

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0525
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Responsible Officer:	Gareth David
Land to be developed (Address):	Lot 26 DP 758044, 12 Nolan Place BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Alterations and additions to a dwelling house and a new swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Robert Matthew Poole Alexis Mary Poole
Applicant:	Fe Design Interiors

Application Lodged:	22/05/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	03/06/2020 to 17/06/2020
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.4 Floor space ratio: 23.8%
Recommendation:	Approval

Estimated Cost of Works:	\$ 997,800.00
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EXECUTIVE SUMMARY

The proposal involves alterations and additions to an existing dwelling house and the construction of a swimming pool.

The application includes a request under Clause 4.6 of the Manly LEP 2013 to vary the development standard for Floor Space Ratio (FSR). The application proposes a 23.8% variation to the FSR development standard of 0.45:1 under the Manly LEP 2013.

As the application proposes a variation to the FSR development standard of more than 10% and involves a Class 1 Dwelling, the application is referred to the Development Determination Panel.

Submissions have been received from two (2) adjoining properties. These submissions raised concerns particularly relating to privacy, stormwater impacts and overshadowing impacts.

The proposal was amended during the assessment in order to provide a design which increased solar access to an adjoining property by reducing the extent of the first floor eaves. Furthermore, the amended design removed the proposed first floor screening to expose the front facing windows and balconies and provide additional articulation to the first floor by increasing the front setbacks. The assessment has found that the amended scheme is satisfactory in relation to built form, character, streetscape and internal and external residential amenity.

Conditions have also been imposed to provide a privacy screening to three side facing windows and to incorporate solid balustrading on the first floor balcony to mitigate potential privacy impacts.

The application has also been assessed against the planning controls of the Manly DCP 2013, and whilst there are still minor variations to the wall height control, open space, and side setback controls, these have been found to be consistent with the objectives and requirements of the controls.

The assessment concludes that the proposed design is appropriate for the site and would not have any unreasonable impacts on streetscape, privacy, solar access, views or any other unreasonable amenity or visual impact.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be approved subject to the attached conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes demolition works and alterations and additions to the existing dwelling house as follows:

Demolition Works:

- Demolition of existing roof and partial demolition of existing lower ground and ground floor levels

Roof

- New low-pitched metal roof with skylights

First Floor Level

- Alterations and additions to provide for new first floor level to provide for three (3) bedrooms, an ensuite, a bathroom and new rear balcony.

Ground Floor (entry) Level

- Alterations and additions to provide for new double garage, green room, living and dining room, kitchen, laundry, rear balcony and new windows and doors.

Lower Ground Floor (garden) Level

- Alterations and additions to provide for new bedroom and ensuite and new windows and doors.

Other

- New swimming pool, paved and turf terraces
- New driveway
- Landscaping works and retaining walls
- New front masonry wall fence
- New pool and rear boundary fencing

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 Streetscapes and Townscapes

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

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

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

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 26 DP 758044 , 12 Nolan Place BALGOWLAH HEIGHTS NSW 2093

Detailed Site Description:

The subject site consists of one (1) allotment located on the north-eastern side of Nolan Place.

The site is regular in shape with a frontage of 15.545m along Nolan Place and a depth of 38.5m. The site has a surveyed area of 598.6m².

The site is located within the R2 Low Density Residential zone and accommodates a part single, part two storey brick house.

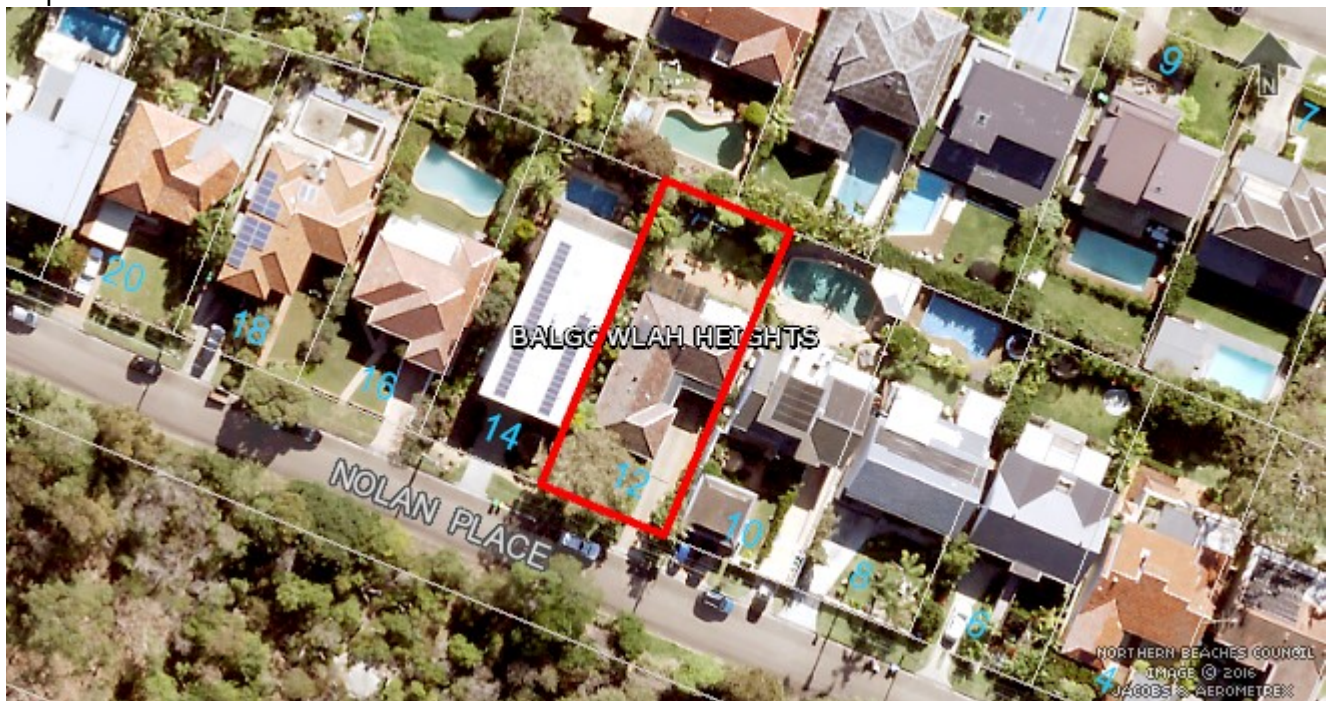
The site falls from the south (street frontage) to the north (rear) by approximately 3.4m .

