setback variation via further stepping-in of the first floor from both the north, south and western sides of the building, to provide a greater viewing corridor.

The proposal does not demonstrate a reasonable sharing of views.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / 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.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The development proposes 37% (211.5sqm) of the site as landscaped open space, which is a variation of 7.5% from the required 40% of the site.

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 proposal is for a first floor addition within the existing footprint. The site currently contains a large Norfolk Island pine tree and established landscaping that is unaltered by the proposal. The landscape setting when viewed from Collaroy/Narrabeen Beach is considered to be in accordance with Part E7 Development on land adjoining public open space.

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



Comment:

The site is generally free of any substantial topographical features such as rock outcrops. The primary location of landscaped open space will remain as per the existing (i.e. in the eastern area of the site), and the existing Norfolk Island pine on site is to be retained.

Therefore, the landscape open space provision is considered satisfactory to conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.

- *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 areas of landscaping in the front and eastern area of the site will be retained. The large Norfolk Island pine tree will also be retained and assists to mitigate the height, bulk and scale of the proposed works, and thus ensure consistency with this merit consideration.

- *To enhance privacy between buildings.*

Comment:

The existing fence lines and low level landscaping are so as not to obstruct the view lines and assist in mitigating potential privacy impacts. Thus, the proposal contains sufficient landscaped area to ensure that privacy is maintained for the property and the adjacent public land.

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

Comment:

The proposal includes changes to the private open space areas at the rear of the property, i.e. a new first floor deck area and associated roofing over the rear deck area. These changes will enhance the outdoor recreational opportunities to better meet the needs of the occupants.

Therefore, appropriate outdoor recreational opportunities that meet the needs of the occupants are provided by the development.

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

Comment:

The site contains adequate space for service functions, clothes drying and the like to service the domestic needs of the occupants.

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

Comment:

Drainage from the new works will be directed into the approved stormwater drainage system.



The remaining deep soil landscaped open space will be sufficient to cater for infiltration of stormwater.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D7 Views

During the notification period of this application, three submissions were received from neighbouring property owners, including to the south (171 Ocean Street), the west (173 Ocean Street) and the north (1 Tourmaline Street) of the subject site.

As a result, Council undertook two view loss inspections from each of the following properties:

- 171 Ocean Street, Narrabeen
- 173 Ocean St Narrabeen

The relevant sections of the submissions which relate to view loss read as follows:

171 Ocean Street, Narrabeen

"Our property, which is located immediately to the south of the development site, enjoys significant and substantial ocean views of Narrabeen Beach to the east, northeast and southeast. These views are obtained from both the ground floor and upper levels of our dwelling as well as the rear yard. Whilst it is acknowledged that the direct east view will not be compromised by the proposal there will be view loss to the north east."

173 Ocean St Narrabeen

"The proposed third storey addition will completely block views to the horizon looking east from my property. This impact will be caused by a non-compliant height. The plans propose a vast curved roof. This curved roof is an architectural design inconsistent with the predominant pitched roof designs of the area. Reference to the plans shows that much of the impact upon view loss is by non-compliant elements:

- *the ceiling height under the curved roof is 4.35 m; and*
- *that the building an roofline does not comply with the side boundary envelope requirements of the DCP.*

There has been no proper attempt to design the proposed dwelling to provide view sharing."

An assessment of the proposal against the view sharing provisions in WDCP 2011 is undertaken below.

Merit consideration

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

- *To allow for the reasonable sharing of views.*

Comment:



In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

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

Comment to Principle 1:

The views which are subject to be affected from the proposed development are as follows:

- (i) East - sand dunes, beach dune area, surf zone area, ocean, horizon
- (ii) North/East - sand dunes, beach dune area, surf zone area, ocean, horizon, North Narrabeen rock platforms in the intertidal zone.
- (iii) South/East - sand dunes, beach dune area, surf zone area, ocean, horizon, Long Reef rock platforms in the intertidal zone.

The views obtained by 171 and 173 Ocean Street dwelling houses is as follows:

- (i) East - sand dunes, beach dune area, surf zone area, ocean, horizon
- (ii) North/East - sand dunes, beach dune area, surf zone area, ocean, horizon, North Narrabeen rock platforms in the intertidal zone.
- (iii) South/East - sand dunes, beach dune area, surf zone area, ocean, horizon, Long Reef rock platforms in the intertidal zone.

The focal point for both dwellings is generally in an easterly direction and comprises of the ocean and the ocean horizon.

The views from No.171 are unobstructed to the east. To the north-east the views are over the roof of the dwelling on the subject sites with a Norfolk Island pine partly obscuring the ocean and horizon views, and views to the south-east are obstructed by the lower ground floor of the dwelling itself and the neighbouring residential flat building (No.169 Ocean St.).

The views from No.173 to the east are partially obstructed over the roof of the dwelling on the subject sites with a Norfolk Island pine partly obscuring the ocean and horizon views. The views to the north-east are partially obscured by the residential flat building (1 Tourmaline Street) and the existing Norfolk Island pine on the subject site. The views to the south-east are obstructed by the lower ground floor of No.171 Ocean Street and the residential flat building (No.169 Ocean St.).

2. What part of the affected property are the views obtained

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

Comment to Principle 2:



The views from both affected properties are enjoyed over side boundaries.

Number 171 Ocean Street

Number 171. Ocean Street was designed to capitalise on the amenity of the coastal reserve and ocean views.

The views enjoyed from No.171 Ocean Street ground floor are principally from the internal living room and outdoor terrace areas over the eastern side boundary to the ocean. The views of the surf zone, ocean and horizon are obtained from a sitting and standing position.

The views from the first floor are principally from the outdoor rear terrace area, the main bedroom, and two bedroom/offices (from all rear windows and doors). These views are obtained over the eastern rear boundary and both the northern and southern side boundaries.

The eastern and south-eastern view is unaffected by the proposal.

The effected view to the north-east, including vegetated sand dunes, beach dune area, surf zone area, ocean views, North Narrabeen rock platform in the inter-tidal area and the ocean horizon are obtained from a sitting and standing position.

No.173 Ocean Street

The views enjoyed from No.173 Ocean Street are principally from the first floor balconies, the living and dinning room, kitchen and bedroom. There are no views from the ground floor.

The views are obtained over the eastern side boundary and both the northern front and southern side boundary. The view of the ocean and ocean horizon to the east (from all rear windows and doors) is partially obscured by the roof of the dwelling on the subject site and Norfolk Island pine. These views are obtained from a sitting and standing position.

The views to the north-east and south-east, including the vegetated sand dunes, the beach dune area, surf zone area, ocean and horizon views are obtained from a sitting and standing position.

It is considered that the view opportunities currently afforded to No.173 Ocean Street could be more reasonably shared by increasing specific setbacks of the proposed development.

3. Extent of impact

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

Comment to Principle 3:

The applicant has provided a view loss analysis for the proposal, however no photo montages were provided. There are details within the view analysis which are believed to be inaccurate in their depiction of the view loss, such as the statement that the office on the first floor of No.173 Ocean Street has no existing view and that the proposal has no significant impact on the



adjoining properties views.

However, assessment of the proposal against the View controls in WDCP 2011 has been undertaken and the proposed development does not comply with the built form controls and will encroach into the view corridor for both properties, significantly impacting the area of views available.

171 Ocean Street

Given the design and layout of the home, ocean views are obtained from the majority of the internal and external spaces over the rear boundary of that property. The dwelling house will retain expansive uninterrupted ocean views towards the east.

However, the view lines from the first floor to the north-east, are across a side boundary and will be significantly impacted.

In conjunction with the planning principle, the north-east view loss associated with the proposed development is qualitatively assessed as follows:

- Outdoor Terrace - Moderate to severe
- Master Bedroom - Moderate to severe
- Bedroom/Office 1 - Moderate
- Bedroom/Office 2 - Moderate

173 Ocean Street

Given the design and layout of the home, ocean views are obtained from the majority of the first floor internal and external spaces and are over the side boundary.

All views to the east of the property from a sitting and standing position will be severely affected by the proposal.

In conjunction with the planning principle, the north-east view loss associated with the proposed development is qualitatively assessed as follows:

- Outdoor Terrace 1 and 2 - moderate to severe
- Lounge - minor to moderate
- Dining - moderate
- Bedroom - moderate to severe

The view impact is ranked as moderate to severe due to the impact on high quality ocean views. In this regard the proposal does not demonstrate a reasonable sharing of views.

4. Reasonableness of the proposal that is causing the impact

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



Comment to Principle 4:

The subject development does not comply with the controls of the WDCP 2011 and in the circumstances it is found that the view loss for the neighbouring properties is unacceptable and warrants the refusal of the application.

These non-compliance, being wall height, side boundary envelope and front boundary setback give rise to unreasonable view impacts.

It is acknowledged that context and siting of the existing dwelling on the subject site, makes views for No.171 and No.173 extremely vulnerable to any form of two storey development. However, it is concluded that the extent of the breaches of the planning controls is excessive and a more skillful and compliant design would vastly improve the outcome.

It is considered that an increase in the front setback, combined with a reduction in the wall height and stepping-in of the side wall (southern and western) would provide the applicant with a similar development potential and amenity but significantly reduce the impact on the view corridors of neighbours. Design change to the roof, such as incorporating a flat roof, would also result in a improvement to the provision of views and without being detrimental to the amenity of the occupants of 2 Tourmaline Street.

Therefore, the proposed first floor addition is considered unreasonable in the circumstances of this application in that the application does not demonstrate a reasonable sharing of views.

