

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0145
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot A DP 368257, 39 Adelaide Street CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling House
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Gina Minks Mark Tafft
Applicant:	Linked Project Mangement
Application lodged:	19/02/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	21/02/2019 to 11/03/2019
Advertised:	Not Advertised
Submissions Received:	3
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,184,285.00

Executive Summary

The application is for alterations and additions to an existing dwelling house including a first floor addition. The development proposes a variation to the floor space ratio development standard of 58.47%. Despite the numerical extent of the non-compliance, the proposal is not considered to result in unreasonable bulk or amenity impacts as viewed from the surrounding streetscape or adjoining properties.

Submissions were received on behalf of two (2) adjoining properties. One submission related only to the maintenance of safe vehicle access during construction works. The other objection raised a number of concerns relating to FSR and additional DCP non-compliances and amenity impacts.

Following preliminary assessment of the application, the applicant was requested to amend the

proposal and erect height poles on the site. A full assessment of the amended proposal and erected height poles concluded that the development and resulting view loss is reasonable, and is supported.

As the proposed variation to the FSR development standard is greater than 10%, the application is referred to the Development Determination Panel for determination.

No further assessment issues are raised and the proposal is recommended for approval.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 6.2 Earthworks

Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area

Manly Development Control Plan - 3.3.1 Landscaping Design

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

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

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area

SITE DESCRIPTION

Property Description:	Lot A DP 368257 , 39 Adelaide Street CLONTARF NSW 2093
Detailed Site Description:	The subject site consists of one allotment located on the

south-eastern corner of Adelaide Street and Beatrice Street.

The site is regular in shape with a frontage of 21.21m along Adelaide Street and a secondary frontage of 21.335m to Beatrice Street. The site has a surveyed area of 452.6m².

The site is located within the R2 Low Density Residential zone and accommodates an existing dwelling house.

The site slopes 7.7m from north-east to south-west.

The site contains one significant tree and a variety of smaller planted vegetation within the secondary frontage to Beatrice Street.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached dwellings.

Map:



SITE HISTORY

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

DA2018/1380 - Construction of a swimming pool and landscaping works - Approved 25 October 2018.

CDC2018/0996 for Alterations and additions to existing dwelling - Approved 4 October 2018.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes alterations and additions to the existing dwelling resulting in:

Lower ground:

- Lounge
- Wet bar
- Bed 1
- Bath 1
- Underfloor storage & subfloor
- Balcony

Ground:

- Kitchen, living & dining room
- Pantry
- Sitting room
- Bed 2 with ensuite
- Bath 2
- Laundry
- Garage
- Courtyard
- Terrace/Balcony

Level 1:

- Main Bed with ensuite and robe
- Bed 3
- Bed 4
- Bath 3
- Balcony

External:

- New western stairs
- Minor alteration to approved front/pool fence
- Reconfiguration of pool stair

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any	Manly Development Control Plan applies to this

Section 4.15 Matters for Consideration'	Comments
development control plan	proposal.
Section 4.15 (1) (a)(iii) – 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. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Mr Michael Peter Bell	PO Box 387 FRENCHS FOREST NSW 1640
Mr Mark Raymond Shoebridge Ms Krystyna Louise Lojek	37 Adelaide Street BALGOWLAH HEIGHTS NSW 2093
Tomasy Planning	1073 Pittwater Road COLLAROY NSW 2097

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

- **Blocking of adjoining driveways by construction vehicles**
- **View loss**
- **FSR non-compliance / Clause 4.6, and precedent**
- **Tree removal**
- **Building height, number of storeys**
- **Setbacks**
- **Foreshore scenic protection area**
- **Engineering**

- **Proposed garage**

The matters raised within the submissions are addressed as follows:

- **Blocking of adjoining driveways by construction vehicles**

The submissions raised concerns that the driveway access to No. 12 Beatrice Street will be blocked by construction vehicles during the construction works.

Comment:

A condition of consent is included to ensure that adjoining driveways remain clear during construction.

- **View loss**

The submissions raised concerns that the proposal will result in unreasonable view loss impacts from No. 37 Adelaide Street.

Comment:

The proposed view loss is considered to be reasonable, with a full assessment undertaken under Part 3 General Principles of Development.

