

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/2208
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Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 33 DP 200638, 77 Castle Circuit SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Nicole Mary Algar
Applicant:	Hot House Projects Pty Ltd

Application Lodged:	06/01/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	12/01/2023 to 27/01/2023
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of buildings: 32.9% 4.4 Floor space ratio: 49.6%
Recommendation:	Approval

Estimated Cost of Works:	\$ 609,840.00
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EXECUTIVE SUMMARY

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

The proposed application seeks a variation to the Height of Buildings development standard pursuant to Clause 4.3 of the Manly LEP 2013. The proposed application also seeks a variation to the Floor Space Ratio development standard pursuant to Clause 4.4 of the Manly LEP 2013. The application is referred to the Development Determination Panel (DDP) due to the application proposing a variation to both development standards of more than 10%.

The Clause 4.6 variation request for the non-compliance with the building height and FSR arises due to existing site constraints and structures, a small lot size, and steeply sloping topography.

The applicant's written requests pursuant to clause 4.6 of the Manly LEP 2013 have adequately addressed the merits required to be demonstrated. The proposal is for alterations and additions to an existing dwelling and must content with existing non-compliances and site layout. Furthermore, the subject site is constrained by steeply sloping topography and the proposed development is commensurate to surrounding residential development.

Three (3) submissions were received as a result of the public exhibition of the application.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the construction of alterations and additions to a dwelling house. Specifically, the proposal comprises of the following:

Basement/Garage (RL 35.60m AHD)

- Double garage
- Driveway and vehicle cross over at the northern boundary
- Pedestrian access adjoining eastern boundary
- Internal lift access contained within proposed garage
- Removal of 9 trees (3 requiring approval)

Terrace (RL 40.81m AHD)

- Terrace over proposed garage
- Lift access

Pool Terrace (RL 42.87m AHD)

- Modifications to existing pool and surrounds
- Pergola over the eastern end of the pool enclosure

Ground Floor (RL 44.61m AHD)

- No change proposed

First Floor (RL 47.20m AHD)

- Extension of a portion of the northern wall of the Master Bedroom
- Replacement of window

Second Floor (RL 50.01m AHD)

- Extension in northern wall of the Lounge Room
- Lift access

Garage - to be converted to storage (RL 51.55m AHD)

- Deletion of existing garage and replacement with storage
- Pedestrian entrance to southern boundary

- Stairs to third floor

Third Floor (RL 53.14m AHD)

- Parent's Lounge/Study and deck.

Roof Ridge (RL 55.94m AHD)

- Roof extension and alteration to accompany works

Additional information was requested in relation to referral comments from Council's Development Engineers, as well as in relation to the width/size of the proposed garage, the FSR Clause 4.6 Request and privacy. Additional information and amended plans were provided which satisfied this request. This additional information and amended plans did not require renotification in accordance with the Northern Beaches Council Community Participation Plan.

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 - 6.8 Landslide risk

Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

Manly Development Control Plan - 3.9 Mechanical Plant Equipment

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

Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features
Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 33 DP 200638 , 77 Castle Circuit SEAFORTH NSW 2092
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Castle Circuit.</p> <p>The site is irregular in shape with a curved frontage of 24.341m along Castle Circuit, an eastern side boundary length of 26.245m, a western side boundary length of 21.74m, and a southern rear boundary length of 25.305m. The site has a surveyed area of 562.6m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house and swimming pool.</p> <p>The site slopes steeply from the south (rear) down towards the north (front), with a crossfall of approximately 16m.</p> <p>The site contains trees, lawn areas and garden beds. There are no details of any threatened species on the subject site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by dwelling houses.</p>

Map:



SITE HISTORY

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

DA3736/1990 issued by Manly Council for 'Proposed Timber Deck' on 27 August 1990.

DA597/2003 issued by Manly Council for 'Retaining Walls and landscaping (including removal of certain trees)' on 16 March 2003.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 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 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to referral comments from Council's Development Engineers, as well as in relation to the width/size of the proposed garage, the FSR Clause 4.6 Request and privacy.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 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>

Section 4.15 Matters for Consideration	Comments
	<p>Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Sydney Bushfire Consultants, dated 3 December 2022) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 12/01/2023 to 27/01/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mrs Rebecca Wareham	79 Castle Circuit SEAFORTH NSW 2092
Withheld Withheld	SEAFORTH NSW 2092
Withheld Withheld	SEAFORTH NSW 2092

The following issues were raised in the submissions:

- **Geotechnical Hazards**

The submissions raised concerns regarding geotechnical hazards presented by the development. In particular, concern was raised about potential geotechnical impacts on the neighboring property to the east (79 Castle Circuit).

Comment:

The development application is supported by a Geotechnical Report, the recommendations of which will form a condition of consent. Furthermore, a condition of consent has been included requiring pre-construction dilapidation reporting be undertaken at 79 Castle Circuit. This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works. The proposed development, subject to conditions, is considered to meet the geotechnical requirements of the MLEP 2013 and MDCP.

