

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1393
----------------------------	-------------

Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 1 SP 67726, 1 / 17 Francis Street FAIRLIGHT NSW 2094
Proposed Development:	Alterations and additions to an existing dwelling.
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Iain Stuart Liddel Emma-Jane Marie Haselden
Applicant:	Emma-Jane Marie Haselden

Application Lodged:	06/12/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	20/12/2019 to 28/01/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 16.82% 4.4 Floor space ratio: 10%
Recommendation:	Approval

Estimated Cost of Works:	\$ 260,000.00
---------------------------------	---------------

EXECUTIVE SUMMARY

This report is submitted to the Northern Beaches Local Planning Panel for the consideration of Development Application DA2019/1393 for alterations and additions to an existing townhouse within a multi dwelling housing development.

The proposed development is non-complaint with Clause 4.3 Height of buildings and Clause 4.4 Floor space ratio of the Manly Local Environmental Plan 2013 (MLEP 2013).

The subject site is located within 'Area I' on the Height of Buildings Map, which is subject to an 8.5m maximum building height development standard. The application proposes a maximum building height

of 9.93m, which represents a variation of 16.82% from the development standard. As a consequence of the variation to the prescribed maximum building height, the application is referred to the Northern Beaches Local Planning Panel for determination.

The subject site is located within 'Area F' on the Floor Space Ratio Map, which is subject to a 0.6:1 (469.2sqm of gross floor area) floor space ratio development standard. The proposed floor space ratio is 0.66:1 (515.34sqm of gross floor area), which represents a variation of 10% (46.14sqm) from the development standard.

The application has been assessed against the Manly Development Control Plan 2013 (MDCP 2013). In relation to the MDCP 2013, the proposed development does not comply with the numerical requirements stipulated within Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height), Clause 4.1.3 Floor Space Ratio (FSR), Clause 4.1.4 Setbacks (front, side and rear) and Building Separation and Clause 4.1.5 Open Space and Landscaping.

The proposed development was notified and received zero (0) submissions.

It is recommended that the Northern Beaches Local Planning Panel approve the application, subject to the conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to an existing townhouse within a multi dwelling housing development. Specifically, the application proposes the following works:

Garage and Basement Level (FFL - RL 43.375)

- Excavation works to the sub-floor to create a new storage area;
- Demolish existing walls and doors on the western and southern elevations;
- The construction of a new masonry wall and piers on the southern elevation;
- To construction of a new internal staircase and doors to provide new access points to the proposed storage area.

Ground Floor (FFL - RL 46.400)

- Demolish the existing roof over the external bin area and enclose the area to create a mud room and new entryway;
- Internal alterations to the existing kitchen;
- The construction of a new fence along the eastern front boundary and southern edge of the driveway to enclose the existing front garden. The proposed fence contains masonry pillars with timber infills; and
- The construction of new external glazed doors on the eastern elevation of the existing lounge room.

First Floor (FFL - RL 49.350)

- Internal alterations to the existing floor plan to reconfigure the existing ensuite, bathroom, bedroom 2 and bedroom 3; and
- An extension on the southern elevation to create a new bedroom (bedroom 4).

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 6.4 Stormwater management

Manly Development Control Plan - 3.2 Heritage Considerations

Manly Development Control Plan - 3.3.2 Preservation of Trees or Bushland Vegetation

Manly Development Control Plan - 3.7 Stormwater Management

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

Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 1 SP 67726 , 1 / 17 Francis Street FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site is legally known as Lot 1, 2 and 3 of SP 67726. The site is located on the western side of Francis Street, Fairlight.</p> <p>The site is regular in shape with a frontage of 24.32m along Francis Street and a depth of 32.155m. The site has a surveyed area of 782sqm.</p> <p>The site is located within the R1 General Residential zone and accommodates three (3) townhouses separated into three (3) strata lots. Vehicle access is maintained via an existing driveway from Francis Street to basement car</p>

parking.

A large paved terrace is located within the centre of the site, which is directly accessible from the existing dining area within the subject townhouse.

The site contains a large Norfolk Island Pine tree that is located centrally towards the southern side boundary and is well landscaped within the rear yard.

The site experiences a fall of approximately 9m that slopes from the eastern front boundary towards the western rear boundary.

Lots 1 and 2 are burdened by an easement for stormwater detention and drainage.

The site is mapped as containing 'Acid Sulfate Soils Class 5' under the provisions of the Manly Local Environmental Plan 2013 (MLEP 2013).

Detailed Description of Adjoining and Surrounding Development

Adjoining and surrounding development comprises one (1) and two (2) storey detached dwellings and semi-attached dwellings. The site is adjacent to Heritage Item No. I52 "Group of 6 houses" located on properties 12-22 Francis Street, Fairlight (opposite the subject site).

Map:



SITE HISTORY

The site has been used for residential purposes for an extended period of time. Development Consent was granted for Three (3) townhouses with strata subdivision on lots 11 and 12, Section A, DP 978391, known as Nos. 17 and 19 Francis Street, Fairlight by Court Order on 19 January 2000.

The following is a list of other approvals on site:

- DA306/2002 - Alterations and additions to existing;
- DA90/2004 - Addition of an External Stairwell to a RFB and change construction of stairwell from Timber to Painted Galvanised Street;
- DA05/12 - Alterations and additions to an existing Residential Flat Building including a privacy screen and roof over the existing deck - Unit 3;
- DA176/13 - Alterations and additions to an existing building including side foyer and roof addition over the existing deck; and
- DA72/1999 S96(AA) - Section 96(AA) application to modify approved construction of three (3) townhouses and strata subdivision - Part 2.

