

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2021/1355
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<b>Responsible Officer:</b>	Penny Wood
<b>Land to be developed (Address):</b>	Lot 17 DP 9362, 143 Balgowlah Road BALGOWLAH NSW 2093
<b>Proposed Development:</b>	Demolition works and the construction of an attached dual occupancy development, including two (2) lot Torrens Title subdivision
<b>Zoning:</b>	Manly LEP2013 - Land zoned R1 General Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Pasa Saglam Nonie Rebecca Veness
<b>Applicant:</b>	Nonie Rebecca Veness

<b>Application Lodged:</b>	11/08/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - New multi unit
<b>Notified:</b>	18/08/2021 to 01/09/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	3
<b>Clause 4.6 Variation:</b>	4.1 Minimum subdivision lot size: 1.9%
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 584,234.00
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### PROPOSED DEVELOPMENT IN DETAIL

The subject application proposes the following works:

This proposal seeks approval for the demolition of the existing dwelling and construction of two (2) storey attached dual occupancy and Torrens title subdivision.

The proposal also seeks approval for the Torrens Title subdivision of one lot into two resulting in the following allotments:

Proposed Lot 1: 245.3m<sup>2</sup>

Proposed Lot 2: 245.2m<sup>2</sup>

The layout of each dwelling comprises the following:

Ground Floor:

Entry, laundry, WC, kitchen, dining and living room.

First Floor:

Four bedrooms (main with ensuite) and bathroom.

Each dwelling proposes one (1) single garage accessed from Balgowlah Road.

A new front fence is proposed along the street frontage. The fence is to be constructed of masonry and timber slats and measures 1.6m to 1.8m in height.

## ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.8 Waste Management

Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size

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

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

<b>Property Description:</b>	Lot 17 DP 9362 , 143 Balgowlah Road BALGOWLAH NSW
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	2093
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the southern side of Balgowlah Road.</p> <p>The site is regular in shape with a frontage of 12.19m along Balgowlah Road and a depth of 40.235m. The site has a surveyed area of 490.5m<sup>2</sup>.</p> <p>The site is located within the R1 General Residential zone from MLEP 2013 and accommodates a single dwelling and a detached garage/outbuilding in the rear south west corner of the site. Vehicular access to the site is via a concrete driveway located along the western side boundary.</p> <p>The site slopes gently from the rear boundary towards the street with a fall of approximately 1.8m.</p> <p>The site does not contain any significant vegetation, however the site has an established hedge around the street frontage running along the boundary. The street frontage consists of tall canopy trees within the road reserve along Balgowlah Road which are identified as local heritage items (13 Street Trees - Balgowlah Road)</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by single dwellings and some attached dwellings along Balgowlah Road.</p> <p>Immediately to the north east is Manly Golf Club. To the south is Manly West Public School and to the north west is a commercial/light industrial precinct consisting of cafes, Bunnings Warehouse, Harvey Norman and other businesses.</p>

Map:



## SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- **PLM2021/0050** - Meeting held on 18 March 2021 for Demolition works and construction of an attached dual occupancy
- **DA345/11** - Alterations and additions to an existing dwelling including conversion of first floor to a family flat. Approved 28 February 2012;
- **DA291/09** - Alterations and additions to an existing dwelling including a first floor addition. Approved 3 December 2009.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.

Section 4.15 Matters for Consideration	Comments
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 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 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 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> 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) <b>Social Impact</b></p>



Section 4.15 Matters for Consideration	Comments
	<p>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 18/08/2021 to 01/09/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Mr John Paul Gooley	141 A Balgowlah Road BALGOWLAH NSW 2093
Mr Alan Dennis Do Rozario	141 Balgowlah Road BALGOWLAH NSW 2093
Ms Bronwyn Janine Benson	145 Balgowlah Road BALGOWLAH NSW 2093

Three (3) submissions have been received in response to the proposed development. One (1) submission was received in support of the application, one (1) submission was received in opposition to the development with the third submission received was generally supportive of the development subject to privacy measures imposed on new windows (as discussed below). The following issues were raised in the submissions and each have been addressed below:

- Non-compliance with minimum lot size
- Overshadowing;
- Privacy and Security
- Intensification of the site

- Non-compliance with side setback control
- Stability of the site
- Parking
- Boundary encroachment

The matters raised within the submissions are addressed as follows:

- Non-compliance with minimum lot size requirement

Comment:

The development proposes to subdivide the site into two (2) lots. The minimum lot size as stipulated in the Manly LEP is 250sqm. The development proposes two (2) slightly undersized lots being 245.2sqm and 245.3sqm resulting in a variation of 1.9% to Clause 4.1 Minimum Subdivision Lot Size of the MLEP 2013. This non-compliance is supported by Council and is discussed in more detail under Clause 4.6 Exceptions to Development Standards in the body of the report.

