



## Pre-lodgement Meeting Notes

**Application No:** PLM2022/0143  
**Meeting Date:** 2 August 2022  
**Property Address:** 9 Francis Street FAIRLIGHT  
**Proposal:** Alterations and additions to a dwelling house including a swimming pool  
**Attendees for Council:** Adam Urbancic - Planner  
Jordan Howard - Student Planner

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### General Comments/Limitations of these Notes

These notes have been prepared by Council's Development Advisory Services Team on the basis of information provided by the applicant and a consultation meeting with Council staff. Council provides this service for guidance purposes only.

These notes are an account of the advice on the specific issues nominated by the Applicant and the discussions and conclusions reached at the meeting.

These notes are not a complete set of planning and related comments for the proposed development. Matters discussed and comments offered by Council will in no way fetter Council's discretion as the Consent Authority.

A determination can only be made following the lodgement and full assessment of the application.

In addition to the comments made within these Notes, it is a requirement of the applicant to address the relevant areas of legislation, including (but not limited to) any State Environmental Planning Policy (SEPP) and any applicable sections of the Manly Local Environmental Plan 2013 and Manly Development Control Plan 2013, within the supporting documentation including a Statement of Environmental Effects, Modification Report or Review of Determination Report.

You are advised to carefully review these notes and if specific concern have been raised or non-compliances that cannot be supported, you are strongly advised to review your proposal and consider amendments to the design of your development prior to the lodgement of any development application.



## MANLY LOCAL ENVIRONMENTAL PLAN 2013 (MLEP 2013)

MLEP 2013 can be viewed at: <https://www.legislation.nsw.gov.au/view/html/inforce/current/epi-2013-0140>

Part 2 - Zoning and Permissibility	
Definition of proposed development: (ref. MLEP 2013 Dictionary)	<b>dwelling house</b> means a building containing only one dwelling.
Zone:	R1 General Residential
Permitted with Consent or Prohibited:	Permitted with Consent

Part 4 - Principal Development Standards		
Standard	Permitted	Proposed
4.3 Height of buildings	8.5m	9.8m
<p><u>Comment:</u></p> <p>The proposed development exceeds the maximum permitted building height under this control.</p> <p>The proposed building height has been measured at 9.8m, which represents a percentage variation of 15.29% to the 8.5m building height development standard.</p> <p>Please note that the building height has been calculated using the approach adopted by the NSW Land and Environment Court in its judgment of <i>Merman Investments Pty Ltd v Woollahra Municipal Council</i> [2021] NSWLEC 1582, which requires building height to be measured from excavated ground levels, not extrapolated natural ground level.</p> <p>If the proposed development varies a development standard under the MLEP 2013, the consent authority must be satisfied that 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.</p> <p>As discussed during the meeting, it is considered that the proposed development does not achieve consistency with the objectives of Clause 4.3 of MLEP 2013, specifically those listed below:</p> <ul style="list-style-type: none"><li>(a) <i>to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,</i></li><li>(b) <i>to control the bulk and scale of buildings,</i></li></ul> <p>As such, the proposed development is not supported in its current form.</p> <p>It is strongly recommended that the height of the building is reduced to achieve full</p>		



#### Part 4 - Principal Development Standards

compliance with the 8.5m maximum permitted building height or that the existing roof form is retained.

If you wish to proceed with the proposed development in its current form, a Clause 4.6 Variation Statement demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard must be submitted for further consideration of any variation to the development standard. If this cannot be demonstrated, the proposed development must comply with the maximum building height development standard.

**Note:** A development application with a variation greater than 10% to this development standard requires determination by Council's Development Determination Panel.

<b>4.4 Floor space ratio</b>	0.6:1 (235.2m <sup>2</sup> )	0.59:1 (231.3m <sup>2</sup> )
<b>Site Area:</b> 392m <sup>2</sup>		
<u>Comment:</u> The proposed development complies with the requirements of this control.		

#### Clause 4.6 - Exceptions to Development Standards

Clause 4.6 enables the applicant to request a variation to the applicable Development Standards listed under Part 4 of the LEP pursuant to the objectives of the relevant Standard and zone and in accordance with the principles established by the NSW Land and Environment Court.

A request to vary a development Standard is not a guarantee that the variation would be supported as this needs to be considered by Council in terms of context, impact and public interest and whether the request demonstrates sufficient environmental planning grounds for the variation.