- **FSR non-compliance / Clause 4.6, and precedent**

The submissions raised concerns relating to the impact of the proposed FSR non-compliance, the Clause 4.6 written request justifying the development, and the potential for the proposal to set a precedent for development of the surrounding area.

Comment:

It is acknowledged that the proposal includes a significant variation to the FSR control. However, an assessment against the provisions of the Manly LEP and relevant case law has concluded that the proposal is consistent with the objectives of the FSR control and that there are sufficient environmental planning grounds to justify the variation. A full assessment is completed under Clause 4.6 Exceptions to Development Standards. An approval of the application is not considered likely to set a precedent for future development as the specific characteristics of the subject site, in terms of configuration, frontages and topography vary significantly from the predominant characteristics of the surrounding locality.

- **Tree removal**

The submissions raised concerns about the removal of trees on the subject site.

Comment:

No trees are proposed to be removed as part of the application. The proposal is also conditioned to minimise impacts on existing trees and vegetation.

- **Building height, number of storeys**

The submissions raised concerns about the increase to the existing building height and the non-compliant number of storeys.

Comment:

The building height of the amended proposal is calculated to be compliant as measured to the natural ground line. The proposal presents to Adelaide Street as a two-storey dwelling, and the three-storey presentation to Beatrice Street is consistent with the streetscape. Further, the proposed first floor addition is sited to step with the topography of the site and minimise the proportion of the dwelling that appears as three storeys.

- **Setbacks**

The submissions raised concerns about the compliance of the development with the setback controls.

Comment:

The proposed front setback non-compliance is consistent with the objectives and will not unreasonably impact the existing streetscape of Adelaide Street. Further, additional physical separation to the garage is provided by the layout of the driveway access to the site. The proposed rear setback non-compliance is addressed in detail in this report. The proposed first floor addition side setbacks, including the eastern side setback to No. 37, are compliant with the DCP control. The existing driveway to No. 12 Beatrice Street provides further physical separation between the new development and the dwelling at No. 37.

- **Foreshore scenic protection area / views**

The submissions raised concern about the level of detail submitted with the application in relation to view loss.

Comment:

A full assessment of view loss has been completed in this report, including an assessment against the planning principle established by the NSW Land and Environment Court (Tenacity Consulting vs. Warringah Council [2004] NSWLEC 140). The applicant provided further assessment of views as part of the amended proposal. This information, along with the erection of height poles, has allowed a full assessment of the impacts on views to be undertaken.

- **Engineering**

The submissions raised concern about the initial referral response from Council's Development Engineer in relation to OSD details.

Comment:

A revised OSD plan was submitted by the applicant to satisfy the requirements of Council's stormwater management policy.

- **Proposed garage**

The submissions raised concern about the conversion of the existing carport to a fully enclosed garage.

Comment:

The proposed conversion of the existing carport to a garage utilises the existing boundary wall and the new works are generally limited to a new roof and the provision of a new garage door. The proposed changes are not considered to result in unreasonable impacts to the streetscape or any adjoining property.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><u>Landscaping Comments:</u></p> <p>The proposal, in terms of landscape outcome as illustrated on the site plans, is not acceptable and fails to satisfy the landscape controls of the Manly DCP.</p> <p>The proposal fails to provide the required tree planting in deep soil to satisfy 4.1.5.2 c) Minimum Tree Plantings. The site has one existing tree on site, and this is subject to impact from the proposed development.</p> <p>The proposed development will impact upon the retention of the existing Smooth Barked Apple location near the pool. This tree</p>



