

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1820
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Responsible Officer:	David Auster
Land to be developed (Address):	Lot 9 DP 8075, 74 Bower Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Trustees Roman Catholic Church Archdiocese Sydney Band Pty Ltd
Applicant:	Band Pty Ltd

Application lodged:	14/11/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	21/11/2018 to 07/12/2018
Advertised:	Not Advertised
Submissions Received:	2
Recommendation:	Approval

Estimated Cost of Works:	\$ 270,000.00
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ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;

- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)

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

SITE DESCRIPTION

Property Description:	Lot 9 DP 8075 , 74 Bower Street MANLY NSW 2095
Detailed Site Description:	<p>The site has a generally rectangular shape, with the front and rear boundaries being angled to form a parallelogram. It has side boundaries 45.835m long, and front and rear boundaries of 16.365m. It has a surveyed area of 698.5sqm. The topography slopes down from front to rear (south to north). The site backs onto a cliff above the public walkway between Manly Beach and Shelley Beach.</p> <p>There is an existing three storey dwelling located in the approximate centre of the site. The dwelling has views out towards the ocean to the north, Manly Beach to the west, and Fairy Bower to the east.</p> <p>Surrounding development consists mainly of large detached dwellings of various heights and designs. The immediate neighbours to each side (east and west) have similar views to the north, east and west. The sites across the road to the south are significantly higher than the subject site.</p>

Map:



SITE HISTORY

A search of Council's records has revealed the following:

Application 10.2006.250.1 for Alterations & Additions to the existing dwelling house was approved by Council on 19 January 2007.

Application 10.2005.56.1 for Demolition & Construction of a new multi-level dwelling with pool & landscaping was approved by Council on 11 May 2005.

PROPOSED DEVELOPMENT IN DETAIL

The proposed works include the following:

- Extending upper level Master Bedroom by 2 metres to the north
- Extending upper level Bed 2 by 1 metre to the north
- Extending roof and parapet above the rooms respective to the proposed extensions
- Demolishing existing roof under the rooms respective to the proposed extensions
- Replacing existing fixed windows with operable windows in the rooms and installing three additional windows to the Master Bedroom.

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 Matters for Consideration'	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including	<p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed development on</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Squillace Architects Vince Squillace & Associates	1/80 Albion Street SURRY HILLS NSW 2010
Symons Goodyer Pty Ltd Geoff Goodyer	PO Box 673 BALGOWLAH NSW 2093

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

- Privacy
- View loss
- Aesthetic appearance

The matters raised within the submissions are addressed as follows:

- Privacy
Comment:
Concerns were raised by the neighbours on both sides regarding privacy. This issue is assessed in detail under clause 3.4.2 Privacy and Security in this report. In summary, the proposal is not considered to result in any unreasonable privacy impacts. No conditions are recommended in this regard, and the submissions are not supported.
- View loss
Comment:
Concerns were raised by the owners of number 76 regarding loss of views. This issue has been assessed in detail under clause 3.4.3 Maintenance of Views in this report. In summary, the proposal is considered to minimise view loss in accordance with the clause, and maintain a reasonable sharing of views in accordance with the NSW Land and Environment Court Planning Principle. The submission is not supported in this regard.
- Aesthetic appearance
Comment:
The submission raised concerns with the colour of the drainpipes, as they are slightly lighter in colour than the rendering of the walls. This is considered by the objector to be unsightly and a condition has been requested should the development be approved requiring drainpipes to match the colour of the wall to which they are attached. The finishes are to match the existing building, and a slightly different colour of drain pipe compared to the wall is not considered to result in any unreasonable unsightliness. The submission is not supported in this regard.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p>The proposed development has been assessed against the following provisions:</p> <ul style="list-style-type: none">- NSW Biodiversity Conservation Act 2016 (BC Act)- Manly DCP Clause 5.4.2 (Threatened Species and Critical Habitat Lands)- Manly LEP Clause 6.5 (Terrestrial Biodiversity) <p>The subject site is known habitat for the endangered population of long-nosed bandicoot at North Head. Accordingly, a five-part test is required to be prepared in accordance with the provisions of the NSW BC Act. Given that the proposal will have a minimal long-term impact on soft-open space, Council's Biodiversity Section has undertaken this assessment. The assessment concluded that, subject to conditions of consent, the proposal complies with the controls and is unlikely to result in a significant impact to the endangered population.</p>
NECC (Coast and	The DA has been assessed for impacts to the coastal environment