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

Comment:

The proposal has a high-set curved arch shaped roof design, with a non-complying front setback, combined with a building envelope encroachment that will result in unnecessary view impacts.

- *To ensure existing canopy trees have priority over views.*

Comment:

A large Norfolk Island Pine to be retained as part of the proposal. Conditions could be applied to ensure that impacts from the proposal on the Norfolk Island Pine are acceptable.

Having regard to the above assessment, it is concluded that the proposed development is not consistent with the relevant objectives of WLEP 2011 / 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.

D8 Privacy

In a dense urban environment, it is generally accepted that complete privacy is an unrealistic expectation.

Privacy and the potential for overlooking was considered in the assessment of this application in conjunction with multiple site visits.



There are no additional privacy impacts in relation to No. 173 Ocean Street (property to the west) as there are no proposed windows or openings to the western elevation.

There are privacy impacts in relation to No. 171 Ocean Street (property to the south) due to the first floor windows and rear deck area.

The adjoining property to the south has private open space adjoining the length of the subject site and its proposed first floor. The additional windows and rear balcony on the southern elevation of the subject site will have views directly into the private open space of No. 172 Ocean Street.

In summary, the proposal does not incorporate design solutions to minimise privacy impacts on the southern adjoining property. However, conditions could be applied to maintain a satisfactory level of privacy to No. 171 Ocean Street.

Therefore, this issue does not warrant refusal of the application.

D9 Building Bulk

Merit consideration

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

- *To encourage good design and innovative architecture to improve the urban environment.*

Comment:

The planning outcome is not site responsive in that the multiple variations to the built form controls of WDCP 2011 do not relate to any natural constraints of the site (such as slope). Given the substantial scale of these non-compliances, it is considered that they will have a significant impact on the overall height and bulk of the development and will have caused unreasonable amenity impacts, including view loss for adjoining properties.

Therefore, the proposal is inconsistent with this objective.

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

The proposal seeks to benefit from a first floor addition that sits over the majority of the ground floor existing building footprint which will have a significant visual impact. The design is not considered to be an appropriate response to the site's location and siting relative to adjoining properties, in that the front setback and envelope will have a significant bearing on the overall height and bulk of the development, such that it will have an unreasonable amenity impact upon surrounding properties.

Additionally, the proposed western facade of the first floor addition lacks any articulation or visual interest and is a blank 3.m high, 10.5m wide wall with no openings, stepping, change of material which is considered to be a poor design outcome and contributes to excessive visual impact when viewed from adjoining properties.

The encroachment of the side boundary envelope on the southern side runs for the entire length of the building, being 17.0m. Whilst an attempt to break up the southern facade has been made



with windows and a step in of 1.0m, the encroachment will create an unreasonable impact on the amenity of the southern adjoining property due to the excessive visual bulk.

Therefore, the proposed addition will appear overbearing and visually dominant and the design does not provide sufficient articulation.

Therefore, the proposal is inconsistent with this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / 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.

D11 Roofs

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 innovative design solutions to improve the urban environment.*

Comment:

The existing dwelling house has a low-style flat roof. The proposal, which provides an arc shaped curved roof design, is not considered to be an innovative design solution due to the impact this style of roof has on the overall height and bulk of the development and the unreasonable amenity impacts on the southern adjoining property. This roof design also impacts on the extent of the view loss for adjoining properties and will result in loss of significant views.

It is considered that an alternate roof designs would achieve compliance with the height control and have a significantly lesser impact by virtue of privacy, amenity, views and visual impact.

Therefore, proposal is inconsistent with this objective.

- *Roofs are to be designed to complement the local skyline.*

Comment:

The proposed roof design is generally consistent with the existing roof lines. However, due to the unreasonable amenity impacts upon adjoining properties the proposed roof design is unsatisfactory.

Therefore, proposal is inconsistent with this objective.

- *Roofs are to be designed to conceal plant and equipment.*

Comment:

This objective relevant to the proposal.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / 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.

D12 Glare and Reflection

The proposed curved roof is to have a colour of 'Natural White'.

This light colour will create unnecessary glare and sunlight reflectivity, and will significantly impact the amenity of the surrounding private properties.

Therefore, the proposal is inconsistent with objectives.

However, conditions could be applied to require the proposed colour of the roof to have a medium to dark range (BCA classification M and D) to maintain a satisfactory solar reflection to the neighbouring properties.

Consequently, as a the condition would ensure that excessive glare or reflectivity nuisance does not occur as a result of the development it does not warrant the refusal of the application.

E4 Wildlife Corridors

The development application does not seek the modification or removal of any native vegetation and thereby, complies with the requirements of E4.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is inconsistent with the principles of Crime Prevention Through Environmental Design.

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

This report provides a comprehensive assessment of the Development Application for the alterations and additions to 2 Tourmaline Street, Narrabeen.

Public Exhibition

The public exhibition of the application resulted in three (3) response from neighbouring residents. Those objecting to the proposal raised concerns in relation to the building height and consequent visual impacts of the development, building bulk, privacy, overshadowing and the view loss that would be generated by the development.

The issues raised in the submissions have been addressed in the "Public Exhibition & Submissions Received" section in this report.

Referrals

The application was referred to internal departments and external authorities.

External: there was no response from Ausgrid within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Internal: Council's Landscape officer raised fundamental concerns with the proposal and its impact on the sites existing Norfolk Island pine. Council's Natural Environment and climate change sections (Bushland and Coast and Catchment) has indicated that the proposal is acceptable subject to specific conditions.

Assessment of the Development Application

The works sought as a part of this application include a first floor addition siting across the majority of the ground floor existing building footprint.

The assessment of the proposed development against the provisions of WLEP 2011 found that the proposal does not comply with the 'Height of Buildings' Development Standard under the WLEP 2011 which permits a maximum building height of 8.5m within the R2 – Low Density Residential zone.

Whilst the building height variation is minor and confined to the rear section of the roofline over the first floor deck area, when combined with the variations to the front setback, wall height, and side boundary envelope it creates unreasonable building bulk and moderate to severe view loss. Hence, the proposal significantly affects the amenity of the adjacent properties and is unreasonable within its context. Furthermore, the applicant has not provided sufficient justification for the substantial departure from the Development Standard.

In addition, the assessment of the proposed development against the provisions WDCP 2011 found that the proposal is not consistent with a number of clauses, i.e wall height, side boundary envelope and front boundary setback. Given the substantial scale of these non-compliances it is considered that they will have unreasonable amenity impacts, including moderate to severe view loss for adjoining properties.

Council's Landscape Officer concluded that there is insufficient information submitted with the application as ascertain the likely impact of the proposed development on the sites Norfolk Island



pine.

Recommendation - Refusal

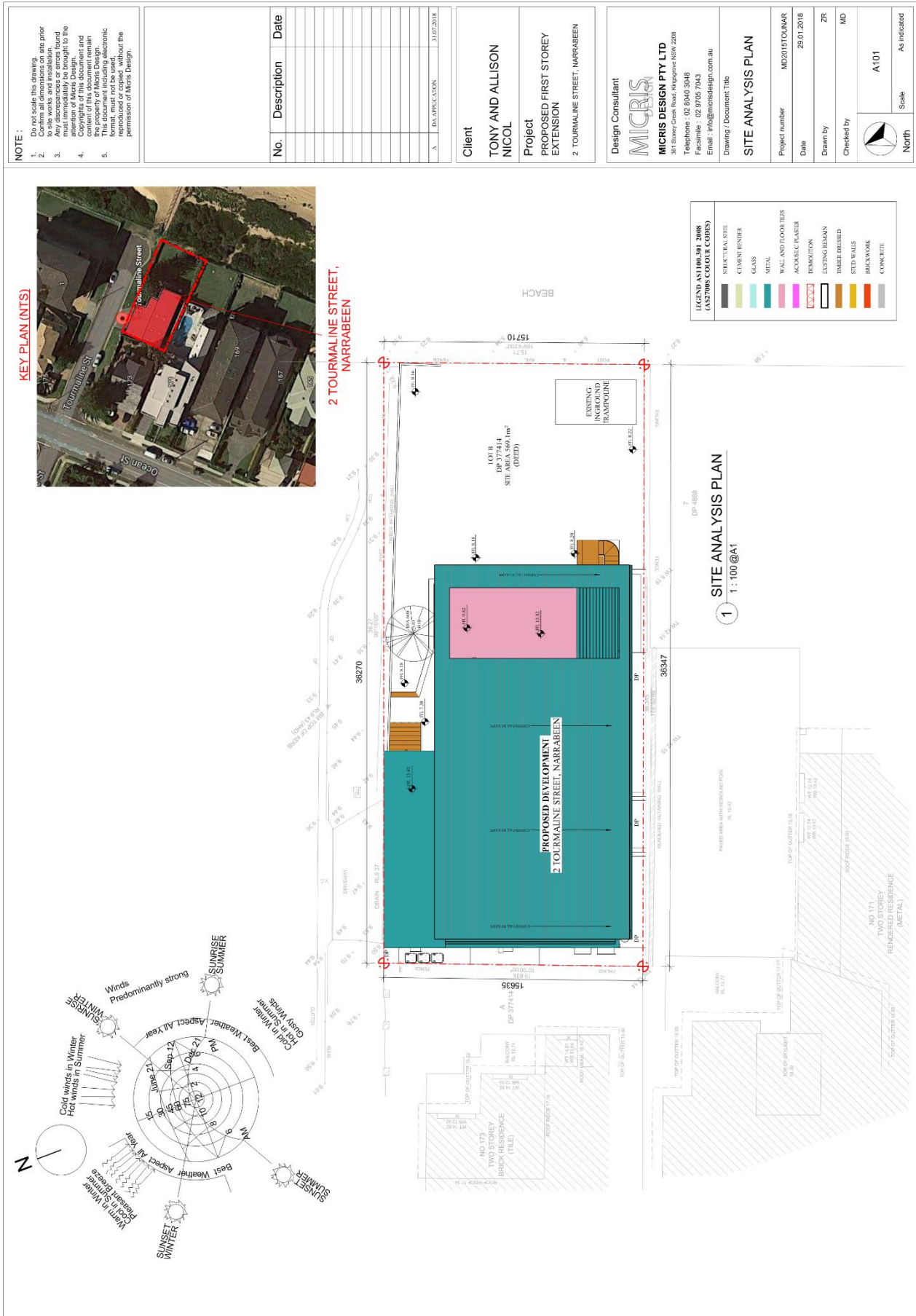
In summary, the proposal should be refused as the design is unreasonable for the site by virtue of the level of non-compliance that creates unreasonable amenity impacts and moderate to severe view loss to the adjoining properties.

