

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2025/0572
----------------------------	-------------

Responsible Officer:	Lachlan Rose
Land to be developed (Address):	Lot 2 DP 210657, 24 Ogilvy Road CLONTARF NSW 2093
Proposed Development:	Demolition works and construction of a dwelling house including a swimming pool
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
Applicant:	David Edward La Rose

Application Lodged:	23/05/2025
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	03/06/2025 to 17/06/2025
Advertised:	Not Advertised
Submissions Received:	9
Clause 4.6 Variation:	4.3 Height of buildings: 9.8%% 4.4 Floor space ratio: 21.22%
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,351,910.00
---------------------------------	-----------------

EXECUTIVE SUMMARY

This development application seeks consent for Demolition works and construction of a dwelling house including a swimming pool.

The application is referred to the Development Determination Panel (DDP) due to a variation greater than 10% to the Floor Space Ratio standard. 8 submissions were received, with an additional submission received from a different email address during informal re-notification. After informal re-notification via email, 4 submissions were received with additional comments.

Concerns raised in the objections predominantly relate to building height, floor space ratio, built form controls, view loss, building bulk and streetscape and amenity concerns.

Critical assessment issues included Height of Buildings, Floor Space Ratio, Maintenance of Views, Streetscape, Setbacks and Open Space and Landscaping.

The subject site is burdened by a large easement and stormwater pipe that runs along the eastern boundary towards the front of the property; this severely restricts the siting of a dwelling. The site also sits within a varied streetscape in terms of dwelling design and siting (see the aerial photo below for an indication of the unusual development pattern), and is an undersized lot.

The proposal includes the removal of the existing garage and storage shed at the front of the site, greatly improving the front setback area and streetscape presentation. The dwelling has been sited outside the easement, sits under the height limit (with the exception of a minor portion of a pergola), has an FSR that is suitable for an undersized lot, and will be compatible with the varied streetscape.

The 4.6 request for the non-compliance with the height standard arises from the pergola over the proposed upper terrace which creates a 9.4% variation. The primary aspects of the dwelling house comply with the standard, with the slope of the land the major factor in the non-compliance.

The 4.6 request for the non-compliance with the FSR standard arises due to the site being an undersized allotment. It is noted that the FSR does achieve compliance with the FSR variations permitted within Manly DCP for undersized allotments (227.95sqm proposed where 300sqm is permitted).

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes:

Demolition of all existing structures on the site.

Garage Floor

- New garage with lift and internal access stairs

Ground Floor

- New ground floor to provide for guest bedroom, two bedrooms with small balconies, bathroom, hall library area internal access stairs and lift shaft
- External courtyard

First Floor

- New first floor to provide for open plan living, dining and kitchen, pantry, WC, master suite with walk-in robe and ensuite, laundry, internal access stairs, lift shaft, front terrace with planter and rear balcony

External Works

- New inground swimming pool and spa with rear terrace at the ground floor level
- Associated landscaping

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone R2 Low Density Residential

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 5.21 Flood planning

Manly Local Environmental Plan 2013 - 6.2 Earthworks

Manly Local Environmental Plan 2013 - 6.4 Stormwater management

Manly Local Environmental Plan 2013 - 6.8 Landslide risk

Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area

Manly Local Environmental Plan 2013 - 6.12 Essential services

Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

Manly Development Control Plan - 3.9 Mechanical Plant Equipment

Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size

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

Manly Development Control Plan - 4.1.3 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 - 5.4.1 Foreshore Scenic Protection Area

SITE DESCRIPTION

Property Description:	Lot 2 DP 210657 , 24 Ogilvy Road CLONTARF NSW 2093
------------------------------	--

Detailed Site Description:

The subject site consists of one (1) allotment located on the northern side of Ogilvy Road.

The site is irregular in shape with a frontage of 9.845m along Ogilvy Road and a depth of 43.33m on the eastern boundary and 38.06m on the western boundary. The site has a surveyed area of 470.1m².

The site is located within the R2 Low Density Residential zone and accommodates a part one and two storey dwelling with a detached garage and carport.

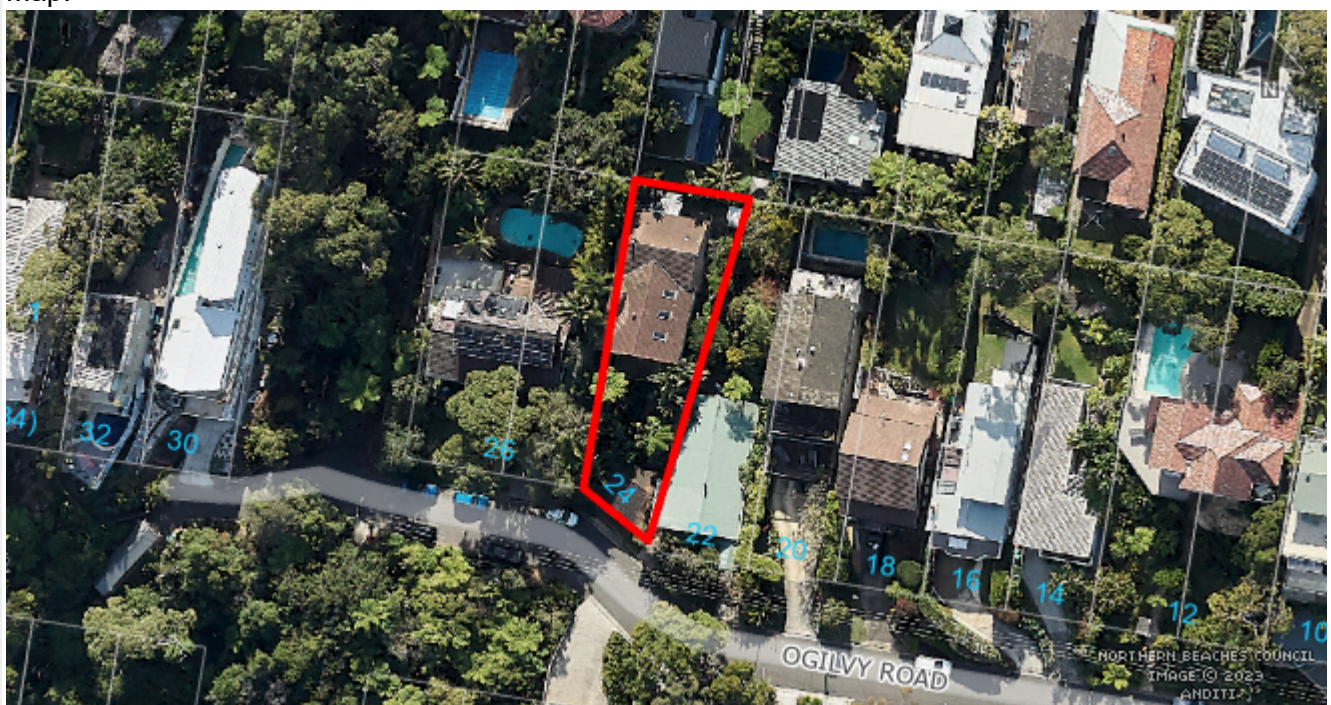
The site is located mid-slope on a south facing hillside, which slopes and steps down towards North Harbour and has an estimated drop in gradient of 7.5m from the northern boundary to southern boundary and slope of 10%.

The site includes landscaped areas of trees, grass and shrubs. There are no known threatened species on the subject site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by residential development with a mix of one, two and three storey dwellings. The dwelling houses are configured to benefit from the views of the harbour and district views to the west and south.

Map:



SITE HISTORY

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

DA195/97: Alterations and additions to the existing dwelling- approved on the 6th of November 1997.

APPLICATION HISTORY

Following a preliminary assessment of the application and site inspection of the subject site and adjoining properties Council wrote to the applicant on 10 July 2025 outlining concerns that would not allow for Council to support the application in its current form. The concerns related to view loss, information on the architectural plans, building height, front storage area, rear setback, privacy and southern elevation. The applicant lodged amended plans on 27 August 2025 to address the concerns raised.

The amended plans incorporate the following changes:

- reduction in building height and terrace roof length
- removal of front storage area
- privacy mitigation to the eastern living windows
- view loss analysis
- increased rear setback
- additional excavation to the garage for another car space and storage

The proposed amendments will have a reduced environmental impact on the adjoining properties and public open space than the original proposal. Therefore, re-notification was not required in accordance with Northern Beaches Community Participation Plan. Although, the objectors were advised of the amended plans and given an opportunity to provide additional comments.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to view loss, information on the architectural plans, building height, front storage area, rear setback, privacy and southern elevation.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</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 Matters for Consideration	Comments
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 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 application that included a certificate (prepared by Bushfire Planning & Design, dated 2/4/2025) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 03/06/2025 to 17/06/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 9 submission/s from:

Name:	Address:
Mr John Damien Darmody	37 Cutler Road CLONTARF NSW 2093
Mrs Sonya Christina Chadban	39 A Cutler Road CLONTARF NSW 2093
Mrs Kim Paula Flatman	20 Ogilvy Road CLONTARF NSW 2093
Mr Daniel Ben Barbalace	PO Box 281 FRESHWATER NSW 2096
Boston Blyth Fleming Pty Ltd	16 / 7 Narabang Way BELROSE NSW 2085
Mr Christian Jay Geoffrey Allen	26 Ogilvy Road CLONTARF NSW 2093
Mr Shannon Patrick Mccune	22 Ogilvy Road CLONTARF NSW 2093
Mr Tom Michael Oates	71 Undercliff Road FRESHWATER NSW 2096
Mr Steven James Chadban	39 A Cutler Road CLONTARF NSW 2093

The following issues were raised in the submissions:

- Building height
- Floor Space Ratio (FSR)
- Building bulk/ undesirable precedent, streetscape and neighbourhood character impacts

- Construction impacts/ excavation
- Amenity/ privacy impacts
- View loss
- Rear setback non-compliance
- Wall height and side setback non-compliance
- Overshadowing
- Air Conditioning

The above issues are addressed as follows:

- **Building height**

The submissions raised concerns that the building height is not acceptable and is unjustified.

