

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1563
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Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot 11 DP 9928, 76 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Alterations and Additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Victoria Suzanne Sherwood
Applicant:	Victoria Suzanne Sherwood

Application lodged:	20/09/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	26/09/2018 to 12/10/2018
Advertised:	Not Advertised
Submissions Received:	0
Recommendation:	Approval

Estimated Cost of Works:	\$ 616,000.00
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ASSESSMENT INTRODUCTION

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

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

- determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

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)

SITE DESCRIPTION

Property Description:	Lot 11 DP 9928 , 76 Woodland Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Woodland Street.</p> <p>The site is regular in shape with a frontage of 15.24m along Woodland Street and a depth of 53.95m. The site has a surveyed area of 822.0m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a three (3) storey residential dwelling.</p> <p>The site is located on a significant slope in the direction of west to east.</p> <p>The site has vegetation and shrubs in the front setback surrounding a large Jacaranda tree. There is also a small garden bed extending along the base of the front building wall with a large shrub on the corner. There is a small turfed area in the front setback. There is limited vegetation between the northern side boundary and existing dwelling. The rear setback has significantly protruding rocks with minimal vegetation. There is no turfed area, rather there is significant areas of mulch and dirt, large canopy trees and randomly planted small shrubs throughout. There is minimal vegetation between the pool coping and side boundary fence.</p> <p>A site visit was conducted on 7 November 2018.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by</p>

one (1) and two (2) storey residential dwelling houses.

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:

- D108/2017 - Development Application for tree removal.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development includes the following alterations and additions to a residential dwelling:

Garage and Studio

- Extend existing garage to provide additional car spaces in adjacent carport
- Extend studio below garage to provide a bathroom and large studio space
- Provide new stairs to the studio addition

Lower Floor

- Extend lower floor to provide rumpus room and bathroom
- Demolish and remove laundry
- New internal stairs

Ground Floor

- Renovations to entry bathroom
- Convert existing kitchen to the new laundry
- Convert existing dining room to the new kitchen
- Demolish deck and stairs to extend a meals room off the new kitchen
- New alfresco deck to be erected off lounge room and meals area
- New external stairs from alfresco deck

First Floor

- Provide a new robe and ensuite to the master bedroom
- Erect a balcony to the rear off the master bedroom
- Create new bathroom
- Create two (2) bedrooms

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	None applicable.
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&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&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&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The</p>

Section 4.15 Matters for Consideration'	Comments
	<p>Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&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&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&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) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic 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 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The landscape component of the proposal is acceptable. Council's Landscape section have assessed the application against the controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types.
NECC (Development Engineering)	Development Engineer has no objection to the application subject to the following condition of consent.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A319532 on 28 Juny 2018).

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.6m		No
Floor Space Ratio	0.45:1	0.24:1		Yes

Compliance Assessment

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

Requirement:	8.5 metres
Proposed:	8.6 metres
Is the planning control in question a development standard?	YES
If numerical enter a % variation to requirement	1.1%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 - Height of Buildings development standard has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* and an assessment of the request to vary the development standard in accordance with the requirements of Clause 4.6 is provided below:

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 4.3 Building Height 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.*

cl 4.6 (4)(a)(i) (Justification) assessment:

cl 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. The applicant's written request has demonstrated consistency with the objectives of the Building Height development standard as detailed below:

- Proposed development is a minor variation to the statutory height limit due to the topography of the land and original site structures.
- The proposed increase in height is at the rear of the property and will therefore have minimal impact on significant views and/or vistas from adjoining properties, privacy and overshadowing.
- The proposed development is generally consistent with the height and scale of new developments in the locality.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

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

The Applicant's written request has demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard, as detailed below:

- Compliance with the statutory height control is constrained by the siting of the existing excavated lower ground floor level and the sloping topography of the site.
- The design of the proposed development has taken into account the sloping topography of the site and has aimed to reduce the bulk of the development when viewed from either the street or neighbouring properties.
- The proposed development is consistent with the newer existing residential development in the locality. Development in the area reflects a variety of architectural designs, therefore the proposal will positively contribute to the streetscape.
- The extent to which the proposed new works are non-compliant with the statutory maximum height do not propose significant impacts in terms of view loss for neighbouring properties, loss of solar access or unreasonable bulk and scale.