Site Visits

A site visit was undertaken at the subject site on 08 January 2020.

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	Mainly 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 allow Council to request additional information. No additional information was requested in this case.</p>

Section 4.15 Matters for Consideration'	Comments
	<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> <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	No submissions were received during the Notification Period.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Landscape Officer	<p>The development application proposes alterations and additions to an existing townhouse. The first floor addition will require removal of lower branches of the existing Norfolk Island Pine within close proximity to the works in the order of no more than 10%, which is permitted under Manly DCP clause 3.3.2.3, part c), item ii).</p> <p>The landscape component of the proposal is acceptable subject to the submission of a Tree Protection Plan at Construction Certificate application stage addressing the protection of the existing Norfolk Island Pine.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP 2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types.</p>
NECC (Development Engineering)	<p>Development Engineer has no objection to the application subject to the following conditions of consent.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>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.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate has been submitted with the application (see Certificate No. A361090 dated 15 October 2019). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. 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.

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	9.93m (RL 53.676)	16.82%	No
Floor Space Ratio	FSR: 0.6:1 (469.2sqm of gross floor area)	FSR: 0.66:1 (515.34sqm of gross floor area)	10%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Height of Buildings

Description of non-compliance:

The maximum building height of the proposed development is 9.93m, which results in a 1.43m (16.82%) variation to the 8.5m height standard. The variation is sought for a first floor bedroom addition to the rear of the building. The maximum building height proposed equates to RL 53.676 which falls below the existing roof ridge height RL 53.750 which faces Francis Street. The proposed building height breach will therefore not be visible when viewed from Francis Street. It should also be noted that the existing building height currently exceeds the 8.5m height standard.

Note: The submitted Clause 4.6 Variation Request submitted by the Applicant measures the proposed

maximum building height as being 10.171m. However, the assessment considered that Ground Level (existing) should be taken as a reference to the ground level in an undisturbed state (i.e. not taken from within an excavation or from on top of filled land). Therefore, the assessment has observed that the actual Ground Level (existing) would be 241mm higher than the excavated Finished Floor Level of the storage area within the Garage Level.

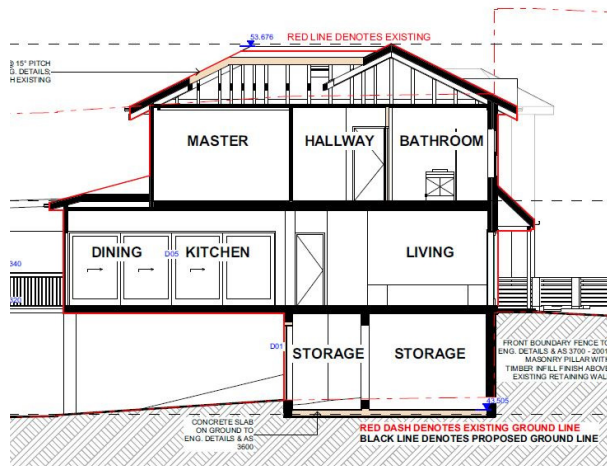


Figure 1. Long Section. Source: Action Plans.

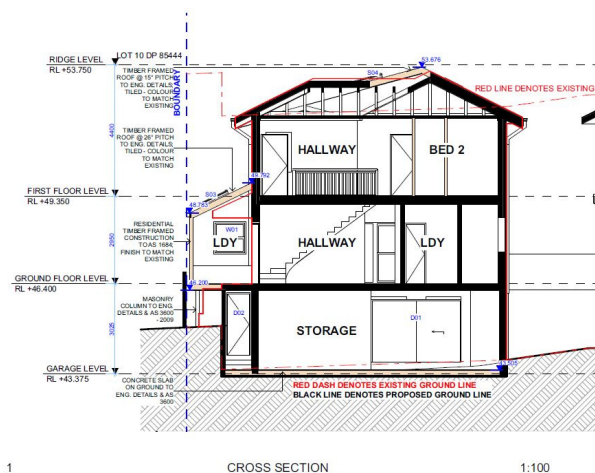


Figure 2. Cross Section. Source: Action Plans.

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

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

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

(2) Development consent may, subject to this clause, be granted for development even though the

development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

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

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ

provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

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

s 1.3 of the Environmental Planning and Assessment Act 1979 (EPA Act) reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- The variation between the existing and proposed building height is minor.
- The proposed development satisfies the objectives specified within Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP 2013).
- Strict numerical compliance with the 8.5m maximum building height development standard would not result in a materially better urban design outcome and would thwart the underlying objectives of Clause 4.3 of the MLEP 2013.
- The proposed development will not present with excessive bulk from the public domain due the sloping topography of the site.
- The proposed built form is consistent to that of the existing dwelling on the subject site.

- The proposed development is considered to be in the public interest as it satisfies the objectives of the R1 General Residential zone as specified in the MLEP 2013.
- The proposal will not result in any unacceptable built, natural, social or economic impacts for consideration under the EP&A Act.

