

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2024/0873
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<b>Responsible Officer:</b>	Reeve Cocks
<b>Land to be developed (Address):</b>	Lot 2A DP 17157, 17 Dalwood Avenue SEAFORTH NSW 2092
<b>Proposed Development:</b>	Alterations and additions to a dwelling house including carport
<b>Zoning:</b>	Manly LEP2013 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Applicant:</b>	Westley Franz Owers

<b>Application Lodged:</b>	23/07/2024
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	31/07/2024 to 14/08/2024
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	4.4 Floor space ratio: 13.7%
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 48,700.00
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### EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing dwelling house including the construction of a carport.

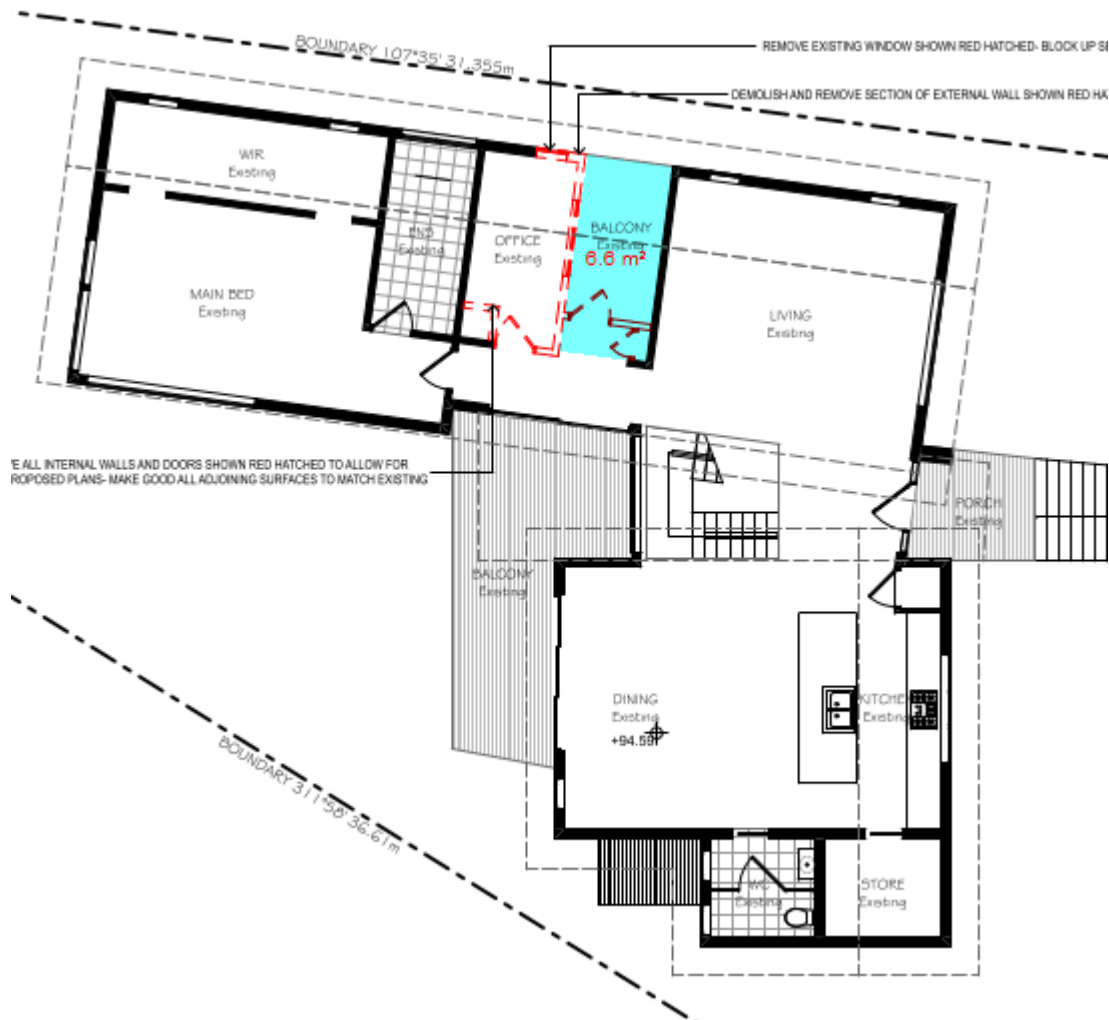
The application is referred to the Development Determination Panel (DDP) due to the proposed breach to Clause 4.4 Floor Space Ratio of 13.7%.

