



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0307
Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 1 SP 33890, 1 / 7 Boyle Street BALGOWLAH NSW 2093
Proposed Development:	Alterations and additions to a residential building
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Proprietors of Strata Plan 33890
Applicant:	Buckandsimple
Application Lodged:	26/03/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	10/04/2020 to 28/04/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 8%
Recommendation:	Approval
Estimated Cost of Works:	\$ 84,500.00

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to an existing dwelling (1/7 Boyle Street) within an attached dual occupancy development and adjustment of strata lot boundaries. Specifically, the proposed works are as follows:

Ground Floor

- Repair an internal wall within the rumpus room;
- Installation of a window on the southern side elevation;
- Excavate under the existing concrete terrace and extend the size of the rumpus room on the eastern elevation; and
- Installation of a new spiral staircase to access the first floor from the ground floor.

First Floor

- A terrace extension at the front (east) of the dwelling with external access stairs;
- A new entry door on the eastern elevation of the dwelling; and
- A balcony extension at the rear (west) of the dwelling.

Second Floor

- No works proposed (second floor contains 2/7 Boyle Street).

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 - 6.1 Acid sulfate soils

Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area

Manly Development Control Plan - 3.3.2 Preservation of Trees or Bushland Vegetation

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

Manly Development Control Plan - 4.1.8 Development on Sloping Sites

SITE DESCRIPTION

Property Description:	Lot 1 SP 33890 , 1 / 7 Boyle Street BALGOWLAH NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Boyle Street, Balgowlah.</p> <p>The site is rectangular in shape with a frontage of 13.715m along Boyle Street and a depth of 33.53m. The site has a surveyed area of 459.87sqm.</p> <p>The site is located within the R1 General Residential zone pursuant to the MLEP 2013 and accommodates a three (3) storey residential building comprising two (2) dwellings within an attached dual occupancy development. The dual occupancies are separated into two (2) strata allotments.</p> <p>Landscape features within the front setback area comprise hedging, garden beds, a small tree and small palms. Landscape features within the rear yard comprise landscaped open space and shrubs.</p> <p>The site experiences a fall of approximately 2.37m that slopes from the north-eastern front corner towards the south-western rear corner, representing an approximate slope of 6.56%.</p> <p>The site is identified within the 'Foreshore Scenic Protection Area' and contains 'Acid Sulfate Soils Class 5' under the provisions of the MLEP 2013.</p> <p>The site is mapped as being located within the 'Coastal Use Area' and 'Coastal Environment Area' pursuant to the SEPP (Coastal Management) 2018.</p> <p>The site is identified within the Sydney Harbour Catchment pursuant to the SREP (Sydney Harbour Catchment) 2005.</p> <p>The site is not flood or bushfire prone.</p> <p>The site does not contain a heritage item, is not located within a heritage conservation area and is not located within the direct vicinity of any heritage items. It is noted that a number of heritage items are located within the broader locality.</p> <p>Detailed Description of Adjoining and Surrounding Development</p> <p>Adjoining and surrounding development comprises dwelling houses, dual occupancies and residential flat buildings.</p>

Map:



SITE HISTORY

The site has been used for residential purposes for an extended period of time. A search of Council's records has revealed no recent applications relevant to this Development Application.

Site Visits

A site visit was undertaken at the subject site on 29 April 2020.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received in relation to this Development Application.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The development application is for alterations and additions to an existing dwelling and adjustment of strata lot boundaries.</p> <p>The development application is assessed by Council's Landscape Referral section against the landscape controls of Manly DCP 2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types.</p> <p>No landscape works are proposed as the site contains existing trees and vegetation within the front setback and along property boundaries, that are not impacted by the proposed development works. No trees are proposed for removal, and existing trees and vegetation shall be the subject of consent conditions to ensure retention and protection.</p> <p>The landscape component is acceptable subject to the protection of tree and vegetation not impacted by development works.</p>
NECC (Development Engineering)	The applicant proposed new balcony and internal changes. Development Engineering raises no objection to the application.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	Ausgrid have raised no objections to the proposal, subject to conditions. The recommended conditions have been included as part of this 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. A369957 dated 12 February 2020). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007Ausgrid

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:

Ausgrid have raised no objections to the proposal, subject to conditions. The recommended conditions have been included as part of this consent.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The site is identified within the Foreshores and Waterways Area pursuant to this SREP, therefore the provisions of this plan apply to the proposed development.

