

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0340
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Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 361 DP 700858, 21 Parkview Road FAIRLIGHT NSW 2094
Proposed Development:	Alterations and additions to a semi-detached dwelling
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Anthony Gavin Moss Kathleen May Moss
Applicant:	Laura Jane Robinson

Application Lodged:	21/03/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	28/03/2022 to 11/04/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.4 Floor space ratio: 18.05%
Recommendation:	Approval

Estimated Cost of Works:	\$ 528,000.00
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EXECUTIVE SUMMARY

This report is submitted to the Northern Beaches Development Determination Panel (DDP) for the consideration of Development Application DA2022/0340 for alterations and additions to an existing semi-detached dwelling. The works largely pertain to a first floor addition and new car parking hardstand and vehicle crossing.

The maximum floor space ratio (FSR) permitted on the site is 0.6:1 (150.78sqm). The proposed development results in a FSR of 0.708:1 (178sqm), which represents an 18.05% (27.22sqm) variation to Clause 4.4 - Floor Space Ratio of Manly LEP 2013. Any variations to a principal development standard that are greater than 10% must be referred to the DPP for determination if the development relates to a class 1 or 10 structure.

Despite the FSR breach, the overall height, bulk and scale of the development is commensurate with the surrounding built environment, including recently approved developments directly adjoining the site to the north and south. Furthermore, the FSR breach does not result in any unacceptable amenity impacts for surrounding properties, specifically with regards to solar access, view sharing, visual bulk or privacy. The applicant has demonstrated that compliance with the FSR standard is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the variation to Clause 4.4 - Floor Space Ratio of the Manly LEP 2013.

The proposed development involves variations to the numerical requirements entail within Clause - 4.1.4 Setbacks (front, side and rear) and Building Separation, Clause 4.1.5 - Open Space and Landscaping and Clause 4.1.6 - Parking, Vehicular Access and Loading (Including Bicycle Facilities) of the Manly DCP 2013. However, these variations do not result in a development that is incompatible with the established and desired future character of the area and the proposal provides a net increase of off-street parking on the site.

Throughout the assessment process amended plans were submitted to increase the total open space on the site, reduced the FSR on the site and increase the depth of the hardstand parking space to ensure compliance with the Australian Standard. The amendments have been assessed and are considered to have adequately address to Council's preliminary concerns.

The application was notified for 14 days and received one (1) submission. The issues raised include visual bulk, solar access and privacy. A detailed assessment of these issues has been conducted and the application has been found to be satisfactory.

Accordingly, it is recommended that the application be approved by the DDP, subject to the conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to an existing semi-detached dwelling including a new single car hardstand parking space. The works consist of:

Ground Floor

- Internal alterations to modify the floor plan.
- Window changes.
- Small rear extension to provide a larger living area with rear decking.
- Internal staircase to access the proposed first floor addition.

First Floor Addition

- Main bedroom with ensuite and balcony on rear elevation.
- Additional bathroom.
- Home office.
- Second living room with door to storage in existing roof cavity.

Ancillary Works

- New vehicle crossing and driveway.
- Removal of one small shrub/tree within the road reserve.

- Single car hardstand parking space.
- Sliding gate.

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 Development Control Plan - 3.4.2 Privacy and Security

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 - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot 361 DP 700858 , 21 Parkview Road FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of one allotment located on the western side of Parkview Road, Fairlight.</p> <p>The site is rectangular in shape with a frontage of 6.8m and a depth of 37.01m. The site has a surveyed area of 251.3sqm.</p> <p>The site is located within the R1 General Residential zone pursuant to Manly LEP 2013 and accommodates a single storey semi-detached dwelling. The site is devoid of off-street parking and currently does not have vehicular access.</p>

	<p>The site is generally flat with a gentle slope from the front eastern boundary to the rear western boundary.</p> <p>The site contains existing lawn areas and is devoid of any significant vegetation.</p> <p>Description of Surrounding Development</p> <p>Adjoining and surrounding development is characterised by semi-detached dwellings, detached dwelling houses, and residential flat buildings. The scale of nearby development ranges from 1-3 storeys in height.</p>
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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 the following relevant history:

- Complying Development Certificate No. CD03/08 for alterations and additions to dwelling approved by Manly Council on 8 August 2008.