Comment:

The development has been amended to mostly comply with the maximum building height with only a minor section of the pergola over the upper terrace exceeding 8.5m. The applicant has demonstrated that the pergola over the building height standard will not result in unreasonable view loss. See Clause 4.6 for a detailed assessment of the building height variation. In summary, the slope of the land contributes to the non-compliance of an element that does not have any unreasonable impacts. This concern does not warrant a reason for refusal.

- **Floor Space Ratio (FSR)**

The submissions raised concerns that the FSR is excessive and is not commensurate with the surrounding development.

Comment:

See Clause 4.6 and Clause 4.1.3 of this report for a detailed assessment of the FSR variation. In summary, the subject site is an undersized allotment and the proposal will comply with Clause 4.1.3 and the undersized allotment provisions. As such, the concern is not a reason for refusal.

- **Building bulk/ undesirable precedent, streetscape and neighbourhood character impacts**

The submissions raised concerns that development will result in an unreasonable bulk and scale that will impact the streetscape and neighbourhood character.

Comment:

See Clause 4.6, Clause 3.1.1 and the detailed assessments under the residential development controls in Part 4 of MDCP. The relevant objectives have been assessed in regards to building bulk and streetscape character. The development is considered to meet these objectives and is designed to minimise impacts particularly given the constraints of the site. There is a varied pattern of development along Ogilvy Road, with the proposal being compatible with the streetscape and providing an acceptable level of compliance with the residential development controls. These concerns do not warrant a reason for refusal.

- **Construction impacts/ excavation**

The submissions raised concerns that the construction and excavation may impact the adjoining property to the west at 26 Ogilvy Road.

Comment:

A condition of consent applies to this application requiring a dilapidation report, including photographic surveys, of the following adjoining property must be provided prior to any works commencing on the site and prior to occupation certificate (including demolition or excavation). Additionally, conditions of consent require Geotechnical recommendations and inspections outlined in the Geotechnical report to be conducted to ensure the works are carried out adequately. As such, subject to the imposition of conditions of consent, the concern is not a reason for refusal.

- **Amenity/ privacy impacts**

The submissions raised concerns that the proposal will result in amenity and privacy impacts from the front, rear and side elevations of the dwelling.

Comment:

See Clause 3.4.2 *Privacy and Security* under this report for a detailed assessment against the objectives of the clause. The proposal has been amended to increase the rear setback to the balcony and has reduced its size. The balcony is located off the master bedroom and laundry, which are low use rooms and will have minimal privacy and amenity impacts.

Amendments also included the removal of windows W2.2 and W2.4 on the eastern elevation of the first floor, reduced the window height on the remaining three eastern windows on the first floor and included privacy glazing up to 1.65m sill height. The first floor balcony has frosted glazing to the east.

In summary, these amendments are considered appropriate to mitigate privacy and amenity concerns in a residential setting. The windows to the western elevation are small in design and size, considered acceptable in this instance. Therefore, the concern is not a reason for refusal.

- **View loss**

The submissions raised concerns that the proposed development will result in view loss from 39, 39A and 41 Cutler Road.

Comment:

A view loss assessment has been conducted under Clause 3.4.3 *Maintenance of Views* in this report, with an assessment against the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*. In summary, the proposal will not result in unreasonable view loss. The view impact varies from each property with a significant extent of the existing views being maintained. As such, the concern is not a reason for refusal.

- **Rear setback non-compliance**

The submissions raised concerns that the rear balcony setback non-compliance is unreasonable and should comply.

Comment:

The rear balcony has been reduced in size and increased to a 4.6m rear setback (from 3.4m). The reduction of the primary usable area to the eastern portion has been reduced and is not considered to be an area of high use or impact. The site has a stormwater pipe and easement to the east of the property, restricting the siting of the dwelling at the front of the site. The development will meet the objectives of Clause 4.1.4 and the rear setback non-compliance will not result in unreasonable impacts. Thus, the concern is not a reason for refusal.

- **Wall height and side setback non-compliance**

The submissions raised concerns that the wall height and side setback non-compliance should be reduced to comply with the requirements.

Comment:

A detailed assessment has been conducted under Clauses 4.6, 4.1.2 and 4.1.4 of this report. The side setback variation primarily relates to the western elevation. The area of the wall height non-compliance is located to the upper first floor where the wall is recessed to 2.4m for the upper area of the pitched roof and open structure of the terrace. Similarly, the eastern elevation results in a non-compliance to the pitched wall, however, this element is stepped in from the northern portion of the dwelling.

Overall, on a constrained site, within a varied streetscape, the wall height and setback non-compliance is acceptable. Thus, the concern is not a reason for refusal.

- **Overshadowing**

The submissions raised concerns that the proposal will result in overshadowing impacts.

Comment:

A detailed assessment has been conducted under Clause 3.4.1, determining that the development is appropriately designed to reduce additional overshadowing impacts compared to the existing shadowing. The site is an irregular allotment size, limiting the ability for full compliance and minimal overshadowing due to the closely adjoining dwellings. As shown in the shadow diagrams provided by the applicant, the adjoining properties already dictate the significant overshadowing to adjoining properties with the proposed dwelling not resulting in significant changes from the existing overshadowing. The dwelling has been stepped-in from the eastern elevation and front portion of the dwelling to further assist with the reduction of overshadowing to No. 22 Ogilvy Road where the dwelling is located to the front of the site. Due to the restricting allotments and sloping land, it would be unreasonable to require full compliance with the Clause. As detailed in this report, the concern is not a reason for refusal.

- **Air Conditioning**

The submissions raised concerns that the air conditioning is not included in the plans and the detail should be included to determine if there will be sound issues on adjacent properties.

Comment:

A condition of consent applies stating that the swimming pool / spa and mechanical equipment motors including air conditioning units shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary. This is considered appropriate to assist in the mitigation of mechanical equipment motor noise in a residential setting. As such, the concern is not a reason for refusal.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	<p>SUPPORTED WITHOUT CONDITIONS</p> <p>General Comments</p> <p>The plans accompanying the proposal show a fireplace on the eastern elevation of the firsts floor of the proposed dwelling house.</p> <p>It is noted that there does not appear to be detail on the plans relating to the proposed location or height of any flue associated with the proposed heater.</p> <p>Additionally, there does not appear to be any detail as to the make, model or specifications of the proposed heater.</p> <p>Until such information is available, Environmental Health is unable to undertake a proper assessment of the proposal.</p> <p>12/06/2025 - Updated Comments</p> <p>The applicant has provided further information and clarified that the heater associated with the proposal will have a gas fuel source. Environmental Health has no objection to the installation of a gas heater.</p>
Landscape Officer	<p>SUPPORTED, SUBJECT TO CONDITIONS</p> <p>The application seeks consent for: Demolition works and construction of a dwelling house including a swimming pool.</p> <p>The Arborist's Report prepared by Naturally Trees and Landscape Plans prepared by Contour are noted.</p> <p>The Arborist's Report indicates that 14 Category Z trees are to be removed. 10 of these trees are exempt species under MDCP.</p> <p>The Landscape Plans indicate replanting of 7 specimen trees in addition to hedge planting, shrubs and groundcovers across the site.</p> <p>A large rock in the rear garden is to be retained.</p> <p>No objections are raised regarding landscape issues subject to conditions.</p>

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p>SUPPORTED, SUBJECT TO CONDITIONS</p> <p>The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> SEPP (Resilience and Hazards) 2021 - Littoral Rainforest and Proximity Area <p>The proposal has been submitted with an arborist report that has assessed the condition of a total of 15 trees and recommended the removal of all trees on site. It should be noted that trees 1, 3, 4, 6, 8, 9, 10, 11, 12, 13, 14 and 15 can be removed without Council's consent by either height or species exemptions. Tree 2 which is found outside of the property boundary will need to be retained and the recommended tree protection measures will need to be in place before works commence and until completion. This matter is deferred to the appropriate referral body.</p> <p>The application has been submitted with a landscape proposal that includes a number of trees, shrubs and groundcovers that would allow for an improved biodiversity outcome over time. However, conditions are recommended to avoid the use of species identified as weeds or having a weedy potential.</p> <p>The site is on land identified as proximity area for littoral rainforest and as such the development must not impact on the ecological integrity of the rainforest.</p>
NECC (Development Engineering)	<p>SUPPORTED, SUBJECT TO CONDITIONS</p> <p>The proposal is for demolition works and the construction of a new dwelling and swimming pool.</p> <p><u>Stormwater</u></p> <p>The site falls to the kerb and is tagged as Low to High flood risk precinct. Hence OSD is not required for the development. The submitted stormwater plan proposing discharge to the kerb in Ogilvy street is acceptable subject to conditions.</p> <p><u>Access and Parking</u></p> <p>The proposal is to widen the existing layback and provide a combined driveway leading to a single garage adjacent to the front boundary and another garage within the footprint of the proposed dwelling. The dimensions of the single garage adjacent to the front boundary do not comply with current standards and is not supported. Enclosed garages are to be a minimum 3.0m wide to comply with AS2890.1.</p> <p>Review 22/08/2025:</p> <p>Amended plans propose the demolition of the garage adjacent to the boundary. No objections to approval subject to conditions as recommended.</p>

