

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1769
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Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot 15 DP 4449, 13 Baltic Street FAIRLIGHT NSW 2094
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Lachlan Charles Hudson Baker

Application Lodged:	15/01/2025
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	27/01/2025 to 10/02/2025
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 12.9% 4.4 Floor space ratio: 12.73%
Recommendation:	Approval

Estimated Cost of Works:	\$ 737,326.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house.

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

No submissions were received.

Critical assessment issues included height of buildings, FSR, setbacks, landscaping open space, parking and fencing. These issues have been addressed within the assessment report.

The 4.6 request for the non-compliance with FSR standard arises from a 27.5m² increase in floorspace. The site is required to have a maximum FSR of 0.6:1 (201m²). The proposed development

exceeds this by 26m² or 0.676:1. The additional floorspace does not increase the bulk or scale of the building as the additional gross floor space is located in the sub-floor area and on level 2 with the enclosure of a entry and slight increase to the living room area.

The Clause 4.6 request for the non-compliance with height standard arises from the alteration to the roof over the north facing level 2 terrace, which results in a 12.35% variation. The proposal maintains the height of the existing roof.

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

PROPOSED DEVELOPMENT IN DETAIL

The application seeks approval for alterations and additions to a dwelling house. The works include the following:

- Demolition Works.

Lower Ground Floor/Garage (Alterations and Additions):

- Double car garage with bin and bicycle storage areas,
- Rumpus with under stair storage area,
- Stairs,
- Existing subterranean space.

Ground Floor (Alterations and Additions):

- Entry,
- Living,
- Dining,
- Stairs,
- Kitchen and pantry,
- Family room,
- Powder room,
- Laundry.

First Floor (Alterations and Additions):

- Hallway,
- WC,
- Study,
- Bath,
- Stairs,
- Bed 1 with ensuite,
- Bed 2 with WIR,
- Bed 3.

External Works:

- New driveway and crossover,
- New front entrance and stairwell,
- Covered ground floor terrace at the front of the property addressing Baltic Street,
- New awning over rear ground floor deck area,
- First floor terrace area,
- New front boundary fencing,
- Planters, retaining walls and associated landscaping works.

A Development Application has also been lodged and is currently under assessment for the adjoining property at no. 15 Baltic Street, Fairlight for Demolition and the construction of a new dwelling. No. 15 Baltic Street is owned by the same owner as the subject site and has been lodged with Council by the same applicant.

Planner's Note:

The application, as lodged, was inconsistent with the requirement of the MLEP and MDCP in regards to the setbacks to front and side boundary. The applicant was requested to provide amended plans and information that satisfied Council's concerns.

The applicant submitted amended plans that addressed Council's concerns.

In accordance with Council's Community Participating Plan, the application was not re-notified as it was reducing the environmental impact.

The application was assessed based on the amended plans by Mont Architects submitted to Council in April 2025.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

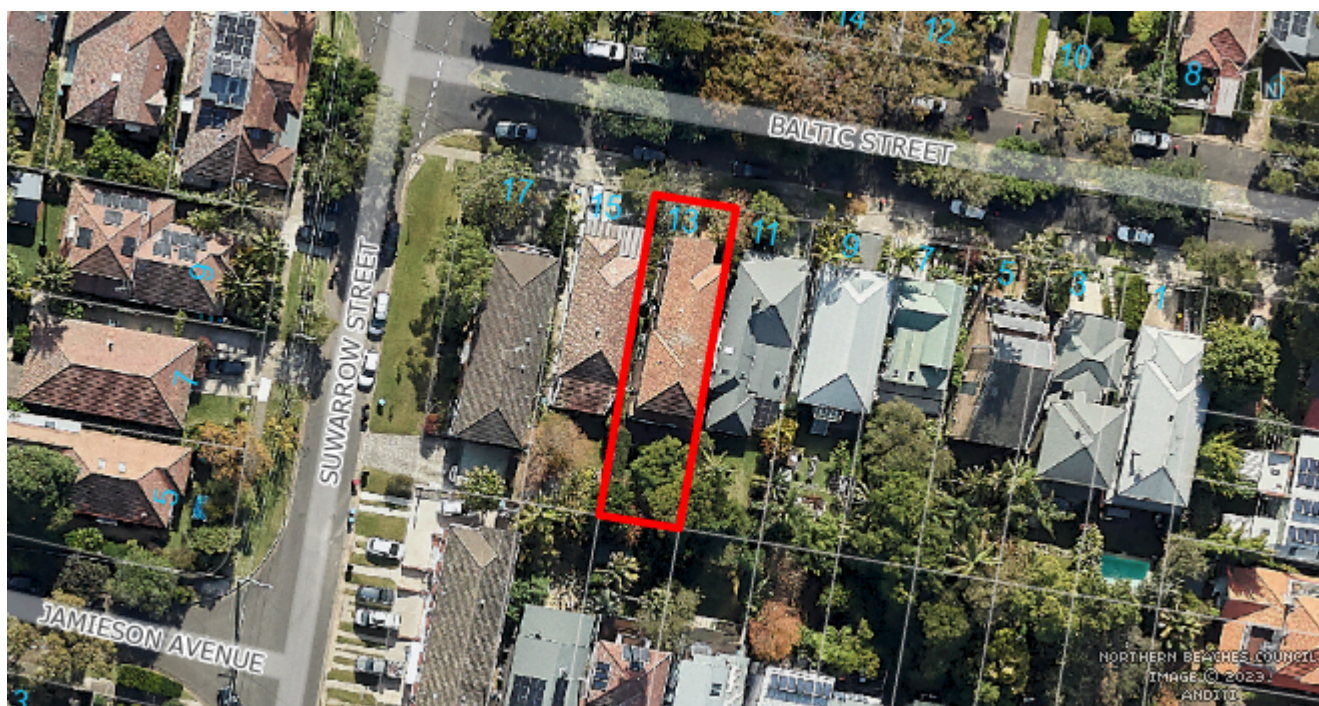
Manly Local Environmental Plan 2013 - Zone R1 General Residential

Manly Local Environmental Plan 2013 - 4.3 Height of buildings
 Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 15 DP 4449 , 13 Baltic Street FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of one allotment located on the southern side of Baltic Street, Fairlight.</p> <p>The site is regular in shape with a frontage of 9.1m along Baltic Street and a depth of 36.51m. The site has a surveyed area of 333.8m².</p> <p>The site is located within the R1 General Residential zone and accommodates a two/three storey dwelling with attached garage and sub floor below.</p> <p>The site slopes down from the rear boundary to the front boundary. The site has a slope of approximately 10 degrees.</p> <p>The site has lawn area and garden beds at the rear with trees and shrubs along the boundaries. There are no threatened species on the site.</p> <p>Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by variety of property types and sizes ranging from two-three storey dwelling houses and residential flat buildings.</p> <p>Site Inspection A site inspection was undertaken 19 February 2025.</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:

Development Application: 0445/00

Demolish existing and Construct New Dwelling
Determined - 20/12/2000

PLM2023/0058

Development Application Pre-Lodgement Meeting for a double carport within the front boundary setback.
Meeting held - 2 June 2023

PLM2022/0202

Development Application Pre-Lodgement Meeting for Alterations and additions to a dwelling house including a garage within the front boundary setback.
Meeting held - 28 November 2022

Both of the pre-lodgment meetings were for garages/carports within the front boundary setback. The current proposal is for a garage beneath the existing dwelling which retains the existing setback to the front boundary. This is considered a more desirable outcome to having carparking which takes up the whole frontage of the site.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to the built form controls.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 27/01/2025 to 10/02/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	<p><i>Supported, subject to conditions</i></p> <p>The proposed development is for alteration and additions to the existing dwelling house with a new garage. A new vehicular access is to be constructed.</p> <p>No Development Engineering objection is raised to the proposed development subject to conditions.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council

Policies have been considered in the merit assessment of this application.