APPLICATION HISTORY

The Development Assessment Planner examined the subject site and the surrounds on 27 April 2022.

Following the preliminary assessment of the application, which included the aforementioned site visit, Council wrote to the applicant raising concern of the following aspects of the proposal:

- **Off-Street Parking:** The proposed hardstand parking space was only 4.8m in depth, whereas the Australian Standard requires single off-street car parking spaces to be 2.4m (width) x 5.4m

(depth) in dimension.

- **Total Open Space:** The application only proposed 19.9% (50sqm) of the site as total open space, which is a significant departure from the numeric requirement of 55%. Council requested that the total open space be increased to reduce the extent of the non-compliance.
- **Front Gate/Fence:** The plans did not depict the height of the proposed front fence. Council requested clarification on the height of the fence.

Subsequently, the applicant submitted revised plans and documentation to demonstrate the following:

- Increase the parking hardstand platform dimensions to 2.4m (width) x 5.4m (depth). This was achieved by encroaching into the existing front porch.
- Increase the total open space on the site to 32.51% (81.7sqm), which is considered reasonable in the context of the narrow site. This was achieved through increasing the rear setback to the ground floor façade and re-locating the hardstand parking space to provide additional total open space within the front yard (noting that parking/access is excluded from total open space and that open space areas must be 3m x 3m in dimension with an unbroken area of at least 12sqm to be included in the calculations).
- Confirm that the front fence and gate is 1.5m in height, which complies with the Manly DCP 2013 front fencing provision for partially transparent/open fences.
- New Clause 4.6 written request for the FSR non-compliance to reflect the amended FSR calculations, which was reduced from 0.73:1 (184sqm) to 0.708:1 (178sqm).

The amended plans constitute an overall reduced impact when compared to the original proposal. Hence, the application was not required to be re-notified, in accordance with the Northern Beaches CPP.

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

Section 4.15 Matters for Consideration	Comments
	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>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended plans and a revised Clause 4.6 written request. The additional information was received and assessed accordingly.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Matters for Consideration	Comments
with the EPA Act or EPA Regs	
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 28/03/2022 to 11/04/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Mr Malcolm Peter Kindred	17 Parkview Road FAIRLIGHT NSW 2094

One (1) submission was received following the public exhibition period. The submission was prepared by the owner of 17 Parkview Street, which is located two properties to the south of the subject site. The following issues were raised in the submission:

- **Solar Access**

The submission raised concern that the proposed development will result in unacceptable overshadowing of the nearby property.

Comment:

The proposal does not result in unreasonable overshadowing of adjacent properties, with the additional shadowing being largely confined to the roofline of the semi-detached dwelling to the south (No. 19 Parkview Road). Furthermore, as the height and footprint of the second storey component corresponds with the recently approved first floor addition for the adjoining semi-detached dwelling to the south, the proposal will not result in additional overshadowing of No. 17 Parkview Road when compared to what will currently be experienced from the approved development at No. 19 Parkview Road to the south.

- **Bulk and Scale**

The submission raised concern that the bulk and scale of the proposal will be excessive.

Comment:

The proposed development respects the two storey built form on surrounding and adjacent sites, with the upper floor stepped back from the front, rear and side facades to negate the bulk and scale of the development. The proposal also complies with the 8.5m height of buildings development standard and Manly DCP 2013 wall height provision, thereby demonstrating an acceptable height for the site. Whilst the proposal contravenes the FSR development standard, the overall density of the proposal is commensurate with recent approvals immediately to the north and south of the site. Thus, the bulk and scale of the proposal is considered to be acceptable in the context of the surrounding area.

- **Privacy**

The submission raised concerns that the proposed development would have an unacceptable privacy impacts on the nearby property.

Comment:

The balcony has a trafficable area of 2.9sqm and adjoins a bedroom (i.e. low trafficable room). These factors mean that the area is not conducive for numerous occupants to utilise the area. In addition, as the area adjoins a low trafficable area it will not receive high volumes of pedestrian movement, noting that the ground floor rear decking and lawn adjacent to the living area will serve as the private open space on the site. Therefore, any overlooking would be infrequent and therefore reasonable. This argument is supported within the NSW Land and Environment Court Case of *Meriton v Sydney City Council [2004] NSWLEC 313*, where Commissioner Roseth SC states that *"overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time"*.