- Overshadowing

Comment:

Concern has been raised by the neighbouring property to the west (145 Balgowlah Road). Shadow diagrams have been submitted with the application. Given the north-south orientation of the allotment the proposal ensures adjoining properties will receive the required amount of solar access.

- Privacy and Security

Comment:

Concern was raised from both properties along the eastern and western side boundaries of the subject site in relation to overlooking and loss of privacy as a result of the development. This is discussed in more detail under *Clause 3.4.2 Privacy and Security* within the body of the report.

- Intensification of the site

Comment:

The development proposes an attached dual occupancy comprising of 2 four bedroom dwellings. Whilst it is acknowledged, the development proposes to vary the lot size for each lot by 1.9%, this is considered minor and is not anticipated to have a detrimental impact on the amenity of the surrounding dwellings. The proposed development is largely compliant with the development controls and development standards stipulated within Council's MDCP and MLEP. The site will be in keeping with the subdivision pattern of the immediate vicinity and will not alter the existing car parking arrangement for the site.

- Stability of the site

Comment:

A Preliminary Geotechnical Report (Prepared by White Geotechnical Group on 29/4/21) was submitted with application which supports the proposed works. The report states that provided good engineering and building practice are followed no further Geotechnical assessment is recommended

- Parking

Comment:

Concern is raised with the number of parking spaces provided for the development. This is discussed in more detail within the body of the report under Clause 4.1.6 Parking, Vehicular

#### Access and Loading.

- Non-compliance with side setback control

Comment:

Concern is raised with the proposed ground floor setback of 900mm to the eastern and western side boundaries. This is discussed in more detail under Clause 4.1.4 Setbacks within the body of the report.

- Boundary encroachment

Comment:

Concern is raised with a possible boundary encroachment along the western elevation of an existing fence. A suitable condition is imposed for a Boundary Identification Survey to be prepared by a Registered Surveyor prior to the issue of a construction certificate to ensure all works approved are within the property boundaries of the subject site.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>This proposal seeks approval for the demolition of an existing dwelling and construction of an attached dual occupancy with Torrens title subdivision and associated landscaping and driveway crossover.</p> <p>Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to):</p> <ul style="list-style-type: none"> <li>• 3.3.1 Landscaping Design</li> <li>• 3.3.2 Preservation of Trees or Bushland Vegetation</li> <li>• 4.1.5 Open Space and Landscaping</li> </ul> <p>The Landscape Plan prevented by Conzept Landscape Architects is noted. The plans indicate new 2 trees planted on each site in addition to other shrubs and groundcovers. No trees are indicated for removal.</p> <p>No objections are raised to approval with regard to landscape issues subject to conditions as recommended.</p>
NECC (Development Engineering)	<p>The submitted stormwater design including OSD is satisfactory subject to amendments which have been conditioned. The proposed driveways are in accordance with Council's policy and specifications. The subdivision plan is satisfactory.</p> <p>No objection to approval, subject to conditions as recommended.</p>
NECC (Water Management)	<p>The proposal was assessed under the current creek and water management legislation framework, the relevant parts of the LEP, DCP and Protection of Waterways and Riparian Lands Policy . The supplied reports and plans were considered and assessed satisfactory.</p> <p>Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover reestablished.</p>



Internal Referral Body	Comments		
	Should the applicant demonstrate that this is achieved, the application can be supported, and on this basis conditions of consent are provided.		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	The proposal has been referred to Heritage as the subject property adjoins a heritage item		
	13 Street Trees - Balgowlah Road		
	Details of heritage items affected		
	Details of the item as contained within the Manly inventory is as follows:		
	Statement of significance:		
	Balgowlah Road East, Historical, early street tree planting indicating importance of road. (from Condamine Street to Manly Golf Club House).		
	Balgowlah Road West (Condamine Street to Hill Street). Aesthetic, part of 1930's street tree planting. Marks entrance to major road thoroughfare from Balgowlah to Queenscliff.		
	Physical description:		
	Araucaria heterophylla specimens planted in carriageway. Balgowlah Road West (Condamine Street to Hill Street) Avenue of Brush Box (Lophostemon Confertus) tree planting extending from intersection with Condamine Street to Hill Street, Balgowlah. Planting appears c. 1930's.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
Australian Heritage Register	No		
NSW State Heritage Register	No		
National Trust of Aust (NSW) Register	No		
RAIA Register of 20th Century Buildings of Significance	No		
Other	N/A		
Consideration of Application			
The proposal seeks consent for the demolition of the existing dwelling and the construction of two semi detached dwellings and subdivision. The existing street tree outside the property is proposed to be retained in the proposal. The heritage item covers the road reserve outside the property however the tree species			