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A1777084 dated 11 December 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.55m	12.35%	No
Floor Space Ratio	FSR: 0.6:41	FSR: 0.67:1	12.73%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone R1 General Residential

The underlying objectives of the R1 General Residential zone:

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

Comment:

The proposed works retain the residential use of the site.

It is considered that the development satisfies this objective.

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

Comment:

The proposal provides additional rooms to accommodate varying housing needs of a residential dwelling.

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. The proposed alterations and additions retains the residential use of the site.

It is considered that the development satisfies this objective.

4.3 Height of buildings

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.6m
Percentage variation to requirement:	12.9%

4.3 Height of buildings

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

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

Comment:

The proposed building height and roof form are consistent with the topography. the existing building height and streetscape character. The proposed alterations and additions will be retaining the established roof height of the building. The roof form will be generally consistent with the existing building and surrounding, development in the vicinity. The dwelling is appropriately articulated using recessed and modulated walls, fenestration, balconies and eaves to break up built form.

b) to control the bulk and scale of buildings,

Comment:

The proposed dwelling house is acceptable with respect to the proposed variation to the Height of buildings development standard and all built form controls under the MDCP, including setbacks and wall heights. Additionally, the proposed development includes acceptable total open space and landscaped area. This demonstrates the dwelling is of a bulk and scale anticipated for the subject site by the controls, and that the footprint of the dwelling is not excessive.

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 is designed and sited so as not to result in any unreasonable view loss to or from public or private land.

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 is acceptable with respect to the requirements of Clauses 3.4.1 Sunlight Access and Overshadowing and 3.4.2 Privacy and Security of the MDCP, as detailed in the relevant sections of this report.

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

Comment:

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

4.4 Floor space ratio

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.676 to 1
Proposed:	0.6 to 1
Percentage variation to requirement:	12.73%

4.4 Floor space ratio

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

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

Comment:

The proposed development, despite its non-compliance with a number of built form controls, is of a bulk and scale consistent and compatible with surrounding developments.

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

Comment:

The proposed development is designed and sited so as not to obscure any important landscape and townscape features.

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

Comment:

The works demonstrate a suitable balance between the existing built form and landscape character of the locality.

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

Comment:

The proposed works do not result in any unreasonable environmental impact, and do not impact

upon enjoyment or use of adjoining land.

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. The subject site is zoned as R1 General Residential.

4.6 Exceptions to development standards

(i) BUILDING HEIGHT

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

Development standard: 4.3 Height of Buildings

Requirement: 8.5m

Proposed: 9.6m

Percentage of variation: 12.35%

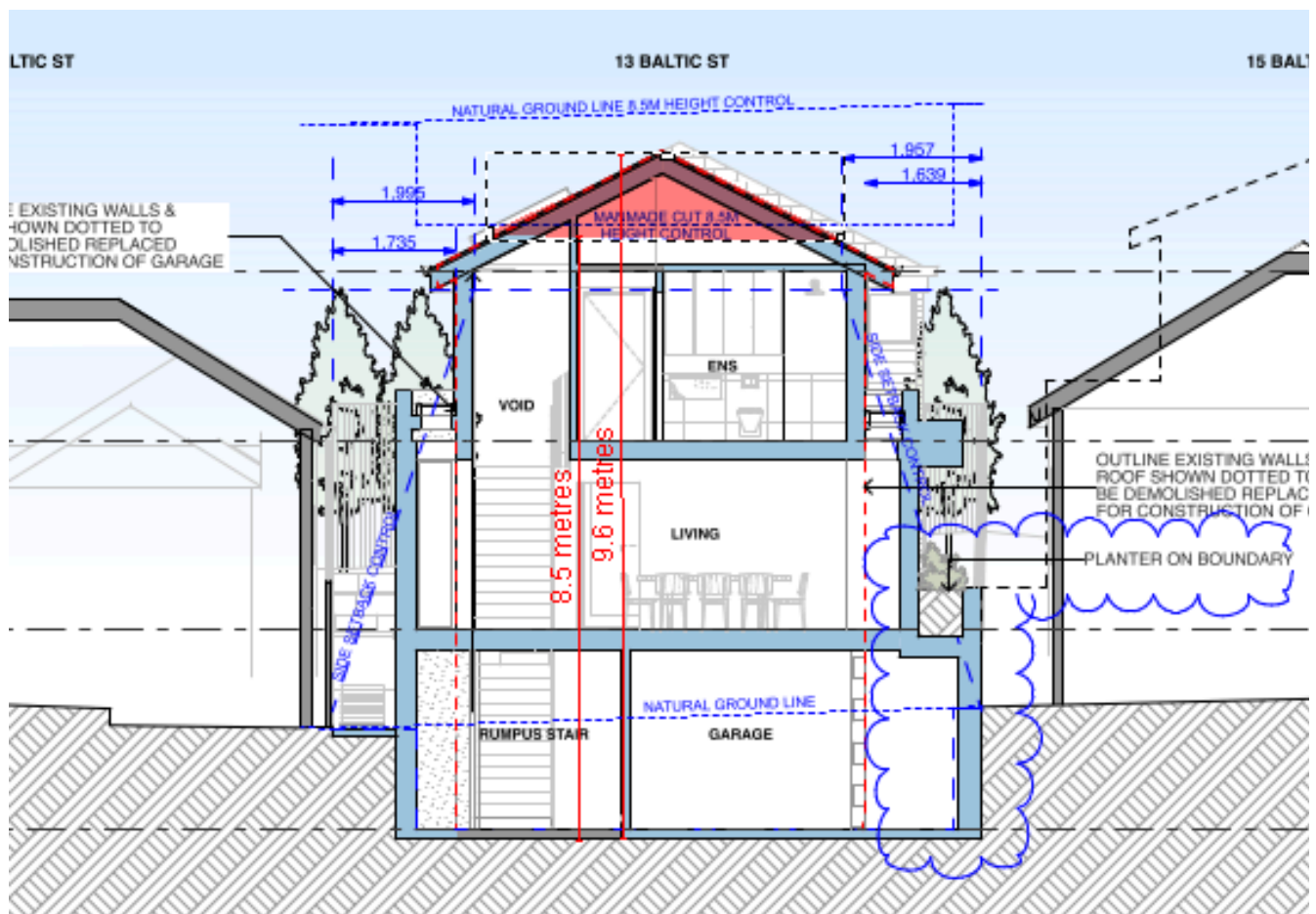


Image 1: Building height non-compliance shaded in red.