Conclusion

The concerns raised within the submission have been appropriately addressed above. The concerns for not warrant refusal of the application or amendments to the design.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><u>Amended plans Comment 11/05/2022</u></p> <p>Amended plans relocating the driveway are noted.</p> <p>It is understood that due to engineering requirements, the amendment has been required.</p> <p>An improved soft landscape outcome in the front setback is considered to have been achieved with the amendment.</p> <p>The relocation will require removal of one small street tree in average condition, which can be replaced within the road reserve.</p> <p>No objections are raised with regard to landscape issues, subject conditions including to replanting.</p> <p><u>Original Comment</u></p>

Internal Referral Body	Comments
	<p>The application seeks consent for alterations and additions to a semi-detached dwelling.</p> <p>Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to):</p> <ul style="list-style-type: none"> I 3.1.1 Streetscape (Residential areas) I 3.1.1.4 Garages, Carports and Hardstand Areas I 3.3.1 Landscaping Design I 3.3.2 Preservation of Trees or Bushland Vegetation <p>The plans indicate that the new driveway crossover is to be located adjacent to an existing street tree, though the tree is indicated for retention.</p> <p>Concern is raised regarding the proximity of the crossover to the tree and it is recommended that the crossover be relocated further south of the tree and butt up to the entry path to the dwelling. This would require deletion of a small planted area indicated on the plans between the path and the drive, which seems to serve little purpose, particularly in relation to exit from a vehicle from the passenger side (if car is parked front first).</p> <div data-bbox="512 1120 1404 1904"> <p>The diagram is a site plan for 'T02 FRANC'. It shows a property boundary with a hatched area representing a driveway or crossover. A street tree is shown with a green dashed line indicating its footprint. A 'ROAD RESERVE GRADIENT 1:12' is marked with a red line. A 'PATH' and 'GRASS' area are also indicated. A 'KERB' line is shown on the right. Various elevation points are marked: 54.58, 54.53, 54.46, 54.51, 54.43, and 54.45. A green dashed line indicates a proposed relocation of the crossover further south, away from the street tree. A date stamp '04/02/03' is visible near the tree.</p> </div> <p>Subject to relocation of the crossover further away from the street tree, no objections are raised with regard to landscape issues subject to conditions.</p>

Internal Referral Body	Comments
NECC (Development Engineering)	<p>1st Engineering referral</p> <p>The applicant proposed a hardstand parking space. However, the marked parking space is only 4.8 m long in the submitted plan.</p> <p>The minimum length of the parking is 5.4 m in accordance with Council's specification and Australia Standard.</p> <p>As such, Development Engineering cannot support the application due to clause 4.1.6 of Council's Manly DCP 2013.</p> <p>The applicant may need to consider to utilise the space under the covered verandah to extend the parking space.</p> <p>Note: stormwater design is acceptable.</p> <p>2nd engineering referral response</p> <p>A 5.4 m long parking space is proposed in the amended drawing. Development Engineering has no objection to the application subject to the following conditions of consent.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>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.</p>

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

The application is accompanied by a BASIX Certificate (see BASIX Certificate No. A448563, dated 2 March 2022). A condition has been included with this consent to ensure compliance with the aforementioned BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who 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.

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	7.71m	-	Yes
Floor Space Ratio	0.6:1 (150.78sqm)	0.708:1 (178sqm)	18.05%	No

Compliance Assessment

Clause	Compliance with Requirements

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
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1 (150.78sqm)
Proposed:	0.708:1 (178sqm)
Percentage variation to requirement:	18.05% (27.22sqm)

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 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 primary issue is whether or not there are sufficient environmental planning grounds particular to the site to allow the variation to the floor space ratio development standard.

Accordingly in regards to the proposed development at 21 Parkview Road, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:-

- The proposal does not result in any loss of privacy nor an unreasonable loss of solar access to the adjoining properties.*
- The existing surrounding development comprises a mixture of single detached dwellings, semi-detached dwellings and large residential flat buildings. The resultant development is compatible with the existing surrounding development.*

When having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for maximum floor space ratio.

The existing surrounding development and the desired architectural outcome combine to produce a meritorious development despite the numerical variation to the floor space ratio standard".

Development Assessment Planner Comment:

The Development Assessment Planner agrees generally with the applicant's justification to contravene the FSR development standard.