Comment:

It is accepted that despite the contravention of the 8.5m Height of building development standard, the variation between the existing and proposed building height is minor, with the proposed building height being technically 35mm lower than the current maximum building height when measured from the existing ground level. It is also agreed that the proposed breach is exacerbated by the sloping topography towards the rear of the site. The additional building height resulting from the proposal will have negligible impacts on the streetscape and will not detract from the amenity of adjoining dwellings. This argument is validated, due to the application proposing a building height of RL 53.676, which is below the highest ridge level of the existing building (RL 53.750).

Furthermore, it is agreed that the proposed development satisfies the objectives specified within Clause 4.3 of the MLEP 2013 and the objectives of the R1 General Residential zone as stipulated within the MLEP 2013. A detailed discussion of the proposal against the above-mentioned objectives is provided later within this report.

Moreover, it is agreed that the proposal will not present with excessive bulk from the public domain, given the additional gross floor area is confined to the existing building footprint and the rear of the dwelling.

In conjunction with the above-mentioned factors, it is accepted that the proposed built form is consistent with the existing dwelling on site, due to the proposed development providing a roof form that is consistent to the existing dwelling, whilst also conforming to the established side boundary setbacks.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the MLEP 2013 are:

(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:

As discussed earlier within this report, the proposed building height of RL 53.676, which is below the highest ridge level of the existing building (RL 53.750). Despite the contravention of the Height of building development standard, the variation between the existing and proposed building height is minor, with the proposed building height being technically 35mm lower than the current maximum building height when measured from the existing ground level. It is therefore considered that the resultant development will still be consistent with the sloping topography of the site. Furthermore, the proposed hipped roof form on the first floor rear addition is compatible with the existing dwelling. Having regard to the above, it is considered that the proposed development is consistent with the desired future character of the locality.

b) to control the bulk and scale of buildings,

Comment:

Whilst the proposal departs from the floor space ratio development standard, the additional floor space resulting from the proposed development is predominantly confined to the existing building footprint within the garage and basement level, with the remaining floor space being located at the rear of the dwelling. As a result, the proposal will not alter the bulk and scale of the existing dwelling when viewed from Francis Street. Having regard to the above, it is considered that the bulk and scale of the proposal is suitable for the subject site and consistent with the desired future character of the locality, given no unreasonable amenity impacts will arise as a result of the proposal.

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 subject site is not located within the vicinity of the foreshore and no views of the foreshore are obtained from the subject site and adjoining properties. It is noted that the dwellings on the subject site and adjoining properties obtain views of the Fairlight residencies through the western rear boundaries. The proposed first floor addition only encroaches 1.07m beyond the established rear building line. Therefore, it is not anticipated that the proposal will obscure existing views of the Fairlight residencies obtained from adjoining dwellings on the subject site and adjacent properties.

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 shadow diagrams submitted with this application demonstrate that private open space areas and habitable rooms on the subject site and adjoining properties will maintain sufficient access to sunlight during the winter solstice.

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 subject site is not located within a recreation or environmental protection zone, nor does the site adjoin a recreation or environmental protection zone. Furthermore, the proposal will not result in the removal of trees or significant landscape features. Suitable conditions have been included with this consent to ensure the preservation of the existing Norfolk Island Pine. Therefore, the proposed development will not be detrimental to existing flora and fauna within the locality.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposed development retains the residential use of the site.

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

Comment:

The application proposes alterations and additions to an existing townhouse within a multi dwelling housing development, which is a permissible use within the R1 General Residential zone.

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

Comment:

The proposal continues to maintain a residential use.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

Floor Space Ratio

Description of non-compliance:

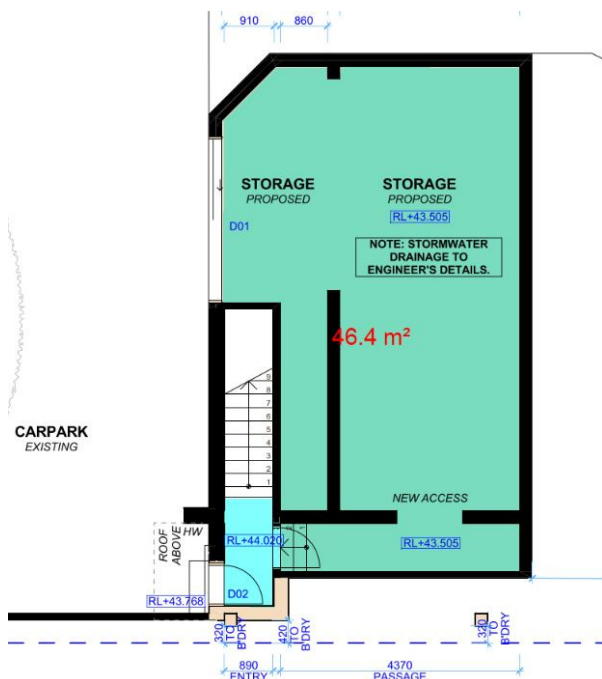


Figure 3. Proposed Garage Level amended to demonstrate increase in floor area (shaded blue).
Source: Action Plans.

