

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0275
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Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 1794 DP 752038, 90 Griffiths Street FAIRLIGHT NSW 2094
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Thomas Robert Perrett Katrina May Perrett
Applicant:	Corona Projects Pty Ltd

Application Lodged:	09/04/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	19/04/2021 to 03/05/2021
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.4 Floor space ratio: 6.33%
Recommendation:	Approval

Estimated Cost of Works:	\$ 755,155.94
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PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to an existing dwelling house. Specifically, the proposal comprises the following:

Lower Ground Floor: FFL - RL20.70 - RL21.30

- Demolition of existing garage and construction of a new garage.
- Construction of a new in-ground pool within the front yard adjacent to the garage.
- Excavation works and addition of a new lower ground floor, which includes a rumpus room, gym room, bike storage, bathroom and internal stairs to the ground floor.

Ground Floor: FFL - RL23.96 - RL24.78

- Removal of the existing in-ground pool and decking in the rear yard.
- Extension forward of the existing building footprint above the proposed lower ground floor, which includes an office/guest space, family room, toilet, balcony on front elevation and kids retreat.
- Alterations to an existing external and internal wall.
- Re-configure internal stairs to access the first floor.

First Floor: FFL - RL28.11

- Internal alterations to divide the existing bathroom into a smaller bathroom and separate ensuite to service bedroom 1.
- New windows and new deck on front elevation (south) of bedroom 1.
- Re-clad front elevation (south).

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 Development Control Plan - 3.1.1 Streetscape (Residential areas)

Manly Development Control Plan - 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

Manly Development Control Plan - 3.8 Waste Management

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 1794 DP 752038 , 90 Griffiths Street FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of one allotment located on the northern side of Griffiths Street, Fairlight.</p> <p>The site is rectangular in shape with a frontage of 14.02m along Griffiths Street and a depth of 37.96m. The site has a surveyed area of 532.2sqm.</p> <p>The site is located within the R1 General Residential zone pursuant to the MLEP 2013 and accommodates a two storey dwelling house, including a detached garage within the front yard and an in-ground swimming pool within the rear yard.</p> <p>The site contains a number of small trees located along the western and eastern side boundaries and front boundary (south).</p> <p>The site experiences a fall of approximately 5m that slopes away from the north-eastern rear corner towards the south-western front corner.</p> <p>Description of Surrounding Development</p> <p>The surrounding built environment is characterised by a mix of residential development, consisting of detached dwelling houses, semi-detached dwellings and residential flat buildings. The surrounding development is typically 1-2 storeys in height. Griffiths Street contains a number of heritage listed street trees, identified as Heritage Item No. 154 'Street trees' in Schedule 5 of MLEP 2013.</p>

Map:



SITE HISTORY

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

Development Application No. DA175/05 for alterations and additions including terrace and replace tile roof with colour bonded metal approved by Council on 12 July 2005.

Development Application No. DA81/06 for alterations and additions to an existing dwelling approved by Council on 15 November 2005.

Development Application No. DA111/06 for construction of an in-ground swimming pool and deck approved by Council on 11 May 2006.

APPLICATION HISTORY

The Assessment Officer undertook a site visit at the subject site and examined the site's surrounds on 27 April 2021.

Following preliminary assessment of the application, which included the aforementioned site visit, Council wrote to the applicant raising the following concerns with the development:

- **Floor Space Ratio non-compliance**

Comment:

The proposed Floor Space Ratio (FSR) equates to 0.638:1 (339.8sqm), which exceeds the statutory requirement of 0.6:1. The proposal was not accompanied by a written request under Clause 4.6 of MLEP 2013 and therefore, Council had no power to vary the development standard. Council noted that a variation may be acceptable, subject to the adequacy of a Clause 4.6 written request.

- **Impacts Upon Trees**

Comment:

The works involved works in close proximity to existing trees. It was requested that the swimming pool be setback further from the western side boundary and that an Arborist Report be submitted, recommending methods to retain the existing trees.

- **Privacy**

Comment:

Council raised concern of the potential for tree removal along the western boundary. The tree removal, coupled with a minimal side setback for the swimming pool, would have an unreasonable privacy impact upon private open space on the western site (No. 92). Furthermore, it was requested that the outermost sides on the ground floor and first floor balconies be fixed with privacy screens to mitigate opportunities for overlooking.