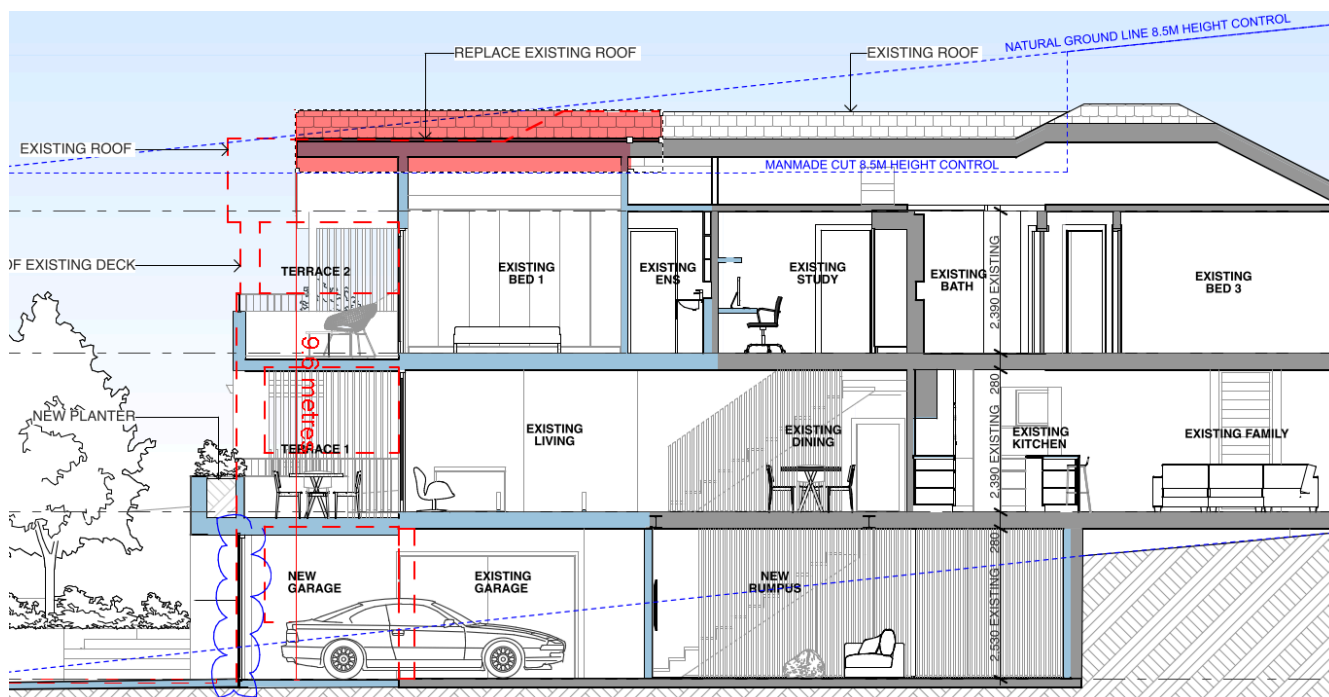


Image 2: Building height non-compliance shaded in red.

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

Clause 4.3 Height of Buildings is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

(3) *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*
 (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 Height of

Buildings is unreasonable or unnecessary in the circumstances of this application for the following reasons:

'Despite the variation to the Height of Building control which occurs as a result of the topography of the land, the proposed development is considered to be in keeping with the desired future character of the locality. The proposal has been strategically designed to minimise the impact and bulk and scale of the project. The project designer has worked tirelessly to design through alterations and additions a modern high-end development that meet the sites constraints and the existing bulk and scale of the area; therefore, the proposal will not result in any unreasonable visual impact on the Baltic Street streetscape.

The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing. Therefore, this written submission is considered to be compliant with the Statutory Provisions prescribed both under MLEP2013 and the provisions of Clause 4.6 which permit a variation to a development standard. It is noted it is consistent with the approval granted through the case Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582 is that the distorted height plane creates reasonable environmental planning ground that justifies the contravention of the height standard.

In determining the building heights of the development, it is important to understand the definitions of building height and ground level (existing) and also relevant case law from the NSW Land and Environmental Court.

The court now considers the definition of "ground level (existing)" Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582, which insists that the ground level (existing) is measured from the excavated ground level (within the footprint of the existing building) to the highest point of the proposal directly above. It is noted that the Court accepted (at [74]) that there is an 'environmental planning ground' that may justify the contravention of the height standard under 'clause 4.6' when the prior excavation of the site (within the footprint of the existing building) distorts the maximum building height plane. This falls hand in hand with the original leading cases Bettar v Council of the City of Sydney [2014] NSWLEC 1070 and Stamford Property Services Pty Ltd v City of Sydney & Anor [2015] NSWLEC 1189.

It is noted that common-sense should prevail from the new court case "Merman Investments Pty Ltd" with the fact that many height planes are now going to be distorted creating an argument which goes hand in hand with the original court cases relating to the extrapolated levels of a site through 'Bettar'. As a result of the above, it is determined that the maximum building above ground level (existing) is 9.55m for the proposed development. This results in a 1.05m variation or 12.35%. The Development Application is supported by a Clause 4.6 Variation to Development Standard report. The proposed breach relates to the front component of the dwelling and a portion where the excavated ground level distorts the height plane.

It is noted that the building height flows from 5.41m at the rear of the site to the maximum 9.55m which is consistent with the topography of the southern side of Baltic Street. It is noted that the breach is the result of the sloping nature of the site, several existing man-made level changes which distort the existing ground level and the existing man-made changes. If the natural ground level was applied, the proposed variation would be consistent with other approvals granted in the area. It is noted that if the natural ground level was applied, the proposal would achieve compliance with the 8.5m building height control for the majority of the building footprint. Regardless, the natural topography of the site makes compliance with the building height impractical, and therefore unreasonable for Council to enforce. The bulk and scale and three storey appearance of the southern side of Baltic Street is also retained.'

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

standard.

Comment:

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

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

The Clause 4.6 Request argues, in part:

'There are sufficient environmental planning grounds to justify contravening the development standard. Whilst there is no requirement that the development comply with the objectives set out in clause 4.6(1) it is relevant to note that objective (b) provides:

"to achieve better outcomes for and from development by allowing flexibility in particular circumstances."

It should be noted at the outset that in *Initial Action* the Court held that it is incorrect to hold that the lack of adverse impact on adjoining properties is not a sufficient ground justifying the development contravening the development standard when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse impacts.

'There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. From a planning perspective, there is sufficient grounds to justify the variation to the height of buildings development standard for the following reasons:

1. *Historical excavation and site disturbance*
2. *Topography of the site*
3. *Characterisation of the development*
4. *Streetscape Appearance*

- *The sites topography and existing man-made excavation distorts the height plane for the site. If the natural ground level was taken, the proposal would substantially comply with the building height control (as per the existing building height retained and above the 8.5m allowance).*
- *The proposed development responds to the existing and desired future character of the locality. Furthermore, the subject proposed dwelling through alterations and additions retains the building footprint and in majority the height existing on the site. It's our opinion that the proposal will integrate into the existing streetscape and pattern of development within Baltic Street.*
- *The development does not result in any unnecessary or undue bulk or visual impacts on adjoining properties and is of a scale that is compatible with the existing and surrounding buildings. The streetscape analysis completed within the Statement of Environmental Effects notes numerous recent approvals with a variation to the building height and properties three storeys in height.*
- *The amenity impacts to neighbouring residential properties, arising from the non-compliant building height, is negligible. Adjoining properties will continue to receive suitable solar access,*

privacy impacts are suitably minimised, and views are reasonably maintained.