An assessment of the proposal against Clause 2(2) (aims of the SREP), Clause 14 (nominated planning principles), Clause 21 (relating to biodiversity, ecology and environment protection) Clause 25 (relating to foreshore and waterways scenic quality) and Clause 26 (relating to maintenance, protection and enhancement of views) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP.

2 Aims of plan

(1) This plan has the following aims with respect to the Sydney Harbour Catchment—

(a) to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained—

(i) as an outstanding natural asset, and

(ii) as a public asset of national and heritage significance,

for existing and future generations,

(b) to ensure a healthy, sustainable environment on land and water,

(c) to achieve a high quality and ecologically sustainable urban environment,

(d) to ensure a prosperous working harbour and an effective transport corridor,

(e) to encourage a culturally rich and vibrant place for people,

(f) to ensure accessibility to and along Sydney Harbour and its foreshores,

(g) to ensure the protection, maintenance and rehabilitation of watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity,

(h) to provide a consolidated, simplified and updated legislative framework for future planning.

(2) For the purpose of enabling these aims to be achieved in relation to the Foreshores and Waterways Area, this plan adopts the following principles—

(a) Sydney Harbour is to be recognised as a public resource, owned by the public, to be protected for the public good,

(b) the public good has precedence over the private good whenever and whatever change is proposed for Sydney Harbour or its foreshores,

(c) protection of the natural assets of Sydney Harbour has precedence over all other interests.

Comment:

The proposal is located approximately 60m north of the Foreshore Building Line and is visually separated by street vegetation. Furthermore, the extent of the works are relatively minor, of which are unlikely to detract from the ecological, commercial and cultural values of the Foreshores and Waterways Area. In this regard, it is considered that the proposal satisfies the relevant provisions specified within Clause 2(1) of the SREP (Sydney Harbour Catchment) 2005.

14 Foreshores and Waterways Area

The planning principles for land within the Foreshores and Waterways Area are as follows—

(a) development should protect, maintain and enhance the natural assets and unique environmental qualities of Sydney Harbour and its islands and foreshores,

- (b) public access to and along the foreshore should be increased, maintained and improved, while minimising its impact on watercourses, wetlands, riparian lands and remnant vegetation,*
- (c) access to and from the waterways should be increased, maintained and improved for public recreational purposes (such as swimming, fishing and boating), while minimising its impact on watercourses, wetlands, riparian lands and remnant vegetation,*
- (d) development along the foreshore and waterways should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands and foreshores,*
- (e) adequate provision should be made for the retention of foreshore land to meet existing and future demand for working harbour uses,*
- (f) public access along foreshore land should be provided on land used for industrial or commercial maritime purposes where such access does not interfere with the use of the land for those purposes,*
- (g) the use of foreshore land adjacent to land used for industrial or commercial maritime purposes should be compatible with those purposes,*
- (h) water-based public transport (such as ferries) should be encouraged to link with land-based public transport (such as buses and trains) at appropriate public spaces along the waterfront,*
- (i) the provision and use of public boating facilities along the waterfront should be encouraged.*

Comment:

Considering the proposal is confined to private property and physically separated from the foreshore area, the development will not alter any public access to or along the harbour foreshore for recreational or commercial use.

21 Biodiversity, ecology and environment protection

The matters to be taken into consideration in relation to biodiversity, ecology and environment protection are as follows—

- (a) development should have a neutral or beneficial effect on the quality of water entering the waterways,*
- (b) development should protect and enhance terrestrial and aquatic species, populations and ecological communities and, in particular, should avoid physical damage and shading of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities),*
- (c) development should promote ecological connectivity between neighbouring areas of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities),*
- (d) development should avoid indirect impacts on aquatic vegetation (such as changes to flow, current and wave action and changes to water quality) as a result of increased access,*
- (e) development should protect and reinstate natural intertidal foreshore areas, natural landforms and native vegetation,*
- (f) development should retain, rehabilitate and restore riparian land,*
- (g) development on land adjoining wetlands should maintain and enhance the ecological integrity of the wetlands and, where possible, should provide a vegetative buffer to protect the wetlands,*
- (h) the cumulative environmental impact of development,*
- (i) whether sediments in the waterway adjacent to the development are contaminated, and what means will minimise their disturbance.*

Comment:

Suitable conditions have been included as part of this consent requiring sediment and erosion control measures to be installed on site and in effect for the duration of construction works. This will minimise sediment migration into the nearby waterway.