- **Side Setback non-compliances**

Comment:

Council requested that the garage be setback at least 900mm from the eastern side boundary and that the rear pergola be deleted, given the extent of the numeric rear setback non-compliance and the amenity impacts that would result. Council also requested that the swimming pool be setback at least 1.5m from the western boundary to ensure the retention of the existing trees.

- **Earthworks**

Comment:

The works involved excavation up to approximately 3.2m in depth to accommodate for the proposal. A Geotechnical Report was not submitted in support of the excavation works proposed, which is inconsistent with the MDCP 2013 requirements for excavation greater than 1m below natural ground level.

Amended plans and additional documentation (Arborist Report, Geotechnical Report and Clause 4.6) were subsequently submitted to Council's satisfaction. The additional information and amended plans increased the side setbacks of the pool and garage, enabled the retention of the existing trees along the western boundary and provided privacy screens on the outermost edge of the ground floor and first floor balconies. Overall, the amended design constituted a reduced environmental impact and therefore, the application is not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan.

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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development

Section 4.15 Matters for Consideration'	Comments
Assessment Regulation 2000 (EP&A Regulation 2000)	<p>consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>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>
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 2013 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 19/04/2021 to 03/05/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Mrs Christine Louise Perry	88 Griffiths Street FAIRLIGHT NSW 2094
Mr Mark Andrew Terei	5 / 51 Griffiths Street FAIRLIGHT NSW 2094

A total of two unique submissions were received following the public exhibition period.

The matters raised within the submissions are addressed as follows:

- **Other development in locality not built as per approvals**

Comment:

This is not a matter for consideration for this Development Application under Section 4.15 of the Environmental Planning and Assessment Act 1979.

- **Setback of pool**

Comment:

Concern is raised that the pool does not comply with the 1.5m setback requirement for side/rear boundaries. In response to this concern, it is noted that the amended plans demonstrate a compliant 1.5m setback for the swimming pool.

- **Setbacks of dwelling/garage**

Comment:

The setbacks of the proposed alterations and additions have been considered against the objectives of Clause 4.1.4 of the MDCP 2013 and found to be acceptable. It is noted that the eastern side setback of the garage has been increased to 902mm from approximately 200mm through amended plans at the request of Council. This outcome is consistent with the existing streetscape pattern and MDCP 2013 objectives.

- **Cracking from excavation works**

Comment:

Concern is raised of potential cracking on adjoining properties resulting from the extent of the excavation works. The application has been accompanied by a Geotechnical Report, which outlines recommendations during construction/excavation works to alleviate impacts. Noting that

the large extent of the excavation is confined to the eastern confines of the site, a suitable condition has been included with this consent requiring the applicant to prepare a pre and post construction dilapidation report for No. 88.

- **Noise**

Comment:

Concern is raised of potential noise impacts. In response to this concern, it is noted that a condition has been included with this consent to limit all sound producing pool equipment to 5dB (A) above the background level when measured from any property boundary or habitable rooms. In respect to noise that may arise during construction/excavation works, this is not a matter for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979.

- **Tree Retention**

Comment:

Amended plans and an Arborist Report have been submitted indicating that the existing trees will be retained. Conditions pertaining to tree preservation during construction have been included with this consent.

Concluding Remarks

The matters raised within the submissions have been appropriately addressed above and resolved through conditions where necessary. The concerns do not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>This application is for the alterations and additions to an existing residential dwelling. Alterations include the minor demolition of internal walls and structures to create more space for the family room, as well as kitchen and dining area, with additions inclusive of a new garage, new lower ground area comprising of a rumpus room, gym, storage, and bathroom, as well as a new swimming pool.</p> <p>Councils Landscape Referral section has considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls:</p> <ul style="list-style-type: none"> • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping <p><u>Original Comments - 19/04/2021</u> The Statement of Environmental Effects provided with the application</p>