- *The building height breach is minor (when assessed from the natural ground level) and would relate to only a small portion of the proposed development only, which will largely be indiscernible when viewed from Baltic Street.*
- *The proposal is consistent with the stance Council has taken on developments within Fairlight noting numerous approvals granted for variations to the building height control for the following developments:*
 - *DA2024/0040 – 18 Wattle Avenue Fairlight – 8.8% variation*
 - *DA2024/0864 – 4 Jamieson Avenue Fairlight – 7% variation*
 - *MOD2024/0155 – 9 Francis Street Fairlight – 15.3% variation*
 - *DA2023/1583 - 38 Francis Street Fairlight – 17.4% variation*

Having regard to Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, and further to the proposal's consistency with the above strategic and statutory environmental planning provisions, the proposal is consistent with the following objectives under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):

- (c) to promote the orderly and economic use and development of land; and*
- (g) to promote good design and amenity of the built environment,*

1. *In response to (c), the proposal will facilitate the orderly and economic use and development of the land in a manner that is desired by the planning controls because it will facilitate the renovated dwelling consistent with approvals in the immediate area. In considering the contrary (refusal of the DA), retention of the building in its current form would not promote the orderly and economic use and development of land in the manner that council's strategic and statutory planning provisions seek. Retention of the building in its current form makes no advancement towards achieving the goal of creating functional development opportunities.*
2. *In response to (g) the proposal has been designed to promote good design and amenity of the built environment, with a consistent built form retained for Baltic Street as per recent approvals.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.'

Planner's Comment:

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

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

Public Interest:

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

Conclusion:

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

It is considered on balance, that having regard to the particular circumstances of the breach of the building height development due to the existing site constraints and topography, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

(ii) FLOOR SPACE RATIO

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

Development standard: Clause 4.4 Floor Space Ratio

Requirement: 0.6:1

Proposed: 0.67:1

Percentage of variation: 12.73%



Image 3: Existing and proposed FSR.

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

Subclause (1) of this clause provides that:

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

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

Comment:

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

Subclause (2) of this clause provides that:

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

Comment:

Clause 4.4 Floor Space Ratio is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

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

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

Comment:

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

'In determining a merits-based assessment for the floor space ratio of the development due consideration has been given to the above objectives and the planning principles set by the Land and Environment Court of NSW, Planning Principle – floor space ratio (*Salanitro-Chafei V Ashfield Council* (2005) NSWLEC 366) and *Project Venture Developments v Pittwater Council* (2005) NSW LEC 91).

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the FSR of the site should be assessed on a greater numerical figure, noting the sites constraints and the unique nature of the locality in a varying degree of development types. Given the proposed application is in our opinion minor and consistent with similar approvals granted in the area, Council's assessment should be focused on this numerical allowance as opposed to the variation to the specific standard. By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for the existing residential development.

The proposal is consistent with the objectives of Clause 4.4, as outlined below:

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

The development proposes alterations and additions to create a functional dwelling for the occupants of the dwelling through design changes. It is important to note that the additional floor space for majority relates to existing space within the building footprint on the lower ground/garage floor (Level 1). In this regard, the additional 15.29sqm of GFA to the lower ground/garage level (Level 1) will be indistinguishable from the streetscape and can be supported. To assist it is noted that the GFA increases to Level 2 and Level 3 are functional changes being 5.03sqm to Level 2 and 7.25sqm to Level 3. The apparent bulk and scale of the dwelling will be negligibly impacted, from the existing approved dwelling and the new refurbishment works will ensure a positive contribution to the streetscape.

The surrounding area varies in size, bulk and scale, ranging from two to three storeys in height and varying setbacks. It is our considered opinion that the proposal is consistent with the intent and approvals granted in the area, therefore confirming that the proposal is consistent with the prevailing

bulk and scale and the future streetscape of the locality.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, I have formed the considered opinion that most observers would not find the bulk and scale of the proposed development, as viewed from Baltic Street, to be offensive, jarring or unsympathetic in a streetscape context. This objective is satisfied, notwithstanding the non-compliant FSR proposed, as the bulk and scale of development is consistent with the existing and desired streetscape character.

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

The development will result in a built form and massing that is of a consistent scale to the existing dwelling and surrounding properties. The development will not obscure any important landscape or townscape features and will not result in any view loss impacts. The proposal integrates new functional landscaping zones to the site. The proposal is of a density and bulk applicable to the site and landscaping within backyard. The proposal retains the existing street trees within the road verge which assists in retaining important landscape features of Baltic Street. It is therefore considered this objective is met, despite the numerical variation.

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

The proposal enhances the existing visual relationship acknowledging the existing parameters of the dwelling that are not functional or usable for the occupants. The proposal has been designed to the character of the area while creating its own "image" and "identity" for the area. The proposal integrates existing landscaping with new functional elements which provides an enhanced dwelling which flows and is usable both inside and out.

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

In responding to this objective, I have adopted views, privacy, solar access and visual amenity as environmental factors which contribute to the use and enjoyment of adjoining public and private land.

The proposed alterations and additions will not result in any impacts on the use or enjoyment of neighbouring properties or the public areas adjoining the site. It is my professional opinion that the proposal provides a functional building for the new occupants which ensures the amenity and privacy of adjoining properties is maintained.

Privacy - *Given the spatial separation maintained between the balance of surrounding properties, and the primary orientation of living areas for the site, I am satisfied that the design, although non-compliant with the FSR standard, minimises adverse environmental impacts in terms of privacy and therefore achieves this objective.*

Solar access - *The accompanying shadow diagrams demonstrate that the building, although non-compliant with the FSR standard, will not give rise to any unacceptable shadowing impact to the existing living room and open space areas of the adjoining properties at 11 and 15 Baltic Street, with compliant levels of solar access maintained.*

Visual amenity/ building bulk and scale - *As indicated in response to objective (a), I have formed the considered opinion that the bulk and scale of the building is contextually appropriate with the floor space appropriately distributed across the site to achieve acceptable streetscape and residential amenity outcomes.*

It is my considered opinion that the building, notwithstanding the FSR non-compliance, achieves the objective through skilful design that minimises adverse environmental impacts on the use and enjoyment of adjoining land and the public domain.

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

Not applicable – the site is located within a residential zone.

It is our professional opinion that the building by virtue of its height, bulk and scale, is consistent with the locality and desired character of the area. We have formed the considered opinion that the project is a sympathetic design and development with a bulk and scale consistent with the existing and future character of the area. The proposal is not offensive, or unsympathetic in a streetscape context nor the context from Baltic Street.

As outlined above, the proposed development is consistent with the underlying objectives of the FSR standard, notwithstanding the proposed variation, and therefore compliance with the control is unreasonable and unnecessary and therefore the variation can be supported by Northern Beaches Council.'

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

'It should be noted at the outset that in Initial Action the Court held that it is incorrect to hold that the lack of adverse impact on adjoining properties is not a sufficient ground justifying the development contravening the development standard when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse impacts.