Internal Referral Body	Comments
NECC (Flooding)	<p>SUPPORTED, SUBJECT TO CONDITIONS</p> <p>This proposal is for the demolition of an existing property and the construction of a new multi-storey dwelling. The proposal is assessed against Section 5.4.3 of the Manly DCP and Clause 5.21 of the Manly LEP. The property is constructed on a slope, with the flood characteristics varying across the site. There is a floodway along the eastern border of the property. Subject to the following conditions, the proposal generally complies with Section 5.4.3 of the Manly DCP and Clause 5.21 of the Manly LEP.</p>

Internal Referral Body	Comments
Strategic and Place Planning (Heritage Officer)	<p>SUPPORTED WITHOUT CONDITIONS</p> <p><u>Discussion of reason for referral</u> The proposal has been referred to Heritage as the subject site is opposite a heritage item</p> <p>I38 Natural Landscape - Dobroyd Head and Grotto Point Sydney Harbour National Park (Castle Rock)</p> <p><u>Details of heritage items affected</u> <u>Statement of Significance</u> Natural Landscape. Aesthetic, scientific.</p> <p><u>Physical Description</u> Natural landscape; Prominent visual landform of headland, cliffs; upper slopes with indigenous vegetation communities. Provides a natural visual backdrop or foreground to the cultural aspects of the built environment of Manly. Important viewing position within Sydney Harbour area.</p> <p><u>Other relevant heritage listings</u></p> <ul style="list-style-type: none"> • SEPP (Biodiversity and Conservation) 2021: No • Australian Heritage Register: No • NSW State Heritage Register: No • National Trust of Aust (NSW) Register: No • RAIA Register of 20th Century Buildings of Significance: No • Other: N/A <p><u>Consideration of Application</u> The proposal seeks consent for the demolition of the existing building and the construction of a new dwelling. The existing single car garage on Ogilvy Road will be retained. Part of the heritage item is located across the road from the subject site, being the reserve around Castle Rock beach. The proposed new dwelling is considered to not impact upon the heritage item or its significance as it is separated from the site by the road reserve.</p> <p>Therefore Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No.1790770S dated 08 April 2025).

The embodied emissions have been quantified in the above BASIX Certificate.

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been

included in the recommendation of this report.

SEPP (Biodiversity and Conservation) 2021

Chapter 6 – Water catchments

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

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

6.6 Water quality and quantity

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

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

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

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

Comment:

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

6.7 Aquatic ecology

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

- (a) whether the development will have a direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation,*
- (b) whether the development involves the clearing of riparian vegetation and, if so, whether the development*

will require—

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

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

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

Comment:

The proposal has been reviewed by Council's Landscape and Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the surrounding natural environment.

6.8 Flooding

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

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

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

Comment:

The proposal has been reviewed by Council's Flood Officer who have raised no objection to the works and

their impacts to the surrounding natural environment.

6.9 Recreation and public access

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

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

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

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

Comment:

The proposal will not impact on recreational land uses and will maintain public access to and from regulated catchments.

6.10 Total catchment management

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

Comment:

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

Division 3 Controls on development in specific areas

6.11 Land within 100m of natural waterbody

In deciding whether to grant development consent to development on land within 100m of a natural waterbody in a regulated catchment, the consent authority must consider whether—

- (a) the land uses proposed for land abutting the natural waterbody are water-dependent uses, and*

(b) conflicts between land uses are minimised.

Comment:

The proposed works will meet these requirements.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 1 Coastal Wetlands and littoral rainforest area

2.7 Development on certain land within coastal wetlands and littoral rainforests area

- 1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:
 - a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,
 - b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,
 - c) the carrying out of any of the following:
 - i) earthworks (including the depositing of material on land),
 - ii) constructing a levee,
 - iii) draining the land,
 - iv) environmental protection works,
 - d) any other development

Comment:

The proposed development site is not located within coastal wetlands and littoral rainforest area.

2.8 Development on land in proximity to coastal wetlands or littoral rainforest

- 1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
 - a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
 - b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment:

The proposed development is located on land in proximity to coastal wetlands and littoral rainforest area.

The application has been referred to Council's Biodiversity and landscape Officers who are supportive of the application. The proposal is not expected to cause significant impact.

Division 5 General

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

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

Comment:

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

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

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

Comment:

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

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
----------	-------------	----------	-------------	----------

Height of Buildings:	8.5m	9.3m (terrace)	9.8% (0.8m)	No
Floor Space Ratio	FSR: 0.4:1 (188.04sqm)	FSR: 0.48:1 (227.95sqm)	21% (39.91sqm)	No

Compliance Assessment

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

Detailed Assessment

Zone R2 Low Density Residential

Land use definition: MLEP 2013	Permitted or Prohibited
Dwelling house	Permitted with consent

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 does not result in an increase to the dwelling density of the subject site. The development will provide for the housing needs of the community within a low density residential environment.

It is considered that the development satisfies this objective.

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

Comment:

The proposal will not result in changes to the existing land use of a dwelling house and therefore, will enable the day to day needs of residents.

It is considered that the development satisfies this objective.

4.6 Exceptions to development standards

Clause 4.3 Height of Buildings

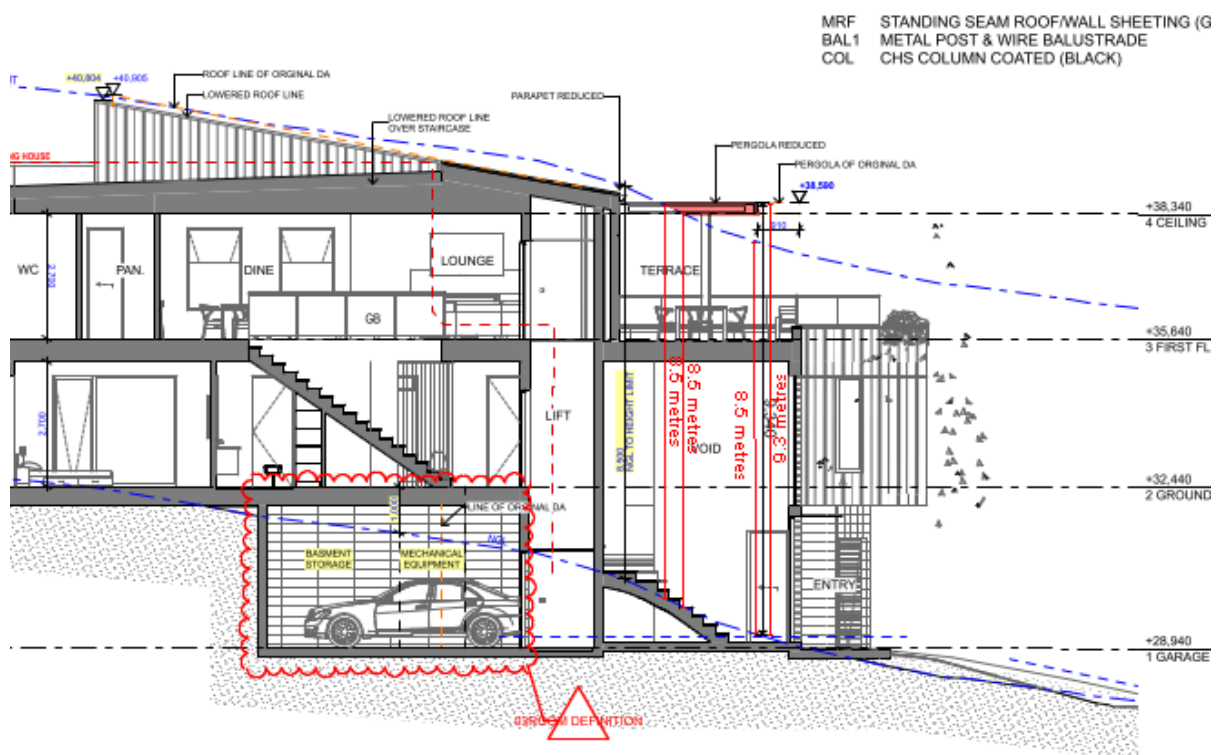
The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.3 Height of Buildings

Requirement: 8.5m

Proposed: 9.3m

Percentage of variation: 9.8%



With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

circumstances.

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

Clause 4.3 is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

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

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

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 is unreasonable or unnecessary in the circumstances of this application for the following reasons:

- The applicant has demonstrated that the development will meet the objectives of Clause 4.3 and the objectives of the zone.
- The bulk and scale is not unreasonable for the surrounding development.
- The view corridors will be maintained with minor impacts.
- Suitable solar access is achieved to adjoining properties.

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

- *"The proposed development is considered to facilitate ecologically sustainable development and observe councils DCP aims,(cl1.3(b)).*
- *The proposed new dwelling will maintain the general bulk and scale of the existing surrounding more contemporary dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).*
- *Similarly, the proposed development will provide for improved amenity through the inclusion of more functional floor space within a built form which is compatible with development in the surrounding area, which promotes the orderly and economic use of the land (cl 1.3(c)).*
- *The proposed development improves the amenity of the occupants of the subject site and respects surrounding properties by locating the development where it will not unreasonably obstruct views across the site and will maintain the views from the site (1.3(g)).*
- *The restriction on the site imposed by the drainage easement and pipeline draining Council's street infrastructure above the site restricts the opportunity for the dwelling to spread across the width of the land and therefore as the site narrows towards the street, by necessity there is some raising of the floor levels to avoid the easement and maintain appropriate protection from overland flow. The minor variation to the height of buildings control as a result of providing the solar protection over the front terrace of the main living areas is considered to be good design and enhances the residential amenity of the building's occupants, which is consistent with the Objective 1.3(g)."*

Council does not generally agree that the variation will result in greater amenity for the occupants. It is agreed that the site results in constraints that restrict the ability to locate the floor space towards the east and has resulted in increased floor levels to increase protection from flooding. The applicant has reflected that the covered area of non-compliance to the terrace will benefit the occupants while reducing impacts on adjoining properties.