The site contains large lawn areas to the front and rear containing predominately shrubs and low lying vegetation, with one substantial tree located in the front garden .

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by one and two storey dwellings of varying architectural styles. To the south of the site is Nolan Place Reserve.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

APPLICATION HISTORY

01 July 2020

Council wrote to the applicant, raising concerns in relation to:

- FSR non-compliance and Clause 4.6 Statement
- Solar Access
- Streetscape
- Inadequate documentation

23 July 2020

Amended plans and additional information were submitted to support the application.

The amendments included:

- The reduction in the upper floor (FSR) by increasing the front setback
- The reduction in the size of the first floor eaves
- Removal of first floor screens to expose the front facing windows

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 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended plans and an updated survey.

Section 4.15 Matters for Consideration'	Comments
	<p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. .</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Planning & Design dated 18 May 2020) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 03/06/2020 to 17/06/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

Name:	Address:
Mr Gregory Douglas Watkins	13 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Withheld Withheld	BALGOWLAH HEIGHTS NSW 2093

The following issues were raised in the submissions:

- Stormwater and pool overflow
- Stability of retaining walls
- Privacy
- Location of air conditioning unit
- Pool Fencing
- Overshadowing/Solar Access
- Maintenance of landscaping on eastern boundary
- Inclusion of site safety fence

The matters raised within the submissions are addressed as follows:

- **Stormwater and pool overflow**

Comment:

Council's Development Engineers have reviewed the development with regard to stormwater drainage and are satisfied the proposal will not have an detrimental impact in terms of stormwater flows subject to conditions. The swimming pool will be connected to the sewer and any overflow will be directed in this system.

- **Stability of retaining walls**

Comment:

Concern was raised in regards to the stability of the existing retaining wall located along north

east boundary. The proposed works do not seek to modify this retaining wall. Nevertheless, a condition has been imposed on the consent requiring that excavation work is to ensure the stability of the soil material and protection of adjoining properties from damage using underpinning, shoring, retaining walls and support where required and that retaining walls are to be structurally adequate for the intended purpose. Furthermore, a Geotechnical report has been submitted with the application. The recommendations of this report will be included within any development consent.

- **Privacy**

Comment:

The amended proposal is acceptable in relation to privacy for the reasons detailed in the section of this report relating to *Section 3.4.2 Privacy and Security* of the Manly DCP. In summary, subject to recommended conditions, the proposal results in reasonable levels of privacy to adjoining properties.

A submission was received concerning the potential of the proposed pool to create privacy impacts to the adjoining neighbour to the north. It is considered that the 1.0m landscape buffer and the 1.8m fence on the northern boundary would provide adequate privacy measures to protect the neighbouring site from direct overlooking and would ultimately maintain a reasonable level of privacy.

- **Location of air conditioning unit**

Comment:

A submission was raised regarding the location of air conditioning requesting that it be located away from adjoining boundaries. The plans do not indicate any new air conditioning units within the vicinity of adjoining boundaries.

- **Pool Fencing and the need to modify existing fencing**

Comment:

New fencing is proposed to be built on the rear boundary to comply with swimming pool safety standards. A condition has been imposed reinforcing that the consent does not provide permission to encroach the allotment boundary. This condition also directs the applicant to the provisions of the Dividing Fences Act 1991.

- **Overshadowing/Solar Access**

Comment:

The amended proposal is acceptable in relation to overshadowing for the reasons detailed in the section of this report relating to *Section 3.4.1 Sunlight Access and Overshadowing* of the Manly DCP.

- **Maintenance of landscaping on eastern boundary**

Comment:

Concern was raised about the removal of vegetation on the eastern boundary adjacent to the existing dwelling and associated privacy impacts with their removal. The demolition/tree removal plan does not indicate the removal of this vegetation. Furthermore, Council's Landscaping Officer has imposed a condition of consent ensuring existing trees and vegetation not designated for removal be retained and protected. As above, subject to recommended conditions, the proposal results in reasonable levels of privacy to adjoining properties.