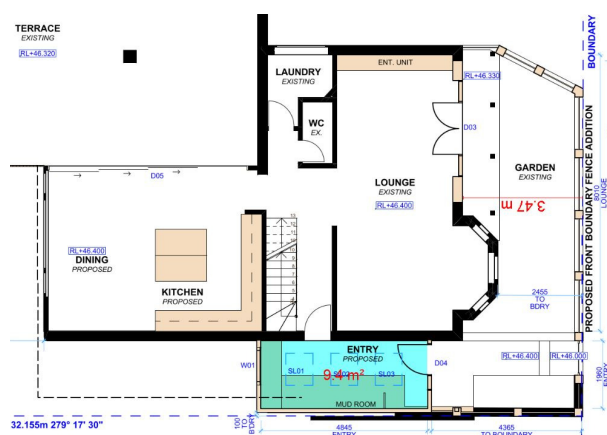


Figure 4. Proposed Ground Floor Plan amended to demonstrate increase in floor area (shaded blue).
Source: Action Plans.

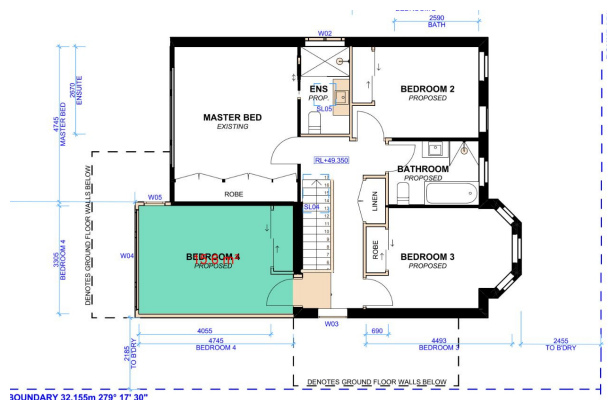


Figure 5. Proposed First Floor Plan amended to demonstrate increase in floor area (shaded in blue).
Source: Action Plans.

The proposed floor space ratio of the site is measures at 0.66:1 (515.34sqm of gross floor area), which results in a 10% variation to the applicable floor space ratio standard of 0.6:1 (469.2sqm of gross floor area). The additional gross floor area on the subject site resulting from the proposal equates to 66.62sqm.

The additional floor space includes the proposed storage area at the garage level (Figure 3), the proposed entry at the ground floor (Figure 4) and the proposed bedroom on the first floor (Figure 5). The resultant floor area of Unit 17 is measured at 196.02sqm. It should be noted that the storage area on the garage level does not appear to have been included as part of the existing approved floor space ratio calculation, despite this area is not meeting the definition of a 'basement' under the Manly LEP 2013, which would have the effect of excluding the area from being calculated as part of the overall gross floor area.

The existing approved floor space ratio (Consent No. DA72/1999 S96AA) of the site was measured as the following:

Unit 17 Floor Area: 129.40sqm
Unit 17A Floor Area: 157.40sqm
Unit 19 Floor Area: 166.90sqm

Total Floor Area: 453.70sqm
Floor Space Ratio: 0.58 to 1.0

As demonstrated above, and following a review of the land area allocated on the strata title, Unit 17 has

a comparatively reduced floor area. It has also been noted that part of the ground floor entry falls within Common Property. In this regard, owners consent has been provided from the each property owner within the strata plan. A condition of consent is recommended for the Strata Plan for the subject site to be amended prior to the issue of any Occupation Certificate, to reflect the works in accordance with the approved stamped plans. This would be to ensure that the Strata Plan accurately depicts the built works on site.

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

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

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the Environmental Planning and Assessment Act 1979 (EPA Act) reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

- The additional floor area resulting from the proposal is minor.
- The proposed variation satisfies the objectives specified within Clause 4.4 of the MLEP 2013.
- Strict numerical compliance with the floor space ratio development standard would not result in a materially better urban design outcome and would thwart the underlying objectives of Clause 4.4 of the MLEP 2013.
- The proposed development will not present with excessive bulk and the built form will remain consistent with both the existing dwelling on the site and development within the locality.
- The proposed development is considered to be in the public interest as it satisfies the objectives of the R2 Low Residential zone as specified in the MLEP 2013.
- The proposal will not result in any unacceptable built, natural, social or economic impacts for consideration under the EP&A Act.

Comment:

The additional gross floor area on the subject site resulting from the proposal equates to 66.62sqm. Whilst the additional gross floor area is not particularly minor, it is agreed that the proposed development will not present with excessive bulk when viewed from Francis Street, given the additional gross floor area will be confined to the existing building footprint within the garage and basement level and at the rear of the dwelling. In this regard, the proposal will not detract from the streetscape.

It is accepted that despite the variation to the floor space ratio development standard, the proposed development satisfies the objectives specified within Clause 4.4 of the MLEP 2013 and the objectives of the R1 General Residential zone as stipulated within the MLEP 2013. A detailed discussion of the proposal against the above-mentioned objective is provided later within this report.

Furthermore, it is agreed that the proposed built form will remain consistent with the existing dwelling on site, due to the proposed addition providing a roof form that is consistent to that of the existing dwelling, in conjunction to conforming to the established side boundary setbacks. Moreover, the bulk and scale of the proposal is considered suitable in the context of a townhouse within a multi dwelling housing development on this particular site.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Floor space ratio' of the MLEP 2013 are:

(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 additional gross floor area resulting from the proposal is largely confined to the existing building footprint within the garage and basement level, with the remaining floor area being located at the rear of the dwelling. Consequently, the proposal will not alter the bulk and scale and of existing dwelling when viewed from Francis Street. In turn, the proposed development will have negligible impacts on the streetscape, thereby ensuring development that is consistent with the desired character of the locality.

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 will not result in the removal of trees or significant landscape features, nor will the proposal obscure important landscape features.