Internal Referral Body	Comments
	<p>outside this property is not one of the species referred to in the listing.</p> <p>Heritage raises no objections to the proposal and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No          Has a CMP been provided? No          Is a Heritage Impact Statement required? No          Has a Heritage Impact Statement been provided? No</p> <p><b>Further Comments</b></p> <p>COMPLETED BY: Brendan Gavin, Principal Planner</p> <p>DATE: 21 August 2021</p>

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

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

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

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

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

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

### SEPP 55 - Remediation of Land

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

## SEPP (Infrastructure) 2007

### Ausgrid

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

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

### Comment:

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

## Manly Local Environmental Plan 2013

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

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	250m <sup>2</sup>	Lot 1: 245.3m <sup>2</sup>	1.9%	No
		Lot 2: 245.2m <sup>2</sup>	1.9%	No
Height of Buildings:	8.5m	8.1m	N/A	Yes
Floor Space Ratio	FSR: 0.6:1 (294.3m <sup>2</sup> )	FSR: 0.6:1 (293.5m <sup>2</sup> )	N/A	Yes

### Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes
2.7 Demolition requires development consent	Yes
4.1 Minimum subdivision lot size	No
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes

Clause	Compliance with Requirements
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

#### Detailed Assessment

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

##### Description of non-compliance:

Development standard:	Minimum Subdivision Lot Size
Requirement:	250sqm
Proposed:	Lot 1: 245.3sqm Lot 2: 245.2sqm
Percentage variation to requirement:	1.9%

##### Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

##### Clause 4.6 Exceptions to development standards:

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

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

*(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

##### Comment:

Clause 4.1 - Minimum subdivision lot size development standard is not expressly excluded from the operation of this clause.

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to*

*justify the contravention of the development standard by demonstrating:*

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

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

*(a) the consent authority is satisfied that:*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*(b) the concurrence of the Secretary has been obtained.*

**Clause 4.6 (4)(a)(i) (Justification) assessment:**

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

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

**Comment:**

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

**Comment:**

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

*'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'*

**s 1.3 of the EPA Act reads as follows:**

### 1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

- The proposal will result in lot sizes and dimensions which are able to accommodate development consistent with relevant development controls.
- The proposed allotment sizes are sufficient to provide a dwelling on each allotment that is of a useable/functional area and sufficient landscaping. This has been demonstrated with the dwelling designs and that the proposal complies with the landscaped area controls of the DCP.
- The proposal complies with the density provisions of the LEP.
- There are no constraints of the site that would require larger allotments. The proposal retains the tree within the road reserve, there is no loss of significant views and there no natural features of the site which are required to be retained.
- The site is well located in terms of public transport, being within close proximity of a number of bus stops. The site is also located in proximity to local facilities and services and the area is well serviced by pedestrian accessways.
- Other than the proposed non-compliant lot size the proposal is considered to result in development which is otherwise compliant with the requirements of the Manly Local Environmental Plan 2013 & Manly DCP, particularly in relation to building height, floor space ratio and landscaped area.
- The proposal will not result in any unreasonable impacts upon the amenity of the adjoining properties particularly in relation to visual and acoustic privacy or overshadowing as a result of the proposed lot size or the resultant development.
- The proposed subdivision will not result in any unreasonable arboricultural impacts. The proposal does not result the removal of any significant vegetation and ensures the retention of the existing street tree.
- The proposal will ensure that the resultant allotments reflect and reinforce the predominant subdivision pattern of the area. It is noted that the surrounding locality contains a number of similar attached dual occupancies that have been subdivided including No. 141/141A and No. 147/147A Balgowlah Road.
- It is submitted that the proposal will provide for a compatible form of subdivision and will present to the street in a manner consistent with the existing streetscape, noting that the proposal allows for the retention of all vegetation located within the frontage of the property.



Council has reviewed the points raised by the applicant in the written request under Clause 4.6. Council agrees with the points raised above in relation to the site being relatively free of constraints, located on a site with good solar access and being located in close proximity to essential infrastructure to meet the needs of future residents.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

**Clause 4.6 (4)(a)(ii) (Public Interest) assessment:**

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

**Comment:**

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Minimum Subdivision Lot Size development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

**Objectives of development standard**

The underlying objectives of the standard, pursuant to Clause 4.1 – 'Minimum subdivision lot size' of the MLEP 2013 are:

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

*(a) to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping.*

**Comment:**

The proposal provides for the retention of the existing subdivision pattern with regular shaped allotments with a street frontage to Balgowlah Road.

*(b) to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns.*

Comment:

The development and subdivision will retain lots with a frontage to Griffiths Street with dwellings that will provide for good passive surveillance and adequate opportunity for landscape planting to compliment the landscaped character of the street.