- **Impact of proposed lift structure on solar amenity of surrounding properties**

The submissions raised concerns that the proposed lift structure would reduce solar access to surrounding properties.

Comment:

A Shadow Diagram submitted with the DA depicts the additional shadows cast by the proposed development during midwinter at 9am 12pm and 3pm. The diagrams show that the additional shadowing of the proposed development is mostly cast on the right of carriageway behind the subject site, which is a paved access driveway to adjoining sites. Very minor additional shadowing occurs on the neighboring property to the west (75 Castle Crescent) from minor paving extension along the west boundary at the swimming pool terrace. Properties to the south are uphill, and not impacted by the additional shadowing. Additional shadowing on the neighboring property to the east (79 Castle Circuit) is limited to a small landscaped area at the rear during the afternoon, and does not result in shadowing on the building between 9am - 3pm. Private open space is provided at the front of 79 Castle Circuit with a northerly aspect, and is not impacted by additional shadowing. Overall, the proposal is considered to meet controls related to solar access in MDCP Clause 3.4.1 Sunlight Access and Overshadowing (refer to this section of the report for a detailed assessment).

- **Height Non-Compliance**

The submissions raised concerns that the proposal is non-compliant with the Height of Building development standard.

Comment:

The applicant has made a 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. Refer to the section of this report on MLEP 2013 Clause 4.6 Exceptions to development standards for a detailed assessment of building height and the 4.6 request. In summary, 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 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.

Therefore, this report recommends the approval of the variation request.

- **Floor Space Ration Non-Compliance**

The submissions raised concerns that the proposal is non-compliant with the Floor Space Ratio development standard.

Comment:

The applicant has made a written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio. Refer to the section of this report on MLEP 2013 Clause 4.6 Exceptions to development standards for a detailed assessment of FSR and the 4.6 request. In summary, 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 4.4 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.

Therefore, this report recommends the approval of the variation request.

- **Visual privacy impacts**

The submissions raised concerns that the development would result in unreasonable privacy impacts.

Comment:

Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for a detailed assessment of privacy. In summary, concerns were raised with the applicant during the assessment process regarding the impact of the development on privacy, particularly concerning the proposed Parent's Lounge / Study and Deck and its potential impacts on adjacent properties to the west, south-west and south. Amended plans were provided which increased privacy screening on western elevation windows at the Parent's Lounge / Study level and reduced the size and shape of the western section of the Deck. The amendments are considered to address the concerns and ensure reasonable levels of privacy.

The amended development is not considered to create an unreasonable privacy impact on adjoining properties, considering the implementation of privacy devices, design alterations, existing landscaping and the distance between properties towards the west, south-west and south.

- **Acoustic privacy impacts**

The submissions raised concerns that the development would result in an unreasonable acoustic impact.

Comment:

Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security, which includes assessment of acoustic privacy. Conditions of consent are included in the recommendations of this report requiring that the swimming pool / spa motor and lift shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

The proposal does not intensify the use of the subject site, remaining a dwelling house within a low density residential environment. Outdoor entertaining areas are characteristic of dwellings in the area. Given the area is an R2 Low Density Residential zone, it must be expected that some level of acoustic background noise may be heard from neighbouring properties when utilising outdoor living areas or going about daily activities. Such noise is not unreasonable in a low density residential area. Subject to conditions, the proposal is acceptable in terms of acoustic privacy.

- **Lighting impacts**

The submissions raised concerns that the extension of the dwelling will contain lighting, particularly noting the proposed Parent's Lounge / Study and Deck.

Comment:

Again, it must be noted the area is an R2 Low Density Residential zone. It is expected that some level of lighting from surrounding low density residential buildings be visible from adjacent properties. The proposal does not intensify the use of the subject site, remaining a dwelling house within a low density residential environment. Adequate separation and vegetation is maintained between the extension and properties to the west and south of the development. Lighting is not considered to create a unreasonable impact on adjacent properties.

- **Arboricultural concerns**

The submissions raised concerns that vegetation was not adequate between the proposal and surrounding development.

Comment:

The proposal has been supported by an Arboricultural Impact Assessment. This has been reviewed by Council's Landscape Officers who support the proposal, subject to conditions. It is considered that distance and existing vegetation between the subject site and properties to west, south-west and south are adequate to mitigate amenity impacts to a reasonable level. Again, it must be noted the area is an R2 Low Density Residential zone, where it is expected that adjoining properties may be seen through vegetation.

- **View loss**

The submissions raised concerns that the development would result in unreasonable view loss.