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

Comment:

The proposed development will not significantly alter the appearance of the existing dwelling when viewed from Francis Street. In this regard, the proposal will not detract from the established 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 development will not result in the removal of trees or significant landscape features. Suitable conditions have been included with this consent to ensure the preservation of the existing Norfolk Island Pine. Moreover, the proposed development will not unreasonably impact the amenity of adjoining dwellings on the subject site and adjacent allotments, specifically having regard to privacy, solar access and views.

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

Comment:

The proposed development maintains a residential use within the R1 General Residential zone.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposed development retains the residential use of the site.

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

Comment:

The application proposes alterations and additions to an existing townhouse within a multi dwelling housing development, which is a permissible use within the R1 General Residential zone.

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

Comment:

The proposal continues to maintain a residential use.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Floor space ratio Development Standard is assumed by the Local Planning Panel.

6.4 Stormwater management

Council's Development Engineer has assessed the application against the requirements of this control and raised no objections, subject to conditions. Subject to compliance with the conditions of consent, the application will satisfy the requirements of this control.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 782sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 3 dwellings maximum	3 dwellings - unchanged	-	Yes
	Dwelling Size: 107sqm minimum gross floor area	216.44sqm gross floor area	-	Yes
4.1.2.1 Wall Height	North: N/A	No new works confined to this area	N/A	N/A
	South: 6.9m (based on gradient 1:17)	8.4m (bedroom 4)	21.74%	No
4.1.2.2 Number of Storeys	2	3 - existing 3 storey structure	50%	No
4.1.2.3 Roof Height	Height: 2.5m	1.62m	-	Yes
	Pitch: maximum 35 degrees	Between 15 and 26 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line (2.76m)	3.74m (glazed doors on eastern elevation) - existing front building line equates to 2.5m	-	Yes
4.1.4.2 Side Setbacks and Secondary Street	North: N/A	No change to existing	N/A	N/A
	South (Garage and	0.32m (piers) and 0.42m	27.59% (piers)	No

Frontages	Basement Level): 0.58m (wall height 1.73m)	(wall)	and 44.83% (wall)	
	South (Ground Floor): 1.45m (wall height of mudroom is 4.336m)	0m - 0.1m (mudroom) - existing setback of bin storage area is 0m	93.10% - 100%	No
	South (First Floor): 2.8m (wall height of bedroom 4 is 8.4m)	2.185m (bedroom 4) - maintains existing setback of first floor)	21.96%	No
	Windows: at least 3m from side boundaries	One (1) new window on southern elevation located 2.18m from southern side boundary	27.33%	No
4.1.4.4 Rear Setbacks	8m	17.82m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space 55% (430.1sqm) of site area	61.55% (481.3sqm) - no change	-	Yes
	Open space above ground 25% (120.33sqm) of total open space	15.75% of total open space (75.8sqm) - no change	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% (165.73sqm) of open space	43.15% (207.7sqm) - no change	-	Yes
	3 native trees	no native trees	100%	No
4.1.5.3 Private Open Space	12sqm per dwelling (36sqm)	171sqm - no change	-	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.2 Heritage Considerations

The subject site is within the vicinity of Item I52 – Group of 6 houses – 12-22 Francis Street, listed in Schedule 5 of Manly Local Environmental Plan 2013. Clause 3.2 Heritage Considerations of the Manly DCP specifies a number of requirements that must be considered for a proposed development in the vicinity of a heritage item. In this regard, Council's Heritage Planner has provided the following comments concerning the application on the 3rd February 2020:

DA2019/1393 proposes alterations and additions to part of a residential flat building at 17 Francis Street, Fairlight. This property is within the vicinity of Item I52 – Group of 6 houses – 12-22 Francis Street, listed in Schedule 5 of Manly Local Environmental Plan 2013. This group of houses is listed as a group of modest, single storey cottages spanning the period 1890's-1915. This heritage group of houses is located on the opposite, higher side of Francis Street, which look back across to the subject site.

The application is largely for internal alterations or additions at the rear, with the exception of a new front fence; new doors and glazing facing the street and an extension on the southern side to create a new entrance (visible from the street). Given the separation of this site from the heritage item (20 metres across the road), it is considered that there will be no impact upon the significance of this heritage item. No heritage fabric will be affected and there will be no impact upon views of the heritage item from the public domain.

Therefore, no objections are raised on heritage grounds and no conditions required.

3.3.2 Preservation of Trees or Bushland Vegetation

Council's Landscape Officer has assessed the application against the requirements of this control and raised no objections, subject to conditions. Subject to compliance with the conditions of consent, the application will satisfy the requirements of this control.

3.7 Stormwater Management

Council's Development Engineer has assessed the application against the requirements of this control and raised no objections, subject to conditions. Subject to compliance with the conditions of consent, the application will satisfy the requirements of this control.

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

Wall Height

Description of non-compliance

Clause 4.1.2.1 of the MDCP 2013 relies on the slope of the land to determine the maximum external wall height. In calculating the slope of the land, the maximum wall height is as follows:

- Northern elevation - N/A (works not confined to this area); and
- Southern elevation - 6.9m (based on gradient 1:17).