Internal Referral Body	Comments
	<p>notes that the proposal will retain all existing trees to maximise residential amenity and protect natural features, inclusive of all trees along the southern and western boundaries surrounding the proposed pool. This is supported in the Architectural Plans provided as these trees have been noted for retention.</p> <p>Concern is raised regarding how these trees are to be retained as the proposed pool, including the required excavation, is located both within the Tree Protection Zones (TPZ) and possibly the Structural Root Zones (SRZ) of these existing trees. It is noted that these trees form a large hedge with multiple trees, and is therefore exempt under control 3.3.2, specifically 3.3.2.3 <i>Clause c) iii</i>). Despite being exempt, these trees have been identified for retention as part of this proposal, and therefore require evidence of how they are going to be retained throughout development. It is recommended that an Arboricultural Impact Statement be provided with the application, identifying how these existing trees are going to be retained and the impacts of the proposed works on both the short and long term health and vitality of these trees. These trees currently provide valuable screening and privacy, alongside built form softening and mitigation, all of which are key objectives of control 4.1.5. Key objectives of control 4.1.5 include "to maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area", as well as "to maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland". If these trees cannot be retained, and are removed as a result, replacement screen planting is required to ensure privacy is maintained.</p> <p>Concern is also raised regarding the limited information provided in relation to proposed planting. The Architectural Plans provided indicate that landscape works are proposed adjacent to the eastern boundary, in addition to that surrounding the proposed deck and pergola at the rear of the property. It is currently unclear as to how privacy shall be maintained at the rear of the property as proposed plant species and their associated mature heights is currently unknown. It is also noted that from the Site Survey provided, numerous trees are located along this boundary, however these have not been identified in the Architectural Plans provided. It is therefore recommended that a Landscape Plan be provided with the application in accordance with Council's DA Lodgement Requirements.</p> <p>In its current form, the landscape component of the proposal is not supported. It is recommended that an Arboricultural Impact Assessment and Landscape Plan be provided with the application in accordance with Council's DA Lodgement Requirements. These documents are required to satisfy concerns regarding tree retention and protection, and the limited information provided regarding proposed landscape works. Upon receipt of these documents, further assessment can be made.</p> <p><u>Updated Comments - 24/05/2021</u></p>

Internal Referral Body	Comments
	<p>Following original concerns regarding the potential impacts of the proposed pool in relation to the existing trees located on the western boundary, amended Architectural Plans and an Arboricultural Impact Assessment have been provided with the application.</p> <p>The amended Architectural Plans provided have amended the pools design and location, ensuring it is located 1.5m from the boundary. The Arboricultural Impact Assessment has noted that this new pool location results in an encroachment of less than 10% into the TPZ of the existing trees lining the western boundary. This is deemed a minor encroachment, and through sensitive excavation techniques as outlined in the Arboricultural Impact Assessment, these trees can successfully be retained with no detrimental impacts expected. The appointment of a Project Arborist shall also take place as per Arboricultural Impact Assessment recommendations, ensuring all works within the TPZ of these trees is carefully monitored, ensuring no significant roots are impacted. For this reason, the Arborists recommendations are supported. The retention of these trees is vital to satisfy control 3.3.2, as key objectives of this control include "to effectively manage the risks that come with an established urban forest through the professional management of trees", as well as "to protect and enhance the scenic value and character that trees and/or bushland vegetation provide".</p> <p>It is recommended that additional screen vegetation be planted in the rear of the property to increase the privacy for residents of the application, as well as those in neighboring properties. As the existing pool is being removed, ample opportunity for this planting is present. This planting is necessary to satisfy controls 3.3.1 and 4.1.5, as key objectives of these controls include "to encourage appropriate tree planting and maintenance of existing vegetation", as well as "to maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and surrounding area".</p> <p>The landscape component of the proposal is therefore supported subject to the protection of existing trees and vegetation, as well as the implementation of additional screen planting at the rear of the dwelling.</p>
NECC (Development Engineering)	<p>The proposed development increases the impervious area by greater than 50 square metres and the overall impervious area exceeds 35% of the site area and as such OSD is required. Conditions for the provision of OSD are included. The proposed driveway widening has also been conditioned to ensure a minimum clearance of 1 metre to the street tree which must be assessed by Council's Tree Officer.</p> <p>No objection to approval, subject to conditions as recommended.</p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>The proposal has been referred to Heritage as the site is in proximity to a heritage item, listed in Schedule 5 of Manly LEP</p>