- **Inclusion of site safety fence**

Comment:

A submission was raised requesting site safety fencing be installed to minimise impacts of dust, noise and privacy impacts during construction. The Sediment and Erosion Plan provided indicates a Site Safety Fence to be installed around the perimeter of the site. Conditions have been included within the draft Recommendation to ensure adequate measures and practices are utilised to minimise dust and noise from the subject site during both the demolition and construction phases of the project.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The proposal is for alterations and additions to the existing dwelling. The site contains one medium sized native tree of significance in the front yard, with other site vegetation containing small trees under 5 metres in height including garden species. The existing native tree within the frontage (Weeping Bottlebrush - <i>Callistemon salignus</i>). The proposed development requires the removal of two trees within the frontage for the proposed driveway, and two trees within the rear for the proposed pool. These are all Exempt Species by either species type or by height, and do not require Council consent. Existing trees to be demolished are identified on the Demolition Plan DA1007.</p> <p>A landscape plan is provided with the application. It is noted that all vegetation not documented for removal is to be retained. Native tree planting shall be provided to satisfy Manly DCP native tree planting requirements.</p> <p>Council's Landscape Referral section have assessed the application against the landscape controls of Manly DCP 2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types.</p>
NECC (Development Engineering)	<p>3rd Referral</p> <p>The below listed items have been amended and provided in the amended plan.</p> <p>Development Engineering has no objection to the application subject to the following conditions of consent.</p> <p>2nd referral</p> <p>An amended plan has been received on 22/7/2020.</p> <p>However, the item 1 and 2 in the previous referral have not been achieved.</p> <p>1) A detailed pipeline survey must be provided to confirm the actual location of the pipeline. Specially, the proposed swimming, which requires 2 m deep excavation, is very close to the easement. As such, the details of the pipeline must be provided in accordance with the Council's Drainage Easements Policy – D100</p> <p>2) The replacement of the existing retaining wall, which is adjacent to the building, is located within the easement. The retaining wall must</p>

Internal Referral Body	Comments
	<p>not be located within the easement. The applicant shall redesign the retaining wall to ensure the structure is outside the easement.</p> <p>The application cannot be supported in this form as the above reasons.</p> <p>1st referral</p> <p>Council's records indicate the subject property is burdened by a 375mm diameter Council stormwater pipeline (SPI 40845) which traverses across the site.</p> <p>In this regard, the applicant is required to demonstrate the development can comply with Council's Drainage Easements Policy – D100. The following details are submitted with the application:</p> <p>1) Accurately locate, confirm dimensions including depth and plot to scale Council's stormwater pipelines and associated infrastructure on the DA site plans that outline the proposal. This should be carried out by a service locating contractor and registered surveyor. (Evidence of methodology used for locating stormwater system should be provided).</p> <p>2) All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with the above-mentioned policy.</p> <p>3) Structural details prepared by a suitably qualified Civil Engineer demonstrating compliance with Council's policy are to be submitted.</p> <p>As the above, Development Engineering cannot support the application when the pipeline information is missing.</p>
NECC (Water Management)	The proposed application has suitably addressed water quality and sediment management and is expected to minimise the impacts of the development on the local catchment and stormwater system.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A377470 dated 15 May 2020).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objection subject to recommended conditions.

Manly Local Environmental Plan 2013

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

aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	N/A	Yes
Floor Space Ratio	FSR: 0.45:1 (269.37sqm)	FSR: 0.557:1 (333.7sqm)	23.8%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance

Development standard:	Floor Space Ratio (FSR)
Requirement:	FSR: 0.45:1 (269.37sqm)
Proposed:	FSR: 0.557:1 (333.7sqm)
Percentage variation to requirement:	23.8%

Assessment of request to vary a Development Standard

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *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 height, bulk and scale of the development is consistent with the established surrounding development including adjoining development and newer development in the surrounding area.*
- *The proposal presents a modern contemporary design that is in sympathy with the immediate neighbours and newer development in the surrounding area.*
- *The proposal has been skillfully designed with reduced wall heights and modulation to reduce bulk and minimise adverse impacts on the adjoining neighbours.*
- *The proposal complies with front and rear setback and building height and is consistent with the pattern of surrounding development*
- *The proposal utilises existing services.*
- *The openness to the front of the property is maintained with the landscaped area improved.*
- *The proposal would not result in unreasonable impacts to neighbouring amenity*
- *The proposal presents a new functional design which enhances the internal amenity of the dwelling and economic use of the land.*

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 Floor Space Ratio development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of Development Standard

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

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

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

Comment:

The presentation of the dwelling from the street is that of two stories with a flat roof and integrated garage in a landscaped setting. These characteristics are not uncommon for newer dwellings in the surrounding area. Sufficient modulation of built form, the use of varying materials and landscaping to surround the site, provides a situation in which the proposal will complement newer dwelling in the surrounding area. The proposal will not unreasonably impact upon the streetscape.

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

Comment:

The proposed works would not unreasonably obscure important landscape and townscape features.

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

Comment:

The design of the proposal is suitable in that it maintains the character of the site and consistency with surrounding development. The proposed development will sit appropriately within the residential setting in a manner that is consistent with the character and landscape of the area.