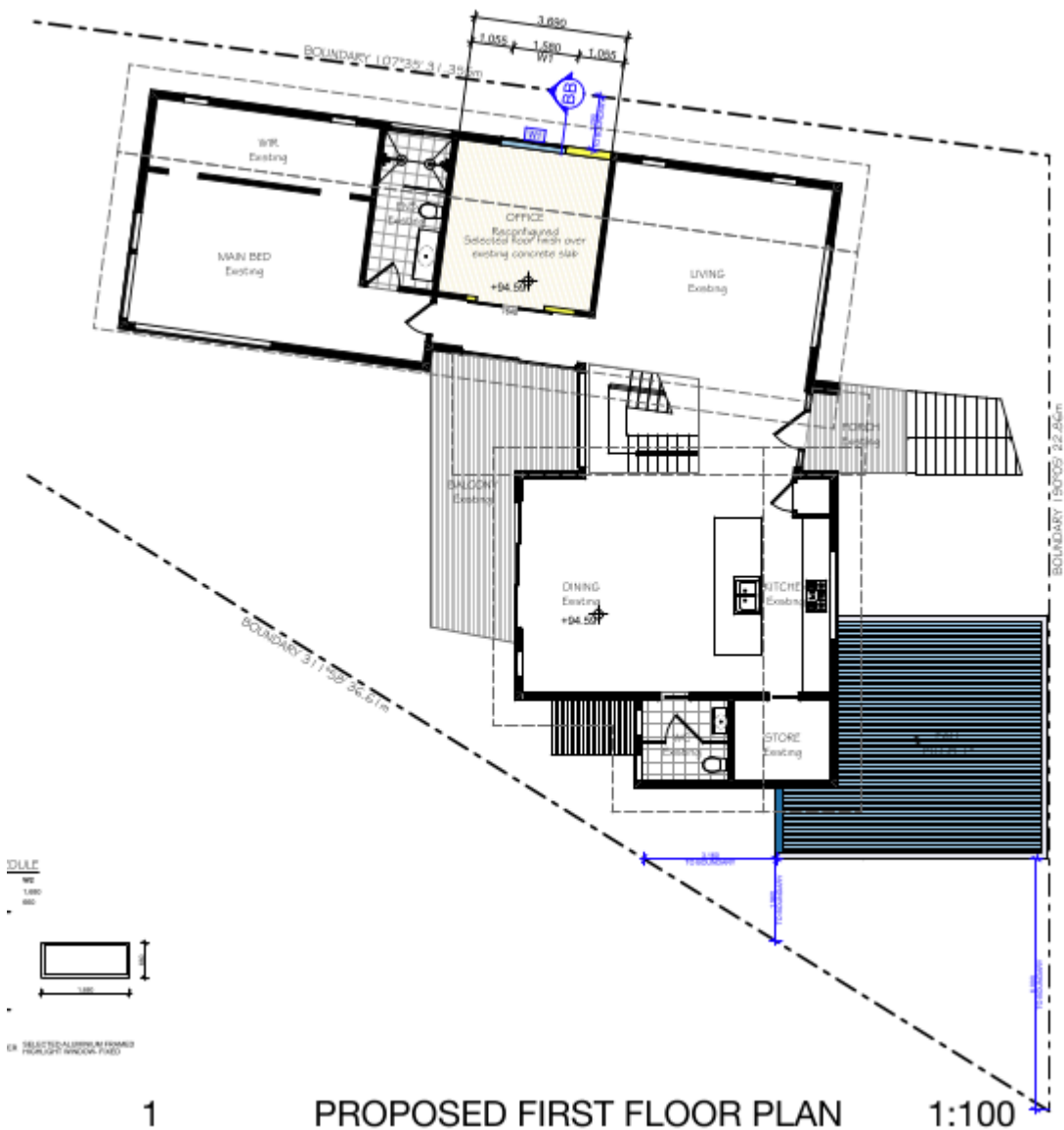
One submission (letter of support) was received. No other objections were raised or submissions received.