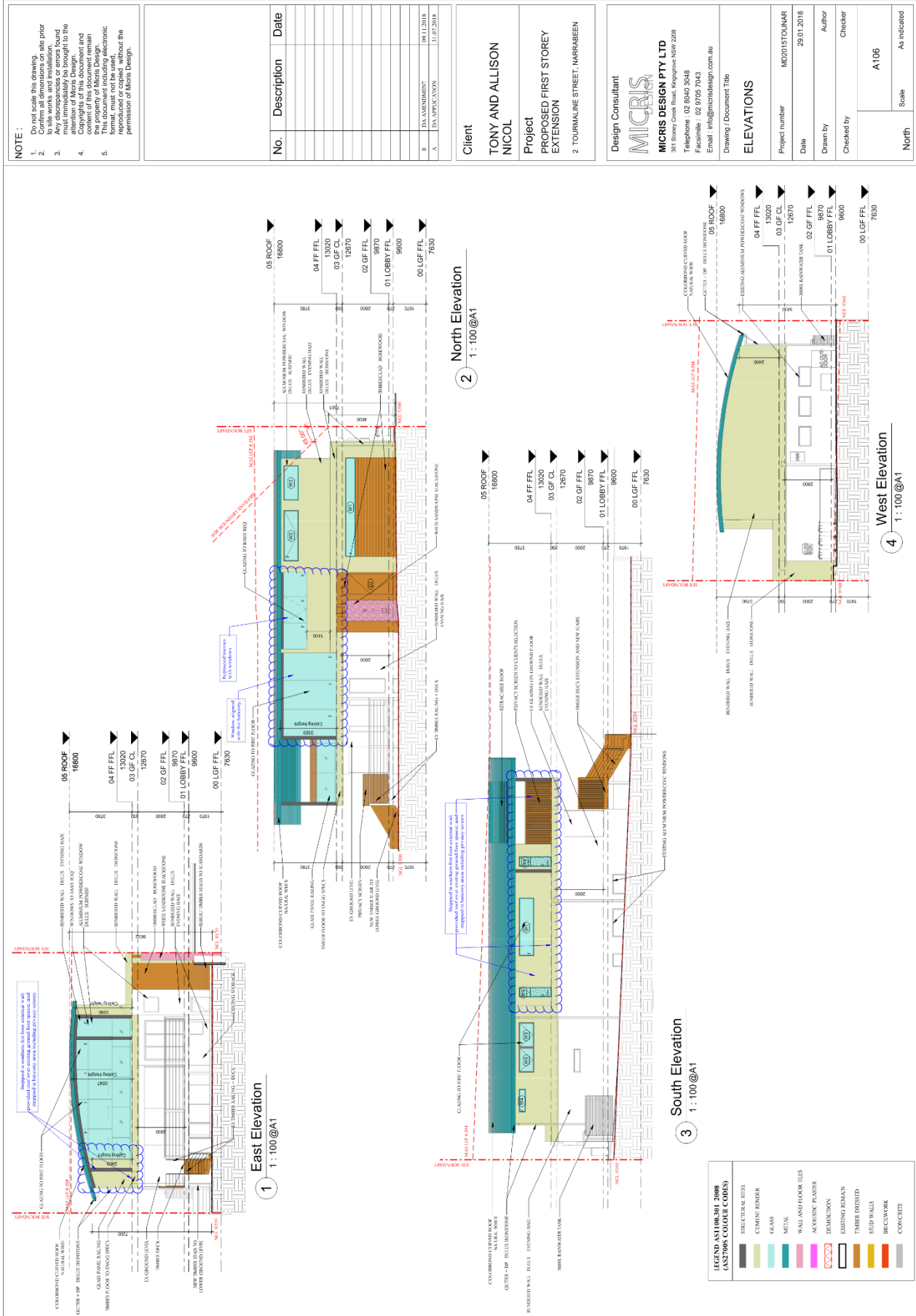
It is considered that all processes and assessments have been satisfactorily addressed and that proposed development does not constitute the proper and orderly planning for the site or the locality. It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

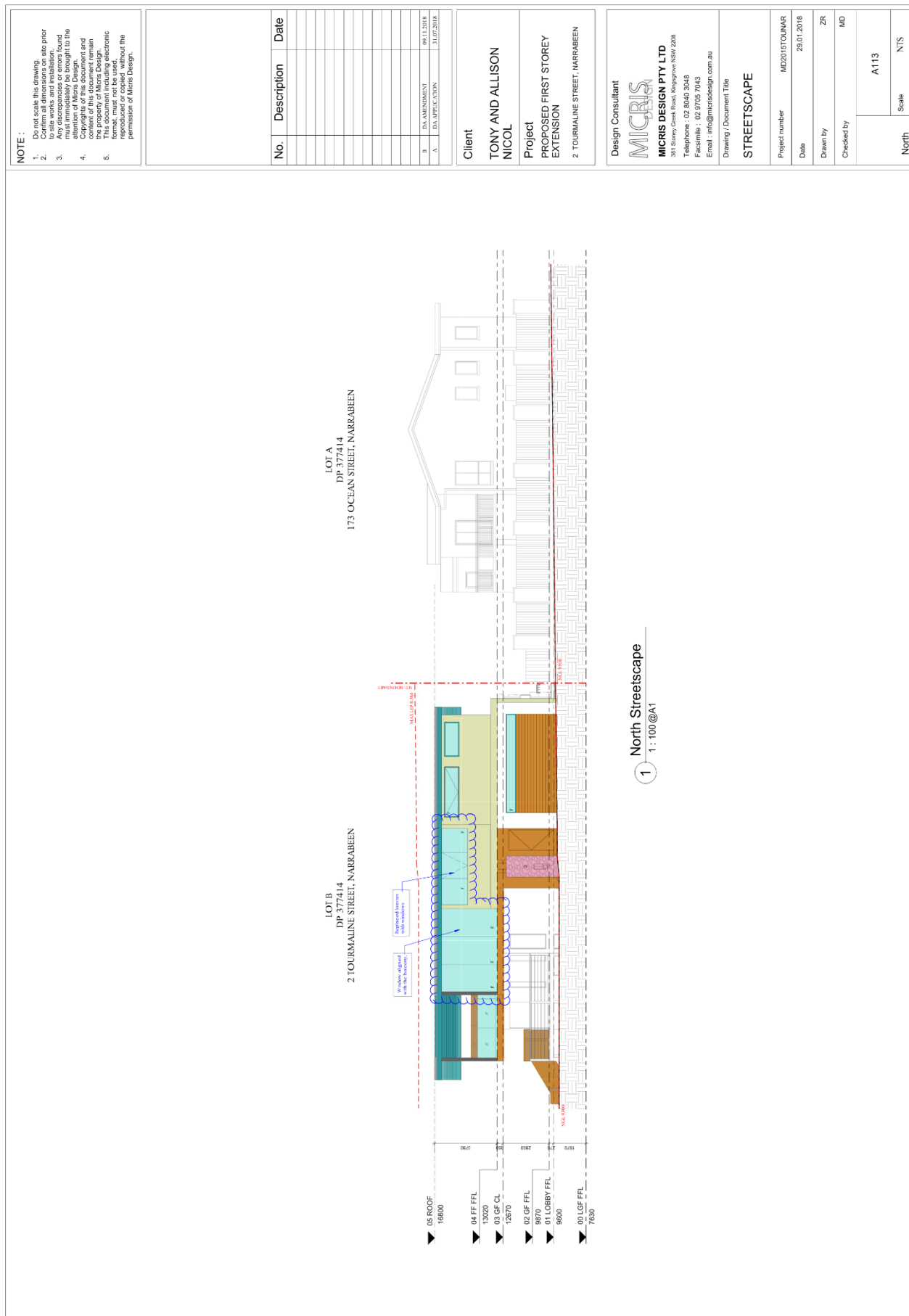
RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2018/1290 for the Alterations and additions to an existing dwelling house on land at Lot B DP 377414,2 Tourmaline Street, NARRABEEN, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of Buildings of the Warringah Local Environmental Plan 2011.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B3 Side Boundary Envelope of the Warringah Development Control Plan 2011.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B7 Front Boundary Setbacks of the Warringah Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D7 Views of the Warringah Development Control Plan.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D11 Roofs of the Warringah Development Control Plan.







