

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0635
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Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 2 DP 554948, 20 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Demolition works and construction of a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Samuel Paul Allen

Application Lodged:	04/06/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	08/10/2024 to 22/10/2024
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of buildings: 15.77% 4.4 Floor space ratio: 13.8%
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,127,273.00
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EXECUTIVE SUMMARY

This development application seeks consent for demolition works and construction of a dwelling house, with detached double garage and swimming pool at No. 20 Beatty Street, Balgowlah Heights.

The application is referred to the Development Determination Panel (**DDP**) due to the application proposing a greater than 10% variation to the Height of Buildings and Floor Space Ratio (**FSR**) development standards.

The application was notified in accordance with Council's Community Participation Plan (**CPP**) and received three (3) submissions. Concerns raised in the objection largely relate to bulk and scale and

amenity impacts (solar access, privacy and view loss). This reports includes a detailed assessment of the objection, and finds that the totality of impact does not warrant the refusal of the application.

The Manly Local Environmental Plan (**MLEP**) 2013 prescribes a maximum FSR of 0.4:1 (338.6sqm) for the site and the application proposes 0.45:1 (385.6sqm) a departure of 13.8% from the control. The application is accompanied by a written Clause 4.6 variation request which explains that the variation to the FSR standard is consistent with the existing and desired character of the area.

The 4.6 request for the non-compliance with the Height of Buildings development standard (8.5m) arises from the site being previously excavated to allow for the existing lower floor and from the sloping topography of the site. The application proposes a maximum building of 9.841m, a 15.77% variation to the numeric standard.

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

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for demolition works and construction of a three storey dwelling house with a double garage, spa and swimming pool.

APPLICATION HISTORY

Following a preliminary assessment of the application Council wrote to the applicant on 4 September 2024, outlining concerns that would not allow for Council to support the application in its current form.

The issues raised included:

- Building Height non-compliance
- Floor Space Ratio non-compliance
- Built form (DCP) non-compliance
- Privacy
- Internal Referral - Environmental Health

The applicant lodged amended plans and additional information to address concerns raised on 26 September 2024 and 1 October 2024. The proposed amendments can be summarised as follows:

- First floor side setback increased 1.5m to 2.5m;
- First floor office window deleted;
- Roof alterations;
- Window alterations;
- Reduced excavation; and
- Garage and access alterations.

The proposed amendments will have a reduced environmental impact on the adjoining properties and public open space than the original proposal. The amended plans result in a reduced development.

However, the application was incorrectly nominated as alterations and additions to a dwelling house when first notified by Council. As such the amended plans were re-notified and the description of works corrected to "Demolition works and construction of a dwelling house including a swimming pool" from 8 October 2024 - 22 October 2024.

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 - 4.3 Height of buildings
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 - 6.2 Earthworks
Manly Local Environmental Plan 2013 - 6.4 Stormwater management
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
Manly Local Environmental Plan 2013 - 6.12 Essential services
Manly Development Control Plan - 3.1 Streetscapes and Townscapes
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.3 Maintenance of Views
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)
Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 2 DP 554948 , 20 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Beatty Street, Balgowlah Heights.</p> <p>The site is irregular in shape with a frontage of 24.83m</p>

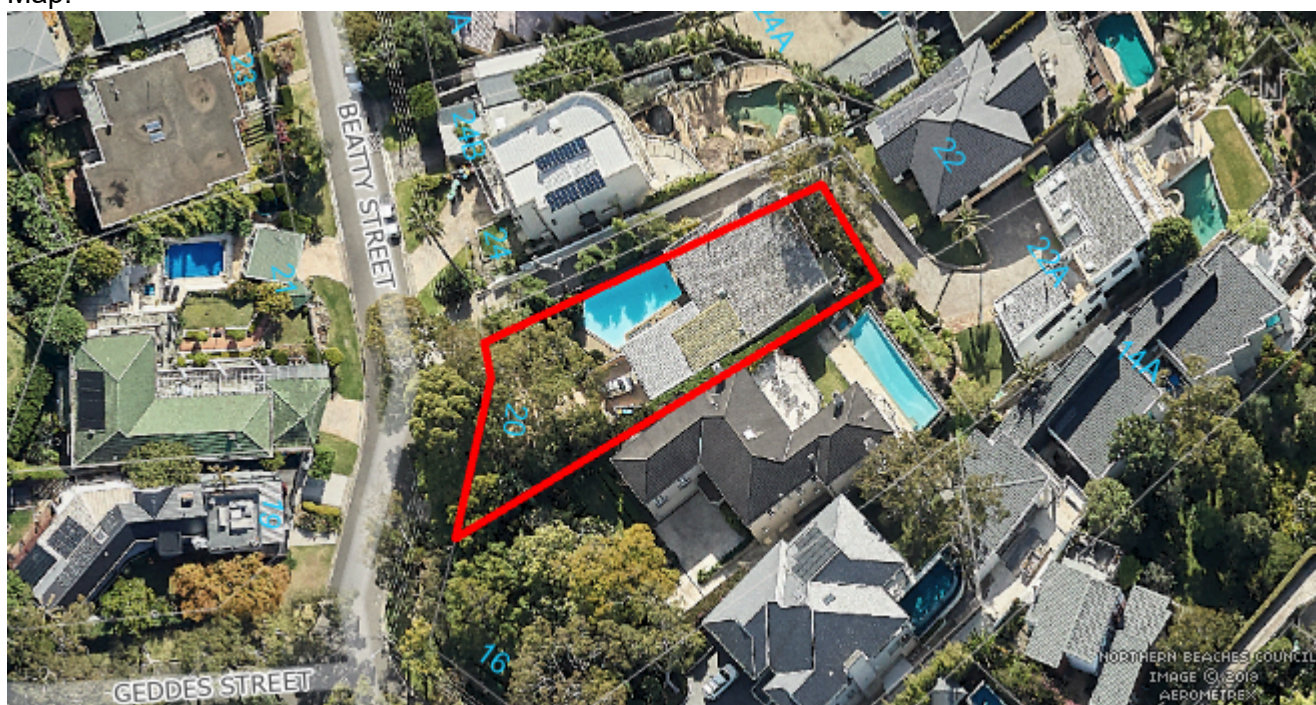
along Beatty Street and a depth of 59m. The site has a surveyed area of 846.5m².

The site is located within the R2 Low Density Residential zone and accommodates a dwelling house.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached 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	There are no current draft environmental planning instruments.