### Critical assessment issues included

- Front Setback Non-compliance
- Bulk and Scale (consistency with existing and desired streetscape character)
- Amenity Impacts

The 4.6 request for the non-compliance with FSR standard arises from a 6.6m<sup>2</sup> increase in floorspace. The existing building has an existing floorspace which is at 10% (0.44:1) above compliance with the LEP based on historical approvals with the proposal increasing this to 13.7% (0.455:1). The additional floorspace does not increase the bulk or scale of the building.





This report concludes with a recommendation that the DDP grant approval to the development application, subject to conditions.

## PROPOSED DEVELOPMENT IN DETAIL

The development seeks consent for

Specifically the following works:

### Ground Floor

- extension to existing car parking hardstand (southern space only)
- Installation of two (2) car space carport

### First Floor

- Extension of study to enclose the existing open reflection area.
- Addition of two (2) windows (W1 and W2).

### **Amended Plans Provided on the 17 September 2024**

Council received amended plans which made minor alterations to the carport structure including the deletion of the originally proposed carport door. The amended plans were not re-notified in accordance with Councils Community Participation Plan due to the amended design being considered to be of a lesser environmental impact to the originally proposed design.

### **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 - Zone R2 Low Density Residential  
 Manly Local Environmental Plan 2013 - 4.4 Floor space ratio  
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area  
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

### **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 2A DP 17157 , 17 Dalwood Avenue SEAFORTH NSW 2092
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the western side of Dalwood Avenue.</p> <p>The site is irregular in shape with a frontage of 22.86m along Dalwood Avenue and a depth of 36.61m. The site has a surveyed area of 473.7m<sup>2</sup>m<sup>2</sup>.</p>



The site is located within the R2 Low Density Residential zone and accommodates an existing two (2) storey detached residential dwelling house with an integrated single car garage and in-ground swimming pool on site.

The site slopes from its north eastern boundary to the south western boundary with an approximate 3 metre fall across the site (as measured from the provided survey).

The site has existing landscaped areas within the eastern (front), northern (side), and western (rear) setbacks. No threatened species are identified on-site.

#### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by one (1) and two (2) storey residential dwelling houses.

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.

#### **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	There are no current draft environmental planning instruments.
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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 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 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended architectural plans and a revised statement of environmental effects.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 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 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 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 69</u> of the EP&amp;A Regulation 2021 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	<p>(i) <b>Environmental Impact</b></p> <p>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>

Section 4.15 Matters for Consideration	Comments
built environment and social and economic impacts in the locality	<p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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 Building Code & Bushfire Hazard Solutions, dated 28 June 2024) 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 application has been publicly exhibited from 31/07/2024 to 14/08/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr David Bruce Nimmo Ms Naomi Rochelle Nimmo	2 Gurney Crescent SEAFORTH NSW 2092

It is noted that Council received one (1) submission which was a letter of support from an adjoining neighbour. This has been taken into consideration by Council in the assessment of this application.

## REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	<p><b>Supported Subject to Conditions</b></p> <p>The proposal is for a double carport at the frontage of the site. A roller door is proposed at the frontage of the carport which is not supported. Carports must be open on both sides and at the front in accordance with Clause 4.1.6 of Manly DCP. Additionally the dimensions and grades of any proposed parking are to be in accordance with AS2890.1.</p> <p><b>Additional Information Provided on 17/9/2024</b> Amended plans have been reviewed. No objections to approval subject to conditions as recommended.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	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 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 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 (Transport and Infrastructure) 2021

#### Ausgrid

Section 2.48 of Chapter 2 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 objections, subject to conditions which have been included in the recommendation of this report.

## SEPP (Resilience and Hazards) 2021

### Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

## 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	5.4m	-	Yes
Floor Space Ratio	FSR: 0.4:1 (189.48m <sup>2</sup> )	FSR: 0.455:1 (215m <sup>2</sup> )	13.7%	No

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes



Clause	Compliance with Requirements
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
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

#### Detailed Assessment

#### **Zone R2 Low Density Residential**

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

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

##### Comment:

The development proposes to utilize the existing space on site to provide greater housing and vehicular space.