*(c) to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential.*

Comment:

The site does not have any significant site constraints that would impact views, natural features, significant vegetation or challenging topography

*(d) to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.*

Comment:

The site is well positioned adjacent to a bus route (and bus stop) along Balgowlah Road and nearby local shops in Balgowlah. The site is considered to be well positioned to accommodate an extra dwelling to make use of the existing local infrastructure.

## Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposed subdivision will provide for one additional dwelling for the community. The application has demonstrated that two dwellings can be accommodated on the site with high amenity to meet the housing needs.

It is considered that the development satisfies this objective.

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

Comment:

The proposal will allow for an attached dual occupancy which provides additional housing choice as an alternative to a detached dwelling house or apartment.

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:

Not applicable to this development.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Minimum Subdivision Lot Size Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

**Manly Development Control Plan**

Built Form Controls

<b>Built Form Controls - Site Area: 490.5sqm</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 250sqm	Lot 1: 245.3sqm Lot 2: 245.2sqm	1.9%	No
4.1.2.1 Wall Height	E: 6.7m (based on gradient 1:36)	5.5m	N/A	Yes
	W: 6.7m (based on gradient 1:28)	5.6m	N/A	Yes
4.1.2.2 Number of Storeys	2	2 Storeys	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	2.2m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	6.2m - Ground floor 5.4m - first floor balcony	N/A 11%	Yes No
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 1.83m (based on wall height)	900mm - Ground floor 1.6m - 2.25m - First Floor	50.9% 12.6%	No
	W: 1.86m (based on wall height)	900mm - Ground floor 1.6m - 2.25m - First Floor	51.7% 14%	No

	Windows: 3m	900mm 2.1m (east and west)	60%	No
4.1.4.4 Rear Setbacks	8m	12.2m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (269.77sqm)	55% 268.6sqm	N/A	Yes
	Open space above ground 25% of total open space (67.44sqm)	13.7%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (94.42sqm)	51.7% 139.7sqm	N/A	Yes
	1 tree per lot	2 trees per lot	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	88.2sqm per dwelling	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	55.7% / 6.8m	11.5%	No
Schedule 3 Parking and Access	Dwelling 2 spaces	1 spaces per dwelling	50%	Yes

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

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	No	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	No	Yes
4.1.1.2 Residential Land Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.8 Subdivision	Yes	Yes

### Detailed Assessment

#### **3.1.1 Streetscape (Residential areas)**

Clause 3.1.1.2 of the MDCP 2013 sets out the following requirements for front fences, which read as follows:

- a) Notwithstanding the maximum height provisions for fencing at paragraph 4.1.10; the siting, height and form of boundary fences and walls should reflect the fencing characteristic of the locality, particularly those of adjacent properties. All fencing and wall materials must be compatible with the overall landscape character and the general appearance of the building and the streetscape.*
- b) Boundary fences or walls must not be erected where they would conflict with the local character.*
- c) Front fences and gates must be constructed in materials that complement the architectural style and period of the dwelling and improve the streetscape. In particular, fencing adjacent to a public road or place must not be constructed in metal cladding, powder coated or otherwise.*
- d) Gates must not encroach on public land when opening or closing.*

#### Comment:

In response to the above criteria, a detailed assessment is carried out below:

- a) The height of the proposed fence contains a maximum height of 1.8m, which exceeds the 1m requirement specified within Clause 4.1.10 of the MDCP 2013. The fence comprises masonry walls and vertical timber battens, which is inconsistent with the predominant character of established fencing along the western side of Balgowlah Road. There are examples of masonry fences, however such fences comprise open/transparent materials or landscaping above 1m, which ultimately reduces the visual impacts of the fence. The existing landscaping located within the road reserve is not sufficient to alleviate the visual impacts of the 1.6 - 1.8m high fence. Furthermore, the site is a relatively busy road which would justify the variation to the maximum allowable height for privacy and acoustic

reasons. For these reasons, the fence is considered to be inconsistent with part a) of this control.

b) The 1.6m - 1.8m front fence with is inconsistent with the established local character along the southern side of the street, which comprises fencing with open/transparent materials or landscaping above 1m. Examples of solid masonry structures along the western side of the street do not generally exceed 1m - 1.2m in height. For these reasons, the fence is considered to be inconsistent with part b) of this control.

c) The application of transparent materials and a reduction in height is necessary to align with the established streetscape character. For these reasons, the fence is considered to be inconsistent with part c) of this control.

d) Conditions can be implemented to ensure the gate does not open or close over the front boundary. Based on the above assessment, it is concluded that the proposal does not satisfy the streetscape requirements for fences.