It is accepted that the FSR breach does not contribute to unreasonable privacy impacts, noting that the upper floor has been adequately separated from the side boundary to avoid unacceptable acoustical privacy impacts, whilst the north-facing windows do not encourage direct overlooking into habitable rooms on the northern adjacent building (No. 23 Parkview Road) due to the south-facing windows on the first floor at No. 23 being highline windows.

Furthermore, it is also agreed that the FSR breach does not result in unreasonable overshadowing of adjacent properties, with the additional shadowing being largely confined to the roofline of the semi-detached dwelling to the south (No. 19 Parkview Road). In this instance, full compliance with the FSR standard would not achieve a greater amenity outcome for the occupants of the neighbouring residential development to the south (i.e. No. 19 and 17).

Additionally, it is accepted that the overall height, scale and intensity of the resulting development corresponds with nearby development within the visual catchment of the site, notwithstanding the FSR breach. The proposed development respects the two storey built form on surrounding and adjacent sites, with the upper floor stepped back from the front, rear and side facades to negate the bulk and scale of the development. It is also important to note that the northern adjacent semi-detached dwelling at No. 23 Parkview Road, which has recently been developed and approved by the Northern Beaches DDP, contains a gross floor area of 181.92sqm, which exceeds what is currently proposed on the subject site.

Overall, in the absence of recognisable streetscape and amenity impacts, it is considered that a fully compliant FSR would not result in an improved environmental planning outcome.

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 resulting two storey built form is commensurate with the scale of surrounding residential development within the visual catchment of the site and consistent with the general scale of development envisaged for the locality. The upper floor has been recessed back from the ground, northern side, and front facades to alleviate the perceived height and bulk.

Additionally, it is important to note that Council has recently approved FSR breaches of a similar extent on the northern (No. 23 Parkview Road) and southern (No. 19 Parkview Road) adjacent sites for two storey semi-detached dwellings. The northern adjacent development has already been constructed. These approvals inform the general scale of development anticipated for the locality, notwithstanding the FSR breaches. It is noted that the density of the proposal generally corresponds with these developments.

Overall, it is considered that the proposal achieves this objective.

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

Comment:

The building density and bulk corresponds generally with approved developments directly to the north and south of the subject site and the overall height and bulk of the proposed development has been alleviated through compliance with the height of buildings development standard and recessing the upper floor back from the ground floor walls. In addition, the FSR breach does not obscure any important landscape or townscape features.

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

Comment:

The area currently comprises of a variety of building forms including detached dwelling houses, semi-detached dwelling houses, and residential flat buildings. Therefore, it is considered that the proposal is consistent with maintaining the visual existing character and landscape of the area.

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

Comment:

As discussed above, the FSR non-compliance does not result in unacceptable amenity impacts to adjacent properties, specifically with regard to privacy, solar access, view sharing and visual bulk. Thus, the FSR breach will not preclude the use or enjoyment of surrounding private properties and the public domain.

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

Comment:

The site is not located within a local centre. Therefore, this objective is not relevant.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

Conclusion:

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

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

Comment:

The proposal provides for a greater number of bedrooms and larger living area to meet the needs of the residents.

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

Comment:

The proposal involves alterations and additions to an existing medium density land use within an area characterised by low and medium density housing.

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

Comment:

The proposal does not alter the existing residential land use.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone and the objectives of Clause 4.4 - Floor Space Ratio of Manly LEP 2013.

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 PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to

the Floor space ratio Development Standard associated with a single dwelling house (Class 1 building).

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 251.3sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 250sqm of site area	1 dwelling on 251.3sqm site	-	Yes
	Dwelling Size: minimum 100sqm (based off 3 bedrooms and 3 bathrooms)	178sqm	-	Yes
4.1.2.1 Wall Height	North: 6.5m (based on flat gradient)	6.3m	-	Yes
	South: N/A - party wall	N/A	N/A	N/A
4.1.2.2 Number of Storeys	2 storeys	2 storeys	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.33m	-	Yes
	Pitch: maximum 35 degrees	< 35 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing Building Line (0m for hardstands and 6m for facade)	0m (hardstand) - 10.53m (1st floor addition)	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 2.1m (1/3 of wall height)	1.13m (ground floor) - 2m (1st floor)	4.76% - 46.19%	No
	Windows: no windows within 3m of side boundaries	11x windows within 3m of northern side boundary	up to 62.33%	No
4.1.4.4 Rear Setbacks	8m	5.15m (ground floor rear deck) - 9.35m (1st floor)	35.63%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (must be 3x3m in dimension)	32.51% (81.7sqm)	40.89%	No
	Open space above ground 25% of total open space	nil	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	102.33% (83.6sqm)	-	Yes
	1 native tree	no native trees	100%	No*
4.1.5.3 Private Open Space	18sqm	50sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	3.4m (50% of lot width)	2.4m	-	Yes
Schedule 3 Parking and Access	2 spaces	1 space	50%	No