Internal Referral Body	Comments		
	2013.		
	Item I54 - Street trees - Griffiths Street (from Hill Street to Bellevue Street)		
	Details of heritage items affected		
	Details of the items as contained within the Manly heritage inventory are as follows:		
	Item I54 - Street trees		
	<u>Statement of significance:</u> Rare example of this species and row planting indicate association with Manly cemetery.		
	<u>Physical description:</u> Schinus Areira (Peppercorn trees) on north side of road adjacent to cemetery. Some species replaced by Agonis Flexuosa.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
NSW State Heritage Register	No		
National Trust of Aust (NSW) Register	No		
RAIA Register of 20th Century Buildings of Significance	No		
Other	N/A		
Consideration of Application			
The proposal seeks consent for alterations and additions to the existing two storey house, involving the construction of a new pool at the front yard and an extension to the front of the existing house towards the existing garage including a new rumpus room, gym, staircase, storage and bathroom.			
The existing dwelling is not a heritage item, however, the heritage listed street trees are located in front of the site and it is considered that the proposed widening to the existing driveway crossover may impact the heritage listed street tree. Therefore, reference is made to the Landscape Referral Response "It is recommended that an Arboricultural Impact Assessment and Landscape Plan be provided with the application in accordance with Council's DA" Lodgement Requirements".			

Internal Referral Body	Comments
	<p>Following guidelines of Manly Development Control Plan 2013 should also be in consideration and the exact dimension (width) for the driveway crossover should be provided to Council to ensure that there is sufficient space between the crossover and the existing tree.</p> <ul style="list-style-type: none"> Section 4.1.6.4 - Clause a) Driveway crossovers/ gutter crossings should be minimised and spaced to maximise kerb-side car parking spaces Schedule 3 - Part B3 - Minimum Requirements for access driveway crossovers - Clause c) The width of a crossover should be sufficient for a single lane driveway (between 2.5m and 3.75m). <p>Therefore Heritage raises no objection to the proposal, subject to one condition that, the heritage street trees be protected during the excavation/demolition and construction works.</p> <p><u>Consider against the provisions of CL5.10 of MLEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p> <p>Further Comments</p> <p>COMPLETED BY: Oya Guner, Heritage Advisor</p> <p>DATE: 15 April 2021</p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	6.7m	-	Yes
Floor Space Ratio	FSR: 0.6:1 (319.32sqm GFA)	FSR: 0.638:1 (339.8sqm GFA)	6.33%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1
Proposed:	0.638:1
Percentage variation to requirement:	6.33%

Clause 4.4 of the MLEP 2013 limits the FSR on the subject site to 0.6:1 (319.32sqm GFA). The proposed development results in a FSR of 0.638:1 (339.8sqm GFA), which represents a 6.33% (20.48sqm) from the development standard.

It is noted that the existing FSR on the site equates to 0.336:1 (178.9sqm GFA), which complies with the FSR development standard. The proposal therefore results in an additional 140.42sqm of gross floor area on the site.

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*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

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 development has been designed to complement the existing scale and character of surrounding development. The height and building envelope of the building is compliant with the objectives behind all applicable LEP and DCP controls. The proposal does not seek to alter the existing height of the existing building any further. Existing front setback trees and landscaping will continue to visually dominate the site when viewed from the street, rendering the works visually subservient in nature behind. Furthermore, the proposal does not result in adverse amenity impacts on adjoining properties in the way of bulk impact, shadow impact or privacy loss.

The above is considered to represent sufficient environmental planning grounds to justify the contravention of the development standard. It has been demonstrated that compliance with the

development standard is unreasonable or unnecessary in the circumstances of this case, and thus the resultant development will be in the public interest".

Comment:

The Assessment Officer generally concurs with the applicant's justification. The proposed development does not increase the existing building height and the building mass steps down in height with the slope of the land, which falls towards the frontage. The proposal is adequately setback from side boundaries and will be softened by existing vegetation located along the western side and front boundaries. The north/south orientation of the site will ensure the shadowing impacts are not confined to one particular property and the proposal optimises adequate separation from side boundaries and fixed privacy measures where necessary to negate unreasonable privacy impacts. The development achieves the aims and objectives of MLEP 2013 and MDCP 2013, notwithstanding the FSR numeric non-compliance and compliance with the FSR standard in this instance will not result in a materially better planning outcome when compared to the proposed development.

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

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

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

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

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

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

Comment:

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

Objectives of Development Standard

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

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

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

Comment:

The proposed alterations and additions to not increase the maximum building height of the existing dwelling and the additional building mass steps down with the topography of the land, which minimises the visual bulk. The built form is adequately setback from side boundaries and utilises façade articulation, which provides further visual relief. There are examples of FSR breaches under recent consents within Griffiths Street (i.e. No's 8 and 15) and the proposed development will not be inconsistent with the existing and desired streetscape character.

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

Comment:

The retention of existing trees along the front and western side boundaries will visually reduce the built form. The stepping down of the building mass with the natural topography will ensure the development does not obscure the existing landscape treatment.