Internal Referral Body	Comments
	<p>displays good health and structure, and provides high amenity. The proposed stairs will impact the structural root zone of the tree, calculated as 2.5m from the trunk, and this is likely to destabilise the tree and result in adverse impacts requiring removal.</p> <p>The proposal fails to minimise the bulk and scale of the development, with the limited rear setback distance not able to support canopy trees. Under 3.3.1 (b) - i) Landscaped areas must be capable of supporting new native tree species that are typically expected to reach a mature height of 10m; ii) including the use of locally occurring native plant species.</p> <p><u>Planning comments:</u></p> <p>The proposed works are generally located within the footprint of the existing dwelling, with the exception of the lower ground and ground floor western balconies. The proposed western stairs referred to below are conditioned to be deleted from the plans due to the provision of insufficient arboricultural assessment. As such, the proposal is not considered to unreasonably impact the existing tree on the site, while further tree planting is not considered necessary or appropriate in the context of the site or this application. Further, the ground floor rear setback remains unchanged and an assessment of the bulk and scale of the development is undertaken by the assessing officer against the relevant planning controls. Relevant tree protection conditions are included by the assessing officer.</p>
NECC (Development Engineering)	<p><u>2nd engineering referral referral</u></p> <p>A new revised OSD plan has been submitted on 28/3/2019. Development Engineering has no objection to the application, subject to conditions of consent.</p> <p><u>1st referral</u></p> <p>An on site stormwater detention (OSD) system has been proposed in the application. However, the Permissible Site Discharge (PSD) has not been calculated in accordance with Council's Manly Specification for On site Stormwater Management 2003. The proposed tank is too small to control the discharge from the proposed development. The stormwater management plan shall be amended to comply with the above Specification.</p> <p>As such, Development Engineering cannot support the application.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</p>

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. A336453_03).

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.2m	N/A	Yes
Floor Space Ratio	0.4:1 181.04m ²	0.64:1 286.9m ²	58.47%	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
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 (181.04m ²)
Proposed:	0.64:1 (286.9m ²)
Percentage variation to requirement:	58.47%

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *"The upgrade to an existing dwelling will have a positive impact on the streetscape character of the area.*
- *The provision of high quality and well designed floor space without creating additional view impacts or amenity impost on adjoining properties.*
- *The location of floor space in locations which respond to the topography of the site and surrounding locality. The relocation of floor space from 'compliant' areas on the site to sit within the slope of the land creates opportunity to retain and enhance views which would otherwise be subject to impacts.*
- *The proposed development would not result in significant environmental or amenity impacts."*

The proposed first floor addition is constrained by the topography of the site and the irregular lot configuration resulting from the dual frontage. The site slopes steeply to the west at the Beatrice Street frontage which limits the provision of gross floor area at the lower level. Despite the extent of the proposed non-compliance, the proposed addition complies with the LEP building height control and the

setback controls, with the exception of the rear (southern) setback.

Due to the location of the site on a corner allotment, strict compliance with the 8m rear setback control would significantly restrict the development of the site. The siting of the dwelling is consistent with similar lot configurations at No. 34 Adelaide Street and Nos. 12 & 16 Beatrice Street. Given the undersized nature of the site and the irregular configuration, the proposal is considered to be a reasonable development in the context of the surrounding area, notwithstanding the proposed non-compliance.

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 dwelling is of a good design and amenity, 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 Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – '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 development is not excessive in bulk or scale and is generally consistent with the existing streetscape and surrounding locality. The subject site, like much of the surrounding area, is classified as an Undersized Lot under Clause 4.1.3.1 of the Manly DCP, with the maximum allowable gross floor area calculated in accordance with this provision being 460m². Furthermore, the site is located within the R2 Low Density Residential Zone and flexibility in this circumstance would allow a development that is reasonably consistent with that of the

surrounding area, which includes significant variations to the FSR control, as demonstrated by the below analysis of nearby approvals:

- No. 29 Adelaide Street - 37.2% - Approved 2010
- No. 30 Adelaide Street - 14.7% - Approved 2014
- No. 35 Adelaide Street - 38.9% - Approved 2017
- No. 13 Beatrice Street - 19.9% - Approved 2018
- No. 21 Beatrice Street - 10.2% - Approved 2015
- No. 23 Beatrice Street - 10% - Approved 2015
- No. 27 Alma Street - 43.4% - Approved 2018
- No. 30 Alma Street - 13.2% - Approved 2018
- No. 12 Moore Street - 34.7% - Approved 2018

The proposal seeks a variation of 58.47%. It is acknowledged that this variation significantly exceeds the FSR control for the site and the approved variations listed above. However, the proposal is considered to be acceptable on merit based on the resulting streetscape and amenity impacts, which are assessed in detail in this report.