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

Comment:

Despite its variation of the floor space ratio development standard, the proposed development does not unreasonably impact upon the use or enjoyment of adjoining land or the public domain, as detailed throughout the assessment in this report.

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

Comment:

The subject site is not within a business zone.

Zone Objectives

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

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

Comment:

The proposal maintains the residential use of the site and therefore continues to contribute to providing housing needs for the community.

It is considered that the development satisfies this objective

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

Comment

The proposal involves a residential land use which is appropriate for the zone.

It is considered that the development satisfies this objective.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment

Clause 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 and the development standard, and in accordance with correspondence from the Deputy Secretary on 24 May 2019, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Floor Space Ratio Development Standard associated with a single dwelling house (Class 1 building).

6.2 Earthworks

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

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

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

Comment: The site is 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: Conditions are included in the recommendation of this report that will minimise the impacts of the development.

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 598.6sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings/500sqm	1 Dwelling	N/A	Yes
4.1.2.1 Wall Height	W: 7.1m (based on gradient 1:10)	7.5m	N/A	No
	E: 7.1m (based on gradient 1:10)	8.0m	N/A	No
4.1.2.2 Number of Storeys	2	3	N/A	No
4.1.2.3 Roof Height	Height: 2.5m	0.5m	N/A	Yes
	Parapet Height: 0.6m	0.5m	N/A	Yes
	Pitch: maximum 35 degrees	Less than 35 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	8.1m, consistent with prevailing setback (additions to dwelling)	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	West: First Floor: 2.5m (based on wall height of 7.6m) Ground Floor: 1.86m	West: First Floor: 1.8m (Stairwell) First Floor: 2.8m	28%	No

	(based on wall height of 5.6m)	Ground Floor: 1.9m		
	East: First Floor: 2.64m (based on wall height of 8.0m) Ground Floor: 1.8m (based on wall height of 5.5m)	East: First Floor: 2.9m Ground Floor: 1.5m	16.7%	No
	Windows: 3.0m	1.5m	50%	No
4.1.4.4 Rear Setbacks	8.0m	11.7m (Dwelling)	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (329.2sqm)	48% (287.5sqm)	N/A	No
	Open space above ground 25% of total open space	15.68% (45.1sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	66% (189.9sqm)	N/A	Yes
	3 native trees	1 tree	N/A	No
4.1.5.3 Private Open Space	18sqm per dwelling	Greater than 18sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6.2m	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1.0m height above ground	0.3m	N/A	Yes
	1.0m curtilage/1.5m water side/rear setback	1.0m curtilage/ 1.5 to side and rear	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 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	No	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.1.10 Fencing	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

Merit consideration:

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

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

Comment:

The proposal involves a new double garage and new front fence. The proposed garage will be adequately set back from the Nolan Street frontage and would be appropriately integrated into the design of the house. The proposed garage would fit in with the character of the area and would also minimise visual impact by complying with the control which requires car parking to be a maximum of 50% of the width of the frontage. The proposed front fence, at a maximum height of 1.0m above existing ground level, is not considered to be out of character or detrimental to the surrounding streetscape in which there are various examples of structures within the front setback including walls, fences, carports and garages. Furthermore, the site maintains vegetation in the front setback to integrate natural features with the built form and minimise visual impact.

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

Comment:

The presentation of the dwelling from the street is that of two stories with a flat roof and integrated garage in a landscaped setting. These characteristics are common for newer dwellings in the surrounding area. Sufficient modulation across the site, the use of varying materials and landscaping to surround the site, provides a situation in which the proposal will complement newer dwelling in the surrounding area.

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

Comment:

The proposed front fence, at a maximum height of 1.0m above existing ground level, is not considered to be out of character or detrimental to the surrounding streetscape. Furthermore, the site maintains vegetation in the front setback to integrate natural features with the built form and minimise visual impact.

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

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

The proposal will result in additional overshadowing of the the ground floor, western side facing windows of the neighbouring property to the east (No.10 Nolan Place), resulting in these windows receiving no direct sunlight on the winter solstice (21 June). These windows service a bedroom and bathroom.

It should be noted that these impacted windows of No.10 Nolan Place are already partially overshadowed by the existing development and are particularly vulnerable to overshadowing given the sloping topography of the land, their western orientation and there central ground floor location. It should also be noted that the rear (north) facing windows and rear private open space of No.10 Nolan Place receives direct sunlight for the vast majority of the day.

The proposed development is addressed in relation to the relevant objectives of this clause as follows:

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

Comment

The subject site and the adjoining properties will maintain a northerly aspect to the rear. Solar access can be gained from this aspect all day throughout the winter solstice. The proposal will result in additional overshadowing of the the ground floor, western side facing windows of the neighbouring property to the east (No.10 Nolan Place). The portion of new development adjoining these side facing windows would have compliant side setbacks. As such, the overshadowing is considered to be equitable.

Objective 2) To allow adequate sunlight to penetrate:

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

development and the adjoining properties.

Comment

The proposal will allow adequate solar access to the private open spaces and windows to living spaces/habitable rooms on the site and to the adjoining properties. The amended design of the proposal incorporates an increased side setback of the first floor roof element which maximise sunlight penetration to the private open space located in the front yard of the adjoining property at No. 10 Nolan Place.