Section 4.15 Matters for Consideration	Comments
environmental planning instrument	
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&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&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&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to bulk and scale and privacy.</p> <p><u>Clause 61</u> of the EP&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&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&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&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 built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic</p>

Section 4.15 Matters for Consideration	Comments
	impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 08/10/2024 to 22/10/2024 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 3 submission/s from:

Name:	Address:
Mr Robert Semsarian	24 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Mr Victor Frank Hazir	22 A Beatty Street BALGOWLAH HEIGHTS NSW 2093
Ms Janet Ladlow Mr Geoffrey Alan Watkinson iObject	16 Beatty Street BALGOWLAH HEIGHTS NSW 2093

The following issues were raised in the submissions:

- **Height of Buildings and FSR non-compliance**
- **Bulk and scale**
- **DCP built form non-compliance**
- **Privacy**
- **Solar Access**
- **View loss**
- **On-site parking**
- **Scenic Protection**
- **Streetscape**

The above issues are addressed as follows:

- **Height of buildings and Floor Space Ratio non-compliance**

A number of submissions raised concerns with the height of the proposed development.

Comment:

As discussed in detail within this report under clause 4.6 of MLEP 2013, the application seeks consent for a variation to both the Height of buildings and FSR development standards. The application proposed a maximum height of 9.841m, representing of a 15.77% departure from the 8.5m control. The application also seeks a total FSR of 0.4:1 (338.6sqm), representing of a 13.8% departure from the 0.45:1 (385.6sqm) control. The non-compliant portion of the development does not result in any unreasonable impacts upon the amenity of adjoining properties and the height of the development as a whole is compatible with surrounding built form. The non-compliant height and FSR of the proposal is supported in this instance.

- **Bulk and scale**

Concern is raised in regards to the overall bulk of the dwelling house.

Comment:

This matter is discussed in detail throughout the report. In summary, the bulk and scale of the proposed development is satisfactory given the constraints of the site, the level of impact on adjoining properties and size and scale of neighbouring properties. The proposed built form non-compliance and resultant bulk and scale are appropriate in this residential context and satisfy the requirements and objectives of the MDCP 2013. All relevant provisions of MDCP 2013 have been assessed in this report, with the bulk and scale of the proposed dwelling house deemed satisfactory.

- **MDCP built form non-compliance**

Concern is raised in regards to general non-compliance with controls (Wall height, setbacks, storeys) under the MDCP 2013.

Comment:

This matter is addressed in detail elsewhere within this report (refer to the respective assessments in relation to 4.1 of Manly DCP 2013 section of this report). With specific regard to the MDCP 2013, Clause 4.15(3A) of the EP&A Act requires Council to be flexible in the application of DCP provisions and allow reasonable alternative solutions that achieve the objects of those standards dealing with that aspect of the development. As such, where the proposal does not achieve strict compliance with an aspect of the DCP, an assessment of the proposal against the objectives of the control has been undertaken.

- **Privacy**

Concern was raised about privacy impacts (acoustic and visual) from the proposed building particularly to outdoor living areas and living room windows of adjoining properties. A detailed assessment has been undertaken against the privacy provisions under Clause 3.4.2 of the

MDCP within this report. The proposal results in satisfactory privacy outcomes.

Comment:

A detailed assessment has been undertaken against the provisions of MDCP 2013 within this report. In summary, the proposal generally complies with the relevant provisions of MDCP 2013 where reasonable and adequate privacy is retained, subject to conditions.

- **Solar Access**

Comment:

The development does not unreasonably overshadow living room windows or private open space of adjoining properties, adequate sunlight is retained to neighbouring properties. The proposal complies with clause 3.4.1 of the MDCP 2013. This matter does not warrant the refusal of the application.

- **View Loss**

Concern was raised in regards to loss of views from private open space from the adjoining properties to the south.

Comment:

The proposal has been assessed against the view loss provisions under Clause 3.4.3 of the Manly DCP and the Land and Environment Court Planning Principle '*Tenacity Consulting Pty Ltd v Warringah Council* (2004) NSWLEC 140' in this report (refer to Cl. 3.4.3 Maintenance of Views under the MDCP 2013 section of this report). In summary, the proposed development does not cause unreasonable view loss to and from public and private open spaces.

- **On-site parking**

Concern is raised in regards to traffic and the potential loss of on-street parking due to

Comment:

The amended development proposal has reduced the driveway width to ensure adequate on-street parking is maintained, without compromising driveway access to the new development.

- **Scenic Protection**

Concern is raised regarding the visual impact of the proposal when viewed from surrounding vantage points.

Comment:

The proposal will not have any discernible impact when viewed from the foreshore (See full comments under Clause 6.9 of the MLEP 2013).

- **Streetscape**

Concern is raised regarding the visual impact of the proposal when viewed from street.

Comment:

With the exception of the proposed garage, the dwelling house complies with the front setback control. The scale of the development when viewed from the street/public open space is consistent with neighbouring residential development within the Beatty Street.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	<p><i>Supported, without conditions</i></p> <p>The applicant has provided additional information relating to a number of building elements associated with the proposal.</p> <p>With particular reference to the previous referral response by Environmental Health in relation to the potential inclusion of a solid fuel heater, the amended plans now note the following:</p> <p>"FIREPLACES NOTED TO BE GAS"</p> <p>Environmental Health has no objection to gas fireplaces</p> <p>Recommendation</p> <p>SUPPORTED - without conditions</p>
Landscape Officer	<p><i>Supported, with conditions</i></p> <p>Council's Landscape Referral section have considered the application against the Manly Local Environment Plan (MLEP), and the following Manly DCP 2013 (MDCP) controls (but not limited to): 3.3.1 Landscaping Design; 3.3.2 Preservation of Trees or Bushland Vegetation; 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable.</p> <p>An Arboricultural Impact Assessment (AIA) report is submitted and recommends removal of the following prescribed trees impacted by the proposed development: tree 14 and 15 (Camellia), 16 and 21 (Angophora) located within the property and should the proposed development be approved, it is noted that there is no design alternative for retention. Additionally tree 6 (Camphor Laurel) located within the road reserve shall be removed. Exempt species listed in the AIA are able to be managed or removed without Council consent, except for any located on common boundaries.</p> <p>All existing trees, except tree 6, within the road reserve (trees 1 to 5, 7 to 10, and 27) shall be retained and protected. All existing trees in proximity to the development works within adjoining residential properties shall be retained and protected. Within the development property, the following existing prescribed trees are listed for retention: 24, 28, 31 and 39, and conditions shall be imposed for protection.</p>

