

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1776
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Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 1 DP 565383, 33 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Helen Margaret Peach
Applicant:	Helen Margaret Peach

Application lodged:	01/11/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	08/11/2018 to 26/11/2018
Advertised:	Not Advertised
Submissions Received:	4
Recommendation:	Approval

Estimated Cost of Works:	\$ 90,000.00
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ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.3.1 Landscaping Design
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)
 Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area

SITE DESCRIPTION

Property Description:	Lot 1 DP 565383 , 33 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	<p>The subject site consists of one allotment located on the western side of Beatty Street.</p> <p>The site is irregular in shape with a frontage of 11.58m along Beatty Street and a depth of 53.815m. The site has a surveyed area of 959m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates an existing dwelling house.</p> <p>The site 15.1m from rear (west) to front (east).</p> <p>The site contains no significant vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by detached dwellings.</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:

DA0382/2004 -AMENDED PLANS-Alts & Adds to Dwelling incl. add. storey & alts to pool - Approved 5 May 2005.

DA0382/2004 - Part 2 - Section 96 Modification to modify DA 382/04 - Withdrawn.

DA0382/2004 - Part 3 - Section 96 to modify approved plans:Alterations & Additions to dwelling including additional storey & alterations to pool - Approved 1 November 2006.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development includes works as follows:

Lower floor plan:

- Bedroom 3, ensuite and walk in robe
- Study area
- Northern (side) timber deck

Upper first floor plan:

- Bedroom 4, ensuite and walk in robe
- Rear timber deck
- Fill earthworks and retaining walls to level rear yard
- Synthetic grass over rear yard
- Boundary planting
- New boundary fencing

The proposal was amended on 8 May 2019 in response to view loss concerns raised by Council. As per Manly DCP Clause 2.6, re-notification of the amended application was dispensed with as the amendment differed only in minor respects from the original and resulted in lesser environmental impact.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration'	Comments
	<p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Mr Trevor John Scott	4 A Tutus Street BALGOWLAH HEIGHTS NSW 2093

Name:	Address:
Mrs Helen Anne Scott	
Mrs Patricia Margaret Thomson	2 Tutus Street BALGOWLAH HEIGHTS NSW 2093
Andrew Vaughan	
Mr John Antony Warn Mrs Marguerite Warn	4 Tutus Street BALGOWLAH HEIGHTS NSW 2093

The following issues were raised in the submissions and each have been addressed below:

- Compliance with building height and FSR
- Dampness / water issues
- Paling fence
- View loss
- Privacy impacts

The matters raised within the submissions are addressed as follows:

- Compliance with building height and FSR
Comment:
The proposed building height of the addition measured from natural ground level is 7.1m. The FSR of the proposed development, as amended, is 0.39:1 (372.6m²). These calculations are compliant as assessed by Council.
- Dampness / water issues
Comment:
The reasoning for the development being that the existing dwelling has recurring water issues is not considered to be sufficient planning justification. However, an assessment of the proposed works against the controls of the Manly LEP and DCP has concluded that the development will not unreasonably impact the amenity of the adjoining properties or surrounding area.
- Paling fence
Comment:
No owners consent from adjoining property owners has been provided. Further, the proposed fencing will unreasonably impact the amenity of the adjoining properties. As such, no approval is given for the proposed boundary fencing.
- View loss
Comment:
A detailed analysis of view loss has been completed as part of this assessment. Following initial inspections of adjoining properties, the applicant was advised to erect height poles on the site. Following viewing and assessment of the height poles, Council considered that the proposed addition was excessive in bulk and required amendment. The view loss assessment completed under Clause 3.4.3 Maintenance of Views is based on the amended plans submitted by the applicant and concludes that the development will result in no unreasonable view loss impacts.
- Privacy impacts
Comment:

The proposed development, as amended and conditioned, will not unreasonably impact the privacy of the adjoining properties. The proposed addition is a bedroom, contains no living areas, and is generally compliant with the side and rear setback controls. The proposed rear deck is non-compliant with the rear setback control, but is conditioned to be substantially reduced in size and include a privacy screen to minimise privacy impacts.