25 Foreshore and waterways scenic quality

The matters to be taken into consideration in relation to the maintenance, protection and enhancement of the scenic quality of foreshores and waterways are as follows—

- (a) the scale, form, design and siting of any building should be based on an analysis of—*
 - (i) the land on which it is to be erected, and*
 - (ii) the adjoining land, and*
 - (iii) the likely future character of the locality,*
- (b) development should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands, foreshores and tributaries,*
- (c) the cumulative impact of water-based development should not detract from the character of the waterways and adjoining foreshores.*

Comment:

The proposal will not alter the height and envelope of the existing dual occupancy. The size and scale of the development will remain

consistent with surrounding residential development within the locality. Furthermore, considering the property is visually and physically separated from the foreshore area, the proposal will not detract from the scenic quality of the waterway and foreshore area.

26 Maintenance, protection and enhancement of views

The matters to be taken into consideration in relation to the maintenance, protection and enhancement of views are as follows—

- (a) development should maintain, protect and enhance views (including night views) to and from Sydney Harbour,
- (b) development should minimise any adverse impacts on views and vistas to and from public places, landmarks and heritage items,
- (c) the cumulative impact of development on views should be minimised.

Comment:

The height of the structure will remain unchanged as a result of the proposed development. Therefore, no significant view loss impacts are anticipated to arise as a consequence of the proposal.

Having regard to the above assessment, the proposal is considered to be consistent with the above provisions of the SREP (Sydney Harbour Catchment) 2005. Given the scale of the proposed modification and the works proposed, referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

SEPP (Coastal Management) 2018

The site is identified within the 'Coastal Use Area' and 'Coastal Environment Area' under the provisions of the SEPP (Coastal Management) 2018. However, given the site is mapped within the 'Foreshores and Waterways Area' pursuant to the SREP (Sydney Harbour Catchment) 2005, the provisions of the SEPP (Coastal Management) 2018 do not apply to the development. No further assessment in relation to the SEPP (Coastal Management) 2018 is required for the purposes of this assessment.

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	Existing building height 11.34m, however all works are below 8.5m	-	Yes
Floor Space Ratio	FSR:0.5:1 (229.94sqm of gross floor area)	FSR: 0.54:1 (248sqm of gross floor area)	8%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.5:1
Proposed:	0.54:1
Percentage variation to requirement:	8%

The proposed floor space ratio of the site measures at 0.54:1 (248sqm), which results in an 8% variation from the applicable floor space ratio development standard of 0.5:1 (229.94sqm). The additional gross floor area on the subject site resulting from the proposal equates to 5.9sqm. It is noted that the existing floor space ratio of the site measures at 0.53:1 (242.1sqm), which contravenes the development standard.

The additional floor space is located on the ground floor and is depicted in Figure 1 and Figure 2.