Internal Referral Body	Comments
Catchments)	<p>including impacts on Cabbage Tree Bay. The Statement of Environmental Effects did not address SEPP (Coastal Management) however an internal assessment has been undertaken. The application has been assessed in consideration of SEPP 2016 (Coastal Management), Manly LEP 2013 and Manly DCP 2013. Clause 6.8 Landslide Risk has been considered.</p> <p>The following reports have been assessed: Statement of Environmental Effects Plans - Master Set Geotechnical Report.</p> <p>The application is acceptable with conditions.</p>
NECC (Riparian Lands and Creeks)	No comments and no conditions recommended.
Strategic and Place Planning (Heritage Officer)	<p>Further to a review of available documents and a site visit The site of proposed development is not heritage listed, however, it is in the vicinity of listed item, the Fairy Bower Pool (I167 in Manly LEP). Given the nature of the proposal, the separation between sites, setting at some distance and the nature of significance of the item, it is assessed that impact on heritage values will be within acceptable limits.</p> <p>Based on the above, I have no objection to this proposal from heritage perspective and deem heritage conditions not required.</p> <p>Kind Regards Zoran Popovic Heritage Adviser</p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A328195_02). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

SEPP (Coastal Management) 2018

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

10 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 site is not on land identified as “coastal wetlands” or “littoral rainforest”.

11 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 site is not on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest”.

12 Development on land within the coastal vulnerability area

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

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

of,
anticipated
coastal
processes
and
current
and
future
coastal
hazards.

Comment:

The site is not on land identified as “coastal vulnerability area”.

13 Development on land within the coastal environment area

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

Comment:

The site is identified as being within the coastal environment area. The proposal is for a minor extension to the rear of the upper level, which will remain entirely within the footprint of the building below. It will not have any significant or unreasonable adverse impacts on any of the matters for consideration above.

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

Comment:

As discussed above, the proposal is for minor works over the existing building footprint. It will have no significant adverse impacts on any of the above matters for consideration. As such, it is considered to be consistent with clause 2(a) above, in that it is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1).

14 Development on land within the coastal use area

(1)

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

Comment:

The site is within the coastal use area. The proposal for a minor extension to the rear of the upper level, wholly over the existing building footprint, will not have any unreasonable impacts on any of the above matters for consideration.

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

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

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

Comment:

The proposal is for minor works to the rear of the upper level, entirely within the existing building footprint. It is not likely to cause any increased risk of coastal hazards on the subject site or other land.

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	8.5m	N/A	Yes
Floor Space Ratio	FSR: 0.45:1	FSR: 0.51:1	11.8%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.45:1
Proposed:	0.51:1
Percentage variation to requirement:	11.8%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

Clause 4.6 Exceptions to development standards:

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

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

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

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

Comment:

Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ

provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- The variation is a minor extension of an existing non-compliance.
- There is almost no visible change to the building from the street.
- The existing building was approved under previous planning controls (MLEP 1988), which measured floor space differently, and would have meant the extent of variation would have been greater under the previous policy (0.56:1 compared to 0.51:1 under the current controls). The statement argues that the extent of variation now proposed is less than what was originally approved for the existing building under the old policy.
- The proposal has no noticeable impact on the building height, maximum wall height and maximum storeys.
- Only a small amount of additional overshadowing will be caused.
- No unreasonable view impacts will be caused.
- No other unreasonable impacts will be caused to the surrounding neighbours or general locality.
- The proposal is consistent with the objectives of the zone and the development standard.

These arguments are considered to be generally accurate and in their description of the alterations and additions (and resulting environmental impacts) as minor and not unreasonable. The proposal is also considered to be consistent with the objectives of the zone and development standard, as argued by the applicant. Little weight is given to the argument regarding the greater extent of non-compliance

previously approved under the previous LEP as compared to the extent of non-compliance now proposed. There are no savings provisions applicable in this regard, and the current application is assessed wholly against the current planning controls under which it was lodged. However, the other arguments presented are considered to constitute sufficient environmental planning grounds to consider the proposed variation.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will not unreasonably impact upon the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor Space Ratio development standard and the objectives of the E3 Environmental Management zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

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

Comment:

The proposed alterations and additions are at the rear of the existing dwelling, and maintain the existing heights and setbacks of the building. The proposal will have a negligible impact on the streetscape character.

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

Comment:

The proposed works occur at the rear of the existing dwelling, over the existing footprint, and will not create any unreasonable impacts on views from any public place to any important features. The neighbours to the west have objected to view loss. However, as discussed within this report, the proposal is not considered to result in any significant view impacts, and is not considered to be unreasonable in this regard.

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

Comment:

The proposed works are a minor extension to the rear of the upper level, which will remain well within the building footprint below. They will not have any significant or unreasonable impacts on the visual relationship between the building and the character and landscape of the surrounding area.