#### MANLY DEVELOPMENT CONTROL PLAN 2013 (MDCP 2013)

MDCP 2013 can be viewed at:

<https://eservices.northernbeaches.nsw.gov.au/ePlanning/live/Pages/Plan/Book.aspx?exhibit=MDCP>

The following notes the identified non-compliant areas of the proposal only.

Control	Permitted	Proposed
<b>Part 3</b>		
<b>3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)</b>		
<b>3.4.1 Sunlight Access and Overshadowing</b>		
<u>Comment:</u> Shadow diagrams demonstrating compliance with the requirements of this control must be submitted with the development application.		



Control	Permitted	Proposed
<b>3.4.2 Privacy and Security</b>		
<p><u>Comment:</u></p> <p>It must be demonstrated that the proposed development achieves the requirements of this control, particularly in relation to the first floor balcony on the western elevation of the dwelling house, as this may facilitate overlooking into the private open space area of the adjoining property at No. 11 Francis Street.</p>		
<b>Part 4</b>		
<b>4.1 Residential Development Controls</b>		
<b>4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys &amp; Roof Height)</b>	<b>Wall Height:</b>	
	<b>Dwelling House:</b> South: 7.5m (based on a gradient of 1:5.91) North: 8.0m (based on a gradient of 1:4.04)	7.4m (existing) 6.3m (proposed) 7.5m (existing)
	<b>Garage:</b> South: 7.6m (based on a gradient of 1:5.28)	4.4m
	<b>Number of Storeys: 2 storeys</b>	3 Storeys
<p><u>Comment:</u></p> <p>The proposed development exceeds the maximum permitted number of storeys for buildings under this control. It is noted that the existing building is 3 storeys in height.</p> <p>Given that alterations and additions are proposed to the existing building, which already exceeds the maximum number of storeys, and based on the site constraints, including the slope of the land, the requested variation can be supported, subject to demonstrated consistency with the objectives of the control.</p>		
<b>4.1.4 Setbacks (front, side and rear) and Building Separation</b>	<b>Street Front Setback:</b> 6.0m	4.4m to Bin Storage Area 4.7m to Covered Porch 6.2m to Garage
	<b>Side Setback: 1/3 Wall Height</b>  <b>Dwelling House</b> South: 2.47m  North: 2.5m	2.0m to Staircase Wall 3.3m to Ground Floor 1.2m to Ground Floor



Control	Permitted	Proposed
	<b>Garage</b>	
	South: 1.47m	Nil to Garage
	<b>Rear Setback:</b> 8.0m	8.0m to Lower Ground, Ground and First Floor
	<b>Windows:</b> 3.0m from side boundaries	North: 1.2m to Bedroom 1 South: 2.0m to Staircase (First Floor)

**Comment:**

The proposed development does not comply with the required street front setback, as well as the required side setback from both the northern and southern boundaries when based on the actual wall height. The proposed development also includes windows to habitable rooms within 3.0m of the northern and southern side boundaries.

Whilst the requested variations to the street front setback, side setbacks for the dwelling house and the inclusion of windows within 3.0m of the side boundaries may be supported, subject to demonstrated consistency with the objectives of the control, the requested variation to the southern side setback for the garage is not supported, as this aspect of the proposed development does not achieve the objectives of the control, specifically those listed below:

- *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.*
- *To promote flexibility in the siting of buildings.*

As such, the proposed development is not supported in its current form.

As discussed during the meeting, the length of the solid southern wall of the garage and its location adjoining the boundary is of great concern, particularly due to the associated visual and amenity impacts to the adjoining property at No. 7 Francis Street.

It is strongly recommended that the southern wall of the garage is deleted and that a carport is provided instead.

4.1.5 Open Space and Landscaping	Area OS3	
	Total Open Space: At least 55% of Site Area (215.6m <sup>2</sup> )	55.03% (215.7m <sup>2</sup> )
Site Area: 392m <sup>2</sup>		