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

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

Comment

The proposed development steps in the first floor level and demonstrates adequate modulation and articulation. The proposal will maximise the penetration of winter sunlight to living rooms and principal outdoor areas of the site. The proposal will also ensure the neighbouring properties receive adequate solar access.

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

3.4.2 Privacy and Security

Merit consideration:

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

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

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

Windows

The provisions of this development control prescribe that when located close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.

In plan, windows W14 and W15 on the eastern elevation of the ground floor are within 3.0m of the side boundary and appear to be located directly opposite windows and private open space of the adjoining neighbour to the east (10 Nolan Place). In order to minimise privacy impacts and mitigating direct overlooking, it is recommended a condition be imposed for these windows to install privacy screens of horizontal louvre style construction or that the glass is to be fitted with obscured glazing.

Window W8 on the western elevation of the ground floor is within 3.0m of the side boundary appears to be located directly opposite windows adjoining neighbour to the west (14 Nolan place). In order to minimise privacy impacts, it is recommended a condition be imposed for this windows to install a privacy screen of horizontal louvre style construction or that the glass is to be fitted with obscured glazing.

All other windows along the eastern and western side elevations of the dwelling are appropriately offset, incorporate raised sill heights or comprise screens to prevent overlooking between adjoining dwellings.

Balcony

The proposal seeks to construct a first floor balcony on the rear elevation immediately adjacent to the master bedroom. The balcony would be located centrally on the site and would be setback and offset from the private open space of the adjoining dwellings. However, despite this, the elevation of the balcony would result in the potential for direct overlooking into neighbouring private open space. To mitigate the privacy impacts, a suitable condition has been included within this consent requiring the balcony to incorporate balustrade of solid, non-transparent material or opaque glazing measured at a height of at least 1.0m above the finished floor level on all elevations. The solid balustrade will prevent downward overlooking when in a sitting position and when standing back from the edge of the decks. Under these circumstances, the privacy impacts are considered to be reasonable within a residential environment.

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

Comment:

Subject to the above conditions, the proposal will achieve this objective.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

Existing levels of neighbourhood security are maintained.

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

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

Description of non-compliance

Clause 4.1.2.1 stipulates maximum allowable wall heights for development based on a calculation of the slope of land under a wall.

The east and west elevations contravenes the 7.1m control by up to 12.6% (0.9m).

Furthermore, in accordance with Clause 4.1.2.2 of the MDCP, buildings are restricted to a maximum of two storeys. The proposed development would result in three storeys, thereby contravening the Control.

Merit consideration

Clause 4.1.2 Height of Buildings of the MDCP 2013 relies on the objectives of Clause 4.3 Height of Buildings of MLEP 2013. With regard to the consideration for a variation, the development is considered against the relevant objectives of Clause 4.3 as follows:

- *To provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality.*

Comment:

The proposed development, although modern in design, will not appear dissimilar to that of surrounding existing and recently approved development. The portion of the dwelling that exceeds beyond the allowable wall height and storey limit is attributed to the site topography. The wall height and storey breaches are located centrally on the site and are not distinctly discernible from the public domain. In turn, the development is considered consistent with the existing and desired future character of the streetscape and wider locale.

The development satisfies this objective.

- *To control the bulk and scale of buildings.*

Comment:

The proposed development is well articulated and modulated such that the visual dominance of the built form is broken up as a result. The development comprises a new parapet roof style, and changes in colours and finished finishes which modernises and breaks up the bulk and scale. Further, due to the topography and elevation of the site, the development as presented to Nolan Place will present as a two storey dwelling house. The proposal will also maintain sufficient landscape treatment, which in turn will contribute to the softening and screening of the development.

The development satisfies this objective.

- *To minimise disruption to the following:*
 - (i) *views to nearby residential development from public spaces (including the harbour and foreshores)*
 - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores)*
 - (iii) *views between public spaces (including the harbour and foreshores).*

Comment:

The proposal will not result in the unreasonable loss of views or vistas from public or private spaces.

The development satisfies this objective.

- *To provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings.*

Comment:

The proposed development achieves compliance with the solar access requirements as prescribed within Clause 3.4.1 Sunlight Access and Overshadowing of the MDCP.

The development satisfies this objective.

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

Comment:

Not applicable, as the subject site is zoned R2 Low Density Residential.

The development satisfies this objective.

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

4.1.3 Floor Space Ratio (FSR)

The proposed development has a floor space ratio of 0.557:1 (333.7sqm) which does not comply with the requirement of 0.45:1 (269.37sqm). This represents a variation of 23.8% of the FSR requirement.

A detailed assessment of the variation to the FSR development standard has been undertaken pursuant to Clause 4.6 of the MLEP 2013 within this report.

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

Applicable Clauses

Clause 4.1.4.1 - Street Front Setbacks.

Clause 4.1.4.2 - Side Setbacks and Secondary Street Frontages.

Clause 4.1.4.4 - Rear Setback.