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. From a planning perspective, there is sufficient grounds to justify the variation to the FSR development standard for the following reasons:

Context

- *The area surrounding the subject site is characterised by 2 and 3 storey residential dwellings, also noting a three storey residential flat building at 17 Baltic Street.*
- *The proposed dwelling has been designed to remain consistent with the character of the locality, despite the variation to FSR, through design, architectural features and complimentary materials and colour choices.*
- *The proposal has been designed as alterations and additions with the main addition relating the alteration of the garage which increases GFA under the existing building footprint.*

- *Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments:*
 - *DA2022/2135 – 1 Wattle Avenue Fairlight – 12.9% variation*
 - *DA2022/0199 – 13 Austin Street Fairlight – 4.8% variation*
 - *DA2022/0340 – 21 Parkview Road Fairlight – 18.05% variation*
 - *DA2021/2055 – 32 Griffiths Street Fairlight – 26.25% variation*
 - *DA2021/2623 – 47 Griffiths Street Fairlight – 1.22% variation*
- *The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d).*

Future Development

- *The proposed alterations and additions will allow for the provision of a modern floor plan, with refurbished and improved internal spaces. The proposal also allows for a functional side by side garage space (currently a tandem garage).*
- *This represents an efficient use of an existing developed site, with all services readily available.*
- *The built form proposed is relatively consistent with the existing dwelling and other buildings in the locality,*
- *The minor increase to the floor area of 25.49sqm is considered reasonable as it is located within the existing building footprint or minor changes that would be indistinguishable to the public eye from the streetscape and does not result in any unreasonable impacts to neighbouring properties.*
- *The proposed works will not hinder any future development of the lot,*
- *The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g).*

Consistent with Zone Objectives

- *The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for additional residential floor space in a residential zone, with a bulk and scale consistent with the existing dwelling and the locality. Compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.*

Natural Environment

- *The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land,*
- *The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.*

Social and Economic Welfare

- *The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community. It utilises existing services, satisfying Cl1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable*

Appropriate Environmental Planning Outcome

- *The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.*

The above environmental planning grounds are not general propositions, they are unique circumstances to the proposed development. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed floor space ratio non-compliance in this instance.'

Planner's Comment:

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

- The development promotes the orderly and economic use and development of the land, in so far as the proposed development upgrades the useability of the existing dwelling and such building is an orderly response to the development of the site, thereby satisfying objects 1.3(c) of the EPA Act.
- The development promotes good design and amenity of the built environment, noting that the works will not contribute to any unreasonable impact on amenity considerations (i.e solar access, privacy and view loss) to neighbouring properties, thereby satisfying objects 1.3(g) of the EPA Act.

Public Interest:

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

Conclusion:

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 333.8m²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	E: 7m (based on gradient 1:12)	Addition - 6.7m	N/A	Yes
	W: 7m (based on gradient 1:12)	Addition - 6.9m	N/A	Yes

		Garage - 2.8m		
4.1.2.2 Number of Storeys	2	3/2	N/A	Yes - existing
4.1.2.3 Roof Height	Roof Height: 2.5m	1.9m	N/A	Yes
4.1.4.1 Street Front Setbacks	6m	Level 1: 3.6m Level 2: 3.5m Level 3: 4.29m	40% 41.7% 28.5%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 2.2m	Level 1: 0.9m Level 2: 1.6m Level 3: 1.7m	59.1% 27.3% 22.8%	No
	W: 2.3m	Level 1: Nil Level 2: 0.9m Level 3: 1.6m	100% 60.9% 30.5%	No
	Windows: 3m	E: 1.8m W: 0.9m	40% 70%	No
4.1.4.4 Rear Setbacks	8m	8.7m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space 55% of site area	44.6%	19%	No
	Open space above ground 25% of total open space	25%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	55.4%	N/A	Yes
	1 native trees	1 trees	N/A	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	18m ² m	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	5m	45.1%	No
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	Yes

Detailed Assessment

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

Description of non-compliance

4.1.4.1 Street Front setbacks

The control requires front setbacks to relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity of the site. Where the street front building lines of neighbouring properties are variable, and there is no prevailing building line in the immediate vicinity, a minimum 6m front setback generally applies. In this instance, there is no prevailing building line in the immediate vicinity of the site.

The proposed level 2 planter box is 3.5m from the front boundary. The remainder of the development

maintains the existing front boundary setback of 4.4m (see image 5 below).

4.1.4.2 Side setbacks and secondary street frontages

Clause 4.1.4.2 Side setbacks and secondary street frontages stipulates that the setbacks between any part of a building and the side boundary must not be less than one third of the height of the building. The wall height of the eastern façade of the proposed extension is 6.7m, thereby requiring a side setback of 2.2m. The western facade has a wall height of 6.9m and requires a wall height of 2.3m. The proposal has the below setbacks to the side boundaries:

- Eastern Side setback:
 - Level 1 - 0.9m
 - Level 2 - 1.6m
 - Level 3 - 1.7m

- Western side setback:
 - Level 1 - Nil
 - Level 2 - 0.9m
 - Level 3 - 1.6m

The non-compliance with the side setback requirements result in a variation of 22.8 - 59.1% on the eastern setback and 30.5 - 100% on the western setback.

Under the above mentioned clause, the requirements for all new windows that face the side boundary are to be setback at least 3m. The proposal exhibits several new windows to the eastern and western elevations. These windows are located within the existing building facade, presenting a maximum variation of 70% to the clause requirements.

4.1.4.3 Variations to Side Setback in Residential Density Areas D3 to D9

Clause 4.1.4.3 allows for variations to the side boundary setback for walls located within 0.9m of any one of the side boundaries but they must meet the following requirements:

- i) contain no windows; *
- ii) be constructed to one side boundary only;
- iii) limit height to 3m; *
- iv) limit length to 35 percent of the adjoining site boundary; **
- v) submit a standard of finish and materials for external surfaces which complement the external architectural finishes of adjacent properties and/or the townscape character;
- vi) obtain a right-of-way to provide access for maintenance; and
- vii) satisfy the objectives for setback in this plan and the applicant can demonstrate no disadvantage to the adjacent allotment through increased overshadowing, or loss of view and no impediment to property maintenance.

The proposed encroachment on the western elevation meets these requirements and can be considered for a variation.