ITEM 3.6 **DA2018/0567 - 39 CABBAGE TREE ROAD, BAYVIEW -
CONSTRUCTION OF A RECREATION FACILITY (INDOOR)
COMPRISING A TWO (2) LANE COMMERCIAL SWIMMING
POOL AND GYM WITH ASSOCIATED FACILITIES, CAR
PARKING AND LANDSCAPING**

REPORTING MANAGER **RODNEY PIGGOTT**

TRIM FILE REF **2018/767478**

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 **refuse** Development Application DA2018/0567 for construction of a recreation facility (indoor) comprising a two (2) lane commercial swimming pool and gym with associated facilities, car parking and landscaping on land at Lot 2 DP 531960, 39 Cabbage Tree Road, Bayview subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/0567
Responsible Officer:	David Auster
Land to be developed (Address):	Lot 2 DP 531960, 39 Cabbage Tree Road BAYVIEW NSW 2104
Proposed Development:	Construction of a recreation facility (indoor) comprising a two (2) lane commercial swimming pool and gym with associated facilities, car parking and landscaping
Zoning:	RE2 Private Recreation
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Janine Elizabeth Crawford
Applicant:	Turnbull Planning International Pty Ltd
Application lodged:	11/04/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	23/04/2018 to 07/05/2018
Advertised:	Not Advertised
Submissions Received:	5
Recommendation:	Refusal
Estimated Cost of Works:	\$ 2,409,000.00

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

Pittwater Local Environmental Plan 2014 - Zone RE2 Private Recreation
 Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
 Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
 Pittwater Local Environmental Plan 2014 - 7.10 Essential services
 Pittwater 21 Development Control Plan - A4.9 Mona Vale Locality
 Pittwater 21 Development Control Plan - B4.6 Wildlife Corridors
 Pittwater 21 Development Control Plan - B4.22 Preservation of Trees and Bushland Vegetation
 Pittwater 21 Development Control Plan - B5.12 Stormwater Drainage Systems and Natural Watercourses
 Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
 Pittwater 21 Development Control Plan - C2.1 Landscaping
 Pittwater 21 Development Control Plan - C2.11 Signage
 Pittwater 21 Development Control Plan - C2.14 Commercial Swimming Pools
 Pittwater 21 Development Control Plan - C2.20 Public Road Reserve - Landscaping and Infrastructure
 Pittwater 21 Development Control Plan - D9.1 Character as viewed from a public place
 Pittwater 21 Development Control Plan - D9.2 Scenic protection - General
 Pittwater 21 Development Control Plan - D9.3 Building colours and materials
 Pittwater 21 Development Control Plan - D9.6 Front building line
 Pittwater 21 Development Control Plan - D9.9 Building envelope

SITE DESCRIPTION

Property Description:	Lot 2 DP 531960 , 39 Cabbage Tree Road BAYVIEW NSW 2104
Detailed Site Description:	<p>The site is a triangular shaped lot located on the southern side of Cabbage Tree Road. It has a frontage (northern boundary) of 77.23m, a south western boundary of 38.25m, a south eastern boundary 54.84m, and a surveyed area of 980.2sqm. The site is currently vacant. It falls within the RE2 Private Recreation zone, and within the Mona Vale locality under the Pittwater DCP.</p> <p>There is a gradual fall from north to south, and a waterway running nearly parallel with the south eastern boundary, mainly on the adjoining golf course, but also on the subject site in the southern corner. There is also a watercourse (or drainage channel) running roughly parallel with the front boundary, between the road and the subject site, which joins into the southern watercourse to the east of the site.</p> <p>The site is well vegetated, with a row of mature casuarina</p>

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trees running along the front boundary, and other mature trees and ground cover located on site.

The site is surrounded entirely to the south by the adjacent golf course. The golf course maintenance depot is adjacent to the west. There are detached dwellings on R2 Low density residential zoned land directly across the road to the north.

Map:



SITE HISTORY

A search of Council's records has revealed the following:

A prelodgement meeting was held with Council on 8 August 2016 to discuss a 'possible recreation facility (indoor)'. The notes from this meeting give general advice relating to relevant planning controls, but do not go into any specifics regarding any preliminary designs.

Application N0045/12 for Construction of an Affordable Rental Housing development (attached dual occupancy) and strata subdivision was refused by Council on 27/06/2013.

Application N0085/14 for Construction of 2 serviced self-care housing dwellings under SEPP Housing for Seniors or People with a Disability 2004 and strata subdivision into two lots was refused by Council on 15/02/2016.

Application R0002/10 for rezoning of the site was refused by Council on 20/12/2010.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves construction of a two storey building, raised on piles due to flood controls, and use of the building as a recreation facility (indoor).

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The building is proposed to have a Colorbond steel roof with painted fibre cement sheet clad walls.

The building will be comprised of the following:

Ground Floor Plan

- 2-lane commercial swimming pool (15m in length and between 2.5m and 3.7m in width)
- bathroom facilities
- outdoor patio area
- parking for 7 vehicles including 1 car space for people with disabilities.
- Pool pump
- Bin store

First Floor Plan

- Gym and deck
- Exercise room
- Change rooms
- Office
- Store Plant room

Operating hours

Proposed operating hours are 8.00am to 6.30pm Monday to Saturday (both inclusive).

Staff

The maximum number of staff to be employed or otherwise engaged in the recreation facility is 4. However, at any one point in time, only 2 staff members (namely, one coach and one other staff member [administration/management]) would be required to be present and active at the facility. Cleaners would work outside of opening hours.

Patrons

The Statement of Environmental Effects states that the facility would primarily operate as a recreation establishment for seniors (meaning those over 55), with details as follows:

- one session of 30 minutes duration per operating hour;
- maximum of 16 adults per hour; and

Insofar as the operations of the facility, it is envisaged that clients would come from nearby retirement villages or private homes for light recreation and rehabilitation purposes. The facility is not to be used as a children's learn to swim facility. The use of the gym on the first floor of the facility would generate a clientele of some 5-6 persons per day.

Shuttle bus

The Statement of Environmental Effects also states that a shuttle bus will be provided to collect clients from nearby, although the bus will be subject to demand.

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	Pittwater 21 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 can be 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.</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 can be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be 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> <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</p>



Section 4.15 Matters for Consideration'	Comments
	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	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. In summary, the proposal is considered to be inconsistent with a number of relevant clauses, and as such is recommended for refusal.</p> <p>(ii) Social Impact The proposed development will have a detrimental social impact in the locality considering the character of the proposal. The proposal is not considered to generally maintain the character of the area, nor achieve the desired future character of the area as set out in the locality statement.</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 potentially suitable for the proposed use, but is not suitable for the development as proposed, for the reasons discussed within this report.
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	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Pittwater LEP 2014 and Pittwater DCP and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Bayview Golf Club Ltd	Po Box 312 MONA VALE NSW 1660
Mr Andrew Norman Tiede	50 A Cabbage Tree Road BAYVIEW NSW 2104

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Name:	Address:
Mr James William Matthews	48 Cabbage Tree Road BAYVIEW NSW 2104
Mrs Marie Ann Matthews	48 Cabbage Tree Road BAYVIEW NSW 2104
M Van Den Bosch	44 Cabbage Tree Road BAYVIEW NSW 2104

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

- Non-compliance with planning controls
- Inconsistency with zone objectives
- Flooding and stormwater
- Trojan horse application for non-permissible uses
- Environmental impacts - water management
- Cabbage tree road issues
- Tree removal and lot maintenance
- Inconsistency with desired future character
- Inadequate parking and parking safety
- Distance from bus stop and pedestrian danger
- Negative net community benefit
- Vermin
- Visual impact
- Habitat for endangered species
- Erosion and sediment control
- Damage to property and infrastructure
- Insufficient lot size for proposed development
- Inadequate access for delivery vehicles and garbage trucks
- Local amenity
- Out of character with the residential area

The matters raised within the submissions are addressed as follows:

- Non-compliance with planning controls
Comment:
Concerns were raised with non-compliance with the relevant planning controls. These concerns are supported to the extent outlined within this report, and in the recommended reasons for refusal.
- Inconsistency with zone objectives
Comment:
Concerns were raised that the proposal is inconsistent with the zone objectives. These concerns are supported to the extent discussed within this report. The proposal is not considered to achieve the objectives of the RE2 zone.
- Flooding and stormwater
Comment:
Concerns were raised with flooding and stormwater. Council's Engineer has assessed the proposal and is not satisfied with respect to the information provided regarding overland flows - see Development Engineers Referral Response. The objections are supported in this regard. However, this issue is likely to be one that could be adequately addressed by additional information.

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- Trojan horse application for non-permissible uses
Comment:
Concerns were raised that the current application was a 'Trojan horse' for future non-permissible uses. Notwithstanding that non-permissible uses would remain non-permissible in the future unless the LEP was amended, Council can only assess the proposed use and building works for which the current application has been lodged. The proposed use is a permissible use in the zone. However, there are other issues with the application, as discussed throughout this report, which means it is recommended for refusal. No further consideration is required in respect of this issue.

- Environmental impacts - water management
Comment:
Concerns were raised with the effects of the development on water management and impacts on the watercourses. These concerns are supported to the extent discussed within this report, particularly with regard to Council's Development Engineer comments.

- Cabbage tree road issues
Comment:
Concerns were raised with the impact of the development on Cabbage Tree Road. These concerns are supported to the extent discussed within this report, particularly with regard to the lack of on street parking available in close proximity to the site.