Description of non-compliance

Clause 4.1.4.2 - Side Setbacks

Clause 4.1.4.2 requires development to provide variable side setbacks based on the proposed wall height. In this respect, the development provides the following side setbacks to the west and east:

West (side) Setback

- Ground Floor - 1.9m Dwelling House (complies)
- First Floor - 1.8m stairwell (variation of 28%)
- First Floor - 2.8m Dwelling House (complies)

East (side) Setback

- Ground Floor - 1.5m Dwelling House - existing setback (variation of 16.7%)
- Ground Floor - 1.8m dwelling addition (complies)
- First Floor - 2.9m Dwelling House (complies)

The proposal also does not comply with the control for setback to windows facing the boundary (3.0m). In this regard, there are windows which face the boundary which are 1.5m-2.9m from the boundary.

Clause 4.1.4.4 - Rear Setback

Clause 4.1.4.4 requires development to provide an 8.0m rear setback. In this respect, the development provides the following rear setbacks:

North (Rear) Setback

- 11.7m Dwelling House

The proposed swimming pool would be setback 1.5m from the rear boundary, however, it would comply with the setback requirements specified within *Clause 4.1.9 Swimming Pools, Spas and Water Features*.

Merit Consideration

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

- *To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.*

Comment:

The proposed development is consistent with the objectives of Clause 3.1 Streetscapes and Townscapes of the MDCP 2013. The non compliant elements of the proposal, i.e. the first floor western stairwell protrusion and the eastern ground floor rear extension, would not be visually prominent from Nolan Place and would therefore not have any adverse impact upon the existing streetscape. Overall, it is considered that the proposed side setbacks are consistent with that of the existing site and surrounding developments within the immediate vicinity. As such, the proposed development maintains the existing desired spatial proportions of the street, the street edge and the landscape character of the street.

Similarly, the front setback provides desired spatial proportions to respond to the landscape character of the locality.

The development satisfies this objective.

- *To ensure and enhance local amenity by:*
 - *providing privacy.*
 - *providing equitable access to light, sunshine and air movement.*
 - *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.
- facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.

Comment:

The separation of the built form enables the development to satisfactorily respond to this objective as follows:

- As detailed within *CI 3.4.2 Privacy* of this report, subject to recommended conditions, the proposed building windows and building design is reasonably offset from the property boundaries such that direct overlooking is avoided into private open space areas thereby providing reasonable levels of privacy.
- As detailed within *CI 3.4.1 Sunlight Access and Overshadowing* of this report, the proposal is considered to maintain equitable access to light.
- No unreasonable view loss is expected to arise as a result of the proposal.
- The proposed side and rear building lines adhere to the established side lines on the existing site and surrounding properties.
- As above, the non complaint elements of the proposal would not be readily evident from the street and hence, it is not considered to impact upon the streetscape
- The proposed development would not impact upon traffic conditions

The development satisfies this objective.

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

Comment:

The proposed setbacks are reflective of the existing format of the dwelling house development and its attempt to respond to the existing structures on the site. In this way, the development adopts a similar siting of the buildings to preserve the natural features and areas of the site and its relationship to its surrounds. The first floor is compliant with the required setbacks of the Manly DCP.

The swimming pool improves the recreational activities for the occupants, whilst still providing adequate areas for landscaping for screening purposes.

The development satisfies this objective.

- *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:

No significant vegetation is required to be removed in order to facilitate the proposed works. The proposed development provides adequate landscaping and planting and does not unduly detract from the context of the site. The subject site does not contain urban bushland.

The development satisfies this objective.

- *To assist in appropriate bush fire asset protection zones.*

Comment:

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Planning & Design dated 18 May 2020) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5 of the MDCP 2013 requires at least 55% (329.2sqm) of the site area to be total open space (TOS). To be included as TOS, the assessment considers outdoor areas with minimum dimensions of 3.0m x 3.0m, with a minimum unbroken area of 12sqm. Areas associated with carparking and vehicular access area excluded from the calculations. The proposed TOS equates to 48% (287.5sqm) of the site area, which represents a 12.7% variation from the prescribed control.

Merit Assessment

With regard to the consideration for a variation, the proposed 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 existing native tree of significance in the front yard of the site will be retained as part of this proposal. The proposed development requires the removal of two trees within the frontage for the proposed driveway, and two trees within the rear for the proposed pool. These are all Exempt Species by either species type or by height, and do not require Council consent. Council's Landscape Officer has also reviewed the proposal having regard to landscape treatment and management and has raised no objection subject to conditions.

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 site complies with the landscaped area requirement prescribed within this Control, providing 66% (189.9sqm) of the total open space as landscaped area. The proposal furthermore enhances the on-site provision of usable open space, through the construction of the swimming pool. Council's Landscape Officer has also reviewed the proposal having regard to landscape treatment and management and has raised no objection subject to conditions. The application is therefore considered to satisfy this merit objective.

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

Comment:

For the reasons discussed elsewhere in this report, the proposal will not result in unreasonable impact on neighbouring amenity or the streetscape.

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

Comment:

The landscaping dimensions on site are appropriate and will assist with stormwater infiltration on site, thereby reducing stormwater runoff. Council's Development Engineer has reviewed the development with regard to stormwater drainage and is satisfied the proposal will not have a detrimental impact in terms of stormwater flows.

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

Comment:

The proposed development will not lead to a significant spread of weeds.

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

Comment:

The existing and proposed landscaping treatments on site are sufficient and will serve as potential wildlife habitat.