Figure 1 - Additional gross floor area highlighted in red

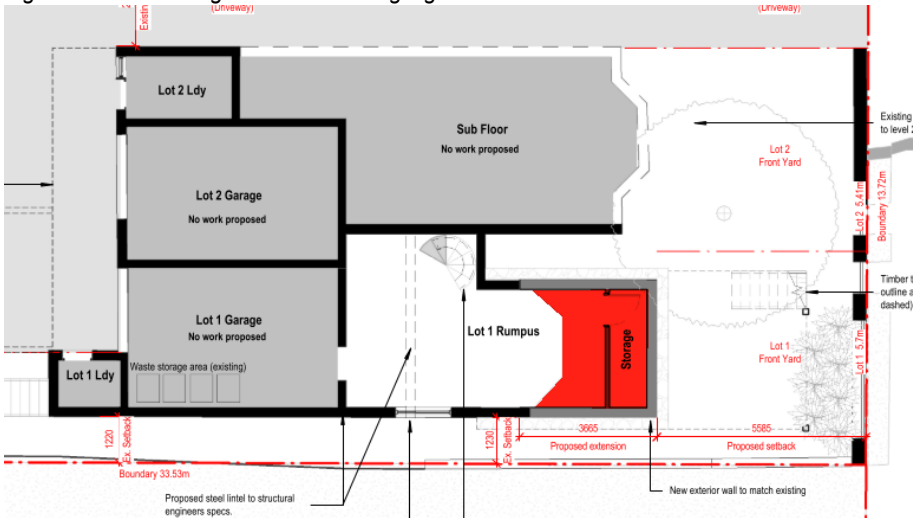
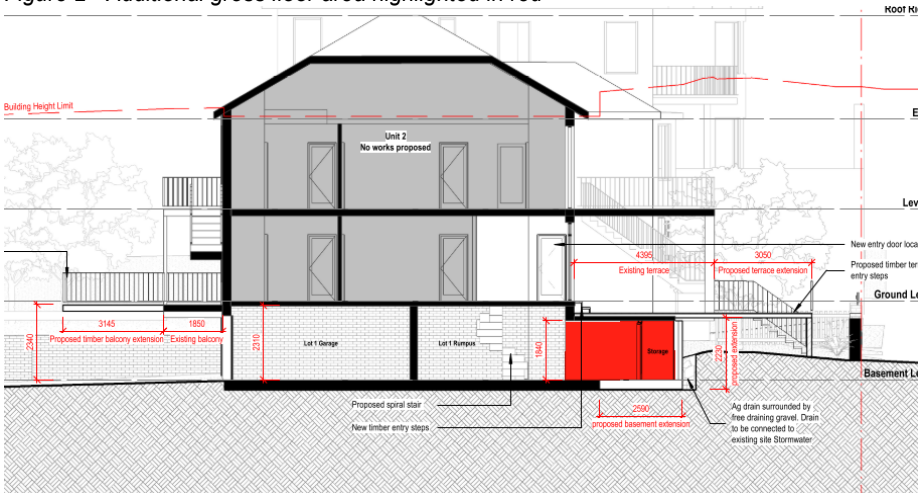


Figure 2 - Additional gross floor area highlighted in red



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 applicant's written request argues, in part:

- The extent of the variation is relatively minor;
- The gross floor area for the site already contravenes the floor space ratio development standard;
- The site falls away from the street and, in combination with the established floor levels, topography creates an opportunity whereby existing subfloor storage space can be converted and utilised as functional floor space without any significant change to streetscape appearance or apparent building volume.
- The proposed additional gross floor area is concealed from view by the existing concrete patio, front fencing and established planting;
- The additional gross floor area will be contained within the parameters of the established building envelope; and
- The proposal seeks to optimise presently underutilised space within the building, which will improve the functionality of the dwelling.

Comment:

It is agreed that the additional gross floor area on the subject site will have no visual impacts upon the streetscape. This argument is validated, considering the additional floor space will be located within the existing subfloor, which is concealed from view by the proposed terrace extension, existing front fencing and existing landscape treatments within the front yard.

It is also accepted that despite an increase in gross floor area, the proposed development will not alter the height and envelope of the existing residential structure. This will ensure the amenity of adjoining properties is preserved, specifically in relation to solar access and privacy.

By allowing a variation to the prescribed development standard, the proposed development will increase the usability of the dwelling, without detracting from the streetscape or compromising the amenity of adjoining properties.

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 R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The additional gross floor area resulting from the proposed development will not alter the bulk and scale of the development when viewed from the streetscape. The proposal does comprise a terrace extension at the front of the property (terrace not included in FSR calculations). However, the terrace will adhere to the established front building line along Boyle Street, therefore will not be to the detriment of the streetscape. The overall height and scale of the development is compatible with surrounding residential development within the locality. As such, it is concluded that the proposed development is consistent with the existing and desired streetscape character of the locality.