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

The majority of the dwelling house is compliant with the maximum building height, with the non-compliance arising to the front covered balcony area. Additionally, the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.

Public Interest:

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

Conclusion:

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

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

Clause 4.4 Floor Space Ratio

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

Development standard: Clause 4.4 Floor Space Ratio

Requirement: 0.4:1

Proposed: 0.484:1

Percentage of variation: 21.22%

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

Clause 4.4 is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

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

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

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.4 is unreasonable or unnecessary in the circumstances of this application for the following reasons:

- The objectives of Clause 4.4 have been met.

- The proposal will provide a new dwelling that aims to maintain a compatible bulk and scale and preserving existing view sharing opportunities for surrounding neighbours.
- The proposal will be consistent with and complement the existing style of single dwelling housing within the locality and as such, will not be a visually dominant element in the area.

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

"As discussed, it is noted that the Council's Manly Development Control Plan 2013 Amendment 14 and in particular Clause 4.1.3.1 provides exceptions to the FSR control where the lot is undersized and is less than minimum required lot size under Council's LEP Lot Size Map, where the development satisfies the LEP Objectives and the DCP provisions.

In this instance the required minimum lot size in the locality is 750m² and when calculated against this required lot size, the development prescribes a FSR of 0.3:1, which comfortably complies with the control when considered against the FSR control for undersized allotments."

The applicant also states:

"There are sufficient environmental planning grounds to justify contravening the development standard. The low pitch roof form further introduces modulation and architectural relief to the building's facade, which further distributes any sense of visual bulk.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- *The proposed new dwelling will introduce modulation and architectural relief to the design of the new building, which promotes good design and improves the amenity of the built environment (1.3(g)).*
- *The proposed new dwelling will maintain the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).*
- *Similarly, the proposed new dwelling will provide for improved amenity within a built form which is compatible with the streetscape of Ogilvy Road which also promotes the orderly and economic use of the land (cl 1.3(c)).*
- *The proposed new works which exceed the gross floor area control and FSR standard of 0.4:1 are considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EPA Act.*

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future

occupants and manages the bulk and scale and maintains views over and past the building from the public and private domain.

These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio control."

It is agreed that the general bulk and scale of the proposal is commensurate with the surrounding developments and will provide improved amenity for the occupants from the beach of the development standard. It is also agreed that the proposal meets the undersized allotment variations in the Manly DCP.

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

The development will comply with Clause 4.3.1 which provides exceptions to the FSR control where the lot is undersized and less than the minimum lot size under Council's LEP Lot Size Map. Additionally, the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.

Public Interest:

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

Conclusion:

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

It is considered on balance, that having regard to the particular circumstances, including the variation from Council's minimum lot size map, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

5.21 Flood planning

Under this clause, development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development:

- (a) is compatible with the flood function and behaviour on the land, and*
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

Comment:

The application has been referred to Council's Flood Engineer, who has reviewed the development in relation

to the above matters. The Engineer is supportive of the works, subject to conditions of consent, which have been included in the recommendation of this report. Accordingly, the development is satisfactory with respect to the above matters at (a) through (e).

In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters:

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) the intended design and scale of buildings resulting from the development,*
- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

Comment:

The application has been referred to Council's Flood Engineer, who has reviewed the development in relation to the above matters. The Engineer is supportive of the works, subject to conditions of consent, which have been included in the recommendation of this report. Accordingly, the development is satisfactory with respect to the above matters at (a) through (d).

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*
- (b) to allow earthworks of a minor nature without requiring separate development consent.*

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

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

Comment:

The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality. Conditions of consent apply to ensure the maintenance of the drainage patterns and soil stability.

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

Comment:

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

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

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

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

Comment:

The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

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

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

Comment:

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

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

Comment:

The site is located in proximity to littoral rainforest area and is supported by Council's Bush and Biodiversity and Landscape Officers.

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

Comment:

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

6.4 Stormwater management

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

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

Comment:

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

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

Comment:

It is not practicable to incorporate on-site stormwater retention into the development.

(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

Comment:

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

6.8 Landslide risk

The objectives of this clause are to ensure that development on land susceptible to landslide—

- (a) matches the underlying geotechnical conditions of the land, and*
- (b) is restricted on unsuitable land, and*
- (c) does not endanger life or property.*

In this regard, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account the risk of landslide—

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*
- (d) waste water management, stormwater and drainage across the land,*
- (e) the geotechnical constraints of the site,*
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The proposed development is supported by architectural plans, stormwater plans, and a geotechnical report, which demonstrate the proposal is acceptable with respect to the above matters, provided that the recommendations of the reports are approved are met. The proposed development has also been reviewed

by Council's Development Engineer, who has raised no objection to the proposal, subject to conditions of consent, which are included in the recommendation of this report.

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and that—

- (a) the development is designed, sited and will be managed to avoid any landslide risk or significant adverse impact on the development and the land surrounding the development, or*
- (b) if that risk or impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that risk or impact, or*
- (c) if that risk or impact cannot be minimised—the development will be managed to mitigate that risk or impact.*

Comment:

Given the above, the proposed development is demonstrated to be designed, sited and managed to avoid landslide risk and significant adverse impact on the subject site and surrounding land.

6.9 Foreshore scenic protection area

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

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

Comment:

The subject site is within the foreshore scenic protection area and is not foreshore land. The proposed development:

- does not unreasonably impact upon the visual amenity of the foreshore and surrounds, and does not result in view loss from a public place to the foreshore,
- complies with Clause 3.4.3 Maintenance of Views
- is not closely visible from the coastline, so does not impact upon its scenic quality,
- is suitable in its site context, and
- does not result in conflict between land-based and water-based coastal activities.

6.12 Essential services

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

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

(e) suitable vehicular access.

Comment:

The subject site is supplied with the above essential services. The proposed development retains and relies upon these services.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 470.1sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density Area D7 – 750 sqm of site area required per dwelling	1 dwelling on 470.1sqm	37% (279.9sqm)	No
4.1.2.1 Wall Height	E: 7.5m (based on gradient 1:6)	Max 8.4m	12% (0.9m)	No
	W: 7.6m (based on gradient 1:5.5)	Max 8.8m	15.7% (1.2m)	No
4.1.2.2 Number of Storeys	2	2-3 storeys	50%	No
4.1.2.3 Roof Height	Height: 2.5m	1.4m	N/A	Yes
	Pitch: maximum 35 degrees	10 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	8.7m (garage)	N/A	Yes
		6.5m (GF)	N/A	Yes
		6.6m (FF)	N/A	Yes

4.1.4.2 Side Setbacks and Secondary Street Frontages	East Garage: 1.5m-0.9m (garage)	Garage: 3.7m- 2.3m (garage)	N/A	Yes
	Ground floor: 2.4m- 1.56m (SE) 1.3m- 0.83m- 0.06m (NE)	Ground floor: 3.9m- 1.69m (SE) 1.7m- 1.8m- 3.1m (NE)	8% (0.13m) N/A	No Yes
	First floor: 2.6m- 2.1m (terrace) 2.9m- 2.7m (E) 2.3m - 2m (NE) (based on wall height)	First Floor: 3.9m- 2.1m (terrace) 2.1m-3.9m (E) 1.8m- 2.8m (NE)	N/A 27% (0.m) 21.7% (0.5m)	Yes No No
	West Garage: 1.13m-0.2m (garage)	Garage: 0.9m- 1.3m (garage)	Max 20% (0.23m)	No
	Ground Floor: 2m- 1.2m (SW) 1.3m- 0.93m (NW)	Ground Floor: 0.9m (SW) 1.3m (NW)	22.5% (0.45m) N/A	No Yes
	First Floor: 2.4m- 2m (Terrace) 2.7m (SW) 2.7m- 2.8m (W) 2.5m-1.9m (NW) (based on wall height)	First Floor: 0.9m (terrace) 0.9m (SW) 1.25m (W) 0.9m (NW)	62% (1.5m) 66% (1.8m) 55% (1.55m) 64% (1.6m)	No No No No
	Windows at minimum 3m setback	13 windows < 3m	13 Windows	No
4.1.4.4 Rear Setbacks	8m	8m (GF courtyard) 4.6m (FF balcony) 6.6m (FF dwelling)	N/A 42% (3.4m) 17.5% (1.4m)	Yes No No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (282.06sqm) of site area	58% (274.7sqm)	2.6% (7.36sqm)	No
	Open space above ground 25% (50.5sqm) of total open space	28.6% (54.5sqm)	7.9% (4sqm)	No
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	75% (206sqm)	N/A	Yes
	2 native trees	>2 trees	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	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	34% (3.4m)	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0.5m max	N/A	Yes
	1m curtilage/1.5m water side/rear setback	E: 2.1m- 2.5m (curtilage) 2.2m-2.7m (water) W:Complies Rear: Complies	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	No	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

Description of non-compliance

Submissions were received stating the development does not compliment the streetscape and neighbourhood character impacts with excessive building bulk. As such, the objectives of this clause have been addressed.

Merit consideration:

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

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

Comment:

The proposal does not propose front, side or rear fencing, and the garage is located at a compliant setback from the street frontage. As such, the proposal will not result in negative visual impacts of walls, fences and carparking on the street frontage.

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

Comment:

There is no clear streetscape character to Ogilvy Road with various built forms and landscaping to the immediate street front. There are a mix of multistorey developments to Ogilvy Road, whereby the proposed development will result in a dwelling house that is compatible with the character of the street and

is adequately setback to manage bulk and scale impacts.