It is considered that the development satisfies objective.

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

##### Comment:

The development results in an increased office space and additional car parking space. It is considered that these additions are proposed to meet the day to day needs of residents.

It is considered that the development satisfies this objective.

#### **4.4 Floor space ratio**

##### The underlying objectives of Clause 4.4 Floor Space Ratio:

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

##### Comment:

The development is consistent with the existing and desired streetscape character as demonstrated in the detailed assessment provided in section 4.1.4 of this Assessment Report. The bulk and scale increase of the dwelling house is minor and will have no impact as viewed from the public realm. The carport addition is of a bulk and scale that is consistent with the desired streetscape character.

- *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 development will have no impact on important landscape and townscape features. The development is largely located within the existing building footprint.

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

Comment:

The carport addition will not result in an inappropriate visual between the site and the existing character and landscape of the area.

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

Comment:

The development has been designed and situated to avoid adverse impact on the use or enjoyment of adjoining land and the public domain.

- *to provide for the viability of Zone E1 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 development is not located within an E1 zone and will have no impact on local centres.

It is considered that the development is consistent with the underlying objectives of Clause 4.4 Floor Space Ratio of the Manly Local Environmental Plan 2013.

#### **4.6 Exceptions to development standards**

The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.4 Floor Space Ratio Development Standard  
Requirement: 0.4:1 (0.44:1 existing)  
Proposed: 0.455:1  
Percentage of variation: 13.7%

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is/is not accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

*(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.*

Comment:

The objectives of this clause have been considered pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979*.

Subclause (2) of this clause provides that:

*(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 is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

*(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*

- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.4 is unreasonable or unnecessary in the circumstances of this application for the following reasons:

- The existing building is currently above the floor space development standard, meaning that any increase (minor or otherwise) in floor space results in a non-compliance. Notwithstanding this, the existing dwelling is considered to integrate into the street-scape and does not result in an adverse impact on the amenity of surrounding properties. The design of the existing



dwelling is considered to provide the opportunity for an increase in floor space (at a certain location) while retaining the character and nature of the dwelling.

- The Proposal would result in a generally minor increase in floor space to a discrete area of the dwelling. This results in a minor alteration to the northern façade, covering in a balcony, below the existing roof line and achieving a consistent and unbroken façade.
- The Proposal would retain the beneficial elements of the existing built-form (the dwelling) with only minor floor space additions. In consideration of the existing design (and floor space) and the ability of the dwelling to be altered (with additional floor space) without adverse impact on the surrounding locality this additional floor space is considered acceptable and appropriate.
- Further, albeit the Proposal does not comply with the FSR development standard of the MLEP 2013, it complies with the FSR control within the DCP 2013. The DCP 2013, allows for a variation to the FSR control where blocks are undersized, which is relevant to the Site. Therefore, the MDCP 2013 provides an alternative approach to calculating FSR, enabling the Proposal to be compliant (with the DCP).

In summary, under the circumstances and in this instance, the development standard, for floor space, is considered unreasonable and its application for the Proposal is unnecessary. Therefore, the Proposal is consistent with clause 4.6(3)(a) of the MLEP 2013.

*(b) 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.'*

The Clause 4.6 Request argues, in part:

The proposal is considered to exhibit sufficient environmental planning grounds consistent with the planning principals established in *Initial Action Pty Ltd v Wool/ahra Municipal Council [2018] NSWLEC 118* and *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* in that:

It would have a neutral or better environmental planning outcome for the Site, namely:

Views – the Site and buildings (neighbouring property to the north) are separated by dense vegetation

and are at considerably differing ground levels (due to topography – residential dwelling is generally below the ground level of the neighbouring buildings). There would be extremely limited, to no views from neighbouring buildings to the addition. The addition would be below the existing established roofline and retain the existing setback and character of the dwelling.

Privacy - the addition would result in a positive impact on privacy within the dwelling (i.e. the conversion of a balcony into a room). There would be a minor decrease in noise, with there no longer being a balcony on this façade. There would be no adverse impacts on privacy of surrounding dwellings or land uses.

Character - the Proposal would not adversely alter the presence of the dwelling. It would be under the roof line, have the same articulation as the existing façade and utilise the same materials to integrate into the dwelling.