Having regard to the above assessment, it is concluded that the applicable outcomes of the control have been achieved. Therefore, the application is supported on merit, subject to conditions.

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 \$9,978 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$997,800.

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.

As addressed within this assessment report, the proposed development does not comply with Clause 4.4 Floor Space Ratio under MLEP 2013 and the formal request via Clause 4.6 Exceptions to development standard was assessed and considered acceptable in this instance. Variations to the MDCP 2013 controls Clause 3.4.2 (Privacy and Security); Clause 4.1.2 (Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height); Clause 4.1.3 Floor Space Ratio (FSR); Clause 4.1.4 Setbacks (front, side and rear); Clause 4.1.5 Open Space and Landscaping have been considered and addressed and supported (subject to conditions).

The proposed design does not give rise to any unreasonable amenity impact or visual impact, and is consistent with the objectives of the MLEP 2013 and MDCP 2013.

The proposed development involves a design that would not adversely impact the existing streetscape and would appropriately minimise adverse impacts on the adjoining properties. Furthermore, an assessment against the objectives of the development standard and DCP controls has found the proposal to be consistent with those provisions and reasonable.

On balance, the proposal should be approved (subject to standard and specific conditions) as the design is reasonable for the site and locality by virtue of a presentation which is consistent with characteristics of the area and also provides sufficient modulation to reduce any unreasonable impact caused by building bulk.

Therefore, the application is recommended for approval.

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

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 DA2020/0525 for Alterations and additions to a dwelling house and a new swimming pool on land at Lot 26 DP 758044, 12 Nolan Place, BALGOWLAH HEIGHTS, 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
DA1003 Rev.3 (Site Plan)	06/08/2020	Rapid Plans
DA1007 Rev.3 (Demolition Lower Ground Floor Plan)	06/08/2020	Rapid Plans
DA1008 Rev.3 (Demolition Ground Floor Plan)	06/08/2020	Rapid Plans
DA1009 Rev.3 (Demolition Roof Plan)	06/08/2020	Rapid Plans
DA1010 Rev.3 (Excavation & Fill Plan)	06/08/2020	Rapid Plans
DA2001 Rev.3 (Lower Ground Floor Plan)	06/08/2020	Rapid Plans
DA2002 Rev.3 (Ground Floor Plan)	06/08/2020	Rapid Plans
DA2003 Rev.3 (First Floor Plan)	06/08/2020	Rapid Plans
DA2004 Rev.3 (Roof Plan)	06/08/2020	Rapid Plans
DA3000 Rev.3 (Section 1)	06/08/2020	Rapid Plans

DA3001 Rev.3 (Section Driveway)	06/08/2020	Rapid Plans
DA3002 Rev.3 (Section Pool)	06/08/2020	Rapid Plans
DA4000 Rev.3 (Elevations 1)	06/08/2020	Rapid Plans
DA4001 Rev.3 (Elevations 2)	06/08/2020	Rapid Plans
DA4002 Rev.3 (Elevations 3)	06/08/2020	Rapid Plans
DA4003 Rev.3 (Front Fence)	06/08/2020	Rapid Plans
DA5001 Rev.3 (Materials & Colours)	06/08/2020	Rapid Plans
A03 (Facade Finishes)	12/05/2020	FE Design Interiors

Engineering Plans		
Drawing No.	Dated	Prepared By
DA1016 Rev.3 (Stormwater Plan)	06/08/2020	Rapid Plans
DR-000 (Legend)	19/05/2020	Stellen Consulting
DR-001 (Pipe Layout & Details)	19/05/2020	Stellen Consulting
DR-002 (Details)	19/05/2020	Stellen Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Risk Assessment Report	18 May 2020	Bushfire Planning Services
BASIX Certificate (A377470)	15 May 2020	Rapid Plans
Geotechnical Assessment Report (AG 20211)	24 August 2020	Ascent Geotechnical Consulting

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
DA1013 Rev.3 (Landscape Plan)	06/08/2020	Rapid Plans

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
DA1014 Rev.3 (Sediment & Erosion Plan)	06/08/2020	Rapid Plans
DA1015 Rev.3 (Waste Management Plan)	06/08/2020	Rapid Plans
Waste Management Plan	13/05/2020	FE Design Interiors

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	23/07/2020

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

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

3. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house.

A dwelling house is defined as:

"dwelling house means a building containing only one dwelling."

(development is defined by the Manly Local Environment Plan 2013 (as amended) Dictionary)

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

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

4. **Works in Close Proximity to the Allotment Boundary**

Consent given to build in close proximity to the allotment boundary is in no way to be construed as permission to build on or encroach over the allotment boundary. Your attention is directed to the provisions of the Dividing Fences Act 1991 which gives certain rights to adjoining owners, including use of the common boundary.

Reason: To advise developers of their responsibilities and to protect the interests of adjoining owners.

5. **Prescribed conditions (Demolition):**

(a) 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 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
- (ii) 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.

(b) 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.

(c) 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.

Reason: Legislative Requirement.

6. **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.

7. **General requirements (Demolition):**

(a) Unless authorised by Council:

Demolition and excavation works are restricted to:

- o 8.00 am to 5.00 pm Monday to Friday only.