#### Merit consideration

With regard to the consideration of a variation, the proposal 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 1.6m to 1.8m fence is inconsistent with the existing streetscape character along the southern side of the street and does not satisfy the fencing requirements outlined within the MDCP 2013. To alleviate the visual impacts of the fence, a suitable condition has been included with this consent which requires the fence to be reduced to 1.60m in height and comprise at least 30% transparent/open materials above 1m in height. Subject to compliance with this condition, the proposal will meet this objective.

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

#### Comment:

The fence, as amended via condition, will be generally consistent with the established streetscape character along the southern side of Balgowlah Road.

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

#### Comment:

The front fence, as amended via condition, will be consistent with the established streetscape character and therefore, soft landscaping alternatives won't be necessary.

Having regard to the above assessment, it is concluded that the objectives of the control will be achieved, subject to the condition noted above.

### **3.4.2 Privacy and Security**

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

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

- *appropriate design for privacy (both acoustical and visual) including screening between closely*



- *spaced buildings; and*
  - *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

### Windows

The provisions of this development control prescribe that windows are to use narrow, translucent or obscured glass windows to maximise privacy where necessary and when located close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.

In plan, windows W23 (Bedroom 3), W24 (Bedroom 2) and W25 (bathroom) on the eastern elevation of the first floor are within 4.0m of the side boundary and appear to be located directly opposite windows of the adjoining neighbour to the east (141A Balgowlah Road). In order to minimise privacy impacts, it is recommended a condition be imposed for these windows to be fitted with obscured glazing 1.65m from the FFL or increase the sill height to 1.65m from the FFL so as to deflect viewing from the opposite window.

Given the identical layout of the dwellings and concern raised from the neighbouring property at 145 Balgowlah Road, it is reasonable to request a condition be imposed for these windows to be fitted with obscured glazing 1.65m from the FFL or increase the sill height to 1.65m from the FFL so as to deflect viewing from the opposite window and in turn protect the amenity of the adjoining properties.

All other windows along the eastern and western side elevations of the dwelling are appropriately offset and spatially separated to prevent overlooking between adjoining dwellings.

### Balcony

The proposal seeks to construct a first floor balcony across the southern (rear) elevation immediately adjacent to Bedroom 4 of both dwellings. The balcony would be located along the entire rear elevation and would measure 1.2m in depth. Concern was raised from the neighbouring property at No. 145 Balgowlah Rd in relation to possible overlooking towards the private open space in the rear yard as no privacy screening is proposed along the western side of the balcony. To ensure the amenity of the neighbouring properties is protected, a 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost eastern and western edge of the balcony located off bedroom 4 for both dwellings as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

Under these circumstances and with the imposition of appropriate conditions, the privacy impacts are considered to be reasonable within a residential environment.

## **3.8 Waste Management**

A detailed waste management plan has not been submitted with the application. To ensure proper disposal of demolition and builders' wastes, a condition has been included in the consent requiring details prior to the issue of a construction certificate.

### **4.1.1.1 Residential Density and Dwelling Size**

The proposal would result in 2 allotments which would be non-compliant with the numerical control of 250sqm site area. In this regard, the proposal provides 245.3sqm for Lot 1 and 245.2sqm for Lot 2.

### 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 promote a variety of dwelling types, allotment sizes and residential environments in Manly.*

Comment:

The proposal would result in two lots with two semi-detached dwellings which is an appropriate type of development for the residential environment. Notwithstanding non-compliance with lot sizing, the lot size is not out of character for the area.

*Objective 2) To limit the impact of residential development on existing vegetation, waterways, riparian land and the topography.*

Comment:

The proposal provides a compliant landscaped area in accordance with the Manly DCP as well as adequate front and rear setbacks to limit impact on existing vegetation and the topography. Subject to conditions, Council's Development Engineer and Landscape Officer have provided that the proposal is acceptable.

*Objective 3) To promote housing diversity and a variety of dwelling sizes to provide an acceptable level of internal amenity for new dwellings.*

Comment:

The proposal complies with the control for minimum internal areas under Clause 4.1.1.1(d). This ensures there would be an acceptable level of amenity.

*Objective 4) To maintain the character of the locality and streetscape.*

Comment:

The proposed subdivision pattern and setback to development is complementary to the streetscape. This includes a similar pattern of lot sizes, dwelling types and subdivision pattern either side of the property as well as across the road to the south-west.

*Objective 5) To maximise the use of existing infrastructure.*

Comment:

The proposal will maintain the use of existing infrastructure where appropriate, subject to conditions.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the objectives of this particular control and therefore, a variation to the residential density control is appropriate in this scenario.