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

Comment:

The scale of the development is commensurate to the surrounding built environment. Furthermore, the proposal complies with the MDCP 2013 landscaped area numeric requirement and will achieve the desired landscaped character of the area.

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

Comment:

The proposed development will not result in any unreasonable amenity impacts on adjoining properties in regards to views, privacy or overshadowing. This is discussed in the section of this report relating to Clause 3.4 of the MDCP 2013.

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:

This objective is not relevant, given the works are within a residential zone.

Zone Objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposal will maintain a residential land use and therefore, will provide for the housing

needs of the community.

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

Comment:

The proposal maintains a residential land use within the R1 General Residential zone.

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

Comment:

The proposal continues to maintain a residential land use.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Floor space ratio Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

6.2 Earthworks

The proposed development involves excavation works up to an approximate depth of 3.2m to accommodate for the lower ground floor component of the development. Therefore, the requirements of this clause must be considered.

The objectives of Clause 6.2 of the MLEP 2013 require development:

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

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

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

locality of the development

Comment:

The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

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

Comment:

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

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

Comment:

Conditions have been included with this consent to ensure that excavation material is adequately disposed of. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

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

Comment:

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

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

Comment:

Conditions have been included with this consent to ensure that excavation material is adequately disposed of. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

Comment:

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

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

Comment:

The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

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

Comment:

The application has been accompanied by a Geotechnical Report (prepared by White Geotechnical Group, dated 17 May 2021), which concludes that the earthworks will have an acceptable risk level. The recommendations outlined within this report have been included as part of this consent, which will minimise the impact of the development.

Concluding Remarks

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and requirements of Clause 6.2 of the MLEP 2013.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 532.2sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 250sqm of site area	1 dwelling on 532.2sqm of site area	-	Yes
	Dwelling Size: 122sqm GFA based off proposed No. bedrooms and bathrooms	339.8sqm GFA	-	Yes
4.1.2.1 Wall Height	East: 7.35m (based on gradient 1:7)	5.05m	-	Yes
	West: 7.35m (based on gradient 1:7)	5.19m	-	Yes
4.1.2.2 Number of Storeys	2 storeys	2 storeys	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	2.38m	-	Yes
	Pitch: maximum 35 degrees	22.5 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing Building Line	consistent with prevailing building line	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East: 2.05m (1/3 of max. wall height of existing building)	902mm (garage) 1.43m - 2.44m (dwelling)	56% (garage) up to 30.24% (dwelling)	No
	West: 2.44m (1/3 of max. wall height of existing building)	1.08m (dwelling)	55.74%	No
	Windows: no windows within 3m of side boundaries	East: windows setback 1.43m - 2.42m from side boundary West: windows setback 1.08m from side boundary	19.33% - 52.33% (east) 64% (west)	No

4.1.4.4 Rear Setbacks	8m	no change	N/A	N/A
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (292.71sqm) of site area	36.7% (195.3sqm)	33.27%	No
	Open space above ground 25% (48.83sqm) of total open space	nil	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% (68.36sqm) of open space	96.26% (188sqm)	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	more than 18sqm	-	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	6m (garage opening)	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	1.37m	37%	No
	1m curtilage/1.5m water side/rear setback	curtilage: 1.75m waterline: 1.95m	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	No	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The MDCP 2013 streetscape controls for residential areas note as follows:

3.1.1.1 Complementary Design and Visual Improvement

- i) complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;*
- ii) ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land;*
- ii) maintain building heights at a compatible scale with adjacent development particularly at the street frontage and building alignment, whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys;*
- iv) avoid elevated structures constructed on extended columns that dominate adjoining sites such as elevated open space terraces, pools, driveways and the like. See also paragraph 4.1.8 Development on Sloping Sites and paragraph 4.1.9 Swimming Pools, Spas and Water Features;*
- v) address and compliment the built form and style any heritage property in the vicinity to preserve the integrity of the item and its setting. See also paragraph 3.2 Heritage Considerations;*
- vi) visually improve existing streetscapes through innovative design solutions; and*
- vii) incorporate building materials and finishes complementing those dominant in the locality. The use of plantation and/or recycled timbers in construction and finishes is encouraged. See also paragraph 3.5.7 Building Construction and Design.*

Comment:

The proposed development maintains compliance with the height of buildings development standard and MDCP 2013 wall height provision. The building mass steps down in height with the topography of the land, which visually reduces the building bulk. The scale of the development is generally consistent with surrounding detached development along Griffiths Street and the proposal will not detract from the scenic amenity of the area. Whilst the swimming pool is located forward of the front building line, this location is consistent with an existing pool located on the western adjoining site (No. 92). The retention

of existing trees along the front and western side boundaries, coupled with adequate separation from the front boundary, will ensure the pool is not discernible from the streetscape. Overall, the proposal is consistent with the relevant requirements set out within Clause 3.1.1.1 of the MDCP 2013.