Comment:

Refer to the section of this report on MDCP Clause 3.4.3 Maintenance of Views for a detailed assessment of views. In summary, the proposal provides an acceptable level of view sharing to public and private spaces and does not result in unreasonable view loss.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The proposal is supported with regard to landscape issues.</p> <p>Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to):</p> <ul style="list-style-type: none"> • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings <p>The Arboricultural Impact Assessment has identified nine trees for removal, of which trees 14, 15, 16, 19, and 20 are exempt by species or height, and trees 25 and 26 are also exempt as they are forming part of a hedge; thus these trees do not require consent for removal. Trees 13 and 21 are small specimens with a low retention rating, and as such they can be supported for removal.</p> <p>The on slab planter above the garage shall meet Council's minimum soil depth requirements, and the species selection shall meet the requirements outlined in the conditions of consent. All natural rock outcrops outside the approved construction footprint shall be retained and protected during works.</p>
NECC (Development Engineering)	<p>The proposed development increases the impervious area by more than 50 square metres and the total impervious area for the site exceeds 60% and as such on-site stormwater detention (OSD) is required in accordance with Council's Water Management for Development Policy. The proposed driveway crossing is too wide and must be reduced to 4 metres at the kerb to 5 metres at the boundary. A section from the kerb invert to the proposed garage on either side of the crossing must be provided to ensure compliance with Council's normal high profile.</p>

Internal Referral Body	Comments
	<p>Development Engineering cannot support the proposal due to insufficient information to address stormwater management and vehicular access in accordance with clauses 3.7 and 4.1.6 of the DCP.</p> <p>Additional information submitted 15/05/2023</p> <p>The submitted driveway profile and amended driveway width is acceptable.</p> <p>The submitted stormwater design including OSD has been designed in accordance with Council's Water Management for Development Policy in terms of the volume and discharge rate for the proposal. The design includes the provision of proprietary precast stormwater tanks to achieve the required OSD volume. These tanks do not provide any grade to the outlet and are connected via pipes above the base of the tank which will cause water to pond and not drain sufficiently. Also there are no access points to each of the tanks which will not allow for any future maintenance of the system. The provision of the high early discharge chamber in the final tank is unclear as this would need to be constructed as a variation to the standard unit and there is no non return valve shown. The proposed OSD system is not acceptable and an amended storage system must be provided to achieve the required OSD for the proposal.</p> <p>Development Engineering cannot support the proposal due to insufficient information to address stormwater management in accordance with clause 3.7 of the DCP.</p> <p><u>Planner Comments:</u> Amended Stormwater Plans were submitted on 8/6/2024 to address the second set of comments from Development Engineering. These amendments satisfied the concerns raised, and the proposal was changed to supported, subject to conditions.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	<p>Development Application No. DA2022/2208 Description: Alterations and additions to a dwelling house Address: 77 Castle Circuit SEAFORTH</p> <p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of</p>

External Referral Body	Comments
	<p>surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A478115, issued 14 December 2022).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	Existing: 10.2m (to lounge balcony)	20%	No (existing)
		11.3m (lounge roof extension)	32.9%	No
		9.5m (parents retreat deck balustrade)	11.8%	No
		11.2m (parents retreat sunhood)	31.8%	No
		9.1m (parents retreat roof)	7.1%	No
Floor Space Ratio	FSR: 0.4:1 (225.04sqm)	Existing FSR: 0.47:1 (266.1sqm)	18.2% (41.06sqm)	No (existing)
		Proposed FSR: 0.6:1 (336.6sqm)	49.6% (111.56sqm)	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes

Clause	Compliance with Requirements
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Clause 4.3 Height of Buildings

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	11.3m
Percentage variation to requirement:	32.9%

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 has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- The development complies with the relevant objectives of the R2 Low Density Residential Zone of the MLEP 2013.
- The development complies with the relevant objectives of the Height of Buildings development standard of the MLEP 2013.
- The proposed development has been designed with respect for neighbouring amenity.
- The proposed alterations and additions maintain the residential use of the residential dwelling and provide for a built form that is of a bulk and scale consistent with the existing and desired streetscape character.
- The proposed alterations and additions ensure no unreasonable adverse environmental impacts on the use or enjoyment of adjoining land and the public domain as they do not require any excavation (except for the proposed garage) and maintain the existing topography of the subject site.
- No significant trees or vegetation are required to be removed as a result of the increase in overall height.

It is considered that the arguments provided by the applicant are acceptable. It is considered the site is constrained by its allotment shape and steeply sloping topography. The proposal is also for alterations and additions to an existing dwelling, and must also contend with the existing built form on the site and existing non-compliances. The proposal is considered commensurate to surrounding residential development on similar topography and with similar site constraints.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density 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:

The proposal is of a comparable size, height and scale to surrounding development. Surrounding development is also restricted by steeply sloping topography and the proposal is commensurate to surrounding residential development. The flat roof form has been designed to minimise the overall height of the development where possible. The proposed development is considered to satisfy this objective.

b) to control the bulk and scale of buildings.

Comment:

It is not considered that the breach of the Height of Buildings standard contributes to excessive bulk or scale, considering the surrounding residential environment, topography and existing vegetation, which acts to soften the impact of the built form. The proposed development is considered to satisfy this objective.

c) to minimise disruption to the following:

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

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

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

Comment:

Refer to the section of this report on MDCP Clause 3.4.3 Maintenance of Views for a detailed assessment of views. The proposal provides an acceptable level of view sharing to public and

private spaces and does not result in unreasonable view loss. The proposed development is considered to satisfy this objective.