- Tree removal and lot maintenance
Comment:
Concerns were raised with regard to the proposed tree removal and lot maintenance in the future. The concerns with regard to tree removal are supported to the extent discussed within this report. The proposal will result in removal of the majority of vegetation on site. With regard to maintenance, it seems likely that if a building and business are approved on site, lot maintenance would be more regularly carried out than is currently the case with the vacant lot. The concerns are not supported in that respect.

- Inconsistency with desired future character
Comment:
Concerns were raised that the application is inconsistent with the desired future character of the area. These concerns are supported to the extent outlined within this report and in the reasons for refusal.

- Inadequate parking and parking safety
Comment:
Concerns were raised that the proposal provides insufficient parking and unsafe parking. These concerns are supported to the extent outlined in this report and in the reasons for refusal. The proposed parking is not considered to be unsafe. However, the number of parking spaces is considered to be insufficient, and Council's Development Engineers have stated that the information provided with the application is inadequate to assess the appropriateness of the design of the driveway access.

- Distance from bus stop and pedestrian danger
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Comment:

Concerns were raised with the distance to the nearest bus stop, and potential for pedestrian danger. These concerns are supported to the extent outlined in this report and in the reasons for refusal, particularly in regard to insufficient parking provision on site.

- Negative net community benefit

Comment:

Concerns were raised that the proposal would result in negative impact on the community. The proposal intends to construct a recreational facility for use by the local community, and in this regard may be expected to provide some community benefit. However, the form proposed, and the environmental impacts, are not considered to be consistent with the desired future character of the locality and other relevant planning controls as discussed in this report. In that respect, the concerns are supported.

- Vermin

Comment:

Concerns were raised that the design of the building would lead to the site becoming a breeding ground for vermin. The proposed building is raised in response to flood requirements, and the open area beneath is not considered to be significantly more favourable to vermin than the present vacant lot. It is likely that if the building was approved the site would be better maintained than is currently the case, particularly with regard to any vermin problems and their likely negative impacts on any recreation business operating out of the site. The concerns raised in this respect are not supported, and are not a recommended reason for refusal.

- Visual impact

Comment:

Concerns were raised with the visual impact of the development. The southern side of Cabbage Tree Road is occupied by the golf course, and is largely free of structures, with the exception of the golf course maintenance sheds to the west of the subject site. These sheds are generally relatively low to the ground and do not have a significant visual impact on the area. The building proposed under this application will create a significant visual impact, given its size and location. The lack of room left on site for landscaping and vegetation to screen the built form and mitigate against visual impacts is considered inadequate, and in this regard the concerns are supported.

- Habitat for endangered species

Comment:

Concerns were raised with respect to endangered species. These concerns are supported to the extent discussed within the Natural Environment- Biodiversity Referral Response in this report.

- Erosion and sediment control

Comment:

Concerns were raised regarding erosion and sediment control, and potential impacts on the waterway. This is an issue that would need to be adequately managed during construction. If the application was approved, conditions of consent could be imposed to adequately satisfy this issue, and it is not a recommended reason for refusal.

- Damage to property and infrastructure

Comment:

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Concerns were raised with respect to damage to property and infrastructure. Council's Development Engineers have requested an overland flow report with respect to the proposed driveways. This issue has not been adequately satisfied by the application, and in this regard the concerns are supported.

- Insufficient lot size for proposed development

Comment:

Concerns were raised that the proposal is too large for the lot it is proposed on. These concerns are generally supported, as discussed throughout this report. The proposed building will occupy the vast majority of the site, with little room left over for landscaping and vegetation to mitigate the visual impacts of the development, and will result in removal of the majority of existing on site mature vegetation. The application also falls well short of the required amount of on site parking, which is another sign that the proposal is an over-development of the site.

- Inadequate access for delivery vehicles and garbage trucks

Comment:

Concerns were raised with respect to access for delivery vehicles and garbage trucks. The application was referred to Council's Development Engineers and Traffic Engineers who raised no concerns in this regard, although an overland flow report is required to determine the suitability of the proposed driveway design. The ability of the site to be serviced in respect of deliveries and waste collection is not a recommended reason for refusal.

- Local amenity

Comment:

Concerns were raised with respect to impacts on local amenity. These concerns are supported in relation to visual impacts and lack of landscaping, and the shortfall in parking, which seems likely to result in some level of on-street parking in the neighbouring residential area.

- Out of character with the residential area

Comment:

Concerns were raised that the proposal is out of character with the residential area. The site falls within the RE2 Private Recreation zone, although it is adjacent to R2 Low Density Residential zone. As discussed in this report, the proposal is not considered to be consistent with the desired future character of the locality, and the concerns raised are supported in this regard.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments		
Building Assessment - Fire and Disability upgrades	No objections subject to conditions to ensure compliance with the Building Code of Australia.		
Environmental Health (Acid Sulphate)	<table border="1"> <tr> <td>Was sufficient documentation provided</td><td>Not Clear</td></tr> </table>	Was sufficient documentation provided	Not Clear
Was sufficient documentation provided	Not Clear		
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Internal Referral Body	Comments	
	appropriate for referral?	
	Are the reports undertaken by a suitably qualified consultant?	NO
	What class is the site in on the PLEP 2014 Acid Sulfate Soils Map?	Class 2
	Is there risk of acid sulfate soil disturbance?	Not clear
	Will the excavations exceed the depth determined in the risk map?	Not clear
	Does the report adequately address acid sulfate risk mitigation?	NO
	Have you considered disposal of water during excavation, pump out etc.	YES
	Have you considered disposal of contaminated soil.	YES
	General Comments Environmental Health requests test holes to be dug before work commences as there is potential for Acid Sulfate disturbance in accordance with the Acid Sulphate Soils guidelines. This can be managed with a condition	
	Recommendation	APPROVAL - subject to conditions
Environmental Health (Industrial)	Comments completed by: Anthony Foy EHO	
	Date:23.4.2018	
	Is the proposal for an industrial use?	YES
	Was sufficient documentation provided appropriate for referral?	YES
	Are the reports undertaken by a suitably qualified consultant?	YES
	Have you reviewed the Statement of Environmental Effects, and consider ongoing use, such as: - Processes with emphasis on potential pollution (air, noise, water and land) - Hazardous Materials, liquids stored on site - Waste storage, disposal. - Mechanical ventilation	YES
	Have you Consider impact of noise, hours of operation, location to nearest residential, location of equipment, times of deliveries, noise management plans, acoustic reports etc.	YES



Internal Referral Body	Comments	
	If the proposal is a scheduled premises have you recommended that the DAO refer the proposal to OEH?	N/A
	<p>General Comments</p> <p>No Objections -including proposed operating hours which need documenting on DA.</p> <p>Issues considered include :</p> <p>Noise Public pool Coffee Shop All matters can be dealt with by way of conditions</p>	
	Recommendation	APPROVAL - subject to conditions
	<p>Comments completed by: Anthony Foy EHO</p> <p>Date: 23.4.2018</p>	
Landscape Officer	<p>The landscape component of the proposal is unacceptable due to the loss of existing trees that will result in the built form becoming the dominant streetscape element. Pittwater DCP 21 requires that development is secondary to landscaping and vegetation.</p> <p>Council's Landscape section has assessed the proposal against the following Pittwater 21 DCP 2014 Controls:</p> <p>B4.22 Preservation of Trees and Bushland Vegetation</p> <p>C2.1 Landscaping</p> <p>It is considered that the built form viewed from Cabbage Tree Road, will dominant the streetscape character. The built form massing will result in a dominant built form that is not capable of integrating with the landscape. This is caused by the removal of 59 of the 85 existing trees. It is likely that upgrading existing utility services for this development may result in further removal of existing trees.</p> <p>The development does not recognise the desirable elements of the existing character of the area that is dominated by tall canopy trees. The removal of a large number of existing trees will change the physical and visual nature of the existing streetscape character, changing the neighbourhood amenity from a scenic landscape to a built form character.</p>	



Internal Referral Body	Comments
	<p>C2.1 Landscaping, outcomes that are not achieved including: A built form softened and completed by landscaping. The extent of built form presented by the proposed development limits effective and substantial landscaping and tree canopy replacement to soften the built form. No replacement tree planting is proposed along the Cabbage Tree Road frontage. The proposed landscape gardens are limited in width and soil volume area that only shrub planting will be successfully supported.</p> <p>D9.1 Character as viewed from a Public Place, is not satisfied, with the development proposal failing to provide a built form that is secondary to landscaping and vegetation. The built form will dominate the streetscape due to the loss of the existing trees. The existing row of Casuarina cunninghamiana (River She-Oak), in association with the existing Eucalyptus robusta (Swamp Mahogany) provide the existing landscape amenity to the streetscape, and retention and protection of this streetscape element is warranted to allow for the integration of the development into the landscape character.</p> <p><u>Planner Comment:</u> The issues discussed above have been included as recommended reasons for refusal under the relevant clauses.</p>
NECC (Bushland and Biodiversity)	<p>Bushland and Biodiversity Comments 18 September 2018</p> <p>Following review of the relevant reports and plans (listed below), Bushland and Biodiversity provide the following updated comments on the proposed Development Application 2018/0567 at 39 Cabbage Tree Road, Bayview (DA).</p> <p>In relation to these comments, Council has reviewed the following documents:</p> <ul style="list-style-type: none"> • Biodiversity Impact Assessment prepared for the site in August 2018, prepared by Narla Environmental Pty Ltd, August 2018 • Landscape Concept Plan prepared by Jocelyn Ramsay and Associates Pty Ltd, August 2018 • Arboricultural Impact Assessment prepared by Urban Forestry Australia, March 2018 <p>Pittwater 21 Development Control Plan 2014 B4.6 Wildlife Corridors</p> <p>Outcomes Retention and enhancement of wildlife corridors ensuring/providing the connection of flora and fauna habitats. (En)</p> <p>Controls Development shall not directly impact on / or significantly reduce / degrade habitat for locally native species, threatened species, endangered populations or endangered ecological communities.</p> <p>Does not comply Development shall retain, and provide an adequate buffer to, wildlife</p>