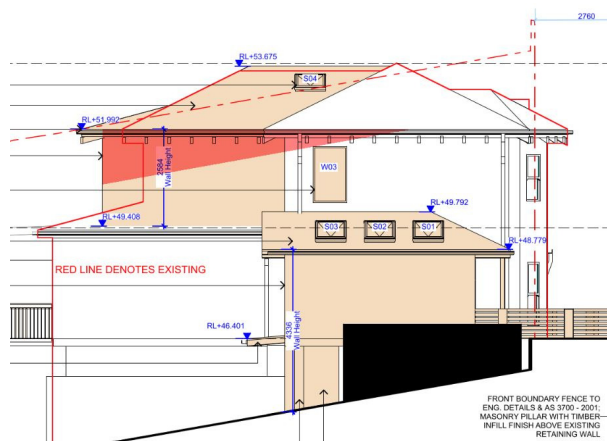


Figure 6. South Elevation amended to demonstrate the extent of the wall height breach (shaded red). Source: Action Plans.

The proposed first floor additions result in a non-complaint wall height of 8.4m to the southern elevation, resulting in a maximum breach of 1.5m to the portion of the additions nearest to the rear boundary (Figure 6). The noncompliance reduces to a 400mm breach where it attaches to the existing building.

As a consequence, the proposed development fails to comply with the numeral requirement of this control.

Merit Assessment

With regard to the consideration for a variation, the proposed development is considered against the underlying objectives of the control. This control relies upon the objectives specified within Clause 4.3 of the MLEP 2013. Accordingly, the proposal is considered against the following objectives:

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

Comment:

The application proposes a ridge height of RL 53.676, which is sited below the ridge level of the existing structure (RL 53.750). The additional building height resulting from the proposed development equates to 0.05m above the existing ground level, which is a consequence of the sloping site. The additional building height resulting from the proposed development will have negligible impacts on the streetscape and will not adversely affect adjoining dwellings located on the subject site and adjacent allotments.

(1) (b) To control the bulk and scale of buildings.

Comment:

Whilst the proposal departs from the prescribed floor space ratio development standard, the additional gross floor area resulting from the proposed development is predominantly confined to the existing building footprint within the garage and basement level, with the remaining floor area being located at the rear of the dwelling. As a result, the proposed development will not alter the bulk and scale of the existing dwelling when viewed from Francis Street. Having regard to the above, it is considered that the bulk and scale of the proposal suitable for the subject site and consistent with the desired future character of the locality.

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

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

Comment:

The subject site is not located within the vicinity of the foreshore and no views of the foreshore are obtained from the subject site and adjoining properties. It is noted that the dwellings on the subject site and adjoining properties obtain views of the Fairlight residencies through the western rear boundaries. The proposed first floor extension only encroaches 1.07m beyond the established rear building line. Therefore, it is not anticipated that the proposal will obscure existing views of the Fairlight residencies obtained from adjoining dwellings on the subject site and adjacent properties.

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

Comment:

The shadow diagrams submitted with this application demonstrate that private open space areas and habitable rooms on the subject site and adjoining properties will maintain sufficient access to sunlight during the winter solstice.

(1) (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 subject site is not located within a recreation or environmental protection zone, nor does the site adjoin a recreation or environmental protection zone. Furthermore, the proposal will not result in the removal of trees or significant landscape features. Suitable conditions have been included with this consent to ensure the preservation of the existing Norfolk Island Pine. Therefore, the proposed development will not be detrimental to existing flora and fauna within the locality.

Number of Storeys

Clause 4.1.2.2 of the MDCP 2013 stipulates that buildings on the subject site are not to exceed two (2) storeys. The application proposes alterations and additions to an existing three (3) storey structure. It is noted that the existing townhouse maintains a two (2) storey appearance from Francis Street. Given the three (3) storey structure is existing, the proposed alterations and additions are considered acceptable in this regard.

Having regard to the above assessment, it is considered that the relevant objectives of the control have been achieved. Therefore, the application is supported on merit.

4.1.3 Floor Space Ratio (FSR)

Description of non-compliance

Clause 4.1.3 of the MDCP 2013 stipulates that development on the subject site shall not result in a floor space ratio (FSR) that exceeds 0.6:1 (469.2sqm of gross floor area). The proposed development will result in an FSR of 0.66:1 (515.34sqm of gross floor area), which fails to comply with this control. It is noted that the existing FSR on the site is 0.57:1 (448.72sqm of gross floor area).

Merit Assessment

With regard to the consideration for a variation, the proposed development is considered against the underlying objectives of the control as follows:

Objective 1) To ensure the scale of the development does not obscure important landscape features.

Comment:

The proposed development will not result in the removal of trees or significant landscape features, nor will the proposal obscure important landscape features.

Objective 2) To minimise disruption to views to adjacent and nearby development.

Comment:

It is noted that the subject site and adjoining properties on the western side of Francis Street obtain views of the Fairlight residencies through the western rear boundaries. The proposed first floor extension only encroaches 1.07m beyond the existing rear building line. Therefore, it is not anticipated that the proposal will obscure existing views of the Fairlight residences obtained from adjoining dwellings on the subject site and adjacent properties.

Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.

Comment

The shadow diagrams submitted with this application indicate that the subject site and adjoining properties will maintain sufficient access to sunlight during the winter solstice.

Having regard to the above assessment, it is considered that the relevant objectives of the control have been achieved.

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

Description of non-compliance

Clause 4.1.4 of the MDCP 2013 requires buildings to be setback:

- One third of the proposed wall height from side boundaries; and
- Windows to be setback at least 3m from side boundaries.