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:

Refer to the section of this report on MDCP Clause 3.4.1 Sunlight Access and Overshadowing for a detailed assessment of solar access. In summary, the development is not considered to create unreasonable overshadowing on public or private spaces. The proposed development is considered to satisfy this objective.

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 a recreation or environmental protection zone. Nonetheless, the height and bulk of the proposal are not considered to impact on existing vegetation. No significant trees or vegetation are required to be removed as a result of the increase in overall height. The proposed development is considered to satisfy this objective.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

- To provide for the housing needs of the community within a low density residential environment.

Comment:

The proposal provides for the needs of current and future occupants within a low density residential environment. The proposed development is considered to satisfy this objective.

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

Comment:

Non-residential land uses are not proposed on the subject site. However, the proposal includes adequate indoor and outdoor areas to provide for the residential needs of current and future occupants. The proposed development is considered to satisfy this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under

environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building Development Standard associated with a single dwelling house (Class 1 building).

Clause 4.4 Floor Space Ratio

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 (225.04sqm)
Proposed:	0.6:1 (336.6sqm)
Percentage variation to requirement:	49.6% (111.56sqm)

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio 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 has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

(c) to promote the orderly and economic use and development of land,
(d) to promote the delivery and maintenance of affordable housing,
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
(g) to promote good design and amenity of the built environment,
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

- The development complies with the relevant objectives of the R2 Low Density Residential Zone of the MLEP 2013.
- The development complies with the relevant objectives of the Height of Buildings development standard of the MLEP 2013.
- The proposed development has been designed with respect for neighbouring amenity.
- The proposed alterations and additions maintain the residential use of the residential dwelling and provide for a built form that is of a bulk and scale consistent with the existing and desired streetscape character.

It is considered that the arguments provided by the applicant are acceptable. The proposal is for alterations and additions to an existing dwelling and must contend with the existing built form on the site and existing non-compliances. The proposal is considered commensurate to surrounding residential development on similar typography and with similar site constraints.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – '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:

It is not considered that the breach of the Floor Space Ratio standard contributes to excessive bulk or scale, considering the surrounding residential environment, topography and existing vegetation, which acts to soften the impact of the built form. The development is characteristic of the surrounding residential development. Additional GFA is added primarily at the Parents Lounge/Study, which adjoins to adjoining properties to the south as a small two storey structure due to the topography. The proposed development is considered to satisfy this objective.

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:

It is not considered that the breach of the Floor Space Ratio standard contributes to excessive bulk or scale, considering the surrounding residential environment, topography and existing vegetation, which acts to soften the impact of the built form. The built form of the development does not obscure important landscape and townscape features. Refer to the section of this report on MDCP Clause 3.4.3 Maintenance of Views for a detailed assessment of views. The proposal provides an acceptable level of view sharing to public and private spaces and does not result in unreasonable view loss. The proposed development is considered to satisfy this objective.

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

Comment:

The development is considered appropriate in regards to the visual relationship between new development and the existing character and landscape. The proposal has been reviewed and supported, subject to conditions, by Council's Landscape Officer. The proposed landscaped area is compliant with the controls of the MDCP. The proposed development is considered to satisfy this objective.

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

Comment:

Refer to the section of this report on MDCP Clause 3.4.1 Sunlight Access and

Overshadowing for a detailed assessment of solar access. In summary, the development is not considered to create unreasonable overshadowing on public or private spaces.

Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for a detailed assessment of privacy. In summary, the development is not considered to create unreasonable privacy impact on adjoining properties.

Refer to the section of this report on MDCP Clause 3.4.3 Maintenance of Views for a detailed assessment of views. In summary, the proposal provides an acceptable level of view sharing to public and private spaces and does not result in unreasonable view loss.

The development minimises adverse environmental impacts on the use or enjoyment of adjoining land and the public domain. The proposal has been reviewed and supported, subject to conditions, by Council's Landscape Officer. The proposed landscaped area is compliant with the controls of the MDCP. The proposed development is considered to satisfy this objective.

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

Comment:

The subject site is not in a business zone and does not propose any non-residential use. This objective is not relevant in this case.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

- *To provide for the housing needs of the community within a low density residential environment.*

Comment:

The proposal provides for the needs of current and future occupants within a low density residential environment. The proposed development is considered to satisfy this objective.

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

Comment:

Non-residential land uses are not proposed on the subject site. However, the proposal includes adequate indoor and outdoor areas to provide for the residential needs of current and future occupants. The proposed development is considered to satisfy this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

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

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

to be granted.

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building / Floor space ratio Development Standard associated with a single dwelling house (Class 1 building).