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Internal Referral Body	Comments
	<p>corridors. Does not comply Development shall provide wildlife corridors via creation, restoration, and / or regeneration of habitat. Partial compliance Development shall not result in a significant loss of canopy cover or a net loss in native canopy trees. Does not comply Development shall ensure that at least 60% of any new planting incorporates native vegetation (as per species listed in Native Plants for Your Garden available on the Pittwater Council website). Landscaping is to be outside areas of existing bushland and not include environmental weeds. Compliant Planting is to maximise linkage within the wildlife corridor. Partial compliance Caretakers of domestic animals shall prevent them from entering areas of wildlife habitat. N/A Fencing, where permitted, shall be passable by native wildlife. N/A</p> <p>General Comments The DA is located wholly within a High Priority wildlife corridor under the Pittwater 21 Development Control Plan 2014 (DCP). High Priority wildlife corridors are considered as areas essential for fauna movement under the DCP.</p> <p>The DA results in the direct removal of 980 sq.m of the endangered ecological community Swamp Sclerophyll Forest on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Coast Bioregions (EEC). Although it is recognised that the patch of EEC is disturbed in the understorey, the proposal will result in the removal of 21 trees from the EEC. Five of these are mature <i>Eucalyptus robusta</i> (Swamp Mahogany) trees between 10 and 18 metres high and 45-60cm DBH (Urban Forestry Australia and Narla 2018). A number of observed hollows, providing evidence of the trees longevity and potential utilisation by local and threatened fauna, were reported in Narla 2018.</p> <p>The proposal will also result in the direct removal of 38 early mature <i>Casuarina cunninghamiana</i> (River Oak) trees (Urban Forestry Australia and Narla 2018). Although these trees are not native to the EEC, they are native to NSW and provide considerable foraging habitat for locally native species.</p> <p>The Test of Significance in Narla 2018 states the following: <i>No area of habitat is likely to become fragmented or isolated as a result of the proposed development. SSF (sic) representative vegetation within the site is already relatively fragmented from other patches of SSF (sic) in the local area as a result of the Bayview Golf course on the adjoining property, and Cabbage Tree Road and the adjacent urban environment.</i> Whilst Council concurs with Narla's assessment that the DA will not result in a significant impact on the EEC such that the local occurrence will be placed at risk of extinction, it is considered the impact of the tree removal on the High Priority wildlife corridor is inconsistent with the objectives of DCP Control 4.6. The DA is</p>

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Internal Referral Body	Comments
	<p>centrally located within an approximate 800 x 40 m (3.2 Ha) patch of uninterrupted tree canopy, providing continuous corridor linkage along this particular length of Cabbage Tree Road to its junction with Pittwater Road. The removal of vegetation for the DA (890 sq.m) comprises approximately 3% of the total area of this patch of corridor vegetation. The removal of vegetation within the centre of this patch will result in a considerable gap in the canopy and therefore fragmentation of the wildlife corridor.</p> <p>Although landscaping is proposed as a mitigation measure for the removal of 59 trees, landscaping in this case will not adequately compensate for the tree canopy removal for the following reasons:</p> <ul style="list-style-type: none"> • seven canopy trees (of which includes six <i>Livistona australis</i>) have been proposed to replace the 59 trees to be removed • only one <i>Eucalyptus robusta</i> is proposed to be replaced • no <i>Casuarina</i> canopy species have been proposed for replanting • the bulk of the revegetation comprises mid-storey and ground cover plantings, thereby improving ground and mid cover conditions, however not compensating for the loss of <i>Eucalypt</i> and <i>Casuarina</i> canopy • it is considered the bulk scale of the development will not allow adequate space for the proposed landscaping. <p>Council acknowledges that 16 <i>Homolanthus populifolius</i> (Bleeding Heart) and eight <i>Pittosporum undulatum</i> (Native Daphne) are proposed for planting in the Landscape Plan. This is considered appropriate considering the position in the landscape and the ability of these species, once relatively mature, to provide potential foraging and roosting habitat for forest owls and bats.</p> <p>Variations Council may consider variation to this control: For those activities listed in adopted Plans of Management for public reserves. N/A Where development is proposed on parts of the site identified as not containing a wildlife corridor providing the development does not impact on bushland on the site or adjoining properties. N/A Where a development is proposed in the area of least impact on a wildlife corridor and where there will be no significant net loss of native vegetation. N/A Where fencing is required to contain a domestic animals and is located on a part of the site that does not impede native fauna from traversing the site. N/A In Bushfire Asset Protection Zones - vegetation species need not be native to the site but are to be native to Pittwater. N/A</p> <p>Initial Referral Response</p> <p>The subject property includes a planted and remnant native canopy with a highly disturbed ground layer represented by invasive weeds</p>

Internal Referral Body	Comments
	<p>only. Some remnant trees on the site are considered likely to form part of the Endangered Ecological Community, Swamp Sclerophyll Forest on Coastal Floodplains as mapped for the site (OEH 2013) and listed under the <i>NSW Biodiversity Conservation Act 2016</i> (BC Act). No reference or impact assessment in relation to matters listed under the NSW BC Act has been provided with the application.</p> <p>The proposal unavoidably requires the removal of a substantial number of trees (59 trees) on the site and may have indirect impacts on trees proposed to be retained in the adjoining areas. No tree replacement plantings are proposed and are likely to be unfeasible given the dimensions of the site in relation to the proposed development. Tree canopy on the site represents one of the main linkages between large areas of bushland to the north west and the nearby Pittwater estuary. The Pittwater 21 DCP Wildlife Corridor Map identifies the subject property as a high priority area essential to fauna movement.</p> <p>Other relevant controls in the Pittwater 21 DCP include; <i>B4.14 Development in the Vicinity of Wetlands</i>, and, <i>B4.22 Preservation of Trees and Bushland Vegetation</i>.</p> <p>Despite the disturbed nature and conditions of the site, the subject proposal is considered to be inconsistent with the outcomes and controls of the Pittwater 21 DCP due to the number of canopy trees requiring removal.</p> <p><u>Planner Comment:</u> The issues discussed above have been included as recommended reasons for refusal under the relevant clauses.</p>
NECC (Coast and Catchments)	<p>The property at 39 Cabbage Tree Road, Bayview has been identified as being affected by estuarine tidal inundation on Council's Estuarine Hazard Mapping. The Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.9 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), an estuarine planning level (EPL) based upon the local (still) water level (2050 sea level rise scenario) + 0.3m freeboard i.e. 2.24m AHD has been adopted by Council for this property. As the ground floor level of the recreation facility is proposed to be RL 3.3m AHD, the proposal is compliant with the relevant requirements of the Policy and B3.9 Estuarine Hazard controls.</p> <p>Given that the facility is intended to cater for seniors (over 55) as its main clientele, however, there is some justification (as a potentially vulnerable use) for considering an EPL based upon the higher 2100 sea level rise benchmark i.e. 2.74m AHD. The higher EPL is almost the same as the applicable FPL for the site (2.70m AHD) and as such any estuarine inundation issues will already have been</p>



Internal Referral Body	Comments
	addressed by the relevant flood risk management conditions should the development be approved.
NECC (Development Engineering)	<p>The proposal is not acceptable because the applicant has not provided an overland flow study to determine the water surface levels in the watercourse that runs across the front of the site. These water surface levels are critical in designing the vehicular access and driveway from cabbage tree road as the vehicular access will need to be designed to address vehicle stability as referenced in the Appendix L of the Flood Plain Development manual.</p> <p><u>Planner Comment:</u> The issues discussed above have been included as recommended reasons for refusal under the relevant clauses.</p>
NECC (Riparian Lands and Creeks)	<p>There are no objections to the proposal as long as the following issues are addressed.</p> <p>Some information on stormwater management has been provided, however information is required to satisfy the following Pittwater 21 DCP controls:</p> <p>B5.9 - the applicant is required to incorporate stormwater quality improvement measures including primary treatment (ie. screening of organic matter/leaf litter and coarse sediments) prior to stormwater discharging from the land. The applicant is encouraged to apply secondary treatment to allow infiltration of stormwater and capture fine sediments.</p> <p>B8.2 - A sediment and erosion control plan must be provided to demonstrate how the watercourses to both sides of the site will be protected from sediment impacts related to construction.</p> <p>Treatment of the drainage channel that takes drainage from the road and under the driveway to the creek is not discussed. No sections of the driveway have been provided that show how drainage will be maintained. The Development Engineer will address this point.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The proposed two-storey indoor recreation facility with swimming pool, gym, facilities, car parking and landscaping is to be located in an area within the 1% AEP flood extent, and affected by Flood Life Hazard Category H3-H5.</p> <p>It is to be constructed with an elevated subfloor on concrete piers, and compensatory works detailed in the Flood Management Report by Waddington Consulting Pty Ltd satisfactorily offset the small loss of flood storage.</p> <p>The proposed development generally complies with the flood requirements of the DCP and LEP.</p>
Traffic Engineer	<p>Traffic:</p> <p>Generation assumptions are acceptable. Traffic raise no objection. No objections.</p>