3.1.1.4 Garages, Carports and Hardstand Areas

a) Garages, carports and hardstand areas must be designed and sited in a manner that does not to dominate the street frontage by:

- i) its roof form, material choice and detailing by being subservient to the associated dwelling; and*
- ii) being compatible with the streetscape and the location in relation to front setback criteria.*

b) Exceptions to setback criteria referred to in this paragraph may be considered where parking structures are a positive element of the streetscape.

Comment:

The gable roof form and degree of pitch is consistent with the roof form of the new additions to the dwelling house. Furthermore, the garage incorporates timber clad materials into the design, which will correspond with the façade of the dwelling house. Whilst the garage is located within the 6m front setback area, it is noted that there are numerous examples of parking structures within similar locations along Griffiths Street, including examples with nil front setbacks. (i.e. No's 88, 86, 84, 82 are nearby examples). For these reasons, Council is satisfied that the garage meets the requirements set out in Clause 3.1.1.4 of the MDCP 2013.

Concluding Remarks

Based off the above assessment, it is concluded that the proposal meets the streetscape requirements set out within the MDCP 2013.

3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

The proposed development is considered to be consistent with the MDCP 2013 amenity provisions for the following reasons:

Privacy

- The retention of existing trees along the western side boundary, coupled with the provision of a 1.5m setback for the swimming pool from the western boundary, will ensure a reasonable level of visual and acoustical privacy is maintained between the site and adjoining private open space within the front yard at No. 92.
- The ground floor and first floor elevated balconies have been affixed with screening devices on the outermost edges, which will prevent opportunities for overlooking into adjoining properties.
- Windows have been adequately designed and sited to prevent unreasonable privacy impacts.

Views

- No significant view corridors are obtained through the subject site. Nevertheless, the new additions are sited well below the 8.5m statutory height limit and maintain compliance with the MDCP 2013 wall height and number of storeys control, which minimises any potential district view impacts.

Solar Access

- The north/south orientation of the site will ensure the shadowing impacts are not confined to one particular property.

3.8 Waste Management

The Waste Management Plan submitted with this application does not indicate the location of the off-site disposal or recycling outlet. Therefore, a suitable condition has been included with this consent requiring the applicant to prepare an amended Waste Management Plan that specifies the location of the off-site disposal or recycling outlet, in accordance with Council's Waste Management Guidelines.

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

Description of non-compliance

Clause 4.1.4 of the MDCP 2013 requires development to be setback at least 1/3 of the adjacent maximum wall height. Applying this principle requires the following side building lines:

- Eastern Setback: 2.05m.
- Western Setback: 2.44m.

The external wall of the dwelling is setback between 1.43m - 2.44m from the eastern boundary and does not comply with the numeric control for a small portion of this elevation adjacent to the family room on the ground floor.. Furthermore, the garage is setback 902mm from the eastern boundary and does not satisfy the numeric requirement.

The external wall of the dwelling is setback 1.08m from the western boundary and therefore, fails to meet the numeric requirement.

In conjunction with the side setback provision, the control further states that windows should not be located within 3m of side boundaries. The proposal contains new windows on the eastern and western elevations within 3m of the side boundaries and therefore, does not satisfy the numeric requirement.

Merit consideration:

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

Objective 1) To 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:

As discussed in detail within the section of this report relating to Clause 3.1 of the MDCP 2013, the proposed development is consistent with the streetscape requirements for the locality. The proposed side setbacks provide adequate separation from the side boundaries to negate unreasonable visual impacts upon adjoining properties. The proposal complies with the MDCP 2013 landscape area numeric requirement and when coupled with the retention of the existing trees and provision of additional landscape treatment (required by condition), the proposal will achieve a high quality

landscape outcome for the site.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

As discussed in detail within the section of this report relating to Clause 3.4 of the MDCP 2013, the proposed development will not result in unreasonable amenity impacts, specifically having regard to views, solar access and privacy. The new additions provide sufficient separation from the side boundaries, which will ensure there is adequate space between the adjoining dwellings to create a rhythm/pattern of spaces. Furthermore, the proposed works will not reduce road visibility. Overall, the proposal achieves this objective.