*** A condition will be applied for the planting of one (1) native tree**

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	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)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	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

Detailed Assessment

3.4.2 Privacy and Security

The control states as follows:

- a) Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.*
- b) Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.*

The proposed development includes an elevated juliet balcony on the rear elevation of the first floor adjacent to the main bedroom. The balcony is partially recessed into the building and protrudes approximately 400mm beyond the rear façade. Whilst the balcony is devoid of privacy screening, this element is not considered to unreasonably affect the privacy of adjacent residencies.

The balcony has a trafficable area of only 2.9sqm and adjoins a bedroom (i.e. low trafficable room). These factors mean that the area is not conducive for numerous occupants to utilise the area. In addition, as the area adjoins a low trafficable area it will not receive high volumes of pedestrian movement, noting that the ground floor rear decking and lawn adjacent to the living area will serve as the private open space on the site. Therefore, any overlooking would be infrequent and therefore reasonable. This argument is supported within the NSW Land and Environment Court Case of *Meriton v Sydney City Council [2004] NSWLEC 313*, where Commissioner Roseth SC states that "*overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time*".

For the reasons detailed above, it is concluded that the inclusion of a privacy screen on the first floor rear balcony is not required and that the balcony is appropriately scaled and sited to prevent adverse privacy impacts. Thus, the proposal is consistent with the intent of this control.

4.1.3 Floor Space Ratio (FSR)

A detailed assessment of the FSR variation has been undertaken within the section of this report relating to Clause 4.6 of the Manly LEP 2013. In conclusion, the applicant has adequately justified that compliance with the FSR Development Standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify the variation.

Furthermore, it is noted that the site is not an 'undersized allotment, as defined by the Manly DCP 2013.

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

Description of non-compliance

Side Setback

The control requires development to be setback at least 1/3 of the adjacent wall height from side boundaries. In applying this principle, development must be setback at least 2.1m from the northern side boundary.

The minor rear extension to the ground floor is setback 1.13m from the northern side boundary, which does not meet the numeric requirement. It is noted that the ground floor rear extension does not further decrease the existing northern side setback.

The first floor addition is setback 2m from the northern side boundary, which does not satisfy the prerequisite of 2.1m.

The side setback provision also stipulates that windows to habitable rooms shall not be located within 3m of side boundaries. The proposal includes 11 new windows on the northern elevation within 3m of the side boundary, which does not meet this requirement.

Rear Setback

The control requires development to be setback at least 8m from the rear boundary. The rear decking on the ground floor is setback 5.16m from the rear boundary, which does not meet the numeric requirement. It is noted that the façade of the building is setback 8.5m from the rear boundary on the ground floor.

Merit consideration:

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

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

Comment:

The proposed first floor addition is generally centrally positioned within the existing building footprint and adequately setback from the front, side and rear boundaries to negate unreasonable visual impacts upon the streetscape and surrounding properties. The upper floor is recessed back from the ground floor facades and employs a 2m side setback, which is consistent with the southern side setback of the approved first floor addition on the southern adjoining semi-detached dwelling to the south (No. 19 Parkview Road). This will ensure the development maintains an appropriate visual relationship with the adjoining semi-detached dwelling at No. 19 Parkview Road and the surrounding built environment. The proposal also complies with the height of buildings development standard and Manly DCP 2013 wall height provision, thereby demonstrating consistency with the desired height of development envisaged for the area. In addition, the proposal integrates soft landscaping areas within the front and rear yards to maintain the desired landscape character of the street.

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 north-facing windows on the ground floor are generally off-set from existing south-facing windows on the northern adjacent building (No. 23 Parkview Road), whilst the first floor north-facing windows do not encourage direct overlooking into habitable rooms on the northern adjacent building due to the south-facing windows on the first floor at No. 23 Parkview Road being highline windows.