The application proposes the following non-compliant setbacks on the southern elevation:

- Garage and Basement Level - 0.32m for piers and 0.42m for external wall, which fails to comply with the 0.58m requirement (one third wall height);
- Ground Floor Level - 0m - 0.1m for mudroom and entryway, which fails to comply with the 1.45m requirement (one third wall height); and
- First Floor Level - 2.185m for external wall of bedroom 4, which fails to comply with the 2.8m requirement (one third wall height).

The application also proposes one (1) window on the southern elevation of the first floor located 2.18m from the southern side boundary, which fails to comply with the 3m requirement.

Merit Assessment

With regard to the consideration for a variation, the proposed 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 reduced setbacks at the garage and basement level are not visible from Francis Street, therefore will have negligible impacts on the streetscape. In assessing the impacts of the proposed entryway and mudroom, it is noted that the works largely comprise the enclosure of the existing bin storage area, which currently maintains a nil setback from the southern side boundary. In this regard, a reduced setback is considered to be acceptable, given the proposal will not significantly alter the appearance of the existing dwelling when viewed from Francis Street, nor will the reduced setback detract from the amenity of the southern adjoining property (15 Francis Street). Whilst the proposed first floor extension departs from the prescribed numerical requirement, it is noted that the proposal maintains the existing side boundary setback for the upper floor on the southern elevation. In this regard, the reduced setback is considered appropriate, given the addition will not be visually imposing on the streetscape.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement;*
- *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 and 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 reduced side building line along portions of the southern elevation will not give rise to unreasonable privacy impacts, given the new structures will be devoid of windows on the southern elevation. Whilst the proposed window W03 within the existing footprint encroaches into the 3m setback requirement, it is noted that the window is located in a hallway where the occupants will spend little waking time. Therefore, no unreasonable privacy impacts will arise as a result of the window's location. As noted earlier within this report, the proposed development will not give rise to unreasonable view loss, nor will it result in excessive overshadowing impacts. The proposed development generally conforms to the established side building line on the southern elevation. As a result, the proposal will not present with excessive bulk when viewed from the street, thereby preserving the character of the streetscape. Furthermore, the proposal will not impact road visibility or traffic conditions within the locality.

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

Comment:

As noted above, whilst the proposal departs of the prescribed numerical requirements for side setbacks, the application conforms to the established side building line along the southern elevation. In this regard, a variation to the prescribed control is considered appropriate.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed development will not result in the removal of trees or significant landscape features, nor does it alter the existing landscaped open space within the site.

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

Comment:

The site is not located within a bushfire prone area.

Having regard to the above assessment, it is considered that the relevant objectives of the control have

been achieved. Therefore, the application is supported on merit.

4.1.5 Open Space and Landscaping

Description of non-compliance:

Clause 4.1.5.2 of the MDCP 2013 requires at least three (3) native trees present on the subject site. The site does not currently contain any native trees, nor does the application propose any tree planting. As a consequence, the proposed development fails to comply with the requirements of this control.

Merit Assessment

With regard to the consideration for a variation, the proposed 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:

As discussed previously within this report, the proposal will not result in the removal of trees or significant landscape features. Suitable conditions have been included with this consent to ensure the retention of the existing Norfolk Island Pine.

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:

No changes are proposed to the existing landscape area and total open space on the subject site. Whilst the site is currently devoid of native trees, the existing Norfolk Island Pine and additional trees, shrubs and landscape features are sufficient to ensure the site is not dominated by the built form.

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

Comment:

As noted earlier within this report, the proposed development will not detract from the amenity of adjoining properties, specifically having regard to view loss, privacy and solar access.

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

Comment:

The proposed development does not alter the existing compliant dimensions for landscape area. All new stormwater collected from the proposed development will be connected to the existing drainage infrastructure present on site. In this regard, it is considered that the proposal will effectively minimise stormwater runoff.

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

Comment:

There are no additional landscaping works entailed within the proposal. Therefore, the proposal will limit the opportunity for invasive weeds to access the site.

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

Comment:

As noted above, the proposal will retain the existing landscape features on site. The existing trees, shrubs and soft landscaping will maximise the opportunity for potential wildlife corridors.

Having regard to the above assessment, it is considered that the relevant objectives of the control have been achieved. Therefore, the application is supported on merit.

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

Northern Beaches Section 7.12 Contributions Plan 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$2,600 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$260,000.

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

The report provides a detailed assessment of the Development Application for alterations and additions to 1/17 Francis Street, Fairlight.

The assessment of the proposal against the provisions of the MLEP 2013 found that the proposal does not comply with Clause 4.3 Height of buildings. Despite the variation to the 8.5m maximum building height development standard, the proposal is sited below the existing ridge level (RL 53.750). The additional building height resulting from the proposed development equates to 0.05m above the existing ground level, which is a consequence of the sloping topography. It is considered that the applicant has provided sufficient justification for the departure of the development standard.

The assessment of the proposal against the provisions of the MLEP 2013 found that the proposal does not comply with Clause 4.4 Floor space ratio. Despite the variation to the 0.6:1 floor space ratio development standard, the additional floor area resulting from the proposed development is predominately confined to the existing building footprint within the garage and basement level, with the exception of the bedroom 4, which is sited at the rear of the dwelling. In this regard, the proposal will not present with excessive bulk when viewed from Francis Street. It is considered that the application has provided sufficient justification for the departure of the development standard.