6.8 Landslide risk

The objectives of this clause are to ensure that development on land susceptible to landslide—

- (a) matches the underlying geotechnical conditions of the land, and*
- (b) is restricted on unsuitable land, and*
- (c) does not endanger life or property.*

In this regard, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account the risk of landslide—

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*
- (d) waste water management, stormwater and drainage across the land,*
- (e) the geotechnical constraints of the site,*
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The development application is supported by a Geotechnical Investigation Report, the recommendations of which will form a condition of consent. Furthermore, the application has been reviewed by Council's Development Engineers, subject to conditions. A condition has also been included regarding Dilapidation Reports on neighboring properties. As such, Council can be satisfied the above has been considered.

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and that—

- (a) the development is designed, sited and will be managed to avoid any landslide risk or significant adverse impact on the development and the land surrounding the development, or*
- (b) if that risk or impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that risk or impact, or*
- (c) if that risk or impact cannot be minimised—the development will be managed to mitigate that risk or impact.*

Comment:

The development application is supported by a Geotechnical Investigation Report, the recommendations of which will form a condition of consent. Furthermore, the application has been reviewed by Council's Development Engineers, subject to conditions. As such, Council can be satisfied

the above has been considered.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 562.6sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings	1	-	Yes
	Dwelling Size: 134sqm (5 bedroom, 5 bathroom)	316.2sqm	-	Yes
4.1.2.1 Wall Height	East: 8m (based on gradient 1:4+)	11.8m	47.5%	No
	West: 8m (based on gradient 1:4+)	10m	25%	No
4.1.2.2 Number of Storeys	2	5	150%	No
4.1.2.3 Roof Height	Height: 2.5m	0.5m	-	Yes
	Parapet Height: 0.6m	0.2m	-	Yes
	Pitch: maximum 35 degrees	0 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	1.3m, (to proposed garage) consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	<u>East</u> 0.9m to garage (based on wall height 2.7m) 3.9m to lift (based on wall height 11.7m) 3.7m to parents retreat and deck (based on wall height 11m)	<u>East</u> 1.3m - 3.1m 2m - 2.5m 2.3m - 2.9m	- Maximum 48.7% Maximum 37.8%	Yes No No
	<u>West</u> 3m to parents retreat (based on wall height 9.1m)	<u>West</u> 13.8m - 14.9m	-	Yes
	Windows within 3m of side boundaries	2 new windows proposed within 3m of side boundary	N/A	No
4.1.4.4 Rear Setbacks	8m	Nil	100%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (337.6sqm)	63.6% (357.9sqm)	-	Yes
	Open space above ground no more that 25% of total open space (89.5sqm)	51.7% (185.1sqm)	106.8%	No
4.1.5.2 Landscaped Area	Landscaped area 40%	40.7% (145.6sqm)	-	Yes

	of open space (143.2sqm)			
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% (12.2m) of frontage up to maximum 6.2m	6.2m	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	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
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 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

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

Description of non-compliance

3.1.1.4 Garages, Carports and Hardstand Areas

The control requires garages, carports and hardstand areas be designed and sited in a manner that does not to dominate the street frontage. Exceptions may be considered where parking structures are a positive element of the streetscape.

The proposed development incorporates a new driveway crossover and garage on Castle Circuit, with a front setback of between 1.3m - 1.8m. This setback is considered consistent with the prevailing building line (see the section of this report regarding MDCP Clause 4.1.4.1 Street Front Setbacks). Nonetheless, the development is assessed against the objectives of the control below.

Merit consideration

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

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

Comment:

The design and scale of the proposed garage is considered consistent with the existing street frontage giving existing garage structures with minimal front setback on the southern side of Castle Circuit, including 79 and 81 Castle Circuit. The proposed development is considered to satisfy this objective.

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

Comment:

As above, the proposed garage is considered to complement the existing streetscape. The proposed

development is considered to satisfy this objective.

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

Comment:

Soft landscaping is maintained in the north-west corner of the subject site which will visually soften the built form. The soft landscaping and garage are considered appropriate within the context of the streetscape. The proposed development is considered to satisfy this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

A submission raised concerns surrounding overshadowing. As such, as detailed assessment has been undertaken to assess the proposal against the controls.

Clause 3.4.1.1 Overshadowing Adjoining Open Space

In relation to sunlight access to private open space of adjacent properties:

a) New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June).

Under Clause 3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties of MDCP 2013, in relation to sunlight to the windows or glazed doors to living rooms of adjacent properties:

b) for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June);

c) for all adjacent buildings (with either orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.

In this instance, shadow diagrams submitted with the proposal have demonstrated compliance with the controls. The proposal maintains adequate solar access to private open spaces and sunlight to windows to living rooms of adjacent properties.

Merit consideration:

The development is considered to comply with the requirements of this Clause. Nonetheless, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To provide equitable access to light and sunshine.

Comment:

The proposal includes shadow diagrams that demonstrate that access to sunshine is providing to the subject site and adjoining properties in accordance with the control. The subject site and adjacent lots are north-south orientated, with a steep slope from the southern rear to the northern front. This is

favorable to solar access. The proposed development is considered to satisfy this objective.