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

Comment:

The proposal does not propose front fencing and will have an open and landscaped setting to the street. The existing storage/ single car space to a nil setback in the south-eastern corner has been removed under this application and replaced with landscaping to increase the landscaping to the streetscape.

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

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

Given that the subject site has a direct north-south orientation, this control requires that, on the winter solstice (21 June):

- *New development must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice, and*
- *The level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm, and*
- *No reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.*

Merit consideration:

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

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

Comment:

It is not possible (regardless of the proposed development) for the adjoining properties to receive more than one third of sunlight from 9am-3pm to private open spaces due to the prevailing development of the surrounding properties. Although, the proposal will not result eliminate more than one third of existing sunlight with regards to this requirement. The western windows of 22 Ogilvy Road will result in greater overshadowing from 12pm, to 3pm given the orientation of the lots and the development location. Accordingly, the control inherently requires no reduction in solar access as the result of development, as detailed above.

For the reasons detailed below and given the circumstances of this case, it is established that the proposed development is designed and sited so as to retain equitable and acceptable solar access for the adjoining properties to the east and west.

Objective 2) To allow adequate sunlight to penetrate:

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

Comment:

The proposal will not result in overshadowing to the adjoining private open space of 26 Ogilvy Road and 22 Ogilvy Road from 9am-12pm, with a reduction in overshadowing from 12pm to 3pm. The proposal will provide sunlight access to the eastern windows at 26 Ogilvy Road from 12pm-3pm and 22 Ogilvy Road from 9am-12pm. Although, not compliant with the requirement, considering the minimal allotment sizes and configurations, the proposal will provide acceptable levels of sunlight penetration for the adjoining properties.

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

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

Comment:

As above, the proposal will provide for sunlight access to adjoining windows for certain periods during the day. The principle outdoor areas will not result in significant increases from the existing sunlight access, with 22 Ogilvy Road getting greater sunlight access to the rear private open space from 12pm to 3pm. The restraints of the easement and flood prone land to the east of the property restricts the ability to centralise the dwelling on the site. Although, the property has been designed to assist with the maintenance of views from adjoining rear properties through the eastern property corridor and maintaining a relative setback to the western boundary. The proposal will comply with the front setback requirements and is adequately setback from the southern boundary.

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

3.4.2 Privacy and Security

Merit consideration:

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

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

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

Comment:

The development is amended to result in a greater rear setback to the first floor balcony with a reduced balcony area. Due to the balcony being low in nature, of a minimal area and to a master bedroom, it is not considered to result in unreasonable privacy loss to the rear properties.

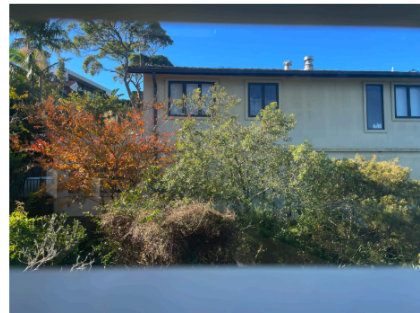
The western side elevation reflects minimal window designs that will allow for light penetration for the occupants and privacy for the adjoining neighbour. The adjoining property to the west is located at an estimated 4.3m from the subject property and includes the use of narrow windows to limit a loss of privacy.

The eastern elevation resulted in window amendments which reduced the amount of windows to the first floor kitchen and dining area, and amended the glazing to result in a privacy film up to 1.65m along window W2.1, W2.3, W2.5. The other windows along this elevation are acceptable with a narrow design and addition setbacks to the ground floor, not directly overlooking the eastern neighbour. See a privacy view analysis provided by the applicant of the view from the dining windows to 20 Ogilvy Road below:



1 VIEW OUT FROM DINING ROOM

NOTES:
The proposed dwelling poses very limited privacy impact to the properties to the east. The outlook from the proposed windows is mostly toward bushes and the blank wall of No. 20. As the top level of No. 20 is elevated, the privacy impact on No. 20 is minimal.



EXISTING PHOTOGRAPHS OF VIEW TOWARDS EAST

The analysis reflects that the proposed windows will not overlook into the adjoining windows at 20 Ogilvy Road, and includes privacy mitigation to manage the concerns addressed.

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 windows are designed to reduce the potential privacy impacts while maintaining sufficient areas for the occupants to gain access to light and air. As mentioned above, the property will balance outlooks from rooms and private open space through window designs and setbacks. The property benefits from views to the south and have situated the primary living areas to this aspect. The proposal will meet this objective.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal results in multiple windows and open space areas to the front to assist in awareness of neighbourhood security.

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

3.4.3 Maintenance of Views

Merit consideration:

Submissions were received from the adjoining properties at 41, 39 and 39A Cutler Road, raising concerns about the proposed development's impact on views. Inspection's to the adjoining properties were conducted with photographs taken of the proposed view loss. The Applicant has submitted detailed analysis of the view impact to determine the extent of the impact to the addressed properties. As such, height poles were not considered necessary to determine the impact.

The development is considered against the Objectives of the Control:

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

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

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

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.

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:

See the images below for visual depictions of the current view from the mentioned properties.

41 Cutler Road:



(Figure 1: View from the upper living area in a standing position)



(Figure 2: View from the master bedroom in a standing position)



(Figure 3: View from bedroom 1 in a standing position)

41 Cutler Road has views across Sydney Harbour to Middle Head with land to water interface.

39 Cutler Road:



(Figure 4: View from the kitchen in a standing position)



(Figure 5: View from the balcony in a standing position)



(Figure 6: View from the lower balcony in a standing position)

39 Cutler Road has views across Sydney Harbour to Middle Head and Balmoral beach with land to water interface.

39A Cutler Road:



(Figure 7: View from the kitchen in a standing position)



(Figure 8: View from the lounge/ living room in a standing position)



(Figure 9: View from the dining room in a standing position)



(Figure 10: View from the balcony in a standing position)



(Figure 11: View from the ground floor master bedroom in a standing position)

39A Cutler Road has views across Sydney Harbour to Balmoral Beach and Bathurst Pavilion with land to water interface.

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:

41 Cutler Road:

The views are obtained over the rear boundary from upper and lower levels. The substantial parts of the property that the view is enjoyed from is the upper living and master bedroom in a standing position.

39 Cutler Road:

The views are obtained over the rear boundary from upper and lower levels. This includes the kitchen, upper balcony and lower balcony. The full extent of the view is best obtained from a standing position.

39A Cutler Road:

The views are obtained over the rear boundary from upper and lower levels. The key areas of the view obtained are from the kitchen, lounge, upper balcony and ground floor bedroom. All the views are best obtained from a 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:

41 Cutler Road:

The view is currently viewed over the subject site with partial views obstructed by existing vegetation. The land to water view is considered to be maintained with a portion of the lower water view lost from the development. There is potential for greater view to be lost from the bedroom 1, although a significant portion of the view will be maintained. Therefore, the key view corridors of the harbour and land interface is maintained and view loss considered minor to moderate.

39 Cutler Road:

The site enjoys views over the subject site from the kitchen and balcony, with the full extent of the harbour views being limited by the existing dwellings to the south-east and south-west. The key view of the land and water interface will be maintained. A portion of the lower water view will be lost and a greater area of the water view lost from the lower balcony. Although, the lower balcony is not considered a highly valued area with regards to the upper balcony and kitchen areas, where the significant view corridor over the harbour is maintained. As such, the view loss is considered minor to moderate and will not be unreasonably impacted by the proposal.

39A Cutler Road:

The property results in multiple areas of harbour views including Balmoral Beach and Bathers Pavilion from primary areas in the kitchen, living, dining, master bedroom and balcony. The views are impacted by existing vegetation. The view analysis and site photos reflect that partial water views will be loss from the kitchen, living and balcony. Although, the significant water to land interface and key outlook will be maintained. The ground floor master bedroom will result in greatest view loss due to the lower lying nature of the room. Therefore, a significant portion of the view will be maintained from key areas of the balcony, living and kitchen area, resulting in minor to moderate view loss.

See the view analysis from the applicant for all three properties below:



(Figure 12: View analysis from the existing and proposed development)

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 increase in dwelling height and design impacts the existing view obtained from the abovementioned properties. The eastern side setback variation to the eastern aspect of the property will contribute to a minor view loss with front terrace area providing a compliant setback and will not result in additional view loss. The eastern portion of the property is restricted from the stormwater line and easement, with the proposed development being designed to reduce the impact on the rear properties and provide the applicant with a suitable development proposal. The western setback non-compliances will not contribute to the view loss. A more skilful design to the side setback will not provide the impacted property with greater view retention without significant altering the development design. The view sharing is acceptable and reasonable.

The dwelling height is compliant with the development standard, with the front pergola covering exceeding the standard. The applicant has demonstrated that compliance with the standard will not result in greater view retention from the affected property to the immediate rear. A more skilful design will not result in substantial view retention and the dwelling has been designed to result in greater amenity for the occupants. The view sharing is acceptable and reasonable.

With consideration to the relevant clauses and objectives of the non-compliance's addressed through this report, the development is adequately designed to maintain key land to water views from the rear properties and provide a reasonable balance of view retention and a greater living environment for the occupants.

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

3.9 Mechanical Plant Equipment

A condition of consent applies to this application to ensure external mechanical plant systems (for pools, air conditioning and the like) must be acoustically enclosed and not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary. The proposal is considered appropriate with the applied condition of consent.

4.1.1.1 Residential Density and Dwelling Size

The development is located within the residential density area D7 which requires 750sqm of site area per dwelling. The existing site includes a dwelling house, where the proposed development will demolish the existing dwelling and provide a new single dwelling.