REFERRALS

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

Nil

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.1m	N/A	Yes
Floor Space Ratio	0.4:1 383.6m ²	0.39:1 372.6m ²	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.2 Earthworks	No
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

6.2 Earthworks

The proposed earthworks within the rear yard will obscure the existing sandstone rock outcrop and will result in unreasonable amenity impact to the adjoining properties. As such, the works are conditioned to be deleted from the plans.

6.9 Foreshore scenic protection area

The proposed works are to an existing dwelling and will not unreasonably impact visual aesthetic amenity or views to and from Sydney Harbour.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 959m ²	Requirement	Proposed	Complies
4.1.2.1 Wall Height	North: 7.9m	6.5m	Yes
	South: 7.9m	6.4m	Yes
4.1.2.2 Number of Storeys	2	2	Yes
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.6m	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 2.17m	2m	No
	South: 2.13m	2.2m	Yes
4.1.4.4 Rear Setbacks	8m	Dwelling: 7.5m- 7.7m	No
		Deck: 4.7m	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.7 Stormwater Management	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	N/A	N/A
4.4.5 Earthworks (Excavation and Filling)	No	No
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.3.1 Landscaping Design

The proposed landscaping/planting works within the rear yard are conditioned to be deleted for the reasons detailed in this report.

3.4.1 Sunlight Access and Overshadowing

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 equitable access to light and sunshine.

Comment:

The proposal will result in no unreasonable overshadowing impacts. At 9am there is moderate additional overshadowing of the rock outcrop area of No. 31 Beatty Street. At 12pm the additional overshadowing is negligible. At 3pm there is further minor overshadowing of the rear yard of No. 31 Beatty Street.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

Comment:

The proposal allows adequate sunlight access to be maintained to the subject site and adjoining properties.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

The proposed additions are sufficiently modulated and set back to maximise sunlight penetration.

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

3.4.2 Privacy and Security

Merit consideration:

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

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

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

Comment:

The proposal, as conditioned, is appropriately designed to minimise privacy and amenity impacts between the subject site and adjoining properties. The proposed northern window to Bedroom 4 is conditioned for privacy and the lower glazed doors and adjoining deck to Bedroom 3 are located at a significantly lower level than No. 4 Tutus Street. The proposed rear deck and earthworks/landscaping to the rear yard would result in a considerably more usable space. Given the irregular subdivision pattern and close proximity of the surrounding dwellings, it is not considered appropriate create a more usable outdoor space in this location. Further, the subject site includes more extensive and practical outdoor living areas to the front of the dwelling. As such, the proposal is conditioned to reduce the size of the rear deck and delete the earthworks/landscaping to the rear yard.

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

Comment:

The proposed development is conditioned to provide sufficient privacy, while maintaining access to light and air.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal does not alter existing opportunities for passive surveillance.

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

3.4.3 Maintenance of Views

The below view loss assessment is based on amended plans submitted by the applicant dated 6 May 2019 in response to view loss impacts.

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 for view sharing for both existing and proposed development and existing and future Manly residents.

Comment:

The proposal will result in reasonable view sharing between existing and proposed development.

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

An assessment of view loss has also been undertaken with reference to the Views Principle established by the NSW Land and Environment Court as follows:

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

Comment:

Views over the subject site are currently available from No. 2 and 4a Tutus Street. The views are water views of North Harbour and include extensive land-water interface at Fairlight and Manly. Some of the available views are whole views and some are partial views. The views to Fairlight from No. 2 Tutus Street are partially obscured by existing dwellings and vegetation, including the subject site. As such, the affected views are considered to be partial views.