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 bulk is reasonable in relation to the site area, given the constraints of the land and the context of the surrounding locality, as discussed above. The proposal will not unreasonably obscure landscape or townscape features.

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

Comment:

The proposed development maintains an appropriate visual relationship with the existing character of the area as viewed from both the Adelaide Street and Beatrice Street frontages. The dwelling maintains a two-storey appearance to Adelaide Street and a three-storey appearance to Beatrice Street, consistent with the existing streetscape.

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

Comment:

The proposal will not unreasonably impact the use or enjoyment of adjoining land or the public domain.

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

Comment:

N/A

Zone objectives

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

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

Comment:

The proposal retains the existing low density residential use.

It is considered that the development satisfies this objective.

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

Comment:

The development will not prevent the provision of facilities or services on other sites.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation is not greater than 10%. Following the release of PS-003, Council received correspondence from a delegate of the Secretary which granted Council staff, for a period of 30 months from 24 May 2019, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary a development standard by more than 10%.

6.2 Earthworks

No significant earthworks are proposed as part of the application.

6.9 Foreshore scenic protection area

The proposed development is for alterations and additions to an existing residence and will result in no unreasonable impacts in relation to visual aesthetic amenity or views to and from Sydney Harbour.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 452.6m ²	Requirement	Proposed	Complies
4.1.2.1 Wall Height	East: 6.5m	6.5m	Yes
	West: 7.4m	Balcony (GF): 4m - 6.1m	Yes
		Dwelling (GF): 5.6m - 7.7m	No
4.1.2.2 Number of Storeys	2	2-3	No
4.1.2.3 Roof Height	Height: 2.5m	1.4m	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Garage: 5.2m	No
		Dwelling: 6.2m	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East: 2.167m	2.3m	Yes
	West (Balcony): 2.03m	2.1m	Yes
	West (Dwelling): 2.567m	5.7m	Yes
4.1.4.4 Rear Setbacks	8m	First floor: 4.2m	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area 271.56m ²	59% 266.8m ²	No
	Open space above ground 25% of total open space	23%	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space 106.7m ²	40.5% 108.1m ²	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	> 18m ²	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6.1m	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	No	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.3.1 Landscaping Design

The proposed development, as conditioned, will result in negligible impact on existing vegetation and landscaped area on the site. See Planning Comments in relation to the Landscape Officer referral response.

3.4.1 Sunlight Access and Overshadowing

Compliance with control

The proposed development will result in negligible additional overshadowing of private open space areas or living room windows and is compliant with the relevant controls under this Clause. The proposal is assessed against the relevant objectives below.

Merit consideration:

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

Comment:

The proposal will result in no unreasonable overshadowing of adjoining properties. At 9am and 12pm there is minor additional overshadowing of the roof and front yard of No. 12 Beatrice Street. At 3pm there is additional overshadowing of the garage window and three ground floor bedroom windows of No. 37 Adelaide Street. Despite the extent of the additional overshadowing of No. 37 Adelaide Street, the proposal maintains compliance with the eastern wall height and setback controls, and the overshadowing/solar controls of 3.4.1.1 and 3.4.1.2. As such, the proposed impacts are considered to be reasonable. Further, sunlight access will be retained to the affected rooms in the early afternoon.

Objective 2) To allow adequate sunlight to penetrate:

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

Comment:

The proposal allows adequate sunlight access to the private open spaces and windows of the subject site and adjoining properties in accordance with the controls.

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

- encouraging modulation of building bulk to facilitate sunlight penetration into the development site

- *and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

The proposed additions are considered to be sufficiently set back and modulated to maximise sunlight penetration into adjoining properties.

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.

3.4.2 Privacy and Security

Merit consideration:

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

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

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

Comment:

The proposed development is appropriately designed to maintain the privacy of the subject site and adjoining dwellings. The proposed Level 1 southern windows will overlook only the roof of the adjoining dwelling and the Level 1 eastern elevation contains only one recessed window. The proposed new balconies are orientated to the west towards the available harbour views.

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

Comment:

The proposal will provide sufficient privacy and sunlight access to the subject site and adjoining sites.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

Further opportunities for passive surveillance are provided.

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.