In doing so, 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 building is of a good design and will protect the amenity of the surrounding built environment therefore satisfying cl 1.3(c)(g) of the EPA Act.

In this regard, the applicants written request has adequately demonstrated the 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).

cl 4.6 (4)(a)(ii) (Public Interest) assessment:

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

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

Comment:

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

Objectives of development standard

The underlying objectives of cl 4.3 Building height development standard are:

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

Comment:

The proposed development remains consistent with the topographic landscape, prevailing building

height and desired future streetscape character of the locality.

The development satisfies this objective.

(b) to control the bulk and scale of buildings,

Comment:

The minor increase in the Building Height development standard is located at the rear of the property and therefore does not have an impact on the bulk and scale of the building as viewed from public places.

The development satisfies this objective.

(c) to minimise disruption to the following:

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

(iii) views between public spaces (including the harbour and foreshores),

Comment:

The proposed development will not have any adverse impacts on the views obtained by the site or neighbouring residential developments.

The development satisfies this objective.

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

Comment:

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

The development satisfies this objective.

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

Comment:

Not applicable

Conclusion:

The proposed development satisfies the underlying objectives of the Height of Buildings development standard.

Zone objectives

The underlying objectives of the R1 General Residential zone

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

Comment:

The proposed development positively contributes to the housing needs of the community.

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

Comment:

The proposed development provides sufficient housing and density for the locality.

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

Comment:

Not applicable.

Conclusion:

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

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

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted. Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation to a numerical standard is not greater than 10%. Following the release of PS18- 003, Council received correspondence from a delegate of the Secretary which granted Council staff, for 12 months from 1 March 2018, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary the special height provisions standard by more than 10% via determination at the DDP.

As the development varies the development standard by less than 10% the concurrence of the Secretary is assumed.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 822.0m²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	N: 8m (based on gradient 1:4)	8.7m		No

	S: 8m (based on gradient 1:4)	7.5m		Yes
4.1.2.2 Number of Storeys	2	3		No
4.1.2.3 Roof Height	Height: 2.5m	0.2m		Yes
4.1.4.1 Street Front Setbacks	6m	Nil	100%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	1.6m (based on wall height) 2.7m (based on wall height)	1m 1.6m	37.5% 40%	No No
	Windows: 3m	1m 1.6m	66.7% 46.7%	No No
4.1.4.4 Rear Setbacks	8m	14.2m		Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	76.7%		Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	41%		Yes
	2 native trees	16 trees		Yes
4.1.5.3 Private Open Space	18sqm per dwelling	18sqm		Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.9m		Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces		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 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	No	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 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	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	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
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

3.4.2.2 Balconies and Terraces

The design and location of the proposed rear alfresco deck and associated stairs to the rear yard make it impractical to adhere to the requirement of architectural screening to minimise overlooking into nearby properties.

The two neighbouring properties that may likely be affected by overlooking are 78 Woodland Street and 78A Woodland Street. It should be noted that the main private open space of 78 Woodland Street appears to be in the front setback, therefore the proposed rear alfresco deck at 76 Woodland Street will not have an adverse impact on visual privacy. Additionally, the private open space at 78A Woodland Street is visually protected by the principle dwelling on the site and screen planting located along the boundary.

As both architectural and landscape screening are impractical and unnecessary at the site, it is considered that the location of the proposed rear alfresco deck is appropriate and consistent with the outcomes of the Clause and is therefore supported on merit.

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

Description of non-compliance

Clause 4.1.2.1 Wall Height requires development to be a maximum of 8 metres. However, the proposed wall height is 8.4 metres.

This Clause relies upon the objectives of Clause 4.3 under MLEP 2013. An assessment of the proposal

against the objectives of Clause 4.3 has been provided within this report. This assessment has found the proposal to be consistent with the objectives of Clause 4.3.

Clause 4.1.2.2 Number of Storeys requires a maximum of 2 storeys. The site is non-compliant as it is currently 3 storeys, however this is due to the significant slope of the site.

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

Comment: the proposed development is consistent with the topographic landscape of the site and surrounding residential developments.