Internal Referral Body	Comments
	<p>The loss of both Angophora trees (16 and 21) shall be replaced within the front of the property in locations in proximity to the removed trees as this shall not hinder any existing views, that are not currently available with the existence of the two Angophora's, and conditions shall be imposed for tree replacement to accord to Manly DCP Schedule 4 - Part B - Native Tree Selection.</p> <p>The submitted Landscape Plan raises no concerns with Landscape Referral. On structure planting shall be supported by appropriately constructed planters and conditions shall be imposed.</p>
NECC (Bushland and Biodiversity)	<p>Supported, with conditions</p> <p>The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> SEPP (Resilience and Hazards) 2021 - Coastal Environment Area <p>The proposal has been submitted with an arboricultural impact assessment which has assessed the condition of a total of 47 trees. A total of 36 trees have been given a retention value of "Remove". A total of 4 prescribed trees (14, 15, 16 and 21) are proposed for removal from the site. Removal of prescribed trees 16 and 21 can be supported as no alternative designs are available, however, conditions will be recommended to ensure appropriate like for like tree replacements are considered.</p> <p>The submitted landscape plan includes a number of trees, shrubs and groundcovers. Amendments will be conditioned to ensure that species selection as well as the number of trees included are appropriate to compensate for the loss of prescribed trees. Additionally, species identified as weeds in the Northern Beaches Local Priority Weeds Management Plan and/or under the Biosecurity Act 2015 will have to be replaced with a suitable native alternative (i.e. <i>Raphiolepis indica</i>).</p> <p>The development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>
NECC (Coast and Catchments)	<p>Supported, with conditions</p> <p>This Development Application is to seek consent for demolition of the existing site structures and the construction of a new dwelling house with detached garage accommodation and a swimming pool.</p> <p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Resilience & Hazards) 2021, Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity &</p>

Internal Referral Body	Comments
	<p>Conservation) 2021 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Sydney Harbour catchment area. Hence, only Clause 2.12 of the SEPP R & H apply for this DA.</p> <p>Comment:</p> <p>On internal assessment, the DA satisfies requirements under clause 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021</p> <p>Foreshores & Waterways Area The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 6.3 of the Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 will apply in assessing this DA. Development consent, among others, must consider clause 6.28.</p>

Internal Referral Body	Comments
	<p>On internal assessment, it is determined that the relevant clauses of the Part 6.3 including the clause 6.28 have been followed.</p> <p>Manly LEP 2013 and Manly DCP</p> <p>Foreshores Scenic Protection Area Management</p> <p>The subject site is also shown to be as “Manly Foreshores Scenic Protection Area” on Council’s Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Boston Blyth Fleming Pty. Ltd. dated May 2024, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p> <p>As such, it is considered that the application does comply with the requirements of the Manly DCP 2013.</p>
NECC (Development Engineering)	<p><i>Supported, with conditions</i></p> <p>Amended plans with the deletion of the new access path and widening of the driveway has been reviewed. No objections to approval subject to conditions as recommended.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><i>Supported, with conditions</i></p> <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>

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 (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. 1746865S_03 dated 25 September 2024).

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

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	9.841m	15.77%	No
Floor Space Ratio	FSR: 0.4:1 (338.6sqm)	FSR: 0.45:1 (385.6sqm)	13.8%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone R2 Low Density Residential

Land use definition: MLEP 2013	Permitted or Prohibited
Dwelling House	Permitted with consent

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 proposed development is for residential purposes, being construction of a dwelling house.

It is considered that the development satisfies this objective.

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

Comment:

N/A

It is considered that the development satisfies this objective.

4.3 Height of buildings

Description of non-compliance

Clause 4.3 (2) stipulates that height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The subject site is located within Area 'I' of the Height of Buildings Map which has a maximum height of 8.5m.

The height of the proposed development has been measured at maximum height of 9.841m from existing ground level. This represents a variation of 15.77%.

Merit consideration

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

Comment:

The proposed building height and roof form are consistent with the topography and prevailing building heights and streetscape character. The vast majority of the proposed dwelling will be under the 8.5m requirement and the areas of height and wall non-compliance predominately relate to the rear of the site, where the site has been previously excavated. The roof form will be generally consistent with the existing building and surrounding, more modern development in the vicinity and the development will be below the ridge height of adjoining development.

b) To control the bulk and scale of buildings.

Comment:

The proposed development is well articulated and modulated such that the visual dominance of the built form is broken up as a result. As above, the dwelling is appropriately articulated using recessed and modulated walls, fenestration, balconies, eaves and planters to break up built form. Furthermore, the development incorporates a terraced style design that steps down with the slope of the land, which provides further visual relief. The proposal also includes sufficient open space landscape treatment, which in turn will contribute to the softening and screening of the development.

c) To minimise disruption to the following:

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

Comment:

The proposed breache will not unreasonably impact views to, from or between nearby residential development and public spaces, including the harbour and foreshores.

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

Comment:

The proposal will not cause excessive overshadowing of adjoining properties or the public domain. The development satisfies this objective.

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

Comment:

The development is not within a recreation or environmental protection zone.

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

4.4 Floor space ratio

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 (338.6sqm)
Proposed:	0.45:1 (385.6sqm)
Percentage variation to requirement:	13.8%

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

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

Comment:

The proposed development is articulated and modulated so as to break down the visual appearance of the built form. The subject site allows for a presentation of landscaping and vegetation that is complementary to the area. The proposal will not unreasonably impact upon the streetscape.

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

Comment:

No important landscape features within the close vicinity of the subject site will be unreasonably impacted by the proposed works. In regards to townscape features, there are no townscape features within the close vicinity of the subject site.

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

Comment:

The development overall is found to enhance the visual continuity of the existing character of the area and improve the aesthetics of the development on site. The proposed development will sit appropriately within the residential setting in a manner that is consistent with the character and landscape of the area.

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

Comment:

The solar impacts of this aspect of the development are minimal and acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces.