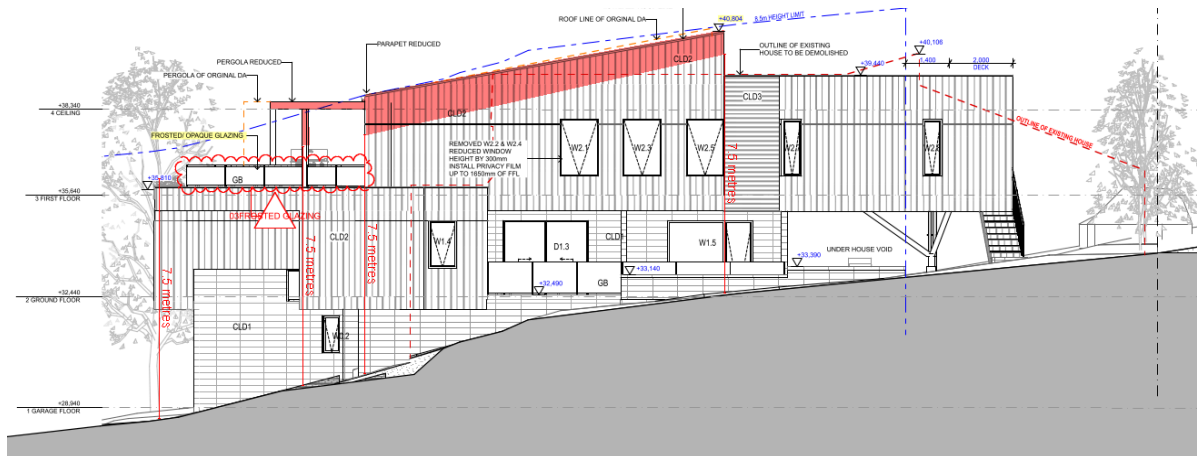
The site area is surveyed at 470.1sqm and therefore, the site results in a non-compliance of 59% (279.9sqm). It should be noted that there are no proposed changes to the residential density of the site under this application and thus, Clause 4.1.1.1 Residential Density and Dwelling Size is not applicable in this instance.

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

Description of non-compliance

The proposal results in non-compliant wall heights and includes windows within the minimum 3m requirement in accordance with the Clause. The dwelling also includes the front aspect presenting as a 3 storey dwelling house, varying from the 2 storey requirement.

See a visual depiction of the wall height variations in red below:
Eastern Elevation:



Western Elevation:



Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. The

proposal has been assessed against these objectives under clause 4.6, above in this report. In summary, there are sufficient environmental planning grounds to vary the development standard and it is unreasonable and unnecessary for full compliance in this instance.

4.1.3 Floor Space Ratio (FSR)

The MDCP Clause 4.1.3 Floor Space Ratio (FSR) provides guidance in assessing the floor space ratio of undersized allotments.

The site is located in 'Area R' on the MLEP Lot Size Map zoned in area requiring the minimum lot size of 750sqm. The proposed site has a surveyed area of 470.1sqm. Clause 4.1.3 Floor Space Ratio states:

The extent of any exception to the LEP FSR development standard pursuant to LEP clause 4.6 in this plan is to be no greater than the achievable FSR for the lot size indicated in Figure 30 - Extent of FSR Variation for Undersized Lots.

In this instance, the exception is to be no greater than the calculation of FSR based on 750sqm lot size/site area. This would result in a FSR of 300sqm or 0.4:1 based on the 750sqm lot size.

Using this calculation, the FSR of the proposed development is 0.3:1 or 227.95sqm, which complies with the required FSR.

A detailed assessment of the FSR variation has been undertaken within the section of this report relating to Clause 4.6 of the MLEP. In summary, the applicant has adequately justified that compliance with the Clause 4.4 Floor Space Ratio Development Standard is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to contravene the development standard.

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

Description of non-compliance

The proposal results in multiple variations to the side setback requirements to the eastern and western boundaries. Specifically, the proposal results in a variation to the eastern ground floor setback to the south-eastern portion and first floor setback for the extent of the dwelling. The western setback is non-compliant for the extent of the dwelling, excluding the north-western portion of the ground floor. See the 'Built Form Control' table of this report for the specific side setback details.

Additionally, the proposal results in rear setback variations to the first floor balcony and first floor dwelling.

As such, a merit assessment is conducted below.

Merit consideration:

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

Objective 1) To 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 has been amended to result in a compliant front setback and will be adequately separated from the street to reduce the impact on the streetscape. There is sufficient landscaped area to the front of the property to enhance the existing streetscape and provide a landscaped character to the street. The proposal was amended to remove the existing garage to the front boundary which has enhanced the streetscape and provided a compliant front setback for the development. The removal of this area has also increased the landscaped character of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

See Clauses 3.4.1, 3.4.2 and 3.4.3 for a detailed assessment against the relevant controls. In summary, the proposal will provide a reasonable amount of amenity including privacy, solar access and view sharing for the dwelling occupants and those of adjoining and surrounding properties. The development is also considered to appropriately respond to the site constraints and prevailing pattern of development seen within the vicinity of the site whilst providing sufficient parking arrangements.

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

Comment:

The development generally maintains the orientation and siting of the current dwelling to minimise further impacts on adjoining properties. Flexibility is granted due to the site constraints of the stormwater easement and flood prone areas of the property.

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:

Council's Landscape Officer has provided a referral response supporting the development, subject to conditions of consent. The development is not considered to impact any important natural features of the site and will provide sufficient tree planting.

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

Comment:

A bushfire report is provided and included in the conditions of consent.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The proposal results in a Total Open Space (TOS) of 58% and represents a 2.6% variation from the 60% requirement. Similarly, the proposal results in an open space above ground of 28.6%, a variation of (4sqm) from the maximum required 25%.

The proposal provides a compliant landscaped area of 75% from the 40% requirement.

Merit consideration:

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

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

Comment:

There are no significant landscape features on the subject site, with key landscaped areas maintained. The landscaped areas will provide for populations of native flora and fauna.

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

Comment:

The proposal provides compliant areas of soft landscaping and acceptable levels of open space at ground level. The variation to the open space above ground level arises from the applicant's development design to avoid potential flood impacts to the ground floor. Therefore, the primary open space areas are located to the north-east of the ground floor pool area and first floor balcony, benefiting from the view outlook. The site restricts the ability for a substantial rear setback area and constrains the open space to the rear of the property. Therefore, the open space has been elevated to the primary areas above ground.

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

Comment:

The proposed development is not considered to result in unreasonable view sharing, overshadowing, and visual and acoustic privacy by the proposal. The streetscape amenity will be maintained under this application and as addressed under Clause 3.1.1 Streetscape.

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

Comment:

It is considered that the proposal will maintain the necessary permeable surfaces for water infiltration to the water table.

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

Comment:

The proposal is not expected to assist in the spread of weeds and the degradation of private and public open space

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

Comment:

The proposal is not expected to adversely impact wildlife habitat or the potential for wildlife corridors.

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

5.4.1 Foreshore Scenic Protection Area

Description of Non-compliance

The proposal results in view loss from the rear adjoining properties at 39A , 39 and 41 Cutler Road.

Merit Assessment

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

LEP clause 6.9 designates land in the Foreshore Scenic Protection Area as shown on the LEP Foreshore Scenic Protection Area Map to protect visual aesthetic amenity and views both to and from Sydney Harbour, the Pacific Ocean and the Manly foreshore. Development in the Foreshore Scenic Protection Area must not detrimentally effect the 'visual or aesthetic amenity of land in the foreshore scenic area nor must the development similarly effect the views of that land, including ridgelines, tree lines and other natural features viewed from the Harbour or Ocean from any road, park or land in the LEP for any open space purpose or any other public place. Any adverse impacts considered in this paragraph will be mitigated. In accordance with these LEP objectives Council seeks to conserve and preserve tree canopies and street trees, wildlife corridors and habitat and minimise cumulative impacts on escarpment, rock shelves and other natural landscape features.

Comment:

The scale of development is generally commensurate with surrounding development along the foreshore area near the site. The bulk and scale of development is responsive to the contemporary design of the building and consistent within the visual catchment of the site. The change to height and FSR variations do not create unreasonable impacts to surrounding land as addressed in this report or diminish the LEP objectives. Additionally, the proposal is considered to comply with Clause 6.9 *Foreshore Scenic Protection Area* of MLEP.

5.4.1.1 Additional matters for consideration

LEP clause 6.9(3)(a) to (d) lists certain matters to be taken into account in relation to all development within the Foreshore Scenic Protection Area.

a) Further to matters prescribed in the LEP, the development in the Foreshore Scenic Protection Area must also:

- i) minimise the contrast between the built environment and the natural environment;*
- ii) maintain the visual dominance of the natural environment;*
- iii) maximise the retention of existing vegetation including tree canopies, street trees, wildlife corridors and habitat;*
- iv) not cause any change, visually, structurally or otherwise, to the existing natural rocky harbour foreshore areas;*
- v) locate rooflines below the tree canopy;*
- vi) consider any effect of the proposal when viewed from the harbour / ocean to ridgelines, tree lines and other natural features; and*
- vii) use building materials of a non-reflective quality and be of colours and textures that blend with the prevailing natural environment in the locality.*

Comment:

The proposed dwelling maintains a residential outlook to maintain the views toward the south and the overall height of the building, positioning and landscaping is complimentary with existing development in the foreshore and scenic protection area. The proposal will not result in an unreasonable visual impact when viewed from public places along the foreshore or the harbour.

The site is separated from the waterfront by approximately 115m by Castle Rock Crescent which contains dense landscaping which will assist to mitigate the built form as viewed from the waterway.

The development has been reviewed by Council's Landscape Officer, Heritage Officer and Bushland and Biodiversity Officer, with each referral team satisfied the proposal will not have an unacceptable impact, subject to conditions and adherence to reports addressed in the referral responses.