Objective 1(b) to control the bulk and scale of buildings

Comment: the majority of the proposed development will occur at the rear of the dwelling, therefore the bulk and scale of the building will be minimised from the street view.

Objective 1(c) to minimise disruption to the following:

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

Comment: the proposed development will not have any adverse impacts on the views currently obtained by the site or neighbouring residential properties.

Objective 1(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings

Comment: the proposed development provides acceptable sunlight access to public and private open spaces of the site, as well as private open spaces and habitable rooms of neighbouring dwellings.

Objective 1(e) to ensure the height and bulk of any proposed building or structure in recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment: the proposed development will occur at the rear of the dwelling, therefore the height and bulk of the development will not have an adverse impact on vegetation and the topography of the site.

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

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

Description of non-compliance

4.1.4.1 Street front setback requires a minimum distance of 6 metres.

The carport and associated studio have a nil front setback.

4.1.4.2 Side setback requirements are to be one third of the wall height.

Northern side boundary requirement: 1.6 metre

Proposed: 1 metre

Southern side boundary: 2.7 metre side setback requirement

Proposed: 1.69 metres

Both side setbacks are non-compliant. Furthermore, the proposed installation of three (3) windows on the northern and southern walls will be within the 3 metre minimum requirement setback, therefore it is non-compliant with the numerical control.

Merit consideration:

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

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

Comment: The proposed open carport will maintain the existing streetscape. The proposed studio beneath the carport will not have an impact on the streetscape and character of the locality as it cannot be viewed from the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment: The installation of windows on the northern and southern walls will have minimal privacy impacts to adjoining properties. Furthermore, these windows will provide access to natural light, sunshine and air movement as well as facilitating view sharing. Access along the side boundaries to the rear yard will be maintained, therefore providing a degree of safety for the residents. The proposed open carport will maintain adequate levels of visibility to Woodland Street.

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

Comment: While the side setbacks are numerically non-compliant, access to the rear of the property between the building wall and side boundary line is still maintained. The proposed carport will reduce on-street parking along Woodland Street and provide safe and convenient parking for the residents.

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 includes significant planting in both the front and rear setbacks, thus contributing to, and enhancing, the natural features of the site. Furthermore, the majority of the proposed development will occur over the existing building footprint, therefore not detracting from the natural elements of the site and surrounding bushlands. The proposed development satisfactorily meets the provisions of SEPP 19 - Bushland in Urban Areas.

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

Comment: The site is not within bushfire prone land, therefore this objective is not applicable to the proposed development.

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

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

Description of non-compliance

Clause 4.1.6.4 requires vehicular access to allow vehicles to enter and leave the site in a forward direction. Due to site constraints, vehicles cannot enter and leave the site in a forward facing direction.

Merit Consideration

It is unrealistic for vehicles to both enter and exit the site in a forward direction due to site constraints which do not allow for the turning motion of vehicles. The design and location of the proposed carport is consistent with the objectives of 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) Clause in the Manly DCP in the following ways:

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

Comment: The proposed carport will provide safe and secure off-street parking for the residents of 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: The site currently has limited off-street parking, therefore the addition of one (1) car space onsite will allow for a reduced demand for on-street parking.

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

Comment: The location and design of the carport and associated driveway will be consistent with the streetscape of Woodland Street which is lined with single and double garages and carports along the front boundary line. Furthermore, the carport will provide safe and convenient parking for the residents of the site.

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 carport is not expected to include excavation therefore avoiding site instability and any interruption to ground water flows.

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

Comment: The proposed development includes a 6.1 metre driveway width and one (1) footpath crossing, which is consistent with the requirements of Clause 4.1.6.1 (c). Furthermore, the location of the driveway will not decrease on-street parking along Woodland Street as the proposed location is situated in a 'no parking' zone.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Manly Section 94 Development Contributions Plan

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1563 for Alterations and Additions to a dwelling house on land at Lot 11 DP 9928, 76 Woodland Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA02	February 2018	Downes Design Plus Pty Ltd
DA05	February 2018	Downes Design Plus Pty Ltd
DA06	February 2018	Downes Design Plus Pty Ltd
DA07	February 2018	Downes Design Plus Pty Ltd
DA08	February 2018	Downes Design Plus Pty Ltd
DA09	February 2018	Downes Design Plus Pty Ltd
DA10	February 2018	Downes Design Plus Pty Ltd
DA11-A	November	Downes Design Plus Pty