Objective 2) To allow adequate sunlight to penetrate:

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

Comment:

The diagrams show that the additional shadowing of the proposed development is mostly cast on the right of carriageway behind the subject site, which is a paved access driveway to adjoining sites. Very minor additional shadowing occurs on the neighboring property to the west (75 Castle Crescent) from minor paving extension along the west boundary at the swimming pool terrace. Properties to the south are uphill, and not impacted by the additional shadowing owing to the topography and orientation. Additional shadowing on the neighboring property to the east (79 Castle Circuit) is limited to a small landscaped area at the rear during the afternoon, and does not result in shadowing on the building between 9am - 3pm. Private open space is provided at the front of 79 Castle Circuit with a northerly aspect, and is not impacted by additional shadowing.

The shadow diagrams show the development is compliant with controls relating to solar access. As such, the development allows adequate sunlight to penetrate the development site and adjoining sites, in regard to private open space and windows. The proposed development is considered to satisfy this objective.

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

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

Comment:

As established above, the development allows adequate sunlight to penetrate the development site and adjoining sites. Regarding maximization of southern setbacks to encourage solar penetration into properties to the south, it is noted the development maintains a nil rear southern setback. However, this is not considered to infringe on solar access to southern properties, as properties to the south are uphill and separated from the subject site by a shared right of carriageway. The proposed development is considered to satisfy this objective.

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

3.4.2 Privacy and Security

Description of non-compliance

Submissions raised concerns regarding privacy. As such, as detailed assessment has been undertaken

to assess the proposal against the controls.

3.4.2.1 Window Design and Orientation & 3.4.2.2 Balconies and Terraces

Clause 3.4.2.1 requires the use of narrow, translucent or obscured glass windows to maximise privacy where necessary and the design of windows to be off-set from close adjacent buildings. Clause 3.4.2.2 requires privacy screening on balconies where necessary and design of balconies to consider privacy.

Concerns were raised with the applicant during the assessment process regarding the impact of the development on privacy, particularly concerning the proposed Parent's Lounge / Study and Deck and its potential impacts on adjacent properties to the west, south-west and south. Amended plans were provided which increased privacy screening on western elevation windows at the Parent's Lounge / Study level and reduced the size and shape of the western section of the Deck. The amendments are considered to address the concerns and ensure reasonable levels of privacy towards the west, south-west and south.

3.4.2.3 Acoustical Privacy (Noise Nuisance)

Conditions of consent are included in the recommendations of this report requiring that the swimming pool / spa motor and lift shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary. The proposal does not intensify the use of the subject site, remaining a dwelling house within a low density residential environment. Subject to conditions, the proposal is acceptable in terms of acoustic privacy.

Merit consideration:

The development is considered to comply with the requirements of this Clause. Nonetheless, the development is considered against the underlying Objectives of the Control as follows:

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

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

Comment:

Proposed windows utilise appropriate design measures, such as high sills or privacy screening to minimise privacy impacts on adjacent and nearby development. The proposed development is considered to satisfy this objective.

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

Comment:

As detailed above, the proposal includes privacy solutions and design features where necessary. These privacy mitigation strategies will not adversely or unreasonably compromise access to light and air. The proposed development is considered to satisfy this objective.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development will not compromise neighbourhood security or casual surveillance of the

street frontage. The proposed development is considered to satisfy this objective.

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

3.4.3 Maintenance of Views

The merit consideration below includes a view loss assessments from an adjoining property to the south.

85 Castle Circuit - South of the Subject Site

A site inspection was carried out from this adjacent property on 10 February 2023 to ascertain the extent of the view impact. It is noted that the information submitted with the application was sufficient to enable an accurate view impact assessment based off the levels of the existing building. Height poles were not required to be erected in this instance.



Figure 1 - View from kitchen of 85 Castle Circuit looking North (towards subject site)



Figure 2 - View from lounge room of 85 Castle Circuit looking North (towards subject site)



Figure 3 - View from balcony of 85 Castle Circuit looking North (towards subject site)



Figure 4 - View from balcony of 85 Castle Circuit looking North-West

Merit consideration:

The development is considered against the Objectives of the Control:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

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

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

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council* (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

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

Comment to Principle 1:

The view affected from 85 Castle Circuit is one looking north and downhill from the vantage point of the kitchen, living room and lounge room. *Figures 1, 2 & 3* depict this northern view of trees, vegetation and bushland over the subject site, which will be partially obscured by the proposed Parent's Lounge / Study set above the existing garage (which is proposed to be converted to storage). There also exists a tree between the subject site and affected property which partially obscures the view towards the subject site.

Notably, only a small portion of this northern outlook towards bushland will be affected, with the development occurring downhill and approximately 18m away. Furthermore, considering the view as a whole, 85 Castle Circuit benefits from north-western views up Middle Harbor towards Bantry Bay, seen in *Figure 4*. In this direction, the land-water interface of both sides of Middle Harbor are clearly discernable, along with large areas of bushland. This view is obtained primarily from the balcony, but also visible from the lounge room and kitchen. Of the northern and north-western outlook obtained by 85 Castle Circuit, views toward Middle Harbor could be considered the most significant element. This element of the view is unaffected by the proposal.