3.4.3 Maintenance of Views

Merit consideration:

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

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

Comment:

The proposal is considered to provide reasonable view sharing between existing and proposed development.

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:

Views over the subject site are currently available from No. 37 Adelaide Street. The available views include water views of Middle Harbour including the marina and land-water interface at Chinamans Beach, The Spit and Seaforth. Further available views include skyline/horizon views of Chatswood and St Leonards to the west, and district views of Clontarf and Seaforth to the north/north-west. The water views and skyline views are whole views, however it should be noted that the skyline views are located a considerable distance from the site. The district views and the water views gained from the front balcony are partial views as they are significantly obscured by the existing dwelling roof and surrounding vegetation.

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 views from No. 37 Adelaide Street are obtained across a side boundary from the upper level kitchen, living and dining room, and the adjoining rear balcony. Some views are also obtained from the front balcony to the front and rear of the subject dwelling. The whole views are enjoyed from sitting and standing positions, while the partial views are enjoyed generally only from standing positions.

The available views from No. 37 are shown in the below photographs, with the height poles erected on the existing roof indicating the views to be lost and retained.



Figure 1. View from No. 37 Adelaide Street living room to the west.



Figure 2. View from No. 37 Adelaide Street living room to the north-west.



Figure 3. View from No. 37 Adelaide Street dining room to the west/north-west.



Figure 4. View from No. 37 Adelaide Street dining room to the west.



Figure 5. View from No. 37 Adelaide Street dining room to the south-west



Figure 6. View from No. 37 Adelaide Street front balcony to the west.



Figure 7. View from No. 37 Adelaide Street front balcony to the south-west

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 extent of the impact on views from No. 37 Adelaide Street varies depending on the room location, however the affected view areas are generally limited to the skyline and district views. The Chatswood skyline view will be lost from the northern end of the living room (**Figure 1**), but will be retained from the remainder of the living, dining room and kitchen, and the adjoining rear balcony. The extent of the impact on district views is indicated in **Figures 2 & 3**. The partial views, including water views, available from the front balcony will also be affected past the front and rear of the subject dwelling (**Figures 6 & 7**). Notwithstanding the proposed impact on the existing views, the proposal will open up additional water views towards the marina and Spit Bridge as a result of the new flat roof form. The actual extent of the views to be gained is difficult to accurately determine but the proposal will result in a significant reduction to the bulk of the existing gable roof.

Considering the nature and extent (and associated value) of the views to be lost versus the additional water/marina views likely to be gained, the proposal is considered to be a reasonable outcome in relation to views/view sharing. Further to the additional views to be obtained, the primary view area from Middle Harbour Yacht Club to Chinamans Beach, which includes the majority of all available land-water interface, remains unaffected from the primary living areas and rear balcony (**Figures 3-5**).

Overall, the views lost are distant views of the Chatswood skyline, district/horizon views, and partial water views from the front balcony. The additional views obtained will increase the extent of primary water views at Middle Harbour, including land-water interface and marina views. Given the above assessment and the extent of views to be affected as indicated in the photos, the overall impact of the development is considered to be minor.

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 critical controls relating to view loss, in this particular case, are the overall height, and the setbacks to the northern (front) and southern (rear) boundaries, of the proposed first floor addition.

The proposal is fully compliant with the 8.5m height limit and the northern (front) setback. The setback to the southern boundary is non-compliant and is discussed as follows:

The proposed southern (rear) setback of approximately 4.0m is significantly non-compliant, however, as discussed above, the overall impact is considered to be minor given the actual extent and nature of the views to be lost. A compliant rear setback would only result in the retention of the lost views of the Chatswood skyline from the northern end of the living room (**Figure 1**) and the water views from the front balcony to the south-west (**Figure 7**).

The floor space ratio is also somewhat relevant with regard to view loss in this case. If the floor area of the first floor addition is relocated on the site it will result in greater amenity/streetscape impacts than the current proposal. Moving the bulk forward (north) on the site would create a front setback non-compliance and unreasonably impact the streetscape. Moving the first floor to the eastern side would result in a side setback non-compliance and bring the dwelling closer to the objecting property, while to the western side would create a building height non-compliance in addition to a likely side setback non-compliance and streetscape impact to Beatrice Street. Alternatively, if floor space/rooms are deleted from the first floor, this would reduce the development potential of the site.