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

Comment:

Flexibility is afforded in this circumstance as the non-compliant side setbacks will not result in adverse streetscape or amenity impacts.

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 works retain the existing trees within the front yard, which will soften the built form. The proposal also complies with the MDCP 2013 landscaped area numeric control.

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

Comment:

The site is not bushfire prone.

Concluding Remarks

Having regard to the above assessment, it is concluded that the objectives of the control have been achieved. Therefore, the application is supported on merit in this particular circumstance.

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5 of the MDCP 2013 requires at least 55% (292.71sqm) of the site to comprise total open space. To be included in total open space, open space areas must not pertain to parking (i.e. driveways and hardstands) and must be at least 3m x 3m in dimension. The proposed total open space equates to 36.7% of the site, which fails to comply with the prerequisite.

Merit consideration:

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

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

Comment:

The proposal does not result in the removal of significant landscape or topographic features.

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

Comment:

The proposal complies with the MDCP 2013 landscape area numeric requirement and when coupled with the retention of the existing trees and provision of additional landscape treatment (required by condition), the proposal will achieve a high quality landscape outcome for the site.

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

Comment:

As detailed within the section of this report relating to Clause 3.4 of the MDCP 2013, the proposal will not result in unreasonable amenity impacts.

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

Comment:

The proposed landscaping is sufficient and will assist in water infiltration, thereby decreasing stormwater runoff. Additional conditions pertaining to stormwater management have been included as part of this consent.

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

Comment:

The proposal will not lead to a significant spread of weeds.

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

Comment:

The proposal will not compromise potential wildlife habitat within the locality, given no significant vegetation will be removed by the development.

Concluding Remarks

Having regard to the above assessment, it is concluded that the objectives of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

Clause 4.1.9 of the MDCP 2013 stipulates that the finished floor level of the swimming pools should be no more than 1m above natural ground level. The control further states that swimming pools should be located in the rear yard.

The finished floor level of the pool paving is 1.37m above ground level on the south-western corner, which is prompted by the slope in the site. It is noted that much of the floor level is compliant with this requirement. Furthermore, the proposed swimming pool is located within the front yard, which does not meet the numeric requirement.

Merit consideration

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

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

Comment:

The 1.5m setback from the western side boundary, coupled with the retention of existing trees along this boundary, will ensure a reasonable level of privacy is maintained between the site and western adjoining property (No. 92). Furthermore, a condition has been included with this consent to limit all sound producing pool equipment to 5dB (A) above the background level when measured from any property boundary or habitable rooms.

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

Comment:

Whilst the swimming pool is located forward of the front building line, this location is consistent with an existing pool located on the western adjoining site (No. 92). The retention of existing trees along the front and western side boundaries, coupled with adequate separation from the front boundary, will ensure the pool is not discernible from the streetscape.

Objective 3) To integrate landscaping.

Comment:

Adequate landscaping is incorporated into the development.

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

Comment:

The site is not bushfire prone.

Concluding Remarks

Having regard to the above assessment, it is concluded that the objectives of the control have been achieved. Therefore, the application is supported on merit in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$7,552 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$755,156.

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary Clause 4.4 Floor Space Ratio development standard pursuant to Clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2021/0275 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 1794 DP 752038, 90 Griffiths Street, FAIRLIGHT, 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
A-121 Sheet 1 (Revision B)	17/05/2021	AH Design
A-121 Sheet 2 (Revision B)	17/05/2021	AH Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Investigation No. J3429	17/05/2021	White Geotechnical Group
Arboricultural Impact Assessment	May 2021	Bluegum Tree Care and Consultancy
BASIX Certificate No. A391694	18/02/2021	AH Design

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
LAND-121 (Revision B)	17/05/2021	AH Design

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) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) 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.
- (k) 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.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall

notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$7,551.56 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$755,155.94.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as

adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

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

5. **Security Bond**

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

6. **On-site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management Policy Clause 9.3.3. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

7. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

8. Vehicle Crossings Application

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

9. Protection Of Heritage Listed Street Trees

The street trees in Griffiths Street are to be protected from damage during demolition/excavation and construction. Details of the proposed driveway crossover (width of the driveway and the distance to the existing tree near the driveway) and the method of protection of the trees must be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate tree protection measures are adopted to preserve significant community heritage assets.