In regards to solar access, it is noted that the proposal does not result in unreasonable overshadowing of adjacent properties, with the additional shadowing being largely confined to the roofline of the semi-detached dwelling to the south (No. 19 Parkview Road).

In relation to view sharing, an examination of the site and the surrounds has concluded that the proposed development will not unreasonably compromise significant view lines from surrounding private and public land.

Furthermore, the northern elevation of the first floor is stepped in from the ground floor and employs a 2m upper floor setback, consistent to what was recently approved on the adjoining semi-detached dwelling to the south (No. 19 Parkview Road). This will ensure that the development does not disrupt the rhythm or pattern of development. This will also ensure that adequate separation is provided between buildings. The numeric non-compliant decking on the ground floor is sited near ground level and will not disrupt the pattern of development or create adverse amenity impacts to neighbouring properties.

The works are also appropriately sited in a manner to facilitate safe and adequate traffic conditions.

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

Comment:

Flexibility is afforded with regards to the side and rear setback non-compliance as the proposed development does not result in unacceptable streetscape or amenity impacts.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The quantum of total open space proposed is generally consistent with neighbouring properties, notwithstanding the numeric non-compliance. Moreover, Council's Landscape Officer has reviewed the application and found the proposal to be satisfactory from a landscaping perspective.

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

Comment:

The site is not bushfire prone.

Conclusion

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The control requires at least 55% (138.22sqm) of the site to consist of total open space (TOS). To be included as TOS open space areas must be at least 3m x 3m in dimension and must not relate to parking structures or vehicular access (i.e. the driveway and hardstand parking space is excluded).

The application proposes 32.51% (81.7sqm) of the site as TOS, which does not satisfy the prerequisite.

The application also does not incorporate a native canopy tree on the site, which does not meet the prescribed requirement.

Merit consideration:

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

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

Comment:

The proposed development results in the removal of one small shrub/tree within the road reserve to accommodate the vehicle crossing. Nevertheless, Council's Landscape Officer has reviewed the proposal and raised no objections, subject to a condition for replanting.

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 includes deep soil landscaped areas within the front and rear yards to ensure an appropriate landscaping outcome on the context of the small narrow site. Moreover, the proposed TOS exceeds that of what was approved next door to the north (No. 23 Parkview Road).

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

Comment:

The proposed development includes 57.5sqm of total open space within the rear yard to meet the recreational needs of the occupants. The rear yard of the site also receives approximately 3 hours of direct sunlight to ensure an appropriate internal amenity outcome, whilst the additional shadows cast by the development are largely confined to the roofline of the adjoining semi-detached dwelling to the south (No. 19 Parkview Road). As discussed earlier, the proposal is also considered to be satisfactory from a view sharing and privacy standpoint.

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

Comment:

The site contains sufficient pervious areas to assist in water infiltration, in turn minimising stormwater runoff. Furthermore, suitable conditions have been included with this consent to ensure that stormwater is managed and disposed of in an acceptable manner (i.e. conveyed to Parkview Road).

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

Comment:

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

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

Comment:

The proposed development does not have an adverse impact upon wildlife corridors.

Conclusion

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

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Description of non-compliance

The proposal provides 1 off-street parking space, whereas the Manly DCP 2013 requires semi-detached dwelling houses to have 2 off-street parking spaces. It is important to note that the current site provides no off-street parking space.

Merit consideration:

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

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

The proposed off-street parking space provides for one car parking space that is accessible for residents.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

The proposal reduces the demand for on-street parking by providing the addition of one off-street parking space.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

The proposed location and design of the driveway and parking space has been reviewed by Council's Development Engineer Officer. The vehicular access is considered to be safe and convenient for the

residents. Whilst, the off-street parking space is located within the front setback area, it is considered to be consistent with surrounding development with driveways and off-street parking located forward of the existing building.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment:

The proposed off-street car space will not result in an unreasonable amount of excavation and therefore will not unreasonably impact ground water flows.

Objective 5) To ensure the width and number of footpath crossings is minimised.