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:

No significant trees or landscape features will be removed as a consequence of the proposal. The existing landscape treatments within the front setback area will soften the visual impact of the built form when viewed from the street frontage.

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

Comment:

As noted above, the proposal adheres to the established front building line along Boyle Street. Therefore, the proposal will be keeping within the character of the area.

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

Comment:

The proposal will not give rise to unreasonable environmental impacts, considering no major trees or landscape features will be impacted upon. Furthermore, the modest scale of the proposal will ensure the amenity of adjoining properties is not compromised, specifically having regard to solar access and privacy.

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

Comment:

The proposed development maintains a residential use within the R1 General Residential zone.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposed development retains the residential use of the site.

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

Comment:

The proposal comprises alterations and additions to a dual occupancy, which is a permitted use within the R1 General Residential zone.

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

Comment:

The proposal continues to maintain a residential use.

Conclusion:

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

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

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

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

6.1 Acid sulfate soils

The proposal will result in minimal soil disturbance. Therefore, it is not anticipated that the proposal will disturb, expose or drain acid sulfate soils and cause environmental damage.

6.9 Foreshore scenic protection area

The proposed development is physically and visually separated from the foreshore area. As such, it is not anticipated that the proposal will detract from the visual amenity of the harbour or coastal foreshore.

Mainly Development Control PlanBuilt Form Controls

Built Form Controls - Site Area: 459.87sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings per 300sqm of site area	2 dwellings on a 459.87sqm allotment - as existing	100%	No
	Dwelling Size: 95sqm minimum gross floor area	248sqm of gross floor area	-	Yes
4.1.2.1 Wall Height	North: N/A	No change to wall height	N/A	N/A
	South: N/A	No change to wall height	N/A	N/A
4.1.2.2 Number of Storeys	2	3 - as existing	50%	No
4.1.2.3 Roof Height	Height: 2.5m	No change	N/A	N/A
	Pitch: maximum 35 degrees	No change	N/A	N/A
4.1.4.1 Street Front Setbacks	6m	Ground Floor: 5.59m First Floor: 1.5m (terrace)	6.83% - 75%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 2.65m (based on existing wall height of 7.94m)	6.96m	-	Yes
	South: 2.75m (based on existing wall height of 8.25m)	Ground Floor: 1.23m First Floor: 0.9m (front terrace) and 2.93m (rear terrace)	55.27% (ground floor) - 66.04% (front terrace)	No
	Windows: no windows within 3m from side boundaries	Ground Floor: 1 window located 1.23m from the southern side boundary	59%	No
4.1.4.4 Rear Setbacks	8m (west)	6.3m (structural support bracing) and 8.55m (rear balcony)	21.25% (structural support bracing)	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space 55% (252.93sqm) of site area	39.03% (179.5sqm)	29.04%	No
	Open space above ground to not exceed 25% (44.88sqm) of total open space	33.31% (59.8sqm)		
			33.24%	No
4.1.5.2 Landscaped Area	Landscaped area 35% (62.83sqm) of open space	80.58% (144.6sqm)	-	Yes
	2 native trees	1 trees	50%	No
4.1.5.3 Private Open Space	18sqm per dwelling	87.6sqm	-	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 x 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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	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
4.1.8 Development on Sloping Sites	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
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.3.2 Preservation of Trees or Bushland Vegetation

Council's Landscape Officer has assessed the application against the requirements of this control and raised no objections, subject to conditions pertaining to tree preservation. Subject to compliance with the conditions of consent, the proposal will satisfy the requirements of this control.

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

Clause 4.1.2.2 of the MDCP 2013 stipulates that buildings on the subject site are not to exceed two (2) storeys. The application proposes alterations and additions to an existing three (3) storey structure. However, the proposal will not alter the height and envelope of the structure. Considering the three (3) storey structure is existing and the height will remain unchanged, the proposed alterations and additions are considered acceptable in this regard.

4.1.3 Floor Space Ratio (FSR)

Description of non-compliance

Clause 4.1.3 of the MDCP 2013 stipulates that development on the subject site shall not result in a floor space ratio (FSR) that exceeds 0.5:1 (229/94sqm of gross floor area). The proposed development will result in an FSR of 0.54:1 (248sqm of gross floor area), which exceeds the prescribed requirement.