2. What part of the affected property are the views obtained

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

Comment to Principle 2:

As shown in *Figures 1, 2 & 3*, the view affected is obtained from the kitchen, living room and balcony. The portion of the view affected by the proposed development can be viewed sitting or standing in the living room or on the balcony, whilst only by standing in the kitchen. The portion of the view affected by the proposed development is obtained over what is arguably a front boundary, as access to the property is provided by a right of carriageway at this northern end of 85 Castle Circuit.

3. Extent of impact

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

Comment to Principle 3:

As has been discussed in the comments to Principle 1, the property obtains a sweeping north to north-west view primarily from the balcony, but also visible from the lounge room and kitchen.

The proposed development impacts on a small portion of this view. Considering the view as a whole, the proposed development does not impact the most significant element of this view (being Middle Harbor), only impacting a limited outlook on bushland downhill to the north, away from the significant elements of the view. As such, the view loss is considered to be negligible.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The proposal presents a number of breaches to planning controls, including to building height, FSR, wall height and setbacks. However, the proposal is for additions and alterations to an existing dwelling, meaning it is constrained by existing building layout and existing non-compliances. Furthermore, the subject site, and surrounding sites, are impacted by natural topography and a steep slope to the north. The reasonableness of the proposed breaches to planning controls are assessed on merit within the various sections of this report, concluding the proposal is supported on merit. Furthermore, 4.6 Variation Requests regarding building height and FSR development standards have demonstrated compliance with the standard is unreasonable or unnecessary in the circumstances of the case pursuant to Clause 4.6 of the MELP 2013.

The proposed development is considered to satisfy the objectives.

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

3.9 Mechanical Plant Equipment

The control requires that external mechanical plant systems (for pools, air conditioning and the like) must be acoustically enclosed, located centrally and away from living areas of neighbouring properties and boundaries. The proposed lift is located near the side boundary.

It is noted that the lift motor will only run when the lift is in use, and not constantly for a long period of time as an air conditioner or pool pump might.

Conditions of consent are recommended to ensure that no unreasonable noise impacts are caused by the proposal, requiring that the lift does not exceed more than 5dBA above the background level when measured from any property boundary and/or habitable room(s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

Subject to this condition, the proposal is considered generally acceptable, and will not cause any unreasonable acoustic impacts.

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

Description of non-compliance

Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) stipulates that walls are not to exceed:

- 8m (based on gradient 1:4+) for the eastern elevation.

- 8m (based on gradient 1:4+) for the western elevation.

The proposal presents a non-compliant wall height on the eastern elevation of 11.8m at the lift shaft, representing a variation of 47.5% to the control.

The proposal presents a non-compliant wall height on the western elevation of 10m at the extended lounge on the Second Floor (a wall that is located significantly in from the western most dwelling wall), representing a variation of 25% to the control.

The control also requires that buildings must not exceed two (2) storeys. The proposed dwelling contains a maximum of five (5) storeys.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at Clause 4.3 in the Manly LEP 2013. The proposal has been assessed against these objectives under Clause 4.6, above in this report. In summary, the proposal is of a comparable size, height and scale to surrounding development. The development is also restricted by steeply sloping topography. The breach is not considered to contribute to additional bulk and scale considering surrounding development. The proposal also does not result in any unreasonable amenity impacts. The proposed development is considered to satisfy the objectives.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.3 Floor Space Ratio (FSR)

A detailed assessment of the Floor Space Ratio (FSR) variation has been undertaken within the section of this report relating to Clause 4.6 of the MLEP 2013. In summary, the applicant has adequately justified that compliance with the requirements stipulated within Clause 4.4 Floor Space Ratio Development Standard is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to contravene this development standard.

The subject site has a total area of 562.6sqm and has an FSR requirement of 0.4:1 (225.04sqm) under the MLEP 2013. The proposed FSR is 0.6:1 (336.6sqm), which presents a variation of 49.6% (111.56sqm).

Under this MDCP control, the subject site is an 'undersized allotment' as it is located within Area U on the LEP LSZ map, which requires a minimum lot size of 1150sqm. This allows for a variation to FSR as established by Figure 30 of the MDCP, with FSR calculated against a site area of 750sqm.

When calculating the FSR against a site area of 750sqm, the FSR requirement equates to 0.4:1 (300sqm). As the proposed GFA exceeds 300sqm, it would not technically comply with the variation allowed by this MDCP control.

Notwithstanding, the proposal has been assessed against the requirements and objectives of Clause 4.6 of the MLEP 2013 within this report. The provisions of MLEP Clause 4.6 Exceptions to development standards operate independently from, and superior to, the MDCP.

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

Description of non-compliance

Clause 4.1.4.1 Street Front Setbacks stipulates that proposed front setbacks must relate to the front building line of neighboring properties and the prevailing building lines in the immediate vicinity. The proposal includes a new garage presenting a setback to the front boundary of between 1.3m and 1.8m. The new garage is considered consistent with the prevailing building line in the vicinity, given existing garage structures with minimal front setback on the southern side of Castle Circuit, including at 79 and 81 Castle Circuit.