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

Comment:

The proposed works are minor, and as assessed throughout this report are not considered to result in any unreasonable impacts to adjoining land or the public domain. In relation to the concerns raised by neighbours regarding views, privacy and visual amenity, the proposal is not considered to result in any unreasonable impacts.

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

Comment:

The proposed works will not impact on the viability of any business zones.

Zone objectives

The underlying objectives of the E3 Environmental Management zone are:

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

Comment:

The site is within the Foreshore Scenic Protection area and in an area of significance with regard to bandicoots. The proposed works are to the existing upper level, and will be wholly within the existing footprint of the building below. The works are minor, being a small extension of two bedrooms to the rear, and will not have any significant or unreasonable environmental impacts on the surrounding area.

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

Comment:

The proposal is a minor extension to an existing approved and permissible use - being a dwelling house - in the zone. It will not have any unreasonable adverse impacts on those values.

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

Comment:

No trees are proposed for removal. The works are a minor extension to the rear of the existing building, and will not cause the building to dominate the natural scenic qualities of the foreshore.

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

Comment:

The proposed works are a minor extension to two bedrooms at the upper level, and will remain well within the footprint of the existing building. The proposal will not have any significant negative impact on the nearby foreshore, or any significant geological features or bushland, and will not result in the loss of any natural vegetation.

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

Comment:

The proposed works are entirely within the existing building footprint, and will not cause any increased runoff.

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

Comment:

The proposed works maintain the existing height of the building, and comply with the built form controls in relation to height. The proposal is for a minor extension to the rear at the upper level, and will not cause the development to become unreasonably bulky. It will not cause any impacts to existing vegetation or topography, and as assessed throughout this report will not have any unreasonable environmental impacts to surrounding land.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Floor space ratio Development Standard is assumed by the Local Planning Panel, for which Council had an exemption for dwelling houses that could be determined by the Development Determination Panel. This exemption has expired, and the application has therefore been referred to the Local Planning Panel for determination.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 698.5sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling/500sqm	1 existing and unchanged	N/A	Yes
	Dwelling Size: 90sqm	357sqm	N/A	Yes
4.1.2.1 Wall Height	E: 6.5m (based on gradient flat)	5.8m	N/A	Yes
	W: 6.5m (based on gradient flat)	8.3m (maintains existing heights)	N/A	Yes
4.1.2.2 Number of Storeys	2	3 (maintains existing heights)	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.5m	N/A	Yes
	Pitch: maximum 35 degrees	Less than 35 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Works at rear	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E 1.9m (based on wall height) W 2.8m (based on wall height)	E 2.4m W 2.7m	N/A N/A	Yes Yes
	Windows: 3m	E 2.4m W 2.7m	20% 10%	No No
4.1.4.4 Rear Setbacks	8m	8.4m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS 3	Open space 55% of site area	Existing and unchanged	N/A	Yes
	Open space above ground 25% of total open space	Existing and unchanged		
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	Existing and unchanged	N/A	Yes
	3 native trees	Works over existing footprint. No changes to landscaping	N/A	Yes

4.1.5.3 Private Open Space	18sqm	Existing and unchanged	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	Existing and unchanged	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	Existing and unchanged	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	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
4.4.1 Demolition	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.2 Alterations and Additions	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

The neighbours to the east (number 72) and west (number 74) have both objected to the proposal on privacy grounds.

To the east number 72 has living room windows on the western side. Number 72 has objected to the reduced space between the new north facing windows from Bedroom 1 W03 and W04, and to the two east facing windows from Bedroom 1, W01 and W02. Conditions have been requested including fixed vertical external privacy louvres (300mm deep) to the north facing windows, and frosted glazing and overlapping louvres to W01 and W02.

The proposed north facing windows (W03 and W04) will replace the existing north facing windows, and remove an existing vertical projecting privacy screen, that does not currently offer any great privacy protection between the existing windows and the neighbouring windows. This privacy screen will be relocated to the east of the north facing windows, and may provide some small protection in that direction, though this is not relied upon in this assessment. The dwelling at number 72 is located to the north of the subject dwelling, and the proposed new north facing windows will only be able to view into the extreme north western corner of the adjacent living room window and out the other side. They will not offer views into the actual room beyond the extreme corner of this room. Given they are bedroom windows, with a relatively low privacy impact due to limited use of the room, and do not create any great increase to privacy impacts no conditions are recommended. There is not considered to be any unreasonable impacts caused by the proposal and it is therefore not considered necessary to restrict the views from the bedroom by the addition of fixed vertical louvres.