It is noted that a water view is currently available over the existing dwelling from the south-facing kitchen window of No. 4 Tutus Street (Figure 11). However, the view is minimal and is only gained from immediately at the kitchen window orientated at 90 degrees to the view. The view of water and

headland is highly vulnerable to impact being over the side boundary and across the middle of the existing dwelling. A fully compliant dwelling would not preserve this view. Further, extensive views of Manly and North Head remain unaffected from the living area/balcony of No. 4 Tutus Street (Figure 12), which is considered to be the primary view. As such, the retention of the kitchen view is not considered to be reasonable.

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

Comment:

The views from No. 2 Tutus are obtained from two (2) bedrooms, the living room and rear deck across a rear and side boundary. Views from No. 4a Tutus Street are gained across a rear boundary from the ground floor kitchen, living/dining room and rear balcony, upper floor bedroom and balcony, and lower floor living room. All views are generally available from a sitting and standing position, with the exception of the lower floor living room of No. 4a Tutus Street.



Figure 1. View from No. 2 Tutus Street bedrooms.



Figure 2. View from No. 2 Tutus Street living room.



Figure 3. View from No. 2 Tutus Street balcony.



Figure 4. Extent of unaffected views from No. 2 Tutus Street.



Figure 5. View from No. 4a Tutus Street ground floor balcony - southern side.



Figure 6. View from No. 4a Tutus Street ground floor balcony - northern side.