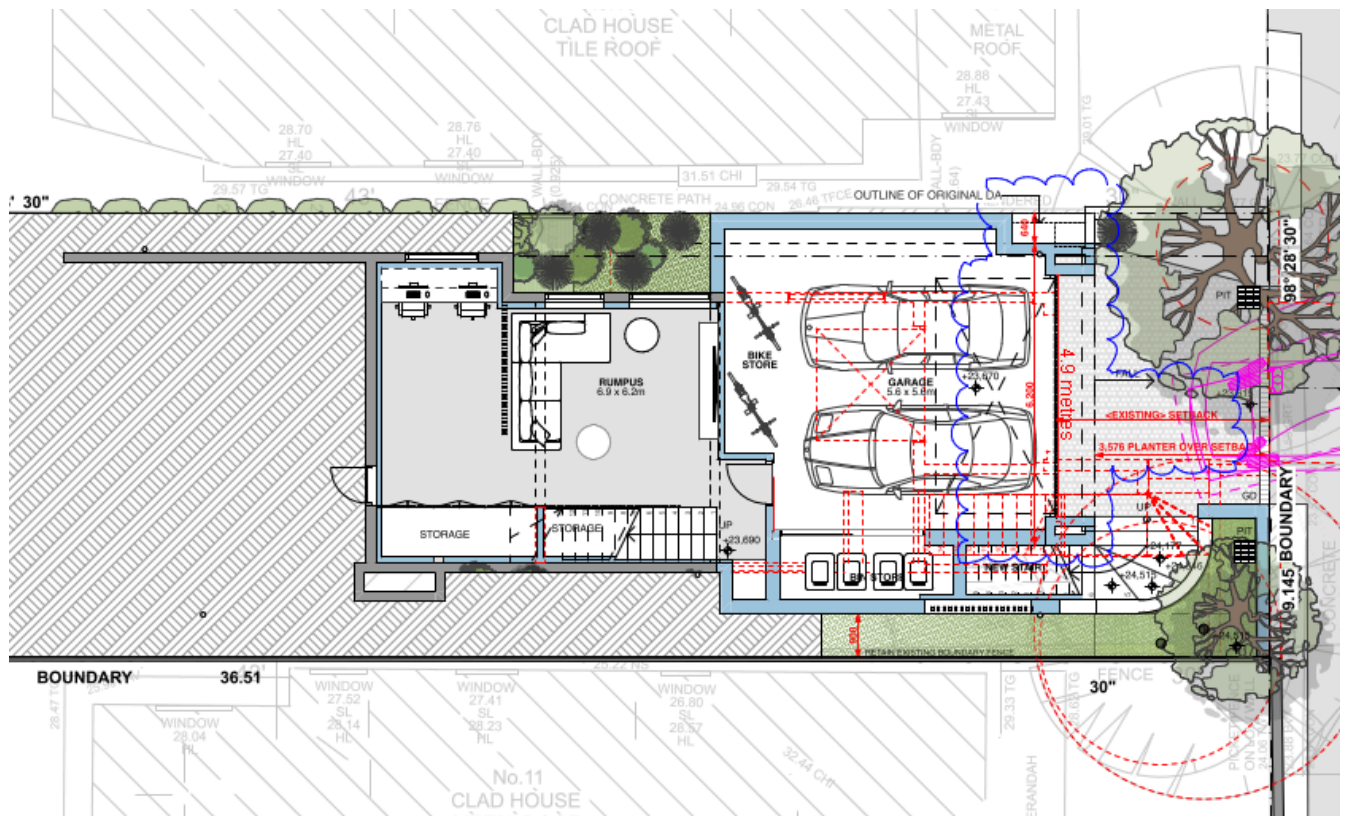


Image 4: Level 1 - western side boundary setback non-compliance.

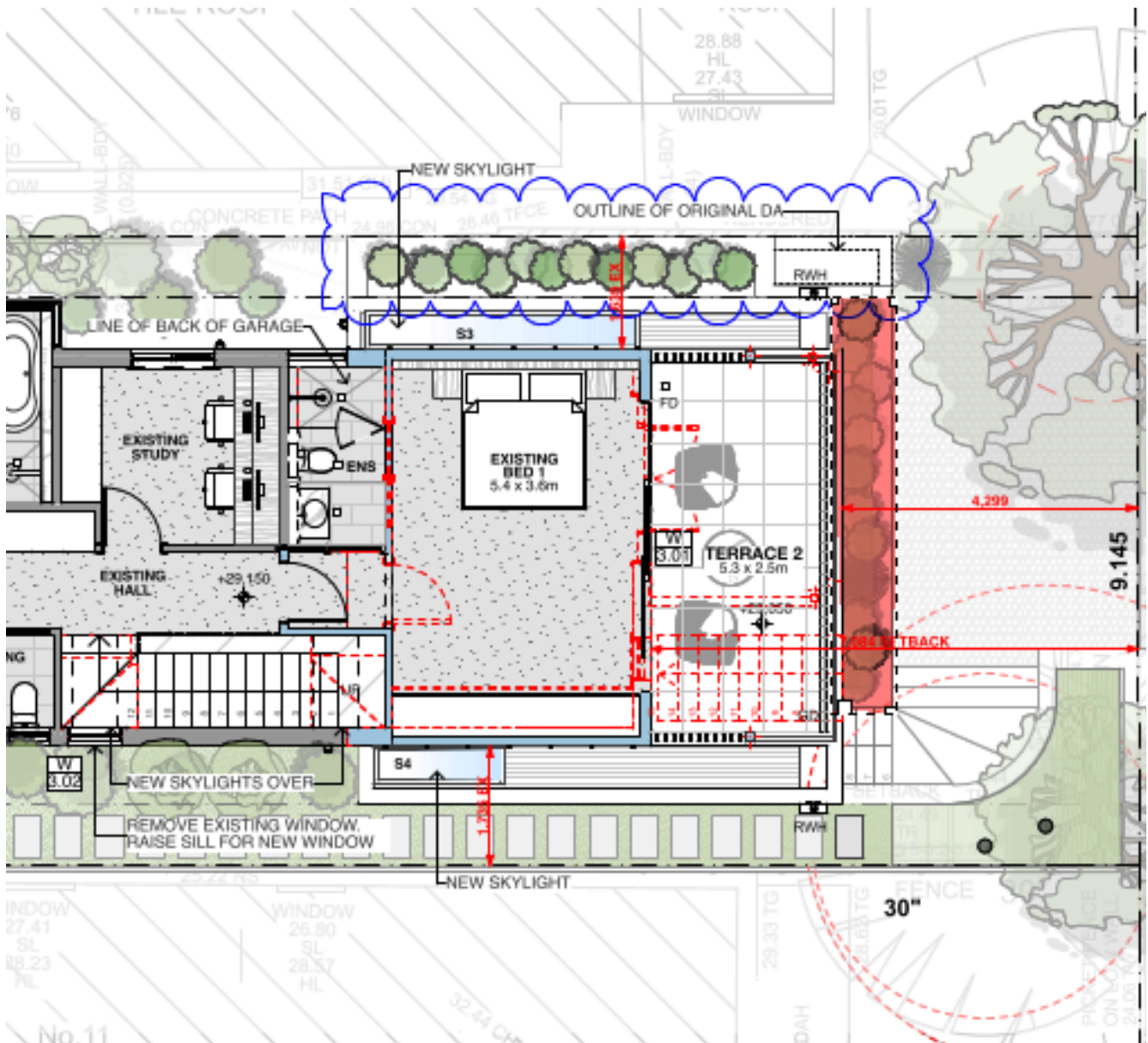


Image 5: Level 2 - front boundary encroachment highlighted in red.

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 non-compliance with the side boundary setback will be screen from the street by the existing and proposed landscaping. Level 1 is also slightly stepped in from the western side boundary at the front to give the appearance of separation between the sites. This along with the proposed landscaping will maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

The proposed first floor planter box and supports are forwarded of the existing building line. While the planter box does not meet the requirement, the planter box will soften the appearance of dwelling when viewed from the street and adjoining dwellings.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The development is considered to provide reasonable amenity including privacy, solar access and view sharing for the dwelling occupants and those of adjoining and surrounding properties. The development is also considered to appropriately respond to the site constraints and prevailing pattern of development seen within the vicinity of the site whilst maintaining safe and adequate parking by providing two onsite car parking spaces.

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

Comment:

Flexibility is afforded in this circumstance, as the window, side and rear setback variations will not result in unreasonable amenity impacts to adjoining sites and allow for a modernised home with safe and accessible carparking.

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 existing topography of the land will be unaltered, with no significant forms of vegetation being proposed for removal. Acceptable dimensions of landscaped open space is provided on site to accommodate for plantings, deep soil zones, and vegetation.