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 ensure the scale of the development does not obscure important landscape features.

Comment:

No significant trees or landscape features will be removed as a consequence of the proposal. The existing landscape treatments within the front setback area will soften the visual impact of the built form when viewed from the street frontage.

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

Comment:

The height and envelope of the structure will remain unchanged as a result of the proposed development. Therefore, no significant view loss impacts are anticipated to arise as a consequence of the proposal.

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

Comment:

Considering the proposed development is sited well below the maximum height of the structure, no unreasonable overshadowing impacts are anticipated to arise as a consequence of the development.

Having regard to the above assessment, it is considered that the relevant objectives of the control have been achieved. Therefore, the application is supported on merit.

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

Description of non-compliance

Clause 4.1.4.1 of the MDCP 2013 requires development to be setback at least 6m from the front boundary. The extension into the existing subfloor on the ground floor is setback 5.59m from the front boundary, which fails to satisfy this requirement. Furthermore, the front terrace extension is setback 1.5m from the front boundary, which conflicts with the prescribed requirement.

Clause 4.1.4.2 of the MDCP 2013 requires the side building line to be no less than one third of the wall height from side boundaries. The maximum wall height of the southern elevation of the structure is 8.25m, therefore the minimum side building line shall be 2.75m. The new wall on the ground floor extension is setback 1.23m from the southern side boundary, whereas the front terrace extension is setback 0.9m from the southern side boundary. Consequently, the proposal fails to comply with the control.

Clause 4.1.4.2 of the MDCP 2013 requires windows adjoining habitable spaces to be setback at least 3m from side boundaries. The proposal includes a new window on the southern elevation of the ground floor which is setback 1.23m from the southern side boundary. As a consequence, the proposal fails to satisfy the prescribed requirement.

Clause 4.1.4.4 of the MDCP 2013 requires development to be setback at least 8m from the rear boundary. The structural beam supporting the rear balcony is setback 6.3m from the rear boundary, which fails to comply with the 8m requirement.

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 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:

Whilst the front terrace extension represents a large variation to the prescribed control, it is noted that the northern adjoining property (9 Boyle Street) contains a similar structure (although sited much higher above the ground level) with a nil setback along the street frontage. Therefore, a variation to the control is supported in this circumstance, considering the finished floor level of the terrace is confined to 1.36m above the existing ground level and adheres to the established building line within the locality. With respect to the non-compliance on the ground floor, it is noted that the extended rumpus room will be located within the subfloor and obscured from the street frontage by the proposed terrace extension, existing front fencing and existing landscape treatments within the front yard. Therefore, it is concluded that there will be no apparent streetscape impacts, despite the variation to the prescribed front building line.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed front terrace extension will not prompt any unreasonable privacy impacts, considering it will not allow for any direct overlooking into windows or private open space on adjoining properties. Moreover, the window sill on the ground floor sits at 1.2m above the existing ground level and will be largely obscured by the existing boundary fence that divides the subject site and 5 Boyle Street (southern adjoining property). The structural support bracing under the rear balcony will not give rise to any unreasonable streetscape or amenity impacts. Considering the proposal will not alter the height and envelope of the existing three (3) storey structure, no unreasonable view loss impacts are anticipated to arise, nor are any adverse overshadowing impacts expected.

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

Comment:

Flexibility is provided in this circumstance as the proposed development will provide for greater internal amenity within the site, without detracting from the streetscape or compromising the amenity of adjoining properties.

Objective 4) To enhance and maintain natural features by:accommodating planting, including deep soil zones, vegetation consolidated across the sites, native vegetation and native trees;

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

Comment:

The proposed development does not necessitate the removal of native trees and vegetation.

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

Comment:

The site is not bushfire prone.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5.1 of the MDCP 2013 requires at least 55% (252.93sqm) of the site to be total open space (TOS). The proposed TOS represents 39.03% (179.5sqm) of the site area, which does not comply with the prescribed requirement. This control also limits TOS above ground to 25% (44.88sqm) of the proposed TOS for the entire site. The proposed TOS above ground equates to 33.31% (59.8sqm) of the entire TOS, which exceeds the maximum that is permitted.