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:

N/A

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

4.6 Exceptions to development standards

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

Development standard: Clause 4.3 (Height of Buildings)

Requirement: 8.5m

Proposed: 9.841m

Percentage of variation: 15.77%

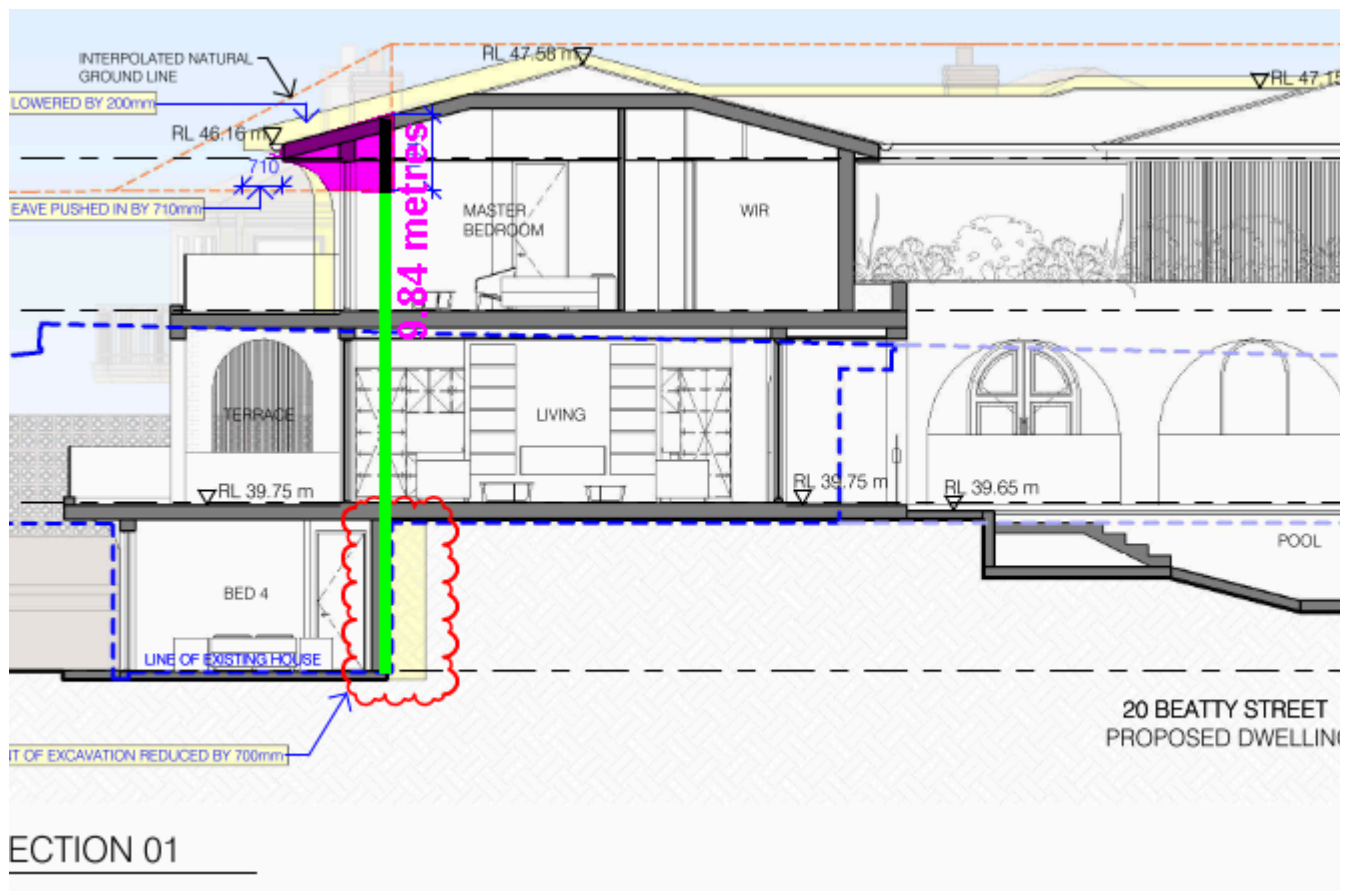


Figure 1: Section plan - Height of building variation in pink.

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is 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 4.3 (Height of Buildings) 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:

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 was considered by the Applicant. The Applicant relies on the 'First Way' test, arguing that the objectives of the standard are achieved notwithstanding non-compliance with the standard. The Applicant provides justification for the proposed development against each objective of the Height of Buildings development standard, arguments that are generally concurred with, including:

- The building height of the proposed development is consistent with that of surrounding development and development within the visual catchment of the site. The non-compliance occurs as a result of historical excavation in a minor area of the site, which is not representative of the topographic landscape of the locality. In this respect, it is noted that the proposed development is otherwise compliant with the height plane, excluding the anomaly of the ground plane created by the existing excavation.*
- The proposed development is well articulated with a bulk and scale that is commensurate with surrounding and nearby development. The development has been designed to step down the slope of the site and is responsive to the natural topography of the site. Non-compliance with the 8.5m height plane is limited to a minor portion of the development that does not contribute to excessive bulk and scale.*
- Having inspected the site and its immediate surrounds to identify potential view lines across the site I am satisfied that the building height breaching elements will not result in the disruption of public or private views to the extent that a view sharing outcome is not maintained. This objective is achieved notwithstanding the building height breaching elements proposed.*
- Notwithstanding the building height non-compliant element of the development compliant solar access is maintained to adjacent dwellings. This objective is achieved notwithstanding the building height breaching elements proposed.*
- The height of the proposed development does not result in any adverse impacts upon existing vegetation or topography. This objective is achieved notwithstanding the building height breaching elements proposed.*
- The proposal presents a compatible height and scale to the surrounding development and the articulation to the building facades and low pitch roof form will suitably distribute the bulk of the additional floor area.*

(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:

"Ground 1 - Topography of the land

The portion of the site over which the building height breach occurs is steeply sloping with the topography contributing towards the extent of the building height breach proposed.

Ground 2 - Contextually responsive building design

Despite non-compliance with the 8.5m building height development standard, the proposed development is consistent and compatible with the height of surrounding development. Council's acceptance of the proposed height variation will ensure the orderly and economic development of the site, in so far as it will ensure conformity with the scale and character established by other existing development within the visual catchment of the site, consistent with Objective 1.3(c) of the EP&A Act. The proposed development has been sensitively designed to respond to both the location of the site and also the form and massing of adjoining development. The building is of high design quality with the variation facilitating a height that provides for contextual built form compatibility, consistent with Objective 1.3(g) of the Act.

Ground 3 – Existing Excavation

*The proposed height breach is a direct consequence of existing excavation. As demonstrated on the Height Plane Diagram at Figure 3 on the following page, the proposed development is compliant with 8.5m height plane when measured to existing ground levels along the perimeter of the building and when the area of existing excavation is excluded. Consistent with the findings of Commissioner O'Neill in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, prior excavation within the building footprint that distorts the height of buildings development standard plane can be properly described as an environmental planning ground within the meaning of clause 4.6(3)(b) of the LEP.*

Overall, there are sufficient environmental planning grounds to justify contravening the development standard.