	2018	Ltd
DA16	February 2018	Downes Design Plus Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate A319532	28 June 2018	Downes Design Plus Pty Ltd

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
1 - Issue A	24 July 2018	Banksia Design Group
2 - Issue A	12 July 2018	Banksia Design Group
3 - issue A	24 July 2018	Banksia Design Group
4 - Issue A	24 July 2018	Banksia Design Group
5 - Issue A	24 July 2018	Banksia Design Group

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Northern Beaches Council Waste Management Plan	23 July 2018	Victoria Sherwood

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 (Demolition):**

(a) 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 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
- (ii) 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.

(b) 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.

(c) 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.

Reason: Legislative Requirement (DACPLB09)

3. **General requirements (Demolition):**

(a) Unless authorised by Council:

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) At all times after the submission a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. The consent shall be available for perusal of any Authorised Officer.

(c) 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.

(d) 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.

(e) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

(i) 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.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

FEES / CHARGES / CONTRIBUTIONS

4. 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 to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

5. Stormwater Disposal

Stormwater shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003.

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

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

6. **Vehicle Crossings Application**

A Driveway Levels and Formwork Inspections Application shall be made with Council subject to the payment of the fee in accordance with Council's Fees and Charges. The fee includes all Council inspections relating to the driveway construction and must be paid.

Approval of the application by Council is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

7. **Compliance with standards (Demolition):**

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 Council prior to the commencement of demolition works.

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

8. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted. As per the materials, finishes and colours report provided the Colorbond 'Basalt' is to be used for the roof colour.

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

9. **Road Reserve**

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety.

10. **Vehicle Crossings**

The provision of one vehicle crossing 4 metres wide at kerb and 6 metres wide at boundary in accordance with Northern Beaches Council Drawing No A4-3330/5 EL and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

11. Tree and vegetation protection

A) Existing trees and vegetation shall be retained as follows:

- i) all trees and vegetation within the site not impacted by development and nominated on the Landscape Plan for retention, excluding exempt trees under the relevant planning instruments of legislation,
- ii) all other trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

B) Tree protection shall be undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4,
- ii) any tree roots exposed during excavation with a diameter greater than 50mm within the TPZ must be assessed by an Arborist. Details including photographic evidence of works undertaken shall be submitted by an AQF Level 5 Arborist to the Certifying Authority,
- iii) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- iv) no tree roots greater than 50mm diameter are to be cut from protected trees unless authorized by the Project Arborist on site,
- v) all structures are to bridge tree roots greater than 50mm diameter unless directed by a AQF Level 5 Arborist on site,
- vi) should either or both iv) and v) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures provided. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying

Authority.

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

12. Protection of rock and sites of significance

All rock outcrops and ledges, and any associated vegetation, outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Reason: preservation of significant environmental features.

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

13. Landscape works

a) Landscaping is to be implemented in accordance with the Landscape Plans prepared by Banksia Design Group, drawings 1 to 5 inclusive, issue A, and inclusive of the following requirement:

i) all tree planting shall be installed at 75 litre pot size,

b) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the landscape plan and inclusive of any conditions of consent.

Reason: to ensure that the landscape treatments are installed to provide landscape amenity.

14. Stormwater Disposal

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

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

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

15. Landscape maintenance

All landscape components are to be maintained for the life of the development. A maintenance program is to be established. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components and species to maintain the landscape theme and be generally in accordance with the Landscape Plan.

Reason: to maintain local environmental amenity and ensure landscaping continues to soften the built form.

16. Environmental and priority weed control

All weeds are to be removed and controlled in accordance with the Biodiversity Conservation Act 2016.

Reason: preservation of environmental amenity.


17. Use of premises

The dwelling is to be solely used as a single dwelling. The area identified as the studio on the ground floor plan (sheet no. DA05) is not to include any cooking facilities. The studio and the

associated area is not to be used for the purposes of separate accommodation/habitation.

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

Signed



Megan Surtees, Planner

The application is determined on 14/01/2019, under the delegated authority of:



Matthew Edmonds, Manager Development Assessments