As such, the proposed development performs reasonably against the controls relevant to view loss. The above assessment has found that there is not a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours.

In this regard, the view loss is assessed as reasonable, and is supported.

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

Comment:

The proposal is considered to be reasonable in relation to view loss and all other relevant provisions of the Manly DCP.

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.

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

Description of non-compliance

The proposed three-storey dwelling exceeds the number of storeys control (two) and western wall height up to 7.7m is non-compliant with the 7.4m control.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the LEP objectives for Clause 4.3 Height of Buildings:

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

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

Comment:

The proposed overall roof height is compliant and the dwelling steps down with the topography of the site.

b) to control the bulk and scale of buildings,

Comment:

The proposed new flat roof form minimises the bulk and scale of the dwelling. The proposed wall height non-compliance does not contribute significant bulk to the dwelling and the proportion of the dwelling that is three stories is minimal.

c) to minimise disruption to the following:

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

Comment:

The proposed non-compliance with the wall height and storey controls does not result in any unreasonable view loss to, from or between public spaces and residential development. A full assessment of view loss is completed under Part 3 General Principles of Development.

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

Comment:

The proposed wall height non-compliance occurs at the western elevation of the dwelling and the resulting overshadowing falls only on the Beatrice Street road reserve at 3pm.

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

Comment:

N/A

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

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

Description of non-compliance

The proposed garage front setback of 5.2m is non-compliant with the 6m control, and the Level 1 rear setback of 4.2m is non-compliant with the 8m control. The lower ground and ground floor rear setback non-compliances are existing and remain unchanged.

Merit consideration:

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

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

Comment:

The proposal maintains a sufficient front setback to the garage to ensure that the existing streetscape is maintained. The location of vehicle access from Adelaide Street to the site provides additional physical separation to the garage/dwelling. The remainder of the dwelling and proposed additions remain compliant with the front setback control.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposal will result in no unreasonable impacts in relation to privacy, sunlight access, views, streetscape character or traffic conditions. A full assessment of amenity impacts is completed under Part 3 General Principles of Development.

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

Comment:

The proposed non-compliance is limited to the garage element and is relatively minor in extent. The siting of the proposed first floor addition is constrained by the lot configuration and topography, and is considered to be an acceptable solution.

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 setback non-compliances do not impact the existing vegetation or landscaped area on the site.

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

Comment:

N/A

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

4.1.5 Open Space and Landscaping

The proposal results in an overall increase to total open space on the site and the proposed landscaped area is compliant.

4.4.5 Earthworks (Excavation and Filling)

No significant earthworks are proposed as part of the application.

5.4.1 Foreshore Scenic Protection Area

The proposed development is for alterations and additions to an existing residence and will result in no unreasonable impacts in relation to visual aesthetic amenity or views to and from Sydney Harbour.

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

In summary, a detailed assessment has been required for the following specific issues:

The proposal includes non-compliances in relation to wall height, number of storeys and garage front setback. These non-compliances are considered to result in minimal material impact to adjoining properties or the surrounding area, and are considered against the relevant objectives of each control.

The proposal also includes more significant non-compliances in relation to floor space ratio and the rear

setback to the first floor addition. The proposed floor space ratio non-compliance is considered in relation to the provisions of Manly LEP Clause 4.6 and the context of the site and surrounding locality, which includes a number of recent approvals including variations to the FSR control. While it is acknowledged that this is significant breach, the resulting impacts of the development on the amenity of the adjoining properties and the streetscape is assessed as reasonable. Similarly, the proposed rear setback is considered to be reasonable in this case where the configuration of the subject site is inconsistent with the context the surrounding area, and the breach does not unreasonably impact the adjoining properties.

The overshadowing impacts of the proposal on the western wall/windows of No. 37 Adelaide Street are assessed as reasonable given the compliance of the proposed additions with the eastern side wall height and setback. A full assessment of views is completed under Part 3 General Principles of Development.

The proposal will result in a minor loss of views from No. 37 Adelaide Street. However, the proposed new roof form will result in the provision of additional views of Middle Harbour from No. 37, including further land-water interface and marina views. On balance, the proposal is considered to result in a reasonable view sharing outcome. A full assessment of views is completed under Part 3 General Principles of Development.