Comment:

A new vehicle crossing is proposed and the provision of one vehicular crossover is consistent with surrounding development.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

Sufficient deep soil landscaping has been provided within the front setback area to limit the amount of impervious surfaces.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

The site not located within a local centre. Therefore this objective is not relevant. Notwithstanding, the site is located in proximity to public transport services.

Conclusion

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

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 2021

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$5,280 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$528,000.

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.

The proposed development involves alterations and additions to an existing semi-detached dwelling, largely to provide a first floor addition and off-street hardstand car parking space and vehicle crossing.

The proposed development results in a FSR of 0.708:1 (178sqm), which represents an 18.05%

(27.22sqm) variation to the 0.6:1 (150.78sqm) FSR development standard that is applied to the site. Despite this, the proposed development will not result in any unacceptable streetscape or amenity impacts.

The issues raised within the submission have been addressed and do not warrant refusal of the application.

When considered on its merits, the proposed development is found to be acceptable and worthy of support.

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 DA2022/0340 for Alterations and additions to a semi-detached dwelling on land at Lot 361 DP 700858, 21 Parkview Road, FAIRLIGHT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A-01 (Revision 2) - Site Analysis + Waste Plan	10 May 2022	Robinson Jolly
A-02 (Revision 2) - GA Ground Floor Layout	10 May 2022	Robinson Jolly
A-03 (Revision 2) - GA Proposed Plan New 1st Storey	10 May 2022	Robinson Jolly
A-04 (Revision 2) - Side Elevations	10 May 2022	Robinson Jolly
A-05 (Revision 2) - Front + Rear Elevations	10 May 2022	Robinson Jolly
A-05 (Revision 1) - Front Fence Elevation	10 May 2022	Robinson Jolly
A-06 (Revision 2) - Longitudinal Section	10 May 2022	Robinson Jolly

A-13 (Revision 2) - Demolition Plan	10 May 2022	Robinson Jolly
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Engineering Plans		
Drawing No.	Dated	Prepared By
SW-1	14 February 2022	Michael Korecky

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A448563	2 March 2022	Laura Robinson

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	15 February 2022	Laura Robinson

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	not dated

(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) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$5,280.00 is payable to Northern Beaches Council for the provision

of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$528,000.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

6. Security Bond

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

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

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

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

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

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

7. Stormwater Disposal

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer,

indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to Parkview Road.

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

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

8. **Vehicle Crossings Application**

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

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

Reason: To facilitate suitable vehicular access to private property.

9. **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.

10. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

11. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

12. Tree Removal Within the Road Reserve

a) This consent approves the removal of the following tree(s) within the road reserve::

- i) 1 x *Callistemon* sp. forward of the property to accommodate the new driveway crossover

b) Removal of the approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services Section prior to removal.

Reason: Public liability.

13. Public Liability Insurance - Works on Public Land

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

14. Tree and Vegetation Protection

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

- i) all trees and vegetation within the site not approved for removal, excluding exempt legislation, (1 x *Plumeria* sp. (Frangipani) may be transplanted)
- ii) all trees and vegetation located on adjoining private properties,

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of trees by temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of tree Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape m vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by
- vi) excavation for stormwater lines and all other utility services is not permitted with minimum AQF Level 5 in arboriculture including advice on root protection measures
- vii) should either or all of v), vi) and vii) occur during site establishment and construction shall provide recommendations for tree protection measures. Details including p Arborist to the Certifying Authority,
- viii) any temporary access to or location of scaffolding within the tree protection zone construction works is to be undertaken using the protection measures specified

- Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of trees on development sites, and the protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of the canopy volume of any tree on the lot or any tree on an adjoining site, in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before the commencement of the construction period, and ii) remain in place for the duration of the construction period.

Reason: Tree and vegetation protection.

15. Removing, Handling and Disposing of Asbestos

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

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

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

16. Survey Certificate

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

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

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

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

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

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

17. 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.

18. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

19. **Waste Management During Development**

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

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

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

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

20. **Street Tree Planting**

a) Street trees shall be planted in accordance with the following:

- i) 1 x *Callistemon* sp. (Bottlebrush) capable of attaining a minimum height of 5m at maturity located forward of the property, clear from driveway sightlines.

b) All street trees shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees.

c) All street trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained including a four post and top and mid rail timber tree guard and watered until established.

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

Reason: To maintain environmental amenity.

21. **Stormwater Disposal**

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

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