Planner's Comment:

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes good design and amenity of the built environment, noting that the proposed development will not unreasonably compromise the amenity of adjoining residential and other development within the immediate vicinity.
- The development promotes the proper construction and maintenance of buildings, in so far as the proposed new dwelling is a necessary upgrade of the ageing development.

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 of the breach of the building height development due to the existing site constraints and topography, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

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

Development standard: Clause 4.4 (Floor Space Ratio)

Requirement: 0.4:1 (338.6sqm)

Proposed: 0.45:1 (385.6sqm)

Percentage of variation: 13.8%

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is 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:

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 was considered by the Applicant. The Applicant relies on the 'First Way' test, arguing that the objectives of the standard are achieved notwithstanding non-compliance with the standard. The Applicant provides justification for the proposed development against each objective of the FSR development standard, arguments that are generally concurred with, including:

- *The proposed dwelling is set back between 10.534m and 26.042m from the splayed front boundary with the relatively wide road reserve at the frontage of the site occupied by dense landscaping with landscaping within the subject site also providing substantial screening to the proposed dwelling. In this regard, the proposed dwelling house will be screened to a significant extent as viewed from the street with the two storey form and setbacks proposed ensuring that it will not be perceived as inappropriate or jarring in streetscape contact.*
- *Having inspected the site and its immediate surrounds to identify potential view lines across the site I am satisfied that the building, by virtue of its density and bulk will not obscure important landscape and townscape features. This objective is achieved notwithstanding the FSR non-compliance proposed*
- *Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments, most observers would not find the proposed development offensive, jarring or unsympathetic in a streetscape context or as viewed from the adjoining properties. The proposed development is compatible with the existing streetscape and the character of the wider R2 Low Density Residential zone. Furthermore, despite non-compliance with the maximum FSR prescribed, the proposed development achieves consistency with the landscaped area controls of MDCP 2013, enabling the provision of a high-quality landscaped solution for the site.*
- *The proposed development does not result in any unreasonable impacts upon neighbouring properties with regards to overshadowing, visual or acoustic privacy. The proposed built form is highly articulated, by virtue of recessed elements, varied setbacks, differing materials and landscaping, and will not be overly dominant as seen from the street or adjoining properties. The non-compliant FSR does not detract from consistency with this objective.*

(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:

"Ground 1 – Superior architectural design

The apparent size of the proposed development will be compatible with dwellings in the visual catchment of the site, which features a number of buildings of significantly greater bulk and scale. The building is of exceptional design quality with the variation facilitating a floor space that provides for contextual built form compatibility, consistent with Objectives 1.3(c) and (g) of the Act.

There is no specific portion of the floor plan that can be pinpointed as attributing to the noncompliance, nor any area that warrants redesign or amendment due to impacts to adjoining dwellings.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments, most observers would not find the proposed development offensive, jarring or unsympathetic as seen from adjoining properties or as viewed from the waterway. The proposed development is compatible with other development in the visual catchment of the site, and the character of the wider R2 Low Density Residential zone.

Ground 2 – Established Precedence

As demonstrated in this request, Council has regularly approved variations to the floor space ratio development standard prescribed by MLEP 2013 along Bower Street involving variations to the floor space ratio development standard to differing degrees.

As established in SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112 and Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115, and as reinforced in HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021], adjacent development which also exceeds the floor space ratio control should be considered when determining desired future character.

With a floor space ratio of 0.45:1, the proposed development is entirely consistent and compatible with the bulk and scale of surrounding development, which seemingly range between 0.4:1 and 0.57:1.

Support of a variation generally consistent with recent development consents issued by Council within the sites visual catchment is consistent with Object 1(c) of the EP&A Act, in so far as it reflects the orderly development of the land and promotes consistency in Council's decision making process."

Planner's Comment:

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes the orderly and economic use and development of the land, in so far as the proposed development upgrades the useability of the existing dwelling and such building is an orderly response to the development of the site, thereby satisfying objects 1.3(c) of the EPA Act.
- The development promotes good design and amenity of the built environment, noting that the works will not contribute to any unreasonable impact on amenity considerations (i.e solar access, privacy and view loss) to neighbouring properties, thereby satisfying objects 1.3(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 FSR development standard is acceptable and it is reasonable that flexibility to the standard be applied. The surrounding area is predominantly characterised by two – three storey development.

6.2 Earthworks

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

Comment: The development was referred to the Aboriginal Heritage Office who provided comments and conditions that have been included in the consent.

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

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

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

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

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

6.4 Stormwater management

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and

Comment: The development will provide a suitable amount of permeable surfaces given the zoning of the land and the proposed use. In this regard, Council is satisfied that the design will maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water.

(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and

Comment: On-site stormwater retention has been incorporated into the development.

(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

Comment: The proposal has been assessed by Council's Development Engineers who have raised no objections to approval, subject to conditions. In this regard, Council is satisfied that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

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 proposed development will not have any unreasonable impact upon the streetscape. The proposed dwelling house is in keeping with the bulk and scale of development that is visible from the foreshore. The proposed development does not have a shadowing impact upon the foreshore. The dwelling house will not unreasonably compromise views from public realm.

6.12 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,*
- (b) the supply of electricity,*
- (c) the disposal and management of sewage,*
- (d) stormwater drainage or on-site conservation,*
- (e) suitable vehicular access.*

Comment:

All of the services listed above will be available for the development.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 846.5sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	North: 7.3m (based on gradient 1:7.5)	6.2m - 9m	23%	No
	South: 7.3m (based on gradient 1:7.5)	6.1m - 8m	4.2%	No
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	1.68m	-	Yes
	Pitch: maximum 35 degrees	15 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line/ 6m	Garage: 1.6m - 8.4m Dwelling: 19.8m	up to 74%	See comments below
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.06m - 3m (based on northern wall height)	Ground floor: 1m - 1.9m	up to 51%	No

		First Floor: 1m -2.1m		
	2.03m - 2.66m (based on southern wall height)	Ground floor: 1m First Floor: 1m - 2.5m	up to 51%	No
	Windows: 3m	1m - 2.5m	up to 66%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (507.9sqm) of site area	51.7% (437.8sqm)	13.8%	No
	Open space above ground 25% of total open space	109.45% (86sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% (175.12sqm) of open space	56% 246.5sqm	-	Yes
	3 native trees	3 trees (conditioned)	-	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	6.7m	8%	No
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	Ground level	-	Yes
	1m curtilage/1.5m water side/rear setback	1m, 2.8m	-	Yes
4.1.10 Fencing	1m or 1.5m with 30% transparency	Wall - 1.8m	80%	No
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	No	Yes
3.1.1 Streetscape (Residential areas)	No	Yes
3.3.1 Landscaping Design	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
3.6 Accessibility	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1.1 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
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

Description of non-compliance

The Manly DCP 2013 permits front fences to a maximum height of 1.5m where the area fence above 1m is 30% transparent. The proposed development includes a front boundary wall with a maximum height of 1.8m.