Based on the above discussion and the full assessment undertaken, the proposal is considered to be acceptable in relation to all relevant Manly LEP and DCP controls, and is recommended for approval.

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 DA2019/0145 for Alterations and additions to a dwelling House on land at Lot A DP 368257, 39 Adelaide Street, CLONTARF, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA0200 Site Plan	Rev. D, 3 June 2019	Red Blue Architecture & Design
DA0201 Proposed Lower Ground Plan	Rev. D, 3 June 2019	Red Blue Architecture & Design
DA0202 Proposed Ground Floor Plan	Rev. D, 3 June	Red Blue Architecture &

	2019	Design
DA0203 Proposed Level 1 Floor Plan	Rev. D, 3 June 2019	Red Blue Architecture & Design
DA0204 Proposed North & South Elevations	Rev. C, 3 June 2019	Red Blue Architecture & Design
DA0205 Proposed East & West Elevations	Rev. C, 3 June 2019	Red Blue Architecture & Design
DA0206 Section 01	Rev. C, 3 June 2019	Red Blue Architecture & Design

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A336453_03	3 June 2019	Red Blue Architecture & Design

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

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

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

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

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

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

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

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

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

5. On-site Stormwater Detention

An On-site Stormwater Detention system must be designed and constructed in accordance with Northern Beaches Council's current MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003]” and generally in accordance with the concept drainage plans prepared by James Rose Consulting, drawing number 678-C-51, dated 18/3/2019.

Detailed drainage plans are to be prepared by a qualified experienced practicing Civil Engineer. The drainage plans must address the following:

- i) The OSD system must have at least 1 inspection access over the deck.
- ii) The outlet control device/ orifice plate must be determined in accordance with Council's Manly Specification for On site Stormwater Management 2003.

Detailed drainage plans, including engineering certification confirming the above requirements have been satisfied and complying with Council's requirements, are to be submitted to the Principal Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of storm water and storm water management arising from the development.

6. **Delete stairs**

The proposed western stair adjoining the lower ground floor balcony is to be deleted from the plans.

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

Reason: Insufficient aboricultural assessment of the works have been provided to Council to mitigate potential impacts on existing trees.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

7. **Tree protection**

(a) Existing trees which must be retained

- i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
- ii) Trees located on adjoining land

(b) Tree protection

- i) No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

8. **Road Reserve**

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

Reason: Public Safety.

9. **Trees Condition**

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

- (a) A general decline in health and vigour.
- (b) Damaged, crushed or dying roots due to poor pruning techniques.
- (c) More than 10% loss or dieback of roots, branches and foliage.
- (d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- (e) Yellowing of foliage or a thinning of the canopy untypical of its species.
- (f) An increase in the amount of deadwood not associated with normal growth.
- (g) An increase in kino or gum exudation.
- (h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
- (i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

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

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

Reason: Protection of Trees.

10. **Sandstone rock outcrop**

The existing exposed sandstone boulders immediately to the west of the dwelling are not to be altered/removed and are to remain exposed to the Beatrice Street elevation.

Reason: To retain natural features on the site.

11. **Construction vehicles/materials**

The driveways of adjoining properties are to remain clear of construction vehicles, materials and other items at all times.

Reason: To maintain safe access to adjoining properties during works.

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

12. **Authorisation of Legal Documentation Required for Onsite Detention**

The original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and Compliance Certificate issued by an Accredited Certifier in Civil Works. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To create encumbrances on the land.

13. **Registration of Encumbrances for On-site Stormwater Detention**

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To identify encumbrances on land.

14. **On-Site Stormwater Detention Compliance Certification**

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a “work as executed” (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council.

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

Reason: To ensure stormwater disposal is constructed to Council’s satisfaction. (DACENF10)

15. **Positive Covenant and Restriction as to User for On-site Stormwater Detention**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council’s standard requirements at the applicant’s expense and endorsed by Northern Beaches Council’s delegate prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council’s standard requirements at the applicant’s expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.

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

Reason: To ensure the on-site detention and/or pump system is maintained to an appropriate operational standard.