#### Planner Comment

The development is minor in bulk and scale and seeks to enclose an existing internally facing balcony. The proposal will not result in the dwelling becoming unreasonable in bulk and scale, nor will it result in an adverse impact on adjoining neighbours amenity and the amenity of the public realm.

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.4 for the following reasons:

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, thereby satisfying objects 1.3(c) and (g) of the EPA Act.

#### **Public Interest:**

Matters relevant to public interest in respect of the development are considered in the relevant sections of this report as per Section 4.15(1)(e) of the EPA Act.

#### **Conclusion:**

Council is satisfied as to the matters set out in Clause 4.6 of the MLEP 2013.

It is considered on balance, that having regard to the particular circumstances, the proposed departure from the Clause 4.4 development standard is acceptable and it is reasonable that flexibility to the standard be applied.

### **6.9 Foreshore scenic protection area**

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) measures to protect and improve scenic qualities of the coastline,*
- (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
- (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Comment:

The development is located significantly away from the harbour and coastal foreshore. It is considered that the development is unlikely to result in an adverse impact and is consistent with the above objectives.

**Manly Development Control Plan**

Built Form Controls

<b>Built Form Controls - Site Area: 473.7m<sup>2</sup></b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
4.1.1.1 Residential Density and Dwelling Size	Density: 1 unit per 1150m <sup>2</sup>	1	-	Yes
4.1.2.1 Wall Height	N: 6.9m (based on gradient 1:16)	5.5m	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.45m	-	Yes
	Pitch: maximum 35 degrees	>35 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	nil setback (carport) 5m (dwelling house - existing)	100% 16.6%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: 1.83m (dwelling house)	1.28m (consistent with existing wall setback)	32.7%	No
	N: 830mm (carport)	11.22m	-	Yes
	S: 830mm (carport)	2.71m	-	Yes
	Windows: 3m	(W1) 1.28m	57.3%	No
4.1.4.4 Rear Setbacks	8m	9.95m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	60% (284.5m <sup>2</sup> )	-	Yes
	Open space above ground 25% of total open space	3.75% (10.5m <sup>2</sup> )	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	82.4% (234m <sup>2</sup> )	-	Yes
	2 native trees	>2 native trees	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.84m (25.5%)	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

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
3.3.3 Footpath Tree Planting	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
3.4.4 Other Nuisance (Odour, Fumes etc.)	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
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
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)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	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
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

## Detailed Assessment

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

#### Description of non-compliance

The development seeks to vary the minimum front setback control, to allow for the construction of a double carport compliant with the NCC and Australian Standards. The carport, located over an existing double car space concrete slab, is proposed to have a nil setback to the front property boundary. A variation to the control has been considered in the below merit assessment.

#### Merit consideration:

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

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

#### Comment:

Generally along Dalwood Avenue and surrounds, car parking structures have a non-compliant front setback (less than 6 metres). With reference to 4.1.4.1 a) of the Manly DCP, the subject site is adjoined by one (1) property on its southern boundary (2 Gurney Crescent) which has an existing 1.3m building line setback from Dalwood Avenue and 1.8 metre tall concrete fencing along Dalwood Avenue.





**2 Gurney Crescent (near) - 17 Dalwood Avenue (far)**

Other properties within the locality including 12 Dalwood Avenue (corner allotment), 13 Dalwood Avenue, 14 Dalwood Avenue (corner allotment), and 100 Peacock Street have existing nil setbacks to enclosed garage structures, with 16, 20-22, 24 and 28 Dalwood Avenue having setbacks less than 6m to parking structures. This is largely the result of the subdivision pattern of Dalwood Avenue which sets back property boundaries from the street pathway and nature strip. Because of this, although the proposed carport has a nil setback to the property boundary, it will remain to have a 1m strip of permeable grass area between the carport and public pathway, and a total 3.6m setback from Dalwood Avenue.





12 Dalwood Avenue









**13 Dalwood Avenue**



**100 Peacock Street (near) - 14 Dalwood Avenue (far)**





#### Dalwood Avenue Subdivision Pattern

It is considered that the proposed open carport structure is consistent in setback with properties within the immediate locality and is representative of the desired bulk and scale of developments within the front setback. The non-compliant setbacks within Dalwood Avenue are aided by the wider than average nature strips which provide for added buffering between the public road and private properties.