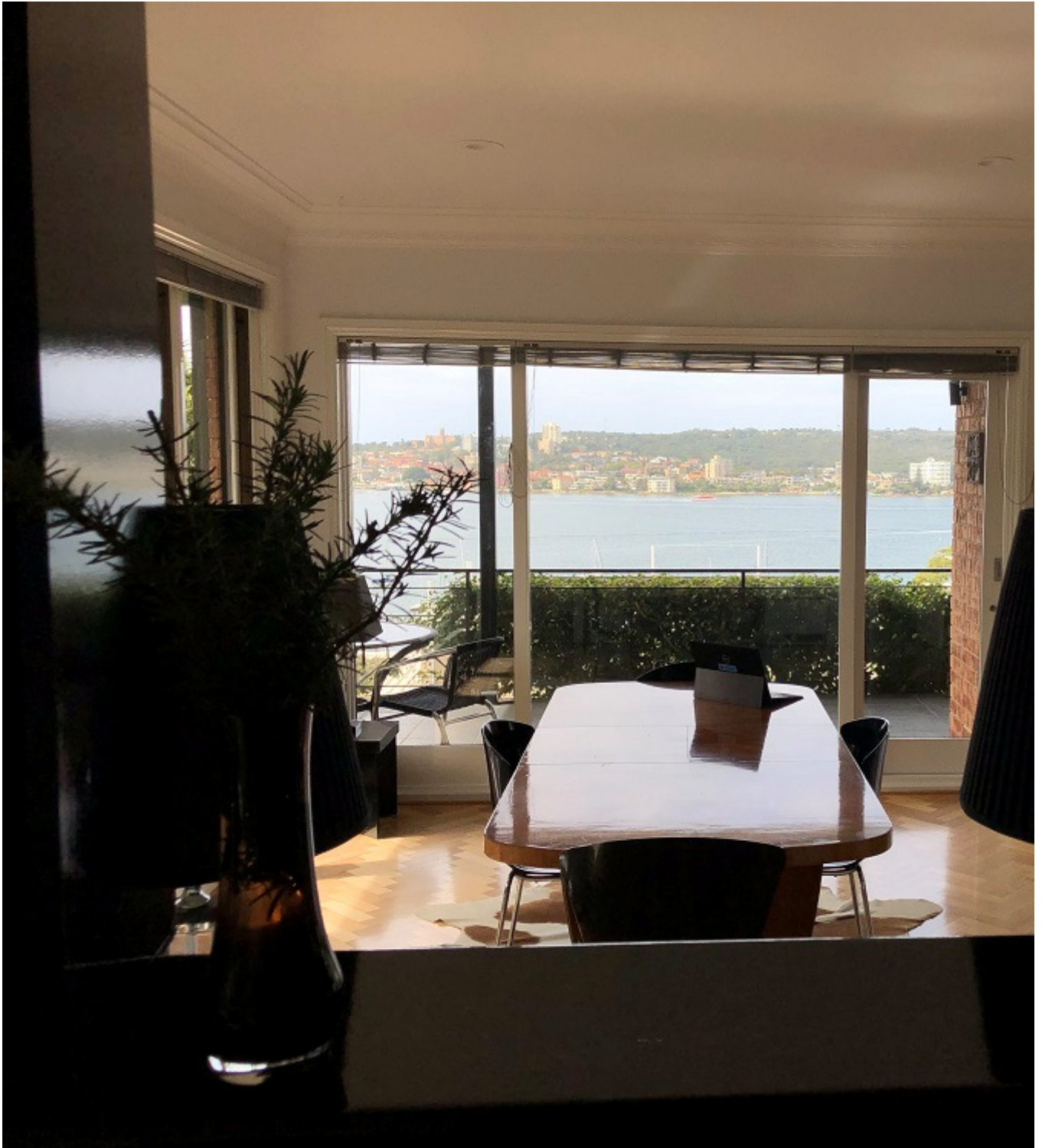


Figure 7. View from No. 4a Tutus Street kitchen.



Figure 8. View from No. 4a Tutus Street living room.



Figure 9. View from No. 4a Tutus Street upper floor balcony.



Figure 10. View from No. 4a Tutus Street lower floor.



Figure 11. View from No. 4 Tutus kitchen.



Figure 12. View from No. 4 Tutus living area/balcony.

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

Comment:

The extent of the impact on views from No. 2 Tutus Street varies depending on the location, however the affected view from all rooms is generally limited to an area of water and land-water interface at Fairlight to the west of Fairlight Beach. Extensive views of the Harbour and Manly are retained from both bedrooms, the living room and rear deck of No. 2 Tutus Street. The existing views from No. 4A Tutus Street are generally retained, with only a minor loss of water views and minimal loss of land-water interface from the lower level. These lower level views are not gained from the primary living area and are particularly vulnerable as they are not elevated above the existing dwelling at No. 33 Beatty Street. The provision of increased side setbacks as part of the amended proposal are effective in maintaining the existing side view corridors from No. 4A Tutus Street.

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

Comment:

The proposal is non-compliant in relation to the northern side setback and rear setback. The proposed side and rear dwelling setback non-compliances are relatively minor and requiring strict compliance in this case would not result in any material gain to views from the surrounding properties. Further, the compliant building height, floor space ratio, wall heights and southern side setback provide sufficient view corridors to minimise the overall impact on views. Taking into consideration the extent of views to be lost across a rear and side boundary and the extent of views to be retained from the affected properties, the proposed view loss is considered to be minor and is acceptable.

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

Comment:

The proposal, as amended, is considered to be reasonable in relation to view loss and all other relevant provisions of the Manly DCP.

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

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

Description of non-compliance

The proposed rear dwelling and deck setbacks are non-compliant. The proposed northern side setback to the upper floor is also marginally non-compliant by 170mm).

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-compliances are at the rear extent of the dwelling and will not impact the streetscape.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed non-compliant setbacks will result in no unreasonable impacts in relation to privacy, sunlight access, views, streetscape character or traffic conditions. A full assessment of amenity impacts is completed against DCP Clause 3.4.

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

Comment:

The non-compliant setback largely relates to the unenclosed rear deck. The dwelling addition rear setback is non-compliant by 0.5m and side setback by only 0.17m.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed non-compliances do not impact existing landscaping on the site.

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

Comment:

N/A

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

4.1.5 Open Space and Landscaping

The proposal, as conditioned, will result in no change to the existing open space or landscaped areas on the site.