The east facing windows W01 and W02 are provided with louvres on the plans. These windows are to a walk in robe, and a small corner of the bedroom. These are low use areas, and it is likely that when they are in use by the occupants they will be wish to have windows shielded for dressing and the like. The louvres provided are considered sufficient in this regard. No further conditions are considered necessary.

Number 74 to the west has no east facing windows in this location at the same level, but has an upper level deck off a study/bedroom area facing to the north and wrapping around the eastern side of the building. To the west the proposal includes 4 new side facing windows. These are W09 and W10 from the Bedroom 2, and W05 and W06 from Bedroom 1. Number 74 has requested conditions requiring frosted glazing and opening limited to 125mm to W06 and W10, and frosted glazing and opening limited to 45 degrees to W05 and W09.

W06 and W10 are small windows with minimum sill heights of 1.7m. W09 and W05 are situated in the northern corners of their respective bedrooms, and replace existing similar west facing windows slightly, moved slightly further north. Given their location the majority of views out of these windows during general bedroom use will be in an angled direction to the north west, and not directly west towards the upper level deck of number 74. Given that these windows are bedroom windows, located in the corner

of the room, or with high sills, and that they do not look directly into a primary living area but will only impact on an upper level deck off a bedroom/study, they are not considered to result in any unreasonable privacy impacts. No conditions of consent are recommended in this regard.

3.4.3 Maintenance of Views

The owners of number 76 to the west have objected to the proposal based on view loss.

Merit consideration:

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

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

Comment:

The proposal is considered to maintain a reasonable sharing of views, as discussed below in relation to the planning principles established by the Land and Environment Court.

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).

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

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

Comment:

The views available from number 76 are panoramic views of Manly and Manly Beach to the north west, Queenscliff Headland and the headlands beyond to the north, the ocean, and around to Fairy Bower headland to the north east. The views are considered to be highly valuable and iconic.

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

Comment:

The primary living area and master bedroom are situated at the northern end of the dwelling, and the views from these areas will be completely unaffected by the proposal. The dwelling includes two upper level bedrooms/studies situated towards the southern end of the building, with adjoining balconies. The views from these areas are not 'whole' views, as they are broken by the northern portion of the dwelling at number 76. Relevantly to the current proposal, the view towards Fairy Bower headland is across two side boundaries from these areas, and is heavily filtered and broken by vegetation and the existing

development at numbers 74 and 72, such that there are only glimpses of the headland currently available from the building at these locations. The view from these areas is considered much less valuable than the primary views in relation to the first step above.

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:

The proposed rear extension of the upper level bedrooms at number 74 will obscure a small portion of the top of the Fairy Bower headland that is currently visible through the glass balustrade of the upper level deck of number 72, when viewed from the balcony situated on the towards the southern end of number 76 on its western side, attached to a bedroom/study. It will also obscure a small portion of ocean from a similar balcony in a similar location but on the eastern side of the dwelling at number 76. The panoramic views from the main living areas, master bedroom, and upper level deck will be completely unaffected. For the whole of the property, the view loss is considered to be 'negligible'.

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 proposal generally maintains the heights of the existing dwelling, and is compliant with the overall height control. It also complies with the rear and side setback controls. It does not comply with the floor space ratio control as discussed in this report. However, this is a very minor rear extension to the upper level bedrooms, which has a negligible impact on the views of neighbours from bedroom/study areas situated towards the southern end of their dwelling. The views from the main living areas will remain completely unaffected. The proposal is not considered to result in any unreasonable view impacts, despite the non-compliance with the FSR control. A reasonable sharing of views is considered to be maintained. A 'more skilful design' is not considered necessary, and imposing amendments on the applicant is not considered reasonable in the circumstances.

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

Comment:

As discussed above, the proposal is considered to maintain reasonable view sharing. Therefore, although there will be some very small view impact to bedrooms/studies situate towards the southern end of the dwelling at number 76, there will be no impacts on the views from the main living areas, and the proposal is not considered to result in any unreasonable 'view creep'.

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

4.1.3 Floor Space Ratio (FSR)

The lot is not an 'undersized lot' as discussed within this clause. The proposal is non-compliant with the minimum floor space ratio requirement under clause 4.4 in the LEP (refer to discussion under clause 4.6 in this report). The proposal is considered to achieve the outcomes of this DCP clause as discussed below.

Merit Assessment

Objective 1) To ensure the scale of development does not obscure important landscape features.

Comment: The proposed works are very minor in scale compared to the existing dwelling, being a small extension to the rear of two upper level bedrooms. They are not considered to have any significant or unreasonable impacts on views to any important landscape features.

Objective 2) To minimise disruption to views to adjacent and nearby development.