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

The control requires development to be setback at least 1/3 of the adjacent maximum wall height from side boundaries. In applying this principle, the following side setbacks are required:

- Eastern boundary: 1.83m.
- Western boundary: 1.86m.

The application proposes a two (2) storey dual occupancy development with the following setbacks:

- Eastern boundary - Ground Floor: 900mm  
First Floor: 1.6m - 2.25m
- Western boundary - Ground Floor: 900mm  
First Floor: 1.6m - 2.25m

Furthermore, the control prescribes that Street Front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity or comply with the 6m setback to the front boundary. Whilst the works to the dwelling comply with the 6m front setback control, the development proposes a first floor balcony for each dwelling which measures 5.5m from the front boundary and therefore is not compliant.

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:

Despite the non-compliances, the proposed development presents a suitable response to the existing streetscape and desired spatial proportions of the street, street edge and landscape character of the street. The development complies with the required FSR and height controls, wall height and rear setback controls. Whilst the proposed setback of the ground floor to both the eastern and western side boundaries fails to comply with the required setback, the articulated facade at first floor along both the eastern and western boundaries provides visual relief to the design and reduces the bulk and scales of the development when viewed from Balgowlah Road and the adjoining properties. The non-compliance in relation to the first floor balcony to the front boundary does not detract from the existing streetscape character and provides articulation to the front facade of the development.

Whilst it is acknowledged the development proposes a variation to the minimum 250sqm lot size, the minor non-compliance is supported and it is argued that a compliant lot size would not have resulted in a better design.

*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 proposed development is well designed and sited so as to respond well to the privacy of the subject site and adjacent sites. The proposed works do not unreasonably impact upon access to light, sunshine and air movement for the subject site or adjacent sites, nor obstruct views to or from public or private places. The proposed development is acceptable in the streetscape as above at Objective 1. The proposed works do not impact upon traffic conditions.

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

Comment:

The proposed development allows for flexibility in the siting of works on the site, without resulting in any unreasonable amenity impacts to the subject site or adjacent sites.

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

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

Comment:

The proposed development complies with the required total open space and landscaped area requirements, thereby allowing for planting, deep soil and vegetation on the site. The subject site does not adjoin any open space lands, national parks, or bushland.

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

Comment:

The subject site is not classified as bush fire prone land.

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

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

Description of non-compliance

Clause 4.1.6.1 of the Manly DCP prescribes that the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent (6.095m) of the frontage, up to a maximum width of 6.2m. The development proposes two (2) single garages each with a width of 3.4m which results in a 9.6% variation the numeric control.

Clause 4.1.6.1 of the Manly DCP requires two (2) car spaces to be provided per dwelling. The single garages will only provide for 1 car parking space per dwelling. Car parking on the site is limited as a result of the narrow nature of the site and limited space forward of the dwelling.

Merit consideration:

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

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

Comment:

The proposed development will allow for one (1) space for each dwelling house. Whilst this falls short of the required two (2) parking spaces required for each dwelling, the development does not alter the existing parking arrangement for the site. The dimensions of the hardstand area forward of the single

garages will measure 2.5m x 6.4m which would not allow for additional parking given the landscaping provided adjacent to the driveways. The parking spaces are accessible for all residents.

Whilst the development is inconsistent with the provisions of this control in that the width of garages exceeds more than 50% of the frontage of the site, the compliant front setback which is also in keeping with the setbacks of the adjoining properties along Balgowlah Road and will not greatly alter the existing parking arrangement for the site.

*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:

Adequate on-site parking is provided for the residents. It is unreasonable to expect a small narrow site to provide for 2 car parking spaces for an attached dual occupancy without a visually dominant structure within the front setback. The development maintains a compliant setback to the front boundary which reduces the impact of the development on the streetscape. The provision of a singular car parking space for each dwelling on site is supported in this particular circumstance.

*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 parking arrangement is considered reasonable given its consistency with other neighbouring parking arrangements along Balgowlah Road. The proposal will not have a unreasonable impact on the streetscape given the compliant setback with the front setback control and adequate landscaping treatment within the front setback. Council's Development Engineer has reviewed the proposed development with respect to vehicular access and raised no objections, subject to conditions. Therefore, it is considered that the proposal will provide effective and safe parking on the site. The compliant front setback of both garages and sufficient landscaping will ensure the structure is not visually imposing within the streetscape.

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

Comment:

The proposed excavation is deemed reasonable. A preliminary geotechnical report was submitted with the application supporting the proposal.

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

Comment:

The development proposes two (2) driveway crossovers to access the single garages. Whilst the development proposes an additional crossover, Council's Development Engineer supports the works subject to conditions.

*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 additional driveway crossover will slightly reduce the landscaped open space area within the front setback however, overall the landscaped area will remain generously compliant over the site. Given the

narrow allotment and small size of the lots the continued provision of a car parking space for each dwelling is a reasonable outcome for the site.