The development complies with the required quantum of landscaped open space and application is supported by a landscape plans which retains suitable areas of deep soil planting to accommodate new planting. The landscape plan has been supported by Council's Landscape Officer.

b) Setbacks in the Foreshore Scenic Protection Area should be maximised to enable open space to dominate buildings, especially when viewed to and from Sydney Harbour, the Ocean and the foreshores in Manly.

Comment:

The proposal is designed to manage the constraints of the site, including the large easement, providing reasonable setbacks to the respective boundaries to maximise open space. This design will not unreasonably impact the views to and from Sydney Harbour, the Ocean and the foreshores.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

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

A monetary contribution of \$23,519 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,351,910.

CONCLUSION

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

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

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for Demolition works and construction of a dwelling house including a swimming pool has been referred to the Development Determination Panel (DDP) due to a variation greater than 10% to the Floor Space Ratio standard.

The subject site is burdened by a large easement and stormwater pipe that runs along the eastern boundary towards the front of the property; this severely restricts the siting of a dwelling. The site also sits within a varied streetscape in terms of dwelling design and siting (see the aerial photo below for an indication of the unusual development pattern), and is an undersized lot.

The proposal includes the removal of the existing garage and storage shed at the front of the site, greatly improving the front setback area and streetscape presentation. The dwelling has been sited outside the easement, sits under the height limit (with the exception of a minor portion of a pergola), has an FSR that is suitable for an undersized lot, and will be compatible with the varied streetscape.

The concerns raised in the objections have been addressed and resolved by amendments to the architectural plans and assessment against the relevant objectives throughout the report. The maximum building height has been reduced to provide compliance for the extent of the dwelling and will assist in view retention for the rear properties.

The critical assessment issues include Height of Buildings, Floor Space Ratio, Maintenance of Views, Streetscape, Setbacks and Open Space and Landscaping and these have been found to be acceptable.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

REASON FOR DETERMINATION

The various non-compliances have been found to be acceptable due to the constraints of the site and the

varied streetscape.

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2025/0572 for Demolition works and construction of a dwelling house including a swimming pool on land at Lot 2 DP 210657, 24 Ogilvy Road, CLONTARF, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA10	02	DEMOLITION PLAN	ARCHISOUL ARCHITECTS	14/8/2025
DA11	02	PROPOSED SITE PLAN	ARCHISOUL ARCHITECTS	14/8/2025
DA13	03	PROPOSED GARAGE FLOOR PLAN	ARCHISOUL ARCHITECTS	26/8/2025
DA14	02	PROPOSED GROUND FLOOR PLAN	ARCHISOUL ARCHITECTS	14/8/2025
DA15	03	PROPOSED FIRST FLOOR PLAN	ARCHISOUL ARCHITECTS	26/8/2025
DA16	02	PROPOSED ROOF PLAN	ARCHISOUL ARCHITECTS	14/8/2025
DA17	03	PROPOSED SOUTH ELEVATIONS	ARCHISOUL ARCHITECTS	26/8/2025

DA18	03	PROPOSED EAST ELEVATIONS	ARCHISOUL ARCHITECTS	26/8/2025
DA19	02	PROPOSED NORTH ELEVATIONS	ARCHISOUL ARCHITECTS	14/8/2025
DA20	02	PROPOSED WEST ELEVATIONS	ARCHISOUL ARCHITECTS	14/8/2025
DA21	03	PROPOSED SECTION A	ARCHISOUL ARCHITECTS	26/8/2025
DA22	03	PROPOSED SECTION A1	ARCHISOUL ARCHITECTS	26/8/2025
DA23	02	PORPOSED SECTION B	ARCHISOUL ARCHITECTS	14/8/2025
DA24	02	PROPOSED SECTION C	ARCHISOUL ARCHITECTS	14/8/2025
DA25	02	PROPOSED POOL SECTIONS	ARCHISOUL ARCHITECTS	14/8/2025
DA37	02	EXTERNAL FINISHES SCHEDULE	ARCHISOUL ARCHITECTS	14/8/2025
DA38	02	EXTERNAL FINISHES SCHEDULE	ARCHISOUL ARCHITECTS	14/8/2025

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
FLOOD RISK MANAGEMENT PLAN	-	TAYLOR CONSULTING	10 JUNE 2025
OVERLAND FLOW MANAGEMENT PLAN (DWG NO.1/A, 4)	-	TAYLOR CONSULTING	26 JUNE 2025
STORMWATER MANAGMENT PLAN	-	TAYLOR CONSULTING	31 MARCH 2025
LANDSCAPE PLAN	-	CONTOUR LANDSCAPE ARCHITECTURE	06/04/2025
WASTE MANAGEMENT PLAN	-	APPLICANT	-
GEOTECHNICAL INVESTIGATION	-	JK GEOTECHNICS	8 APRIL 2025
ARBOCULTURAL IMPACT APPRAISAL AND METHOD STATEMENT	-	NATURALLY TREES	31 MARCH 2025
BASIX CERTIFICATE (1790770S)	-	CHAPMAN ENVIRONMENTAL SERVICES PTY LTD	08 APRIL 2025

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

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. **Compliance with Other Department, Authority or Service Requirements**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	03/06/2025

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

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

3. **Approved Land Use**

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

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

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

4. **Prescribed Conditions**

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

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

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

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

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

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

Reason: Legislative requirement.

5. General Requirements

- (a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (d) At all times after the submission of the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (e) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (f) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (g) Prior to the release of the Construction Certificate, payment of the following is required:
- i) Long Service Levy - Payment should be made to Service NSW (online or in person) or directly to the Long Service Corporation. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.

- (h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (i) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (l) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (m) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (o) Should any construction cranes be utilised on site, they are to be fitted with bird deterrents along the counterweight to discourage raptor (bird) nesting activity. Deterrents are to remain in place until cranes are dismantled. Selection of deterrent methods is to be undertaken in accordance with the recommendations of a suitably qualified ecologist.
- (p) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety

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

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

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$23,519.10 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$2,351,910.00.

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

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

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

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

7. **Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

inspection).

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

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

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

8. **Construction, Excavation and Associated Works Security Bond(s)**

The applicant is to lodge a bond with Council for the following:

Drainage Works

As security against any damage or failure to complete the construction of stormwater drainage works required as part of this consent a bond of \$20 000.

Details confirming payment of the bond(s) are to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

9. **Flood effects caused by development**

There is to be no filling of the land or any other reduction of the available flood storage which results in a net loss of storage below the 1% AEP flood level of 34.63m AHD.

Details demonstrating compliance are to be submitted to the Principal Certifier for approval.

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

10. **Building components and structural soundness**

B1 - All new development below the Flood Planning Level of 34.65m AHD shall be designed and constructed from flood compatible materials.

B2 - All new development must be designed to ensure structural integrity up to the Flood Planning Level of 34.65m AHD, taking into account the forces of floodwater, debris load, wave action, buoyancy and immersion.

B3 - All new and existing electrical equipment, power points, wiring and connections must be located above the Flood Planning Level of 34.65m AHD, protected from flood water or have residual current devices installed to cut electricity supply during flood events.

Details demonstrating compliance are to be submitted to the Principal Certifier for approval.

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

Government policy.

11. **Floor levels**

C1 - New floor levels within the development shall be set at or above the Flood Planning Level of 32.42m AHD.

Details demonstrating compliance are to be submitted to the Principal Certifier for approval.

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

12. **Fencing**

New fencing (including pool fencing, boundary fencing, balcony balustrades and accessway balustrades) shall be open to allow for the unimpeded movement of flood waters. It must be designed with a minimum of 50% open area along any straight length, from the natural ground level up to the 1% AEP flood level. Openings shall be a minimum of 75mm x 75mm.

Details demonstrating compliance are to be submitted to the Principal Certifier for approval.

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

13. **No Clearing of Vegetation**

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

14. **Stormwater Disposal**

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

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

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

15. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3.0 metres wide in accordance with Northern Beaches Council Standard Drawing Normal

in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

A Council approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

16. Structures Located Adjacent to Council Pipeline or Council Easement

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

Structural details prepared by a suitably qualified Civil Engineer, who has National Engineers Register (NER) or Professionals Australia (RPENG) demonstrating compliance are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

18. Boundary Identification Survey

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on a boundary identification survey, prepared by a Registered Surveyor, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

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

19. Pre-Construction Stormwater Assets Dilapidation Report

The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at: <https://www.northernbeaches.nsw.gov.au/media/60355?1730767288>

The pre-construction / demolition Dilapidation Report must be submitted to Council for approval and the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

20. **Compliance with Standards**

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

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

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

21. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifier demonstrating the works are in compliance with Sydney Water requirements.

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

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

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

22. **Construction Traffic Management Plan**

A Construction Traffic Management Plan (CTMP) and report shall be prepared by a Transport for NSW accredited person and submitted to Council via an application for a Permit to Implement Traffic Control. The application form can be accessed via <https://www.northernbeaches.nsw.gov.au/council/forms>. Approval of the permit application by the Northern Beaches Council Traffic Team is required prior to issue of any Construction Certificate.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase.
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken.
- Make provision for all construction materials to be stored on site, at all times.
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed.