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

(b) At all times after the submission a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. The consent shall be available for perusal of any Authorised Officer.

(c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20

persons.

(e) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

(i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

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

8. 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 2008

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

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

FEES / CHARGES / CONTRIBUTIONS

9. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$9,978.00 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 \$997,800.00.

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.

10. **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

11. **Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

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

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Water Management Policy; (in particular Section 6 - Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification). Any proposed landscaping within a Council easement or over a drainage system is to consist of ground cover or turf only (no trees are permitted) - Structural details prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure

13. **Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- **First Floor Balcony** - The first floor balcony adjoining the "Master Bedroom" is to incorporate solid balustrading on all elevations constructed of non-transparent material

- or opaque glazing measured at a height of at least 1.0m above the finished floor level.
- **"Ground Floor" Window (W15)** - Privacy screens are to be installed on the "ground floor" eastern window (labelled W15) adjoining the "Green Room" as shown on the approved plans. The privacy screens shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development, or the glass is to be fitted with obscured glazing.
- **"Ground Floor" Window (W14)** - Privacy screens are to be installed on the "ground floor" eastern window (labelled W14) adjoining the "Dining Room" as shown on the approved plans. The privacy screens shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development, or the glass is to be fitted with obscured glazing.
- **"Ground Floor" Window (W8)** - Privacy screens are to be installed on the "ground floor" western window (labelled W8) adjoining the "Kitchen and laundry" as shown on the approved plans. The privacy screens shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development, or the glass is to be fitted with obscured glazing.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

14. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

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

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

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

15. **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.

16. Stormwater Drainage Application

The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the pipeline connection which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and maintenance stormwater management and compliance with the BASIX requirements, arising from the development.

17. Pre-Construction Stormwater Assets Dilapidation Report

The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available in Council's web site.

The pre-construction / demolition dilapidation report must be submitted to Council for approval and the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

18. Compliance with standards (Demolition):

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 Council prior to the commencement of demolition works.

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

19. 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.

20. External Finishes to Roof

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

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

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

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

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

22. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

23. **Tree removal within the property**

Existing trees/vegetation identified within the Demolition Plan DA1007 for removal are Exempt Species (by species type or height) and do not require Council consent for removal.

Reason: to enable authorised building works.

Note: Any request to remove a tree approved for retention under the development application is subject to a Section 4.55 modification application, or an assessment by an Arborist with minimum AQF Level 5 in arboriculture that determines that the tree presents an imminent risk to life or property.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

24. **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.

25. **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.

26. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

27. **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.

28. **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.

29. **Tree and vegetation protection**

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation within the site nominated for retention, 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) Specifically, tree protection fencing in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites shall be installed around the existing Weeping Bottlebrush located within the frontage to a distance of at least 2.4m in all directions from the existing trunk at the commencement of works. Items b) ii) iv) vi) above must be adhered to.

The Certifying Authority must ensure that:

d) 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.

30. **Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC). Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection. (DACAHE01)

31. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prepared by Rapid Plans prior to commencement of any other works on site.

Erosion and sediment controls 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 vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

The discharge of sediment-laden waters from the site may result in clean-up orders and/or fines under Council's Compliance and Enforcement Policy and legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997.

Reason: Protection of the receiving environment

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

32. **Landscape completion**

Landscaping is to be implemented in accordance with the Landscape Plan DA1013, issue 1, prepared by Rapid Plans, inclusive of the following conditions:

i) Details are to be provided of the existing or proposed native trees for the site which are typically expected to reach a height at maturity of 10 metres, to bring the proposal into compliance with Figure 37 of the Manly Development Control Plan 2013. Details of new planting are to include appropriate siting and pot size (minimum of 75 litres) in accordance with section 2.1.3 of the Manly Development Control Plan 2013, and schedule 4, Part B, Native Tree Selection.

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer 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.

33. Condition of retained vegetation

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, and specifically the existing Weeping Bottlebrush within the frontage, 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.

34. Stormwater Disposal

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

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

35. Certification of Structures Located Adjacent to Council Pipeline or Council Easement

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be built in accordance with Council's Water Management Policy; (in particular Section 6 - Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification). Any landscaping within a Council easement or over a drainage system is to consist of ground cover or turf only (no trees are permitted).

Details prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure

36. Post-Construction Stormwater Assets Dilapidation Report

The Applicant is to submit a post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available in Council's web site.

The post- construction dilapidation report must be submitted to Council for approval and the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

37. Acoustic Treatment of Pool Filter

The pool filter is to be acoustically treated so that it does not emit any noise louder than 5dB (A) above background noise at the nearest residential receiver. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Occupation

Certificate.

Reason: To ensure the acoustic amenity of the neighbouring residents.

38. **Swimming Pool Requirements**

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

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

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

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

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

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

(e) Signage showing resuscitation methods and emergency contact

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

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

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

Reason: To protect human life (DACPLF09)

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

39. **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 fertilized 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 Landscape Plan.

Reason: to maintain local environmental amenity.

40. **Maintenance of Stormwater Treatment Measures**

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment

41. **Separately Accessible Structures**

The provision of cooking facilities within the basement/lower ground floor level are prohibited in order for the structure to not be used for the purposes of separate habitation or as a secondary dwelling.

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