Comment: The proposal is a minor rear extension to the upper level. The neighbour to the west has objected to the proposal based on view loss impacts. However, as discussed under clause 3.4.3 in this report, the proposal is not considered to result in any unreasonable view loss. The minor extension is therefore considered to be consistent with this objective.

Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.

Comment: The proposed works do not create a significant amount of additional overshadowing, and will not cause the development to become inconsistent with this objective. The adjoining dwellings have their primary living spaces orientated to the north, and these are not affected.

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

Description of non-compliance

Clause 4.1.4.2 requires that windows be setback 3m from the side boundaries. Proposed windows W02 to the east, and W09 to the west are located 2.4m and 2.7m from the side boundaries respectively.

Merit consideration:

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

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

Comment:

The proposed works are at the rear of the existing dwelling and will have no significant or unreasonable impacts on the streetscape.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The neighbours to each side (east and west) have objected to the proposal on privacy grounds. The eastern neighbours have also raised view loss as a concern. These issues have been addressed in detail under clause 3.4.2 and 3.4.3 in this report. In summary, the proposal is considered to maintain a reasonable level of privacy, and does not have unreasonable impacts on views. The additions will not create any significant or unreasonable overshadowing. The proposal is considered to be consistent with this objective.

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

Comment:

The proposed alterations and additions are dictated in their location by the existing dwelling.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed works are entirely over the existing building footprint, and will not affect the landscaped area on site, or have any unreasonable impacts in relation to any natural features in the surrounding area.

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

Comment:

The site is not identified as being bush fire prone.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Manly Section 94 Development Contributions Plan

S94 Contributions are not applicable to this application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1820 for Alterations and additions to a dwelling house on land at Lot 9 DP 8075, 74 Bower Street, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A001 A	August 2018	Mark Hurcum Design Practice
A103 A	August 2018	Mark Hurcum Design Practice
A104 A	August 2018	Mark Hurcum Design Practice
A201 A	August 2018	Mark Hurcum Design Practice
A202 A	August 2018	Mark Hurcum Design Practice
A204 A	August 2018	Mark Hurcum Design Practice
A221 A	August 2018	Mark Hurcum Design Practice

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report Project No.: 2018-182	December 2018	Crozier Geotechnical Consultants

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
74 Bower St Manly Waste Management Plan Issue: A	October 2018	Design Practice

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

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

2. Prescribed Conditions

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention

- to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative Requirement

3. **General Requirements**

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

4. **Security Bond**

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

5. **Compliance with Standards**

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

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

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

6. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

7. **Installation and Maintenance of Sediment and Erosion Control**

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after

periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

8. **Pre-clearance Survey Required – Bandicoot Habitat**

A pre-clearance survey for Long-nosed Bandicoot activity and presence is required prior to the removal of any vegetation, material or debris stockpiles. Clearing may only proceed if the survey concludes that no Long-nosed Bandicoots are present within the area to be cleared. All clearing must initially be carried out with hand tools to identify whether any bandicoots are sheltering within the area to be cleared (e.g. at the base of vegetation or under deep litter). Machinery may only be used once it has been confirmed that no bandicoots are sheltering within the area to be cleared. Clearing must be carried out at dusk and completed within one day so that bandicoots do not reoccupy partially cleared areas overnight. A record of each inspection is to be made in the daily inspection register log-book. The log-book is to be made available to the Principal Certifying Authority.

Reason: To avoid injury or death of Long-nosed Bandicoots which may be utilising stockpiles of vegetation, materials or debris.

9. **Pollution Control**

All stockpiles, materials, waste and slurry associated with works (including excavated material) is to be contained at source within the construction area and enclosed in waterproof covering and/or sediment and erosion control while not in use. All waste/debris is to be removed off site and disposed of as frequently as required in accordance to local regulations.

Reason: To protect the surrounding environment, and ensure that pollutants and building associated waste do not leave the construction site.

10. **Report Dead or Injured Bandicoots – Bandicoot Habitat**

Any injured or dead Long-nosed Bandicoots found within the worksite must be reported to the National Parks & Wildlife Service (9457 9577) or Northern Beaches Council (1300 434 434).

Reason: To prevent impacts to Long-nosed Bandicoots in accordance with the Biodiversity Conservation Act 2016.

11. **Pollution Control**

Any excess materials such as cleaning paintbrushes, lacquers, and any water from cleaning tools must not enter the stormwater network and/or receiving waterways.

Reason: To ensure that building associated chemicals and pollutants don't enter the surrounding environment.

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

12. **Stormwater Disposal**

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

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

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

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

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

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

13. **Dead or Injured Wildlife – Manly LEP Clause 6.5**

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

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