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

Comment:

The proposal includes the addition of a 1.8m masonry wall. The proposed height of the front fence in conjunction with the carport to the front of the dwelling house is not consistent with other development within the street. A condition of consent have been included in this recommendation to mitigate the visual impact of this development. The condition is as follows:

"The maximum fence height is not to exceed 1.5m from ground level on the street side of the fence.

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

Reason: To maintain consistency within the streetscape"

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

Comment:

Subject to condition of consent included above, the proposal will complement other development within the streetscape

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

Comment:

The proposed front fence is satisfactory in this circumstance

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

3.4.2 Privacy and Security

Concern is raised by the adjoining property to the south (No. 16 Beatty Street) regarding the visual and acoustic privacy impacts of the proposed development. Of particular concern is the first floor terrace.

Concern has also been raised with regards to the southern facing windows.

Merit consideration:

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

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

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

Comment:

Terrace

The proposed first floor terrace is located off the first floor bedroom and home office and orientated to

the rear (east) of the site. The terrace is setback 2.5m from the southern property boundary. From a view of what is visible from the existing dwelling it is evident there are some sight lines into the terrace and rear yard including swimming pool of the adjoining southern property. However, the sightlines are not the dominant views (which is directly to the rear of the subject site to the east) and inevitable given the sloping topography and residential use of the area. The expectation of complete privacy is not reasonable in this circumstance. Reasonable visual privacy is maintained between the subject site and neighbouring properties.

Having regard to noise, as noted above the terrace is located off a bedroom and study. The noise associated with the use of the terrace is not unreasonable in this residential setting.

Windows

Concern is raised in regards to the suitability of the windows at first floor level along southern elevation. The windows are located off the bedroom and home office to the rear of the first floor of the dwelling. The amended plan have deleted the home office window and increased the sill height to the bedroom window to 1.7m above finished floor level.

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

Comment:

The provision of a privacy screen on the southern elevation of the dwelling (ground floor) will not compromise significant view lines from the subject site or adjacent properties, nor will the screen exacerbate overshadowing towards the adjacent development.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development will allow for the passive surveillance of the street.

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

3.4.3 Maintenance of Views

As a result of the public exhibition of the development application Council received one submission (16 Beatty Street, Balgowlah Heights) raising view loss as a concern.



Image 1 - Location of objecting property (Red) and proximity to subject site.

Merit consideration:

The development is considered against the Objectives of the Control:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Comment:

The proposed development will result in a loss of district views from neighbouring properties. The loss of views is not unreasonable and will maintain adequate view sharing between properties.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council* (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment to Principle 1:

No. 16 Beatty Street, Balgowlah Heights

A view sharing analysis was undertaken from the adjoining property to the south of the subject site at (No. 16 Beatty Street, Balgowlah Heights). The nature of the view affected from this property would be skyline and district views. The views in question are not highly valued, having regard to this principle.

No. 16 Beatty Street, currently enjoys views over the rear property boundary of North Harbour, the ocean and the land water interface. These views are not impacted by the proposed development.

2. What part of the affected property are the views obtained

“The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic”.

Comment to Principle 2:

No. 16 Beatty Street, Balgowlah Heights

Views are obtained from the ground floor living rooms and terrace off the living room, first floor bedrooms, study and terrace. Views are taken over the side boundary.

3. Extent of impact

“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.

Comment to Principle 3:



Photo 1 - Ground floor terrace



Photo 2 - Ground floor living room



Photo 3 - First floor terrace



Photo 4 - First floor internal



Photo 5 - First floor terrace looking east

No. 16 Beatty Street, Balgowlah Heights

The internal rooms and terrace at ground and first floor levels will be impacted to a severe extent as a result of the proposed works. These areas are high use living areas, however, while there may be loss of district views as a result of the upper floor addition of the dwelling house, it is noted that views in question are not highly valued. Additionally the views are severely susceptible to any significant development on site. As noted previously, the primary views available from this property over the rear property boundary of North Harbour and the ocean are maintained in full.

4. Reasonableness of the proposal that is causing the impact

“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”

Comment to Principle 4:

In considering the totality of impact it is noted that the dwelling house is non-complaint with the Height of buildings and FSR development standards under MLEP 2013. While it acknowledged that district views will be highly impacted, the view in question is not deemed to be highly valued and is severely vulnerable to development on the subject site. Further, the current view to the rear of the property of North harbour, which is highly valued is retained in full. The total severity of impacts upon water views is not considered to be unreasonable. A more skillful design is not likely to be able to achieve the same development potential and amenity while reducing view impacts to neighbouring properties.

Given the above, it is considered that the proposal is acceptable and view sharing is achieved.

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

Comment:

The proposed works will not cause unreasonable loss of view. In regards to 'view creep' the proposal does not include any unreasonable bulk which could result in unreasonable future view loss.

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

4.1.3 Floor Space Ratio (FSR)

A detailed assessment of the FSR variation has been undertaken within the section of this report under Clause 4.4 of the Manly Local Environmental Plan 2013 (MLEP 2013). In summary, the applicant has adequately justified that compliance with the Clause 4.4 Floor Space Ratio Development Standard is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to contravene the development standard.

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

Description of non-compliance

Clause 4.1.4.2 of the MDCP requires development be setback at least one third of the adjoining wall height. The development proposes multiple variations to the numeric requirement at the ground and first floor along both the eastern and western elevations.

The clause requires the first floor western wall be setback 2.7m-3.1m at the highest point. The application proposes a setback of 1.1m - 2.7m, non-compliant with the numeric control. This represents a 60% variation to the numeric control.

The clause requires the first floor eastern wall be setback 2.7m-3.1m. The application proposes a setback of 1.2m - 2.7m non-compliant with the numeric control. This represents a variation up to 66%.

Clause 4.1.4.2 requires windows from habitable rooms of dwellings that face the side boundary to be setback at least 3m from side boundaries. The proposed window altered along the eastern setback 1.2m from the side property boundary, will be non-compliant with the numerical control.