Internal Referral Body	Comments
	<p>Parking: Use of the shuttle bus is deemed adequate to compensate for any parking shortfall. This will need to be an operational condition and shall be an ongoing requirement for the longevity of the facility. Location of pick-up/drop-off area to be clearly marked.</p> <p>Car Parking: Design in accordance with AS2890.1:2004. Disabled space to be appropriately marked with shared zone and bollard. No objections.</p> <p>Pedestrian: Pedestrian desire line to be addressed crossing Cabbage Tree Road. Consultation with site opposite at 52 Cabbage Tree Road shall be undertaken to ensure any proposed infrastructure is adequate to accommodate pedestrian access between sites.</p> <p>Servicing: All servicing shall occur within the site. As this is a commercial development, a waste contractor is to be engaged for waste servicing.</p> <p>Item to be confirmed with Waste Team. All necessary provisions onsite will be required to accommodate the anticipated service vehicle.</p> <p>Based on the above, Traffic Team raise no objection subject to conditions.</p> <p><u>Planner Comment:</u> Despite the recommendation of the Traffic Engineer, the proposed parking is considered to be inadequate given the shortfall to the minimum requirements for parking under clauses B6.3 Off-Street Vehicle Parking Requirements, and C2.14 Commercial Swimming Pools. There is no close, easily accessible on-street parking, and the site is located adjacent to a residential area. The application states there are likely to be up to 16 patrons per hour of the swimming pool, plus 5 gym patrons per day, plus 2 staff during operating hours. A condition requiring that a bus service operate for the life of the development, servicing possibly up to 32 stops per hour (16 pick ups and 16 drop offs) at unknown locations, is likely to be difficult to enforce. The seven car spaces proposed on site are to be allocated for use by staff and patrons with a disability. See discussion under clauses B6.3 and C2.14 for more detailed assessment against the requirements and objectives of those clauses. The proposed number of parking spaces is considered to be inadequate, and this forms part of the recommended reasons for refusal.</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



External Referral Body	Comments
	recommended.
NSW Police - Local Command (CPTED)	The proposal was referred to the NSW Police. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been vacant for a significant period of time with no record of contamination. 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 proposed land use.

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.



Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8m above Flood Planning Level (8.5m above ground level)	7.42m above Flood Planning level (8.73m above ground level)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.6 Biodiversity protection	No
7.10 Essential services	No

Detailed Assessment

Zone RE2 Private Recreation

The application is for a recreational facility (indoor), which is a permissible use in the zone. However, the application also makes reference to 'coffee facilities', but does not provide any details on the plans or within the documentation as to what these facilities entail. Such facilities may well be a permissible use if they are ancillary to the main proposed use, or if provided as a 'kiosk' in their own right, which is also a permissible use in the zone. However, the application has not made this aspect clear and as such is insufficient to determine permissibility.

The objectives of the zone are as follows:

- To enable land to be used for private open space or recreational purposes.
Comment: The proposal is to use the land for recreational purposes and as such is considered to achieve this objective.
- To provide a range of recreational settings and activities and compatible land uses.
Comment: The proposed recreational use of the site would add to the range of recreational settings and uses available in the area, and the use itself is considered to be a compatible land use given it is a nominated permissible land use in the zone.



- To protect and enhance the natural environment for recreational purposes.
Comment: The proposal is not considered to adequately protect and enhance the natural environment for recreational purposes, as discussed within this report. The proposal is not considered to achieve this objective.
- To allow development of a scale and character that is appropriate to the nature of its recreational use, and is integrated with the landform and landscape.
Comment: The proposed development may be appropriate in scale and character to the nature of its proposed use. However, as discussed within this report, it is not considered to be adequately integrated with the landform and landscape given the impacts on existing mature vegetation on site, and lack of left over space on site to establish adequate planting if the proposed development was constructed. The proposal is not considered to achieve this objective.

Given the above assessment, the proposal is recommended for refusal due to lack of information to adequately determine permissibility with regard to the coffee facilities, and failing to achieve all objectives of the zone.

7.1 Acid sulfate soils

The proposal is acceptable subject to conditions provided by Council's Environmental Health team to dig test holes and deal with any acid sulfate soils as required.

7.6 Biodiversity protection

Given the comments from Council's Natural Environment - Biodiversity department (see Referral Responses section in this report), the proposal has not demonstrated consistency with the objectives and requirements of this clause.

7.10 Essential services

The clause requires that adequate arrangements be made for suitable vehicular access. Council's Development Engineers have assessed the application (see Referral Responses section of this report) and are not satisfied that the applicant has provided adequate information to determine water surface levels that are critical in designing the vehicular access from Cabbage Tree Road. Given these comments, the application has not demonstrated consistency with the requirements of this clause.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	Merit Assessment	1.2m	N/A	No - see assessment
Side and Rear building line	Nil	900mm	N/A	Yes
Building envelope	3.5m	Unable to assess	N/A	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
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Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	No	No
A4.9 Mona Vale Locality	No	No
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.9 Estuarine Hazard - Business, Light Industrial and Other Development	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B3.13 Flood Hazard - Flood Emergency Response planning	Yes	Yes
B4.6 Wildlife Corridors	No	No
B4.13 Freshwater Wetlands (non Endangered Ecological Communities)	Yes	Yes
B4.14 Development in the Vicinity of Wetlands	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	No	No
B5.1 Water Management Plan	Yes	Yes
B5.5 Rainwater Tanks - Business, Light Industrial and Other Development	Yes	Yes
B5.9 Stormwater Management - Water Quality - Other than Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.12 Stormwater Drainage Systems and Natural Watercourses	No	No
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	No
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C2.1 Landscaping	No	No
C2.2 Safety and Security	Yes	Yes
C2.5 View Sharing	Yes	Yes
C2.6 Adaptable Housing and Accessibility	Yes	Yes
C2.7 Building Facades	Yes	Yes
C2.8 Energy and Water Conservation	Yes	Yes
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Clause	Compliance with Requirements	Consistency Aims/Objectives
C2.9 Waste and Recycling Facilities	Yes	Yes
C2.10 Pollution Control	Yes	Yes
C2.11 Signage	N/A	N/A
C2.12 Protection of Residential Amenity	Yes	Yes
C2.14 Commercial Swimming Pools	No	No
C2.16 Undergrounding of Utility Services	Yes	Yes
C2.20 Public Road Reserve - Landscaping and Infrastructure	No	No
C2.22 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D9.1 Character as viewed from a public place	No	No
D9.2 Scenic protection - General	No	No
D9.3 Building colours and materials	No	No
D9.6 Front building line	No	No
D9.9 Building envelope	No	No

Detailed Assessment

A4.9 Mona Vale Locality

The Desired Character statement requires that “A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, and to enhance wildlife corridors.”

The proposed building will occupy almost the entire site, and result in removal of the the majority of existing mature vegetation and canopy trees on site. The proposed replacement planting shown on the landscape plan is considered to be inadequate to replace what will be lost. Given the comments provided by Council’s Natural Environment Unit and Landscape Officer, the application has failed to show consistency with this aspect of the desired character of the Mona Vale locality. (see Landscape Referral Response and Natural Environment Referral Response – Biodiversity in this report).

B4.6 Wildlife Corridors

The application has not demonstrated consistency with the outcomes and requirements of this clause. (Refer to Natural Environment - Biodiversity Referral Response).

B4.22 Preservation of Trees and Bushland Vegetation

The application has not demonstrated consistency with the outcomes and requirements of this clause. (Refer to Landscape Referral Response).

B5.12 Stormwater Drainage Systems and Natural Watercourses

The application has not demonstrated consistency with the outcomes and requirements of this clause. Refer to Engineering Referral Response.

B6.3 Off-Street Vehicle Parking Requirements

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The traffic and parking report provided with the application is based on there being no specified requirement for parking under the DCP. A Recreation Facility (indoor) is defined under clause A1.9 Definitions of the Pittwater DCP as a Business Development.

As such, Table 1 in Clause B6.3 requires 13.1 car spaces to be provided on site. The application has proposed 7 (or a possible 8) spaces to be provided for exclusive use of staff and patrons with a disability, and so falls well short of the minimum requirement. There is no on street parking in close proximity along Cabbage Tree Road, with the nearest available on street parking being across the road and around the corner on Annam Road, adjacent to residential area. There is no footpath on the southern side of Cabbage Tree Road, and no pedestrian crossing facilities in a direct route to the facility from Annam Road.

The application proposes to make up for this shortfall by providing a bus service for the majority of patrons to and from the facility on demand. This is not considered to sufficiently mitigate the lack of parking provided on site, as there is no satisfactory way to ensure that this service would be continued for the life of the development, or that patrons would necessarily choose to use this service rather than their own vehicles. Further, even if this could be guaranteed, given that there will be up to 16 people per hour using the pool (not including the gym patrons), it seems unlikely that a single bus would be able to collect up to 16 people, and drop off up to 16 people at up to 32 different locations, all within 1 hour. A development of this sort, away from a commercial centre, with no easily accessible on-street parking available, must provide sufficient on-site parking in accordance with the requirements.