*Objective 2) To ensure and enhance local amenity by:*

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

Comment:

The development is an open style carport which will provide reasonable amounts of privacy, equitable access to light, sunshine and air movement. The development will not result adverse impacts on view sharing, building separation, impacts on views and vistas to and from private and public spaces. The setback, bulk, and scale, are consistent with the immediately adjoining property and with properties within the surrounding streets. Timber screening has been included on the southern and western elevation to ensure the safety of the residents and to mitigate the existing fall hazard created by the raised concrete slab (approximately a 1 metre drop).

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

Comment:

The development does not unreasonably limit the siting of buildings.

*Objective 4) To enhance and maintain natural features by:*

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

Comment:

The development mostly builds on the existing building and driveway concrete slab. It is considered that the existing natural features are maintained with the carport structure providing additional opportunities for planting.

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

Comment:

The observations and recommendations provided in the Bushfire Report have been included in the conditions of consent. It is considered that the development will reasonably assist in appropriate bush fire asset protection zones.

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.

## **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 2024**

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 2021;
- 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 the Applicant's written request under Clause 4.6 of the Manly Local



Environmental Plan 2013 seeking to justify variation of the development standard contained within Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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 permits a contravention of 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 DA2024/0873 for Alterations and additions to a dwelling house including carport on land at Lot 2A DP 17157, 17 Dalwood Avenue, SEAFORTH, subject to the conditions printed below:

## Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

### GENERAL CONDITIONS

#### 1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA02		Site Analysis	R & R Building Design	9 September 2024
DA04		Proposed Ground Floor Plan	R & R Building Design	9 September 2024

DA05		Proposed First Floor Plan	R & R Building Design	9 September 2024
DA06		Proposed Roof Plan	R & R Building Design	9 September 2024
DA07		Sections	R & R Building Design	9 September 2024
DA08		North & South Elevation	R & R Building Design	9 September 2024
DA09		East & West Elevation	R & R Building Design	9 September 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Clause 4.6 Report	-	Westley Owers	17 September 2024
Bushfire Report	-	Building Code & Bushfire Hazard Solutions	28 June 2024
Waste Management Plan	-	-	Received by Council 28 June 2024

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

## 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	16 August 2024

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://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 Certifier 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 Certifier 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 Certifier 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) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) 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.
- (d) At all times after the submission of 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 an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (e) 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.
- (f) 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.
- (g) Prior to the release of the Construction Certificate, payment of the following is required:
  - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% 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.
  - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that

applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.

- iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (i) 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.
- (j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (l) 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.
- (m) 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.
- (n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (o) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety

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

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

## FEES / CHARGES / CONTRIBUTIONS

### 5. Security Bond

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

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

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier 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](http://www.northernbeaches.nsw.gov.au)).

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

## BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

### 6. Off Street Parking Design

The Applicant shall submit a design for the parking facility in accordance with the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the

issue of the Construction Certificate.

Reason: Compliance with this consent.

**7. Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, shall be provided 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 Certifier 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.

**8. 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 Certifier prior to the issue of the Construction Certificate.

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

**9. 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 Certifier demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website [www.sydneywater.com.au](http://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.

## **DURING BUILDING WORK**

**10. 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.

**11. 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 Certifier.

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

## **BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**

### **12. 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 Certifier prior to the issue of an Occupation Certificate.

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

### **13. Certification of Off Street Parking Works**

The Applicant shall submit a certificate from a suitably qualified person certifying that the parking facility was constructed in accordance within this development consent and the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

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

Reason: Compliance with this consent.

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

### **14. Driveway Access to Garage**

Vehicular access to the existing single car garage is to be maintained at all times except where the driveway is in use to enter and exit the site.

This approval/consent relates only to the new work nominated on the approved consent plans and does not approve or regularise any existing buildings or structures within the property boundaries or within Council's road reserve. Additionally, no approval/consent is granted for car parking spaces except where specifically designated as shown on the 'Proposed Ground Floor Plan'.

Reason: To ensure that adequate parking facilities and access to these facilities are maintained.