- Where access is required across private property not in the direct ownership of the proponent, such as a private road/driveway, community title road or right of way, the CTMP is to include:
 - Evidence of the legal right and terms to use the access route or provide owners consent from the owners/strata/community association.
 - Demonstrate that direct access from a public space/road is not viable for each stage of works.
 - An assessment to be carried out of the physical constraints of the Right of Carriageway to determine the maximum size of vehicle that may access the site via the Right of Carriageway during construction.
 - Unless owner/strata/community associations consent is obtained, vehicles are not to exceed 24 tonnes or 7.5 metres in length (an assessment must be undertaken that the surface is capable of supporting up to 24 tonnes, otherwise the weight limit should be reduced in the CTMP). If consent is obtained, a copy must be included in the CTMP.
 - No construction vehicles, materials or plant are to be located or parked in the private road/driveway, community title road or right of way.
 - How any disruption to other users of the private road/driveway, community title road or right of way will be minimised and all users kept informed of likely disruption where the access will be closed or blocked for any given time.
 - If trees are located within or overhang the access route, a tree protection plan prepared by an Arborist with minimum AQF Level 5 in arboriculture demonstrating how any trees within the Right of Carriageway will be protected from damage by construction vehicles. Should any tree protection measures be required on private land in accordance with AS4970-2009 Protection of trees on development sites, owner's consent must be obtained.
 - A Dilapidation report, including photographic surveys, of the private road/driveway/right of way must be included prior to any works commencing on the site. The report must detail the physical condition of the private road/driveway/right of way, and any other adjacent private property assets (including trees) or adjacent public property that may be adversely affected by vehicles servicing the development site to undertake works or activity during site works.
 - A requirement for Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, to be submitted after the completion of works and prior to the Occupation certificate. The report must:
 - Compare the post-construction report with the pre-construction report,
 - Clearly identify any recent damage or change to the private road/driveway/right of way and whether or not it is likely to be the result of the development works,
 - Should any damage have occurred, identify remediation actions taken.
 - Be submitted to Council with the Occupation Certificate.
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.

- Make provision for parking onsite. All Staff and Contractors are to use any basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site.
- Specify that the public roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent.
- Proposed protection for Council and adjoining properties.
- The location and operation of any on site crane.

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

A copy of the approved CTMP must be kept on-site at all times while work is being carried out.

The development is to be undertaken in accordance with the Construction Traffic Management Plan approved by Northern Beaches Council Traffic Team.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

23. Pre-Construction Dilapidation Report

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including

demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property / Properties: 26 Ogilvy Road Clontarf (Lot 2 DP 502088)

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

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

24. **Sediment and Erosion Controls**

For developments that include more than 2500sqm of disturbance:

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

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

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

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

The ESCP must include the following as a minimum:

- Site Boundaries and contours,
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application),

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

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

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

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

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

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

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

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

DURING BUILDING WORK

25. **Protection of Landscape Features and Sites of Significance**

All natural landscape features including natural rock outcrops, natural vegetation, soil and watercourses are to remain undisturbed during demolition, excavation and construction works except where affected by works detailed on approved plans.

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should

cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

26. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees within the site not indicated for removal on the approved Plans,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all trees and vegetation within the road reserve.

- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with the Arboricultural Impact Appraisal and Method Statement Report dated 31 March 2025 prepared by Naturally Trees and AS4970-2009 Protection of trees on development sites,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
 - ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,

- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

- c) The arboricultural works listed in a) and b) are undertaken and complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

27. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to or by seeking arboricultural advice from an Arborist with minimum AQF Level 5 in arboriculture during the works.

In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

28. **Pre-clearance Survey**

Any habitat for native wildlife (including tree hollows) approved for removal is to be inspected for native wildlife prior to its removal. If native wildlife is found within habitat to be removed, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Any incidents in which native wildlife are injured or killed as a result of works are to be recorded, in addition to details of any action taken in response.

Written evidence of compliance (including records of inspections and any wildlife incidents) is to be provided to the Principal Certifier prior to any Occupation Certificate.

Reason: To protect native wildlife.

29. **Wildlife Protection**

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

Reason: To protect native wildlife.

30. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

31. **Road Reserve**

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

Reason: Public safety.

32. **Handling of asbestos during demolition**

While demolition work is being carried out, any work involving the removal of asbestos must comply with the following requirements:

- Only an asbestos removal contractor who holds the required class of Asbestos Licence issued by SafeWork NSW must carry out the removal, handling and disposal of any asbestos material;
- Asbestos waste in any form must be disposed of at a waste facility licensed by the NSW Environment Protection Authority to accept asbestos waste; and
- Any asbestos waste load over 100kg (including asbestos contaminated soil) or 10m² or more of asbestos sheeting must be registered with the EPA online reporting tool WasteLocate.

Reason: To ensure that the removal of asbestos is undertaken safely and professionally.

33. **Geotechnical Requirements**

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

34. **Survey Certificate**

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

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

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

35. Maintenance of Sediment and Erosion Controls

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

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

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

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

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

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

36. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

37. Implementation of Construction Management Plan

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

38. Landscape Completion

Landscape works are to be implemented in accordance with Landscape Plans Rev D dated 06/04/2025 prepared by Contour, and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and located either within garden bed or within a prepared bed within lawn,
- c) tree, shrub and groundcover planting shall be installed as indicated on the Landscape Plans,
- e) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
- f) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone,
- g) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

Prior to the issue of an Occupation Certificate, details (from a qualified landscape architect, landscape designer or horticulturalist) shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

39. **Certification of Works as Executed**

A suitably qualified engineer and/or registered surveyor is to certify that the completed works have been constructed in accordance with this consent and the approved plans with respect to the following:

1. Floor levels for the ground floor, are set at or above the required level
2. Openings are provided in fencing where required for the free passage of flood waters
3. The ground levels of the drainage channel.

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

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

40. **Building Components and Structural Soundness**

B2 - A suitably qualified structural engineer is to certify the structural integrity of the new development up to the required Flood Planning Level. The depth, velocity, debris load, wave action, buoyancy and immersion must all be considered.

B3 - A suitably qualified electrician or contractor is to certify that all new and existing electrical equipment, power points, wiring and connections are located above the required Flood Planning Level, are protected from flood water or have residual current devices installed to cut electricity supply during flood events.

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

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

41. **Native Landscaping**

Any new landscaping is to incorporate a minimum 80% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the relevant section of the Native Planting Guide available on Council's website.

Details demonstrating compliance are to be provided to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To ensure compliance with the requirement to retain and protect native planting on the site.

42. **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

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

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

43. **Priority Weed Removal and Management**

All Priority weeds (as specified in the Northern Beaches Local Weed Management Plan) within the development footprint are to be removed using an appropriate control method.

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

Reason: To reduce the risk of site works contributing to spread of Priority weeds.

44. **Post- Construction Stormwater Assets Dilapidation Report (Council stormwater assets)**

The Applicant shall submit a post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at: <https://www.northernbeaches.nsw.gov.au/media/60355?1730767288>

The post-construction / demolition dilapidation report must be submitted to Council for review and approval. Any damage to Council's stormwater infrastructure is to be rectified prior to the release of any Drainage security bonds. Council's acceptance of the Dilapidation Survey is to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure.

45. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

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

46. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

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

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

47. **Geotechnical Certification Prior to Occupation Certificate**

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

48. **Waste Disposal Verification Statement**

On completion of demolition work:

- a signed statement must be submitted to the Certifier verifying that demolition work, and any recycling of materials, was undertaken in accordance with the waste management plan approved under this consent, and
- if the demolition work involved the removal of asbestos, an asbestos clearance certificate issued by a suitably qualified person, must be submitted to the Certifier within 14 days of completion of the demolition work.

Reason: To provide for the submission of a statement verifying that demolition waste management and recycling has been undertaken in accordance with the approved waste management plan.

49. **Certification of Structures Located Adjacent to Council Pipeline or Council Easement**

The Applicant shall submit a suitably qualified Structural Engineer's certification that the completed footing works have been constructed in accordance with this consent, Northern Beaches Council's Water Management for Development Policy and the approved Construction Certificate plans. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure

50. **Restriction as to User – Drainage channel**

The Applicant shall create a Restriction as to User on the title of the land for the drainage channel (under the provisions of Section 88B of the Conveyancing Act 1919), to protect the drainage function and preserve ground levels as approved. The restriction must include the following wording (or wording otherwise approved by Council):

The registered proprietor of the burdened lot shall not:

- Place any fill, soil, building material, or any other object or structure within the area identified as the drainage channel, that may impede, divert, or otherwise interfere with overland flow through the land
- Alter the ground levels within the drainage channel to be above the levels shown on Drawing No. DA14

The terms of the restriction are to be endorsed by Council prior to lodgement with NSW Land Registry Services. The application to Council shall include a copy of the works as executed drawings, certified by a registered surveyor. Northern Beaches Council shall be nominated as the sole authority to release, vary or modify such restriction.

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

Reason: To ensure that the drainage channel preserves the natural flow of water and prevents adverse impacts on adjoining properties.

51. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifier, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause

pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating 'YOUNG CHILDREN SHOULD BE ACTIVELY SUPERVISED WHEN USING THIS POOL' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

(g) Swimming pools and spas must be registered with the *Division of Local Government*.

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

Reason: To protect human life.

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

52. Control of Domestic Dogs/Cats

Domestic dogs and cats are to be kept from entering wildlife habitat areas at all times.

Dogs and cats are to be kept in an enclosed area and/or inside the dwelling, or on a leash such that they cannot enter areas of wildlife habitat, bushland or foreshore unrestrained, on the site or on surrounding properties or reserves.

Reason: To protect native wildlife and habitat.

53. Geotechnical Recommendations

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

54. Approved Works

Nothing within this consent grants approval for works beyond the property boundaries of the subject site to which this development application applies.

Reason: To ensure all works are undertaken in accordance with this consent, and to ensure all works remain wholly within the property boundaries.

55. Swimming Pool/Spa and Mechanical Equipment Motor Noise

The swimming pool / spa and mechanical equipment motors including air conditioning units shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.