The proposal does not therefore achieve the numerical requirements of the clause. It is also considered to fail the outcomes of the clause:

- An adequate number of parking and service spaces that meets the demands generated by the development.
Comment: As discussed above, the proposed parking does not meet the expected demand generated by the proposal.
- Functional parking that minimises rainwater runoff and adverse visual or environmental impacts while maximising pedestrian and vehicle safety.
Comment: Given the comments of Council's Development Engineer, the application has failed to demonstrate that the driveway access minimises rainwater runoff and adverse visual or environmental impacts while maximising pedestrian and vehicle safety. (Refer to Engineering Referral Response).
- Safe and convenient parking.
Comment: The proposed on-site parking may be safe and convenient (although this has not yet been demonstrated - see Development Engineer Referral Response). However, the amount of proposed on-site parking is inadequate to meet demand, and the nearest on street parking in Annam Street is not considered to be convenient. There is no footpath in front of the site, and no direct or safe pedestrian access to Annam Street from the site. Pedestrians would potentially need to exit the site, turn to the west and walk approximately 40m along the road reserve area before getting to a footpath and a traffic island to safely cross Cabbage Tree Road, before turning back to the east and walking approximately 125m to the corner of Annam Road, and then turn up Annam Road (and uphill) to wherever their car was parked. The proposal is not considered to achieve this outcome.

C2.1 Landscaping

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The application has not demonstrated consistency with the outcomes and requirements of this clause. See Landscape Referral Response.

C2.11 Signage

No signage has been proposed.

C2.14 Commercial Swimming Pools

This clause requires that adequate car parking be provided in accordance with the DCP. Further, the clause requires more parking than is required by Clause B6.3 (see discussion above), requiring one car space per patron of a swimming pool in a residential area. The application proposes a maximum of 16 swimming pool patrons per hour (The application states these patrons will all be adults, no children's classes), 5 gym patrons per day, and two staff at any one time. The clause states that:

Adequate car parking is to be provided in accordance with this DCP. In the residential area one car space must be provided for each person attending a tuition period (note: where more than one pupil are members of the same family group, only one car parking space is required for the family group) plus two spaces for residents.

In this regard, particularly in residential areas, due regard must be had to the provision of carparking on site for all patrons, taking into account the overlap of the sessions of use of the commercial swimming pool, which must be a minimum of 15 minutes between classes.

Class numbers must be limited to ensure adequate parking is available for the vehicles of all people in attendance.

The proposal has not demonstrated consistency with this clause, particularly given the site is adjacent to a residential area and there is no on street parking available in close proximity. The only on street parking anywhere close is in the residential area, around the corner on Annam Road, with no direct or easy pedestrian access. The provision of an on-demand bus service is not considered to be a realistic or sufficient way to mitigate the parking shortfall.

Outcomes

- Improvement in the quality and operation of commercial recreational/educational swimming pool operations, both in commercial areas and residential areas, giving due regard to the sensitivity of Pittwater's natural and built context.
Comment: The proposal will add to commercial swimming pool operations in the area. However, given the comments provided by Councils Natural Environment and Landscape officers, and the shortfall in parking, is not considered to have due regard to the sensitivity of Pittwater's natural and built context.
- Encouragement of a high standard of educational and recreational pool development of a design that fits into the context of, and is sensitive to the existing surrounding locality and protects Pittwater's environmental integrity.
Comment: The proposal is not considered to adequately fit into the context of the site and surrounding area. It will be on the only significant building on this side of Cabbage Tree Road, and will be significantly larger than the detached dwellings across the road to the north. It will also result in the removal of the majority of existing mature vegetation and canopy trees on site. Council's Natural Environment unit is not satisfied that the development protects Pittwater's environmental integrity. The proposal is not considered to have achieved this objective.



- Encouragement of the adequate provision for all matters associated with commercial swimming pools, providing for appropriate car parking, health regulations and acoustic controls and design. Comment: As discussed above, the proposed on site car parking is inadequate, and there is no easily accessible on street parking available in close proximity.

C2.20 Public Road Reserve - Landscaping and Infrastructure

The application has not addressed the requirements of this clause. *The control requires that Development with frontage to a public road reserve requires the design and construction of a footpath 1.5m wide (2.1m wide where a multi-use pathway is required to be installed), kerb and gutter and landscaping for the full width of the development site on the public road reserve frontage to the development.*

This issue could be conditioned if approval was granted to the proposal.

D9.1 Character as viewed from a public place

The proposed building will occupy the majority of the block, with only minor setbacks for landscaping. It will also result in the removal of a significant amount of existing mature landscaping. The development is not considered to be "secondary to landscaping and vegetation", as required by the outcomes of the clause. (Refer also to Landscape Referral Response and Natural Environment Referral Response – Biodiversity). The proposal is considered to fail the following outcomes:

- To achieve the desired future character of the Locality.
Comment: See discussion under clause A4.9 Mona Vale Locality in this report. The proposal is not considered to achieve the desired future character of the locality.
- To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment.
Comment: The proposal will present as a large building on the southern side of Cabbage Tree Road, where there are currently no large buildings. This side of the road is characterised by the open, vegetated view of the golf course. The existing row of mature Casuarina trees along the front boundary of the site (proposed for removal), also forms a strong part of the existing characteristic of the southern side of Cabbage Tree Road.
- To enhance the existing streetscapes and promote a scale and density that is in scale with the height of the natural environment.
Comment: The proposed height of the development is acceptable, and the design of the building is well articulated and broken up. However, the building will occupy the vast majority of the site, leaving little room for landscaping to remain in keeping with the existing character of the site and surrounds.
- The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation.
Comment: The site is not in a commercial area. It is surrounded by the open golf course to the south, and is across the road from residential area to the north. The amount of landscaping provided as part of this proposal may be appropriate in a commercial area. However, in the context of this site, the building occupies too much of the site, and does not allow for adequate vegetation for the built form to be secondary to landscaping and vegetation.



- High quality buildings designed and built for the natural context and any natural hazards.
Comment: The building is considered to be generally well designed. However, as discussed throughout this report, it is not considered to be appropriate for the natural context of the site, which sits on the southern side of Cabbage Tree Road, where there is very little built form, and directly across the road from low density residential area.
- Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum.
Comment: Given that there is almost no built form along the southern side of Cabbage Tree Road (with the minor exception of some golf course maintenance sheds to the west which are generally low to the ground and not large in scale), the proposed building is likely to dominate the streetscape in this area. Insufficient room has been left in the front setback area in particular to provide for landscaping that would adequately screen the development, to reduce its visual dominance.
- To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures, being a secondary component.
Comment: As discussed above, the proposal does not maintain adequate landscaped area on site to allow the built form to become a secondary component to the vegetation on site.
- To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land.
Comment: As discussed above, the proposal is not considered to compliment the existing character of the area, due to the removal of existing mature vegetation on site, and the lack of space on site post construction to provide for landscaping to maintain the character of the area, and achieve the desired future character.

D9.2 Scenic protection - General

The clause requires that *Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve*. As discussed throughout this report, the proposal is not considered to minimise any visual impact in the area, particularly given the lack of built form generally along the southern side of Cabbage Tree Road.

Outcomes

- Achieve the desired future character of the Locality.
Comment: The proposal is not considered to achieve the desired future character. See discussion under clause A4.9 in this report.
- Bushland landscape is the predominant feature of Pittwater with the built form being the secondary component of the visual catchment.
Comment: The proposed building occupies almost the entire site, and does not leave adequate open space to allow for planting to remain the predominant feature of the site.

D9.3 Building colours and materials

The proposed walls are to be white, which does not comply with the colour pallet shown in the clause.



This issue could be conditioned if approval was granted.

D9.6 Front building line

The proposal is subject to a merit assessment of the front building setback. As presented, the proposal is not considered to achieve the following outcomes of the clause:

- Achieve the desired future character of the Locality.
Comment: See discussion under clause A4.9 in this report.
- Vegetation is retained and enhanced to visually reduce the built form.
Comment: Refer to the Landscape Referral Response and Natural Environment Referral Response – Biodiversity. Given these comments, and that the development will occupy the majority of the site with minimal room left over for vegetation, the proposed front setback is not considered to be acceptable on a merit assessment.

D9.9 Building envelope

The Statement of Environmental Effects states that the proposal complies with the building envelope. However, the plans provided do not make assessment of compliance possible (due to the angles of the boundaries and the elevations provided). As such, the application has not adequately demonstrated compliance with this clause.

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.

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;
- Pittwater Local Environment Plan;
- Pittwater 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, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is



considered to be:

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

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2018/0567 for the Construction of a recreation facility (indoor) comprising a two (2) lane commercial swimming pool and gym with associated facilities, car parking and landscaping on land at Lot 2 DP 531960,39 Cabbage Tree Road, BAYVIEW, for the reasons outlined as follows:

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Environmental Planning and Assessment Act 1979
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone RE2 Private Recreation of the Pittwater Local Environmental Plan 2014.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.6 Biodiversity protection of the Pittwater Local Environmental Plan 2014.
5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.10 Essential services of the Pittwater Local Environmental Plan 2014.
6. The application is inconsistent with the desired character of the Mona Vale locality.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B4.6 Wildlife Corridors of the Pittwater 21 Development Control Plan.
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B4.22 Preservation of Trees and Bushland Vegetation of the Pittwater 21 Development Control Plan.
9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B5.12 Stormwater Drainage Systems and Natural Watercourses of the Pittwater 21 Development Control Plan.



10. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B6.3 Off-Street Vehicle Parking Requirements of the Pittwater 21 Development Control Plan.
11. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C2.1 Landscaping of the Pittwater 21 Development Control Plan.
12. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C2.14 Commercial Swimming Pools of the Pittwater 21 Development Control Plan.
13. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9.1 Character as viewed from a public place of the Pittwater 21 Development Control Plan.
14. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9.2 Scenic protection - General of the Pittwater 21 Development Control Plan.
15. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9.6 Front building line of the Pittwater 21 Development Control Plan.
16. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9.9 Building envelope of the Pittwater 21 Development Control Plan.