10. Waste Management Plan

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with Council's Waste Management Guidelines.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

11. Compliance with Standards

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

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

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

12. Sydney Water "Tap In"

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

13. Project Arborist

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection.

The Project Arborist is to supervise all demolition, excavation and construction works near all trees to be retained, including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works, unless approved by the Project Arborist.

Existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, including:

- i) all demolition, excavation and construction works within the TPZ's and SRZ's of trees to be retained.

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifying Authority that all recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:

- i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.
- ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are

preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

14. Pre-Construction Dilapidation Report

A Dilapidation Report, including photographic surveys, of the following adjoining property must be provided to the Certifying Authority prior to any works commencing on the site (including demolition or excavation). The report must detail the physical condition of any built structures within 5.0m of the proposed excavations for the property listed below:

- 88 Griffiths Street, Fairlight.

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

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. Protection of Existing Street Trees

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street trees fronting the development site shall be protected by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture.

All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: Tree protection.

16. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected, including:
- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all road reserve trees and vegetation.
- b) Tree protection shall be undertaken as follows:
- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
 - ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.
- c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment, as listed in the following sections:
- i) Section 6 - Recommendations,
 - ii) Attachment C - Tree Protection Plan.

The Certifying Authority must ensure that:

- d) The arboricultural works listed in c) are undertaken and certified by an Arborist as compliant to the recommendations of the Arboricultural Impact Assessment.
- e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree (s) is prohibited.

Reason: Tree and vegetation protection.

17. **Road Reserve**

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

Reason: Public safety.

18. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

19. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

20. **Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

21. Vehicle Crossings

The Applicant is to construct one vehicle crossing 4 metres wide at the kerb and 5 metres wide at the boundary in accordance with Northern Beaches Council Drawing No A4-3330/2 NH and the driveway levels application approval. The edge of the driveway is to be a minimum of 1 metre from the existing street tree. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

22. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifying Authority.

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

23. Geotechnical Inspections and Certification

A suitably qualified geotechnical engineer/geologist must undertake the following inspections:

- The geotechnical consultant is to inspect any exploration pits that may be required to expose the foundation materials of the house.
- During the excavation process for the extension to the house, the geotechnical consultant is to inspect the cut faces as they are lowered in 1.5m intervals to ensure ground materials are as expected and that there are no wedges or other defects present in the rock that may require additional support.
- All footings are to be inspected and approved by the geotechnical consultant while the excavation equipment and contractors are still onsite and before steel reinforcing is placed or concrete is poured.

Documented evidence must be provided to the Certifying Authority.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

24. Landscape Completion

Landscaping is to be implemented in accordance with the approved Architectural Plan, inclusive of the following conditions:

- i) at minimum, 6x screening shrubs are required to be planted at the rear of the property adjacent to the northern boundary. Suggested species include: *Acmena smithii* 'Minor', *Callistemon citrinus* 'Kings Parks Special', or *Syzygium* 'Cascade'.

The selected planting is to comprise of native species capable of attaining a height of 2.5 metres at maturity.

Plants are to be installed at minimum 1 metre intervals and be of a minimum container size of 200mm at planting in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch.

Prior to the issue of an Occupation Certificate, details shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

25. Condition of Retained Vegetation - Project Arborist

Prior to the issue of an Occupation Certificate, a report prepared by the project arborist shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

26. Post-Construction Dilapidation Report

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

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

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

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

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

27. Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan) and Hydraulic engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgment with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A

copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted.

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

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

28. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

29. **Undesirable Trees**

Leighton Green Cypress *Cupressocyparis leylandii* or any of its cultivars, or any other Undesirable Trees identified by Council, must not be planted on the site for the life of the development.

In the event of any inconsistency between this condition and the development application documents, this condition will prevail to the extent of the inconsistency.

Reason: To reduce the potential for adverse amenity effects such as overshadowing, loss of views and loss of plant diversity.

30. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

31. **Pool Filter Noise**

All sound producing plant, equipment, machinery or fittings and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room(s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

Reason: To ensure an appropriate level of residential amenity.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Thomas Burns, Planner

The application is determined on 26/05/2021, under the delegated authority of:



Rodney Piggott, Manager Development Assessments