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

Comment:

The subject site is not located within bush fire prone land and therefore this objective is not relevant.

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.

4.1.5 Open Space and Landscaping

Description of non-compliance

The control requires at least 55% of the site to consist of total open space (TOS). To be included as

TOS open space areas must be at least 3x3m in dimension and must not relate to parking structures or vehicular access (i.e. the driveway and hardstand parking space with carport above is excluded).

The application proposes 44.6% of the site as TOS, which does not satisfy the numeric requirement.

Merit consideration:

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

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

Comment:

No significant vegetation is proposed to be removed. The landscape plan provides significant new vegetation to the site which will increase the landscaping on the site and also increases the total open space.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

The proposed development includes deep soil landscaped areas along the front of the dwelling to ensure an appropriate landscaping outcome. No significant vegetation on the site is proposed to be removed.

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

Comment:

The proposed development does not result in unacceptable amenity impacts, specifically with regard to view sharing, solar access, privacy and visual bulk. Sufficient TOS is provided elsewhere on the site, to meet the recreational needs of the occupants of the dwelling.

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

Comment:

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

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

Comment:

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

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

Comment:

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

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)

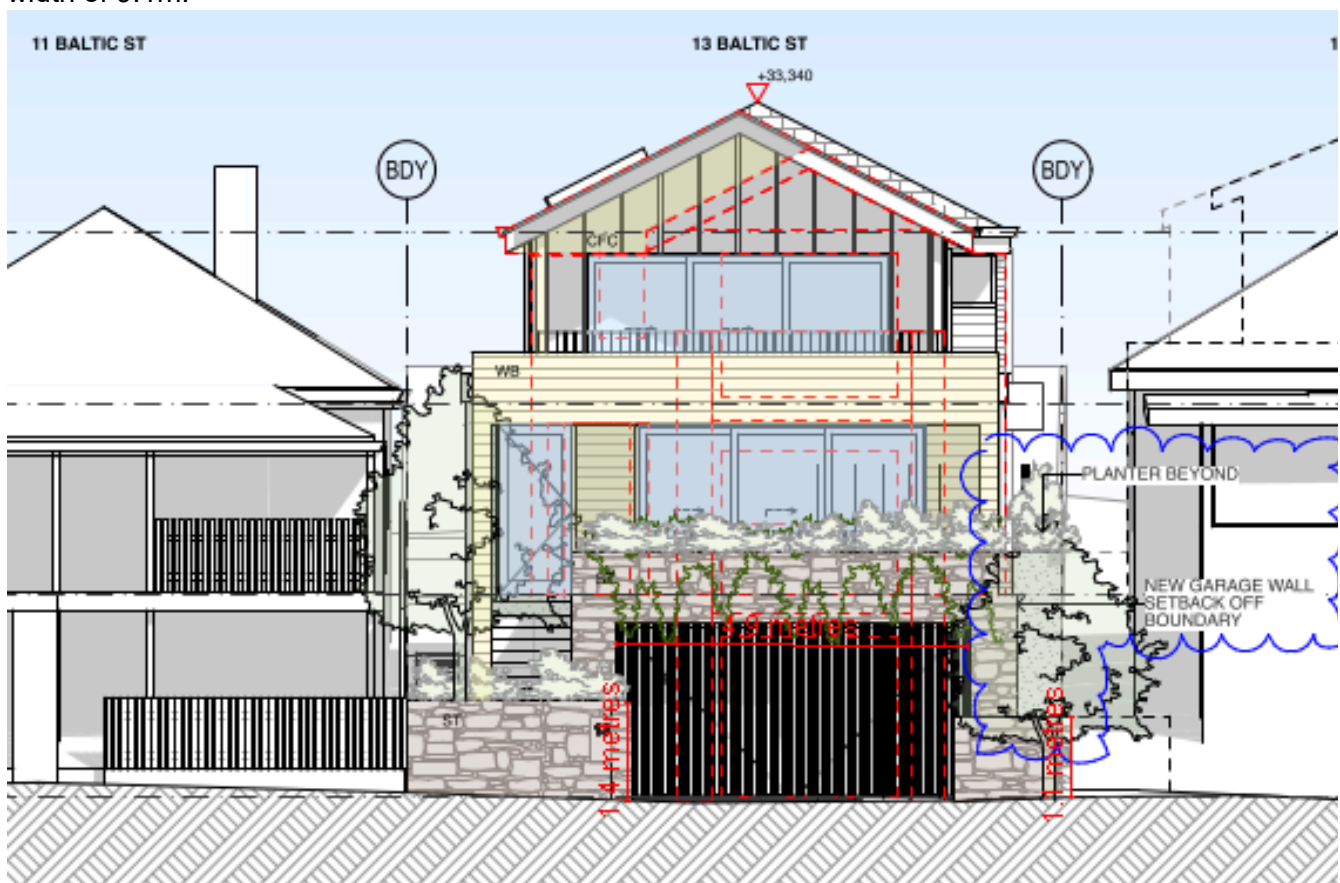
Description of non-compliance

Under MDCP Clause 4.1.6, dwellings require the provision of two (2) off-street parking spaces. This proposal brings the site into compliance through the expansion of the garage to provide two (2) spaces where previously only one (1) was provided.

Clause 4.1.6.1 of MDCP 2013, requires garages forwarded of the building line to be designed and sited to not dominate the street frontage. In particular:

c) the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m.

The width of the garage door is 4.9m, which is non-compliant with the width control as the site has width of 9.1m.



North Elevation

Image 6: North elevation - garage and front fence.

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 garage provides accessible and adequate parking on-site for two (2) cars and is consistent with the stipulated width requirement. The size and width of the garage is considered appropriate 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:

The proposal provides two (2) off-street parking spaces which meets the requirements of the control. Whilst widening of the driveway will effect the availability of on-street parking, this trade off is considered acceptable, given that the proposal is doing so to attain compliance with off-street parking requirements, and that the additional off-street parking space will reduce on-street parking demand.

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 garage is considered to be efficient, safe and convenient. The size and width of the garage and driveway crossover is considered appropriate, and the proposal is supported by Council's Development Engineering team, subject to conditions.

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 garage expansion requires excavation to expand the driveway. The excavation is considered very minor for a small portion of the driveway. The proposal is supported by a Geotechnical Report and has been supported by Council's Development Engineering team, subject to conditions

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

Comment:

The number of footpath crossings remains unchanged.

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 expansion of the garage utilises the existing garage and is therefore reasonably placed. Due to the existing site layout and topography, there are not considered to be reasonable alternatives to this expansion

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

Comment:

The site is located within a residential area and the proposal complies with the required number of parking spaces. The proposal will not restrict the use of active or public transport by residents of the area.

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

4.1.10 Fencing

Description of non-compliance

Clause 4.1.10 Fencing requires the following:

- *Freestanding walls and fences between the front street boundary and the building are to be no more than 1m high above ground level at any point.*
- *In relation to open/ transparent fences, height may be increased up to 1.5m where at least 30 percent of the fence is open/ transparent for at least that part of the fence higher than 1m.*

The proposed a solid masonry fence which ranges in height from 1.1 - 1.4m, which does not comply with the requirement of the clause.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying objectives of the control. The control relies upon the objectives of Clause 3.1 - Streetscapes and Townscapes within the MDCP.

Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.

Comment:

The new fence exceeds the height requirement of 1m or 1.5m with 30% transparency. However, the proposed fence will be maintaining the height of the existing fence line and will compliment the design of the proposed dwelling.

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

Comment:

The southern side of Baltic Street has inconsistent fence heights and designs. There is a mix of fence styles and materials. The proposed solid fence is consistent with the existing fence on the site, however, it will be constructed of materials that match the works to the proposed dwelling. The proposed fence will provide visual interest and complement the identified streetscape.

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

Comment:

There is an existing front fence on the site and the proposed fence will not impact on landscaping within the front setback.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

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

A monetary contribution of \$7,373 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$737,326.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This proposal, for Alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to a greater than 10% variation to both the Height of Buildings and Floor Space Ratio development standards.

No submissions were received.

Critical assessment issues included height of buildings, FSR, setbacks, landscaping open space, parking and fencing. These issues have been addressed within the assessment report.

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

REASON FOR DETERMINATION

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

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013 because the Applicant’s written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2024/1769 for Alterations and additions to a dwelling house on land at Lot 15 DP 4449, 13 Baltic Street, FAIRLIGHT, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA10	D	Proposed Level 1 & Demolition Plan	Mont Architects	25/3/2025

DA11	D	Proposed Level 2 & Demolition Plan	Mont Architects	25/3/2025
DA12	D	Proposed Level 3 & Demolition Plan	Mont Architects	25/3/2025
DA13	D	Proposed Site, Roof & Demolition Plan	Mont Architects	25/3/2025
DA14	D	North & South Elevation	Mont Architects	25/3/2025
DA15	B	East Elevation	Mont Architects	12/12/2025
DA16	D	West Elevation	Mont Architects	25/3/2025
DA17	C	Section A	Mont Architects	24/3/2025
DA18	D	Section B	Mont Architects	25/3/2025

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Waste Management Plan	-	-	-
1 of 1 - Landscape Plan	B	Paul Scrivener Landscape	11.12.24
Geotechnical Assessment Project: Alterations & Additions 13 Baltic Street, Fairlight NSW	Ref: AG 24526	AscentGeo Geotechnical Consulting	3.12.24

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

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

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

2. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	03/02/2025

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

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

3. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out

on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. **General Requirements**

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (d) At all times after the submission of the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (e) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (f) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (g) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that

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

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (m) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (o) Should any construction cranes be utilised on site, they are to be fitted with bird deterrents along the counterweight to discourage raptor (bird) nesting activity. Deterrents are to remain in place until cranes are dismantled. Selection of deterrent methods is to be undertaken in accordance with the recommendations of a suitably qualified ecologist.
- (p) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
- Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$7,373.26 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$737,326.00.

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

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

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

Reason: To provide for contributions in accordance with the Contribution Plan to fund the

provision of new or augmented local infrastructure and services.

6. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. Vehicle Crossings Application

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 4.5 metres wide in accordance with Northern Beaches Council Standard Drawing Normal and in accordance with Section 138 of the Roads Act 1993. The existing concrete footpath shall be reconstructed, in order to provide for a standard Vehicular crossing and Layback.

Note, driveways are to be in plain concrete only.

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

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

Reason: To facilitate suitable vehicular access to private property.

8. Waste Management Plan

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

9. **Compliance with Standards**

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

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

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

10. **External Finishes to Roof**

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

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

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

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

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

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

12. **Pre-Construction Dilapidation Report**

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

Property: No. 11 Baltic Street, Fairlight

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

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

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

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

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

13. **Sediment and Erosion Controls**

For developments that include more than 2500sqm of disturbance:

A Soil and Water Management plan (SWMP), in accordance with section 2.3 of the Blue Book, must be prepared and certified by a suitably qualified professional.

For sites larger than 250sqm and less than 2500sqm of disturbance:

An Erosion and Sediment Control Plan (ESCP) must be prepared by a suitably qualified person in accordance with the following considerations and documents:

- Sites that have slopes exceeding 20% (measured in any direction across the site), and/or where works are within the high-water mark or adjacent to a waterway or watercourses are considered environmentally sensitive areas. These sites require a site-specific ESCP which must be prepared and certified by a suitably qualified professional,
- The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate – Volume 1, 4th Edition (2004)' (the Blue Book), and
- The 'Guidelines for Erosion and Sediment Control on Building Sites' (Department of Planning, Housing and Infrastructure).

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 area 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,
- Type of erosion control measures to divert and slow run-off around and within the site.

Environmentally sensitive areas (i.e. Sites that have slopes exceeding 20% and/or where works are within the high-water mark or adjacent to a waterway or watercourses) must also consider:

- Identify and mark any environmentally sensitive areas on and immediately next to the site and how you will protect these, including any appropriate buffer zones (for example, marking them out as 'no-go' areas),
- Details on vegetation you will clear, as well as areas of vegetation you will keep (mark no go areas),
- Detail on soil information and location(s) of problem soil types, especially dispersive soils and potential or actual acid sulfate soils,
- Location of any natural waterways that could receive run-off and how these will be protected these from run-off.

For sites smaller than 250sqm or where the disturbance is less than 50sqm:

Run-off and erosion controls must be implemented to prevent soil erosion, water pollution or the discharge of loose sediment on the surrounding land by:

- Diverting uncontaminated run-off around cleared or disturbed areas, and
- Erecting a silt fence and providing any other necessary sediment control measures that will prevent debris escaping into drainage systems, waterways or adjoining properties, and
- Preventing the tracking of sediment by vehicles onto roads, and
- Stockpiling top soil, excavated materials, construction and landscaping supplies and debris within the lot.
- Identifying any environmentally sensitive areas on and immediately next to the site, and demonstrating how these will be protected (for example, by designation as no-go areas).

Details demonstrating compliance with the relevant requirements above are to be submitted to the Certifier, and the measures implemented, prior to the commencement of works.

Reason: To ensure no substance other than rainwater enters the stormwater system and waterways.

DURING BUILDING WORK

14. 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.

15. Removing, Handling and Disposing of Asbestos

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

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);

- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

16. Geotechnical Requirements

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

Reason: To ensure geotechnical risk is mitigated appropriately.

17. Demolition Works - Asbestos

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

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

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

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

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

18. 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 Certifier when the external structure of the building is complete.

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

19. Maintenance of Sediment and Erosion Controls

Erosion and sediment controls must be adequately maintained and monitored at all times, particularly surrounding periods of rain, and shall remain in proper operation until all development activities have been completed and the site is in a state where no substance other than rainwater can enter the stormwater system and waterways.

All sediment control measures must be maintained at, or above, their design capacity.

Where more than 2500 square metres of land are disturbed or if the site has a slope of more than 20%, a self-auditing program must be developed for the site. A site inspection using a log book or inspection test plan (ITP) must be undertaken by the site supervisor:

- at least each week
- immediately before site closure
- immediately following rainfall events that cause runoff.

Details demonstrating compliance must be provided to the Certifier during demolition and building works.

Reason: Protection of the receiving environment and to ensure no substance other than rainwater enters the stormwater system and waterways.

20. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

21. Stormwater Disposal

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

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

22. Post-Construction Dilapidation Report

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

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

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

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

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

23. Waste Management Confirmation

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition

and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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