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

Comment:

The subject site is not located within a established town centre noted within the Manly DCP.

Having regard to the above assessment, the proposed development is consistent with the objectives of this clause and is supported in this particular instance.

#### **4.1.10 Fencing**

The proposed 1.6m - 1.8m high fence exceeds the maximum allowable height for fences under clause 4.1.10. This control prescribes a 1m maximum height limit for solid fences along the front boundary.

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. However, as discussed within the section of this report relating to Clause 3.1 of the MDCP 2013, a condition has been included with this consent which requires the fence to be reduced to 1.6m in height. This will be a suitable outcome for the streetscape, despite the numeric non-compliance.

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2021**

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

A monetary contribution of \$5,842 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$584,234.

### **CONCLUSION**

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

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



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

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

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

That Northern Beaches Council as the consent authority vary clause 4.1 Minimum Subdivision Lot Size 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.

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

## RECOMMENDATION

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 4.1 Minimum Subdivision Lot Size 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.

Accordingly Council as the consent authority grant Development Consent to DA2021/1355 for Demolition works and the construction of an attached dual occupancy development, including two (2) lot Torrens Title subdivision on land at Lot 17 DP 9362, 143 Balgowlah Road, BALGOWLAH, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Dwg No 02 Rev 1 - Site Plan	19 July 2021	Scope Architects
Dwg No 03 Rev 1 - Ground Floor Plan	19 July 2021	Scope Architects
Dwg No 04 Rev 1 - First Floor Plan	19 July 2021	Scope Architects
Dwg No 05 Rev 1 - Elevations	19 July 2021	Scope Architects
Dwg No 06 Rev 1 - Elevations	19 July 2021	Scope Architects
Dwg No 07 Rev 1 - Section and Driveway Design	19 July 2021	Scope Architects
Dwg No 08 Rev 1 - Demolitions and Excavation Plan	19 July 2021	Scope Architects
Dwg No 09 Rev 1 - Subdivision Plan	19 July 2021	Scope Architects

<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Dwg No. SW01 - General Notes	11 May 2021	Approved Consulting Engineers
Dwg No. SW01 - Site Drainage Plan	11 May 2021	Approved Consulting Engineers
Dwg No. SW01 - Roof Drainage Plan	11 May 2021	Approved Consulting Engineers
Dwg No. SW01 - Details	11 May 2021	Approved Consulting Engineers
Dwg No. SW01 - Details	11 May 2021	Approved Consulting Engineers

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
BASIX Certificate No. 1206080M_02	6 July 2021	BASIX Certificate Centre

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

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

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Hardscape Plan	30 July 2021	Conzept Landscape Architects
Landscape Plan	30 July 2021	Conzept Landscape Architects
Details	30 July 2021	Conzept Landscape Architects

Specifications	30 July 2021	Conzept Landscape Architects
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In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

## 2. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (i) protect and support the adjoining premises from possible damage from the excavation, and

- (ii) where necessary, underpin the adjoining premises to prevent any such damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

### 3. **General Requirements**

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:
  - 7.00 am to 5.00 pm inclusive Monday to Friday,
  - 8.00 am to 1.00 pm inclusive on Saturday,
  - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative

change. The applicable fee at the time of payment of the Long Service Levy will apply.

- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by

Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

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

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

## **FEES / CHARGES / CONTRIBUTIONS**

### **4. Policy Controls**

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$5,842.34 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$584,234.00.

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

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

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

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

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

### **5. Security Bond**

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



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

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

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

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

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

### 6. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: Protection of the receiving environment.

### 7. **Stormwater Treatment Measures – Minor**

The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

### 8. **Amendments to the approved plans**

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

- The front fence, vehicular and pedestrian gates are to measure no more than 1.6 metres above the existing ground level at any point.
- At least 30 percent of the front fence or freestanding wall must be open/transparent for at least that part of the fence or freestanding wall higher than 1 metre above the existing ground level.
- The sill height of windows W13, W14, W23 and W24 are to be a minimum height of 1.65m above the finished floor level or to incorporate obscure glazing 1.65m measured from the finished floor level.
- A 1.65 metre privacy screen (measured from the finished floor level) is to be erected along the eastern and western edge of the First Floor balcony from bedroom 4 in both dwellings as shown on the approved plans. The privacy screens shall be of louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development or glass screens fitted with obscured glazing.