4.4.5 Earthworks (Excavation and Filling)

Retaining wall and fill works up to a depth of approximately 0.8m are proposed within the rear setback. The proposed filling will obscure the natural rock outcrop feature, conflicting with the provisions of the Manly DCP, including Clause 4.4.5. In association with the proposed rear deck, the leveling and synthetic grass finish will create a more usable space within the rear yard. Given the irregular subdivision pattern and close proximity of the surrounding dwellings, the increased usability of this area will result in unreasonable privacy/direct viewing impacts to and from the subject site. These works were not included in the initial proposal and are not considered to be necessary or appropriate. As such, no earthworks or landscaping is approved as part of this consent.

5.4.1 Foreshore Scenic Protection Area

The proposed works are to an existing dwelling and will not unreasonably impact visual aesthetic amenity or views to and from Sydney Harbour.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Manly Section 94 Development Contributions Plan

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;

- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1776 for Alterations and additions to a dwelling house on land at Lot 1 DP 565383, 33 Beatty Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A1 Upper First Floor Plan	Issue B, 6 May 2019	Simon Chan & Associates
A2 Lower Floor Plan	Issue B, 6 May 2019	Simon Chan & Associates
A3 North Elevation, West Elevation	Issue B, 6 May 2019	Simon Chan & Associates
A4 East Elevation, South Elevation	Issue B, 6 May 2019	Simon Chan & Associates
A5 Seciton A-A	Issue B, 6 May 2019	Simon Chan & Associates

A7 Roof Plan	Issue B, 6 May 2019	Simon Chan & Associates
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Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A319504	6 October 2018	BASIX Certificate Centre

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

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

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

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

2. **Prescribed conditions (Demolition):**

(a) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (i) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (ii) stating that unauthorised entry to the work site is prohibited.

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

(b) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

(c) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- (i) protect and support the adjoining premises from possible damage from the excavation, and

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

Reason: Legislative Requirement.

3. **Prescribed Conditions**

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

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

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

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

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

Reason: Legislative Requirement

4. General requirements (Demolition):

(a) Unless authorised by Council:

Demolition and excavation works are restricted to:

- o 8.00 am to 5.00 pm Monday to Friday only.

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

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

(c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

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

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

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

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

(i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction

unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

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

5. General Requirements

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged

during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(j) 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.

(k) 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 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

6. Security Bond

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

7. Rear deck

The proposed rear timber deck is not to extend to the north beyond the red line shown on drawing A1 Upper First Floor Plan. A privacy screen is also to be installed to the northern side of the deck at this red line up to a minimum height of 1.6m above finished floor level.

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

Reason: To ensure no unreasonable privacy impacts to the adjoining properties.

8. Safety fencing

All safety fencing/balustrades to the rock face at the rear of the dwelling are to be constructed of transparent glazing or similar.

Reason: To minimise the impact of safety features on views.

9. Boundary fencing

No boundary fencing is approved as part of this consent.

All references to proposed boundary fencing are to be deleted from the plans prior to the issue of a Construction Certificate.

Reason: To ensure proper owners consent is provided for works and maintain consistency with the Dividing Fences Act 1991.

10. Earthworks and planting

No retaining walls, earthworks, landscaping or vegetation planting is approved within the rear yard as part of this consent.

All references to such works is to be deleted from the plans prior to the issue of a Construction Certificate.

Reason: To ensure views and natural features are retained.

11. Northern window

The proposed northern window to Bedroom 4 is to either:

i) Have a minimum sill height of 1.6m

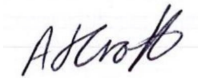
ii) Have fixed angled louvres to prevent direct viewing/overlooking of the eastern balcor

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

Reason: To maintain privacy between the subject site and adjoining property.

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

Signed



Adam Croft, Planner

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



Anna Williams, Manager Development Assessments