Control	Permitted	Proposed
	<b>Landscaped Area:</b> At least 35% of actual total open space (75.5m <sup>2</sup> )	45.02% (97.1m <sup>2</sup> )
	<b>Above Ground (Max. of Total Open Space):</b> No more than 25% of Total Open Space (53.93m <sup>2</sup> )	12.05% (26m <sup>2</sup> )
<u>Comment:</u> The proposed development complies with the requirements of this control.		
<b>4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)</b>	2 parking spaces	1 parking space
<u>Comment:</u> The proposed development does not provide the required amount of parking spaces under Schedule 3 of MDCP 2013 and does not comply with the following requirement of this control: <p><i>a) The design and location of all garages, carports or hardstand areas must minimise their visual impact on the streetscape and neighbouring properties and maintain the desired character of the locality.</i></p> <p>Whilst the requested variation to the required amount of parking spaces may be supported, subject to demonstrated consistency with the objectives of this control, the length of the southern wall of the garage and its location directly adjoining the southern side boundary remains of great concern, as this will have a significant visual impact when viewed from the neighbouring property at No. 7 Francis Street.</p> <p>As such, the proposed development is not supported in its current form.</p> <p>It is strongly recommended that the southern wall of the garage is deleted and that a carport is provided instead.</p>		
<b>4.1.9 Swimming Pools, Spas and Water Features</b>		
<u>Comment:</u> The proposed development does not comply with the following requirements of Clause 4.1.9 of MDCP 2013: <p><b>4.1.9.1 Height above ground</b></p> <p><i>a) Swimming pools and spas must be built on or in the ground and not elevated more than 1m above natural ground level. Consideration of any exception to exceed the height above ground must demonstrate that any swimming pools and/or spa and their curtilage and/or concourse more than 1m above natural ground level:</i></p> <ul style="list-style-type: none"> <li><i>i. would not detract from the amenity or character of the neighbourhood; and</i></li> <li><i>ii. is a minimum distance from any side boundary equivalent to the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level.</i></li> </ul>		



Control	Permitted	Proposed
<p><b>4.1.9.2 Location and Setbacks</b></p> <p>c) <i>The setback of the outer edge of the pool/spa concourse from the side and rear boundaries must be at least 1m, with the water line being at least 1.5m from the boundary.</i></p> <p>The swimming pool concourse is setback 200mm from the southern side boundary and the swimming pool is elevated up to 800mm above existing ground level. Whilst the height of the swimming pool is less than 1.0m above existing ground level, it is unclear whether the swimming pool is more than 1.0m above natural ground level, as it appears that the rear of the site may have been the subject of fill in the past. The calculation of the height of the swimming pool is to be taken from natural ground level, as per the requirements of this control.</p> <p>The requested variation to the setback to the swimming pool concourse is not supported, as the proposed development does not achieve the objectives of the control, specifically those listed below:</p> <ul style="list-style-type: none"> <li><i>To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties</i></li> <li><i>To integrate landscaping</i></li> </ul> <p>As such, the proposed development is not supported in its current form.</p> <p>It is strongly recommended that the setback to the swimming pool concourse is increased to a minimum of 1.0m from the southern side boundary, which will achieve compliance with the requirements of this control. This will also allow landscaping to be integrated within the setback area.</p> <p>It must be demonstrated that the swimming pool is 1.0m or less in height when calculated from natural ground level, otherwise, the swimming pool is to be lowered to ensure that privacy, both visually and aurally, can be maintained to the neighbouring property at No. 7 Francis Street. Any constraints formed by the sewer line in relation to the height of the swimming pool are to be detailed in the Statement of Environmental Effects for further consideration during the assessment of the development application.</p>		
<p><b>Specialist Advice</b></p>		
<p><b>Development Engineer</b></p>		
<p><u>Driveway:</u></p> <p>The existing driveway crossing should be retained.</p> <p>The existing boundary level is about RL 43 and the proposed garage level is RL 42.06.</p> <p>The internal driveway design must comply with current Australian Standard AS2890.</p> <p>At least three engineering longitudinal sections of the proposed driveway shall be provided with the DA submission.</p>		



### Specialist Advice

#### Stormwater:

The submitted plans indicate that an existing OSD system is located in the back yard.

The applicant must provide a calculation to demonstrate the existing OSD has sufficient capacity to capture this proposal.

Alternatively, the applicant should design an on-site stormwater system in accordance with Council's Water Management for Development Policy.

### Heritage Officer

#### Heritage Listings

This PLM has been referred to heritage as the site is within the vicinity of a heritage item, being ***Item 152 – Group of 6 houses, 12-22 Francis Street, Fairlight***

#### Statement of Significance

A group of modest, single storey cottages spanning the period 1890's-1915.

#### Physical Description

Nos. 12-16 late Victorian rendered brick cottages with symmetrical fronts. Extant elements include slate roof, bullnose verandah and cast iron fringe.

No.18. c. 1900 weatherboard cottage.