Clause 4.1.5.2 of the MDCP 2013 requires at least two (2) native trees to be present on site. Only one (1) tree is present on site, with no additional trees being proposed as part of this application. Consequently, the proposal conflicts with this requirement.

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:

Suitable conditions have been included as part of this consent to ensure the preservation of the existing tree on site. Furthermore, the proposal will not require the removal of trees or important landscape features.

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

Comment:

The proposed development complies with the numerical requirement for landscaped area. Furthermore, the site contains an appropriate amount of private open space to sufficiently meet the needs of the occupants.

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

Comment:

Considering the proposal will not alter the height or envelope of the existing three (3) storey structure, no unreasonable overshadowing or view loss impacts are anticipated to arise as a consequence of the development. Furthermore, the proposed terrace extensions and additional window have been appropriately located and setback from side boundaries to minimise any unreasonable privacy impacts. Considering the proposal adheres to the established front building line within the locality, the development will not be to the detriment of 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.

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 landscape treatments on site are sufficient and will serve as potential wildlife habitat.

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

4.1.8 Development on Sloping Sites

The excavation works within the subfloor are minor and are not considered significant enough to warrant a geotechnical investigation.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS**Northern Beaches Section 7.12 Contributions Plan 2019**

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2020/0307 for Alterations and additions to a residential building on land at Lot 1 SP 33890, 1 / 7 Boyle Street, BALGOWLAH, 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
D060 Revision 2 - Erosion, Sediment, Stormwater Control & Waste Management Plan	6 March 2020	Buck & Simple
D103 Revision 2 - Basement Floor Plan - Proposed	6 March 2020	Buck & Simple

D104 Revision 2 - Ground Floor Plan - Proposed	6 March 2020	Buck & Simple
D105 Revision 2 - First Floor - Existing Plan - No Works Proposed	6 March 2020	Buck & Simple
D301 Revision 2 - Section - Proposed	6 March 2020	Buck & Simple
D403 Revision 2 - North Elevations - Proposed	6 March 2020	Buck & Simple
D404 Revision 2 - South Elevations - Proposed	6 March 2020	Buck & Simple
D405 Revision 2 - East & West Elevations - Proposed	6 March 2020	Buck & Simple
19-657 SP Sheet 1	12 February 2020	Vaughan Adam Wady
19-657 SP Sheet 2	12 February 2020	Vaughan Adam Wady

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A369957	12 February 2020	buckandsimple

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	17 February 2020	Kurt Crisp

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	Ausgrid Referral Response	24 April 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. 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.

4. 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) 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

5. Security Bond

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

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

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

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

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

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

6. 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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

7. 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.

8. 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 Certifying Authority.

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

9. Tree and vegetation protection

a) Existing trees and vegetation shall be retained and protected as follows:

- i) all trees and vegetation within the site identified on the Survey Plan 19657001, prepared by Axiom Spatial Surveyors, and in particular the existing Podocarpus (Brown Pine) in the front setback,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
- iii) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an Arborist. Details including photographic evidence of works undertaken shall be submitted by an AQF Level 5 Arborist to the Certifying Authority,
- iv) to minimise the impact on trees and vegetation to be retained and protected, 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, and in particular the existing Podocarpus (Brown Pine) in the front setback,
- v) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a Project Arborist on site,
- vi) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
- vii) excavation for stormwater lines is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist,
- viii) should either or all of v), vi) and vii) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- ix) 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 AS 4970- 2009,
- x) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning

of Amenity Trees.

Reason: to retain and protect significant planting on development and adjoining sites.

Advice: 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 a AQF level 5 Arborist that determines that the tree presents an imminent risk to life or property.

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

10. Removal of All Temporary Structures/Material and Construction Rubbish

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

11. Amended Strata Plan

The Strata Plan for the subject site is to be amended prior to the issue of any Occupation Certificate, to reflect the works in accordance with the approved stamped plans.

Reason: To ensure the Strata Plan accurately depicts the built works on site.

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

Signed



Thomas Burns, Planner

The application is determined on 25/05/2020, under the delegated authority of:



Matthew Edmonds, Manager Development Assessments