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 proposal maintains the prevailing pattern of front setbacks in the street, with parking towards the

frontage and the front of the dwelling aligning with the prevailing line of neighbouring dwellings. The proposal also involves an area of landscaping between the garage and dwelling as well as landscaping in front of the garage structure. This ensures the proposal provides for appropriate spatial proportions and suitable landscape character.

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 proposal provides suitable design for privacy with suitable physical separation and screening (subject to conditions). The proposal also complies with the solar access provisions under the DCP and provides open corridors to surround the development to assist in the provision of equitable amenity.

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

Comment:

Flexibility to allow the numerical non-compliance with the setback controls is warranted given the complementary nature of the structure with the established character of the street, and the lack of unreasonable amenity impact including sufficient physical separation from neighbouring living spaces.

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:

Adequate planting is provided across the site.

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

Comment:

The subject site is not located in a bush fire zone.

Having regard to the above assessment, it is concluded that the proposed development is consistent

with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5.2 of the Manly DCP requires at 60% (507.9sqm) of the site be total open spaces.. The development proposes 51.7% (437.8sqm), non-compliant with the numeric control (13.8% variation).

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 application does not propose the removal of any important landscape features (Trees, plants or rock formations).

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 provides suitable landscape open space on site, compliant with the numeric control.

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

Comment:

Amenity considerations including sunlight, privacy and views have been suitably mitigated to a reasonable standard as part of this application, despite the non-compliance with the numeric control.

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

Comment:

The proposed development provides ample soft open spaces for the purpose of onsite water infiltration to minimise stormwater runoff.

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

Comment:

The proposal is not likely to lead to a significant spread of weeds.

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

Comment:

The development will not affect any existing wildlife habitat and potential for wildlife corridors.

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

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

Description of non-compliance

The proposed garage is 6.7m in width, 8% non compliance to the control requiring a maximum width of 6.2m.

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).

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 proposed development retains two parking spaces on the site in an accessible location, as required by Schedule 3 Part A1 of the Manly DCP. This is sufficient in supporting the vehicular access needs of the occupants of the site. In this way, the proposed development does not result in reliance on street parking.

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 garage is adequately setback from the front boundary line. The front boundary setback is clear of structures and will have adequate landscaping to minimise the visual impact of the development

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 proposal only requires a small amount of excavation for the garage and it is not expected to have

any adverse impacts on site stability or ground water flows.

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

Comment:

The vehicular crossing has appropriately minimised to maximise off-street parking.

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:

The proposal provides adequate landscaping within the front setback to provide screening of internal accesses from public views.

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:

N/A - the proposal is located within a residential zone.

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

4.1.10 Fencing

This clause relies upon the objectives of clause 3.1 under Manly DCP 2013. An assessment of the proposal against the objectives under clause 3.1 has been provided within this report. The assessment found the proposal to be consistent with the objectives of clause 3.1, subject to conditions.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2024.

A monetary contribution of \$21,273 is required for the provision of new and augmented public

infrastructure. The contribution is calculated as 1% of the total development cost of \$2,127,273.

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:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and 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.

PLANNING CONCLUSION

This proposal, for demolition works and construction of a dwelling house has been referred to the Development Determination Panel (DDP) as the application requests a greater than 10% variation to both the FSR and Height of Buildings development standards.

The concerns raised in the objections have been addressed and resolved by way of amended plans,

reducing the overall bulk and scale of the development.

The critical assessment issues included the assessment of the proposed variation of the FSR and Height of Buildings development standard, as well as assessment of amenity impacts on adjoining properties to the east and west of the subject site.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

REASON FOR DETERMINATION

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 4.3 Height of Building and 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 DA2024/0635 for Demolition works and construction of a dwelling house including a swimming pool on land at Lot 2 DP 554948, 20 Beatty Street, BALGOWLAH HEIGHTS, 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
A1012	E	Site Plan	BJB Architects	24 October 2024
A1021	E	Demolition Plan	BJB Architects	24 October 2024

A1022	E	Erosion and Sediment Control Plan	BJB Architects	24 October 2024
A1023	E	Excavation Plan	BJB Architects	24 October 2024
A1102a	E	Lower Ground Floor Plan - Front	BJB Architects	24 October 2024
A1101b	E	Lower Ground Floor Plan - Rear	BJB Architects	24 October 2024
A1102a	E	Upper Ground Floor Plan - Front	BJB Architects	24 October 2024
A1102b	E	Upper Ground Floor Plan - Rear	BJB Architects	24 October 2024
A1103a	E	First Floor Plan - Front	BJB Architects	24 October 2024
A1103b	E	First Floor Plan - Rear	BJB Architects	24 October 2024
A1104a	E	Roof Plan - Front	BJB Architects	24 October 2024
A1104b	E	Roof Plan - Rear	BJB Architects	24 October 2024
A1201	E	Sections	BJB Architects	24 October 2024
A1202	E	Sections	BJB Architects	24 October 2024
A1301	E	East and North Elevation	BJB Architects	24 October 2024
A1302	E	West and South Elevation	BJB Architects	24 October 2024
A1303	E	Streetscape Elevation	BJB Architects	24 October 2024
A1601	E	West Management Plan	BJB Architects	24 October 2024
L-02	B	Site Plans	Site Design and Studios	9 May 2024
L- 04	B	Existing Tree Plan	Site Design and Studios	9 May 2024
L-10	B	First Ground Floor Plan - Rear	Site Design and Studios	9 May 2024
L-11	B	Planting Details	Site Design and Studios	9 May 2024
1/C	-	Stormwater Management Plan	Taylor Consulting	9 May 2024

Approved Reports and Documentation	
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Document Title	Version Number	Prepared By	Date of Document
Arboricultural Report	-	Jacksons Nature Works	10 May 2024
Geotechnical Investigation Report	-	Core Geotech	21 April 2024
BASIX Certificate No. 1746865S_03	-	Integreco Consulting	25 September 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	N/A

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

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

3. Approved Land Use

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a **Dwelling House**, in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

dwelling house means a building containing only one dwelling

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

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

4. 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.

5. 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) Should any construction cranes be utilised on site, they are to be fitted with bird deterrents along the counterweight to discourage raptor (bird) nesting activity. Deterrents are to remain in place until cranes are dismantled. Selection of deterrent methods is to be undertaken in accordance with the recommendations of a suitably qualified ecologist.
- (p) 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

6. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$21,272.73 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 (as amended).