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

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

#### 9. **Boundary Identification Survey**

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

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

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

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

#### 10. **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 Policy and generally in accordance with the concept drainage plans prepared by Approved Consulting Engineers, drawing number 2021080 SW1, SW2, SW3, SW4 and SW5 dated 11/05/2021. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

1. The access grate over the orifice plate and overflow pipe for the OSD/RWT 1 and 2 must be located clear of the garage within the proposed driveway for ease of inspection and maintenance.
2. A grated drain 150 wide by 150 deep must be provided along the driveway intersection with the front boundary connected to the adjacent 450 square pit.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority 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.

**11. Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

**12. Vehicle Crossings Application**

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

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

Reason: To facilitate suitable vehicular access to private property.

**13. Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

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

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

## **CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE SUBDIVISION WORKS CERTIFICATE**

**14. Utilities Services**

Prior to the issue of the Subdivision Works Certificate, the Applicant is to obtain the following:

- (a) A letter from the utility provider confirming that satisfactory arrangements have been made for the approved development have been made; and
- (b) Evidence that notification has been received from a utility authority that, requirements for the development can be provided.

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

Reason: To ensure that services have been provided as required by this Consent.

## CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

### 15. 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 trees fronting the development site shall be protected by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings and in accordance with Section 4 of Australian Standard 4970-2009 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 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.

Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: Tree protection.

### 16. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected including:
  - i) all trees and vegetation within the site not indicated for removal on the approved plans, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
  - ii) all trees and vegetation located on adjoining properties,
  - iii) all road reserve trees and vegetation.
- b) Tree protection shall be undertaken as follows:
  - i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
  - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
  - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
  - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
  - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
  - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection

measures,

- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

- c) The arboricultural works listed in c) are undertaken and certified by an Arborist as compliant to the recommendations of the Arboricultural Impact Assessment.
- e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites do not occur within the tree protection zone of any tree and any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained on the site during the construction is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

**Note:** All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking or removal of any tree(s) is prohibited.

Reason: Tree and vegetation protection.

#### 17. **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.

#### 18. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing

Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

19. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

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

Reason: To demonstrate the proposal complies with the approved plans.

20. **Vehicle Crossings**

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

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

Reason: To facilitate suitable vehicular access to private property.

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

21. **Required Tree Planting**

a) Trees shall be planted in accordance with the following:

- i) 4 trees capable of attaining a minimum height of 5m at maturity; one tree to be located in the rear yard of each dwelling and one tree to be located in the front yard of each dwelling; minimum pot sizes 75 litre.

b) Native tree planting species may be selected from Council's list:

[www.northernbeaches.nsw.gov.au/environment/native-plants/native-plant-species-guide](http://www.northernbeaches.nsw.gov.au/environment/native-plants/native-plant-species-guide).

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

**Note: Please consider registering your new tree through the link below to be counted as part of the NSW State Government's 5 Million trees initiative**

<https://5milliontrees.nsw.gov.au/>



Reason: To maintain environmental amenity.

**22. House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: Proper identification of buildings.

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

**23. Maintenance of Stormwater Treatment Measures - Minor**

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

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

Reason: Protection of the receiving environment.

### **CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE**

**24. Positive Covenant for On-site Stormwater Detention**

A positive covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the final plan of subdivision and accompanying 88B instrument, requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements, which are available from Northern Beaches Council. Northern Beaches Council shall be nominated as the sole authority empowered to release, vary or modify such covenant. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure ongoing maintenance of the on-site detention system.

**25. Provision of Services for Subdivision**

The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan of subdivision. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure that utility services have been provided to the newly created lots.

**26. Restriction as to User (On-site Stormwater Detention)**

The Applicant shall create a restriction as to user (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument for the on-site stormwater detention system, restricting any alteration or additions to the system. The terms of such restriction are to be prepared to Council's standard requirements. Council shall be nominated as the party to release, vary or modify such restriction.

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

Reason: To ensure no modification to the on-site stormwater detention structure without Council's approval.

27. **Sydney Water Compliance Certification**

The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and fees to be paid. Please make early contact with the coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

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

28. **Easement for Drainage**

The Applicant shall create an easement for drainage (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all drainage infrastructure is located within the appropriate easement(s).

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

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

29. **Easement for Services**

The Applicant shall create an easement for services (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all utility services are located within the appropriate easement(s).

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

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

30. **Release of Subdivision Certificate**

The final plan of subdivision will not be issued by Council until the development has been completed in accordance with terms and conditions of the development consent.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing

Act 1919.

31. **Subdivision Certificate Application**

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, four copies of the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

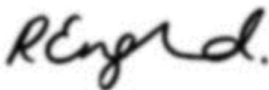
In signing this report, I declare that I do not have a Conflict of Interest.

**Signed**



**Penny Wood, Planner**

The application is determined on 12/01/2022, under the delegated authority of:



**Rebecca Englund, Acting Development Assessment Manager**