Nos. 20-22 stone and rendered brick or stone semi-detached houses with timber addition.

#### Heritage Comments

This proposal is for alterations and additions to the existing 2-3 storey house, including a new single garage, new covered porch and verandah at the front as well as landscaping and a swimming pool at the rear. The application also includes replacement of roof tiles with metal roofing, conversion of rear hip to gable and introduction of skylights. The existing driveway crossing will remain, however new vehicular and pedestrian entry gates proposed.

This property is located on the western side of Francis Street, which at this point is a divided roadway, given the difference in level from the western side to the eastern side of the street. There is also landscaping in the centre of the road, providing a visual barrier between 9 Francis Street and the heritage item on the eastern side of Francis Street. There is a distance of 20 metres between 9 Francis Street and the southernmost property of the group heritage item, being No. 12 Francis Street, however due to the divided road and landscaping, any changes to the dwelling at 9 Francis Street will not visually affect the context of the group heritage item on the other side of the road.

Therefore there are no heritage concerns with this proposal and no heritage requirements for any DA.

### Documentation to accompany the Development Application

- Lodge Application via NSW Planning Portal
- Statement of Environmental Effects
- Clause 4.6 Variation Statement
- Scaled and dimensioned plans:
  - Site Plan;
  - Floor Plans;





- Elevations; and
  - Sections.
- Certified Shadow Diagrams (depicting shadows cast at 9am, Noon and 3pm on 21 June).
- Cost Summary Report (prepared by a building industry professional for works up to \$1,000,000 or a Quantity Surveyor for works equal to, or greater than, \$1,000,001)
- Survey Plan (Boundary Identification Survey)
- Site Analysis Plan
- Demolition Plan
- Excavation and Fill Plan
- Waste Management Plan (Construction & Demolition)
- Driveway Design Plan (if any change is proposed to the driveway)
- Erosion and Sediment Control Plan / Soil and Water Management Plan
- Stormwater Management Plan / Stormwater Plans and On-site Stormwater Detention (OSD) Checklist
- BASIX Certificate
- Arboricultural Impact Assessment (if the proposal requires the removal, or works within 5.0m, of any protected trees on the site, adjoining properties and/or road reserve)
- Preliminary Assessment of Site Conditions ('Area G4')

#### **IMPORTANT NOTE FOR DA LODGEMENT**

Please refer to the Development Application Lodgement Requirements on Council's website (link details below) for further detail on the above list of plans, reports, survey and certificates.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/development-application-da-modification-or-review-determination/2060-da-modification-lodgement-requirements-dec21.pdf>

The lodgement requirements will be used by Council in the review of the application after it is lodged through the NSW Planning Portal to verify that all requirements have been met for the type of application/development.

#### **Concluding Comments**

These notes are in response to a pre-lodgement meeting held on 2 August 2022 to discuss alterations and additions to an existing building including a swimming pool at 9 Francis Street, Fairlight. The notes reference the plans, E01-E03, A04-A09 and DA 100, all Rev E, prepared by Du Plessis + Du Plessis Architects and dated 28 June 2022.

The proposed development is not supported in its current form, but may be supported subject to the design amendments outlined within these notes.

#### **AMENDED PLANS**

Council received amended plans via email on 16 August 2022 in response to some of the matters raised during the pre-lodgement meeting.

The amended plans included the following design amendments:

- deletion of the proposed garage on the ground floor of the dwelling house;
- addition of an e-bike parking and storage room on the first floor of the dwelling house;
- addition of a carport in the south-eastern corner of the site with a nil setback from the eastern (front) and southern (side) boundaries; and



### **Concluding Comments**

- changes to the proposed roof form.

Whilst the amended plans address some of the matters raised during the pre-lodgement meeting, particularly in relation to the provision of a carport instead of a garage, the additional information provided in the amended plans, specifically the Section Plan, has identified that the variation to the maximum permitted building height is larger than expected despite the changes to the roof form, with the building height now being measured at 10.2m above excavated ground level. This represents a percentage variation of 20% to the 8.5 maximum permitted building height. As such, the concerns raised in relation to the building height are of greater concern and it is strongly recommended that the existing roof form is retained.

The variations to the street front setback and side setback for the carport and e-bike parking and storage room may be supported, subject to demonstrated consistency with the objectives of the control.

### **Question on these Notes?**

Should you have any questions or wish to seek clarification of any matters raised in these Notes, please contact the member of the Development Advisory Services Team at Council referred to on the front page of these Notes.