The monetary contribution is based on a development cost of \$2,127,273.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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

7. **Security Bond**

A bond (determined from cost of works) of \$10,000 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).

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. On Slab Landscape Works

Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over structures, upon which soil and planting is being provided. Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections. The following soil depths are required to support planting as proposed: 300mm for groundcovers, perennials, ornamental grasses.

Design certification shall be submitted to the Certifier by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and ensure waterproofing and drainage is installed.

9. No Clearing of Vegetation

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

10. Amendment of Landscape Plans

The submitted Landscape Plan is to be amended in accordance with the following:

- Inclusion of two *Angophora costata* trees to compensate for the loss of prescribed trees 16 and 21 as these are hollow bearing trees.
- Removal of all exempt species as identified on Council's website (<https://www.northernbeaches.nsw.gov.au/environment/trees/exempt-tree-species-list>) and replacement with a suitable native alternative
- Removal of all species identified as weeds on the Northern Beaches Local Priority Weed Management Plan and replacement with a suitable native alternative

- Removal of all species identified as weeds under the Biosecurity Act 2015 (i.e. *Muraya paniculata*) and replacement with a suitable native alternative

The Landscape Plan is to be amended by a qualified landscape architect and provided to the Certifier prior to issue of the Construction Certificate.

Reason: To maintain and replace habitat on the site.

11. On-Site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Taylor Consulting, drawing number Storm 1/C, Storm 2/A, dated 9/5/2024. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

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

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

12. Vehicle Crossings Application

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing maintaining existing width in accordance with Northern Beaches Council Standard Drawing Maximum High in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

A Council approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

13. 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 2.6 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.

14. Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of a Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

15. **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.

16. **Front Fence**

The maximum fence height is not to exceed 1.5m from ground level on the street side of the fence.

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

Reason: To maintain consistency within the streetscape

17. **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.

18. **External Finishes to Roof**

The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.43 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a reflective finish is not permitted.

Green roofs and areas where solar panels (PV) are installed are excluded from conforming to the SA range.

Details demonstrating compliance are to be submitted to the Certifier 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.

19. **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 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

20. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment. The Project Arborist shall be in attendance and supervise all demolition, excavation and construction works in proximity to existing trees retained, and works as nominated in section 4. Recommendations.

All tree protection measures specified must: be in place before work commences on the site; be maintained in good condition during the construction period; and remain in place for the duration of the construction works. The Project Arborist shall provide certification to the Certifier that all tree protection measures under AS4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note: Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

21. **Tree Removal Within the Property**

This consent approves the removal of existing prescribed trees on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:

- a) tree 14 and 15 (Camellia), 16 and 21 (Angophora),
- b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

22. **Tree Removal Within the Road Reserve**

This consent approves the removal of existing trees within the road reserve as identified in the Arboricultural Impact Assessment, or as listed below:

- a) tree 6,

b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Removal of the approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor, as engaged by the applicant. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services business unit prior to removal.

Reason: Public liability.

23. Pre-Construction Dilapidation Report

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Properties: Nos. 16, 22A, 24 Beatty Street, Balgowlah Heights

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

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

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

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

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

24. Installation and Maintenance of Sediment and Erosion Control

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

DURING BUILDING WORK

25. Protection of Rock and Sites of Significance

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works. Should any Aboriginal sites be

uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council (MLALC) are to be contacted.

Reason: Preservation of significant environmental features.

26. Protection of Existing Street Trees

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree(s) fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of AS4970-2009 Protection of trees on development sites. As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

All street trees within the road verge are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) is prohibited. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Reason: Street tree protection.

27. Tree and Vegetation Protection

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

- i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-

2009 Protection of trees on development sites,

ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,

xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

c) The arboricultural works listed in a) and b) are undertaken as complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment and/or Project Arborist as applicable.

Reason: Tree and vegetation protection.

28. Pre-clearance Survey

Any habitat for native wildlife (including tree hollows) approved for removal is to be inspected for native wildlife prior to its removal. If native wildlife is found within habitat to be removed, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Any incidents in which native wildlife are injured or killed as a result of works are to be recorded, in addition to details of any action taken in response.

Written evidence of compliance (including records of inspections and any wildlife incidents) is to be provided to the Principal Certifier prior to any Occupation Certificate.

Reason: To protect native wildlife.

29. Wildlife Protection

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

30. Protection of Habitat Features

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

31. 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.

32. Geotechnical Requirements

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

33. Demolition Works - Asbestos

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

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

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

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

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

34. 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 Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

35. Landscape Completion

Landscape works are to be implemented in accordance with the approved Landscape Plans, and inclusive of the following conditions:

a) landscape works are to be contained within the legal property boundaries,

b) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plans, unless otherwise imposed by conditions,

c) two (2) locally native trees selected from Manly DCP Schedule 4 - Part B - Native Tree Selection, to achieve at least 10 metres height at maturity shall be planted within the front of

the property in locations in proximity to the removed trees as this shall not hinder any existing views, that are not currently available with the existence of the two Angophora's; shall meet the requirements of Australian Standard AS2303 - Tree Stock for Landscape Use; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings and other trees or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,

d) the nominated *Raphiolepis indicaspecies* shall not be planted and shall be replaced with a non self-seeding species of similar size and form,

e) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,

f) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

Prior to the issue of an Occupation Certificate, details (from a landscape architect, landscape designer or qualified horticulturalist) shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

36. Condition of Retained Vegetation

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:

a) compliance to any Arborist recommendations for tree protection generally and during excavation works,

b) extent of damage sustained by vegetation as a result of the construction works,

c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

37. No Weeds Imported On To The Site

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

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

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

38. Post-Construction Dilapidation Report

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

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

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

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

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

39. **Geotechnical Certification Prior to Occupation Certificate**

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

The Applicant shall lodge the Legal Documents Authorisation Application with Council. The application shall include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan prepared by a registered surveyor), and Civil Engineers' certification.

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

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

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

41. **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 2.6 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

42. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plans and any conditions of consent.

The approved landscape area shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

43. **Control of Domestic Dogs/Cats**

Domestic dogs and cats are to be kept from entering wildlife habitat areas at all times.

Dogs and cats are to be kept in an enclosed area and/or inside the dwelling, or on a leash such that they cannot enter areas of wildlife habitat, bushland or foreshore unrestrained, on the site or on surrounding properties or reserves.

Reason: To protect native wildlife and habitat.

44. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

45. **Swimming Pool/Spa Motor Noise**

The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.