In addition, the assessment of the proposed development against the provisions of the MDCP 2013 found that the proposal does not comply with a number of the numerical controls, specifically for wall heights and the southern side boundary setbacks. Despite this, this assessment concludes that the variations are acceptable, given the new works conform to existing side setbacks and that the proposal will not detract from the streetscape and the amenity of adjoining properties.

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 Clause 4.3 Height of Building and 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2019/1393 for Alterations and additions to an existing dwelling. on land at Lot 1 SP 67726, 1 / 17 Francis Street, FAIRLIGHT, 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
DA01	03 December 2019	Action Plans
DA02	03 December 2019	Action Plans
DA07	03 December 2019	Action Plans
DA08	03 December 2019	Action Plans
DA09	03 December 2019	Action Plans
DA10	03 December 2019	Action Plans
DA11	03 December 2019	Action Plans
DA12	03 December 2019	Action Plans
DA13	03 December 2019	Action Plans
DA14	03 December 2019	Action Plans
DA15	03 December 2019	Action Plans

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A361090	15 October 2019	Action Plans

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

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

Waste Management Plan

Drawing No/Title.	Dated	Prepared By
Waste Management Plan	04 December 2019	Emma Haselden

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

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

2. Prescribed Conditions

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

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

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

damage.

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

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

Reason: Legislative requirement.

3. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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 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.
- (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

4. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$2,600.00 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 2019. The monetary contribution is based on a development cost of \$260,000.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

5. **Security Bond**

A bond (determined from cost of works) of \$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

6. Stormwater Disposal

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003.

Details demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

7. Tree Protection Plan

A Tree Protection Plan shall be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate, demonstrating tree protection measures to protect the following tree in close proximity to the works:

a) Norfolk Island Pine

The Tree Protection Plan shall be prepared by an Arborist with AQF minimum Level 5 qualifications in arboriculture/horticulture, showing the following:

- i) layout of the development, including existing and proposed underground services,
- ii) location of all trees identified for retention, including extent of canopy,
- iii) access routes throughout the site for construction activity,
- iv) location of tree protection fencing / barriers,
- v) root protection in the form of mulching within the tree protection zone,
- vi) trunk and branch protection within the tree protection zone, and specifically for this development, any aerial trunk and/or branch protection,
- vii) location of stockpile areas and materials storage,
- viii) other general tree protection measures.

Tree protection fencing to the extent and alignment as determined by an AQF minimum Level 5 Arborist, shall comply to Australian Standard 4687-2007 Temporary Fencing and Hoardings, including 2.4m wide x 2.1m high fence panels, and weighted foot blocks. Alternatives to fencing shall be used only for sloping sites unsuited to fencing, including the use of tree trunk and branch protection battens in accordance with Figure 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

Tree protection measures identified on the plan are to be in place prior to commencement of works. An AQF minimum Level 5 Arborist shall provide certification to the Certifying Authority that the tree protection measures are satisfactory prior to the commencement of works.

Reason: to ensure compliance with the requirement to retain and protect the existing Norfolk Island Pine.

8. **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 Certifying Authority 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 TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

9. **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.

10. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

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

11. **Trees Condition**

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

- i) A general decline in health and vigour,
- ii) Damaged, crushed or dying roots due to poor pruning techniques,
- iii) More than 10% loss or dieback of roots, branches and foliage,
- iv) Mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) Yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) An increase in the amount of deadwood not associated with normal growth,
- vii) An increase in kino or gum exudation,
- viii) Inappropriate increases in epicormic growth that may indicate that the plants are in a

stressed condition,

ix) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of Trees.

12. Tree and vegetation protection - General

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

- i) all trees and vegetation within the site, excluding exempt vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 minimum qualification Arborist,
- iii) existing ground levels shall remain under the tree protection zone of trees to be retained, unless authorised by AQF Level 5 minimum qualification Arborist,
- iv) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an AQF Level 5 minimum qualification Arborist. Details including photographic evidence of works undertaken shall be submitted to the Certifying Authority,
- v) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- vi) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a AQF Level 5 minimum qualification Project Arborist on site,
- vii) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 minimum qualification Arborist on site,
- viii) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with a AQF Level 5 minimum qualification Arborist, including advice on root protection measures,
- ix) should either or all of vi), vii) and viii) occur during site establishment and construction works, a AQF Level 5 minimum qualification Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- x) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009,
- xi) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

c) All protected trees are to be retained for the life of the development, or for their safe natural life. Trees that die or are removed by approval must be replaced with a locally native canopy tree.

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

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

13. Condition of retained vegetation

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with AQF minimum Level 5 qualifications in arboriculture/horticulture shall be submitted to the Certifying Authority, assessing the health and impact on the Norfolk Island Pine required to be retained, including the following information:

- i) compliance to any Arborist recommendations for tree protection and excavation works,
- ii) extent of damage sustained by vegetation as a result of the construction works,
- iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

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

14. Stormwater Disposal

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

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

15. Removal of All Temporary Structures/Material and Construction Rubbish

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

16. Amended Strata Plan

The Strata Plan for the subject site is to be amended prior to the issue of any Occupation Certificate, to reflect the works in accordance with the approved stamped plans.

Reason: To ensure the Strata Plan accurately depicts the built works on site.

17. Waste Management Confirmation

Prior to the issue of the Final Occupation Certificate, evidence / documentation must be submitted to the Certifying Authority confirming 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.