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages stipulates that the setbacks between any part of a building and the side boundary must not be less than one third of the wall height.

The proposed development is compliant with side setback requirements to the western boundary. However, the proposal exhibits non-compliance with side setback requirements to the eastern boundary.

- The garage complies with the required eastern side setback.
- Based on a wall height of 11.7m, the proposed lift requires a 3.9m eastern side setback, exhibiting instead a 2m - 2.5m setback. This represents a maximum 48.7% variation to the control.
- Based on a wall height of 11m, the proposed parents retreat requires a 3.7m eastern side setback, exhibiting instead a 2.3m - 2.9m setback. This represents a maximum 37.8% variation to the control.

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages also requires that no new windows be located within 3m of side boundaries. The proposal includes two (2).

Clause 4.1.4.4 Rear Setbacks stipulates that the distance between any part of a building and the rear boundary must not be less than 8m. The proposal exhibits a non-compliant rear setback of nil, representing a 100% variation to the control. This nil setback is existing, with additions maintaining the established setback.

Merit consideration:

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

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

Comment:

The streetscape is not considered to be adversely impacted. The front setback is consistent with the prevailing building line in the vicinity, given existing garage structures with minimal front setback on the southern side of Castle Circuit, including at 79 and 81 Castle Circuit. Landscaping is maintained in the north-west corner of the front setback to soften the built form and maintain a landscaped street character. Non-compliances with proposed side and rear setbacks are towards the rear of the property and not readily visible from the street. The proposed development is considered to satisfy this objective.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

Refer to the section of this report on MDCP Clause 3.4.1 Sunlight Access and Overshadowing for a detailed assessment of solar access. In summary, the development is not considered to create unreasonable overshadowing on public or private spaces.

Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for a detailed assessment of privacy. In summary, the development is not considered to create unreasonable privacy impact on adjoining properties.

Refer to the section of this report on MDCP Clause 3.4.3 Maintenance of Views for a detailed assessment of views. In summary, the proposal provides an acceptable level of view sharing to public and private spaces and does not result in unreasonable view loss.

The proposal is also considered to maintain the existing streetscape characteristic and not detrimentally impact on traffic conditions. The proposed development is considered to satisfy this objective.

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

Comment:

Flexibility is required in the siting of alterations and additions to existing dwellings as the proposal must contend with existing site structures with existing non-compliances. The proposed alterations and additions are not expected to result in any unreasonable amenity impacts on surrounding properties. As such, flexibility is warranted, in this instance. The proposed development is considered to satisfy this objective.

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 proposal is compliant with the landscape area provisions of the MDCP and maintains adequate landscaping and vegetation. The proposed development is considered to satisfy this objective.

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

Comment:

The site is classified as bush fire prone land. A Bush Fire Report was submitted with the application that

included a certificate stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent. As such, the proposed development is considered to satisfy this objective.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The subject site is located within Residential Open Space Area OS4, which requires at least 60% (337.6sqm) of the site to be open space. In addition, at least 40% (143.2sqm) of the proposed total open space is to be landscaped area. Additionally, no more than 25% (89.5sqm) of total open space can be provided above ground level.

The proposed development results in a compliant total open space of 63.6% (357.9sqm). Furthermore, the proposal is compliant with landscaped area requirements, with 40.7% (145.6sqm) of total open space being landscaped area.

However, the proposal exhibits 51.7% (185.1sqm) of open space above ground level, a non-compliance of 106.8% to the control requiring no more than 25% of open space be above ground level

Merit consideration:

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

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

Comment:

The proposal is compliant with total open space and landscaped area requirements. In this regard the proposal retains landscape features. The proposed development is considered to satisfy this objective.

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

Comment:

The proposal is compliant with total open space and landscaped area requirements. In this regard the proposal maximises soft landscape areas. The non-compliance arising from open space above ground level can be considered a result of the steeply sloping topography and existing built form, which sees stepped terraces provide open space. This limits the amount of open space that can be provided at ground level. Where open space is provided at ground level, it is landscaped in order to meet the requirements of this control. The proposed development is considered to satisfy this objective.

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

Comment:

Refer to the section of this report on MDCP Clause 3.4.1 Sunlight Access and Overshadowing for a detailed assessment of solar access. In summary, the development is not considered to create unreasonable overshadowing on public or private spaces.

Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for a detailed assessment of privacy. In summary, the development is not considered to create unreasonable privacy impact on adjoining properties.

Refer to the section of this report on MDCP Clause 3.4.3 Maintenance of Views for a detailed assessment of views. In summary, the proposal provides an acceptable level of view sharing to public and private spaces and does not result in unreasonable view loss.

The proposal is compliant with total open space and landscaped area requirements, and is consistent with the existing streetscape. The proposed development is considered to satisfy this objective.

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

Comment:

An acceptable amount of soft landscaping is provided on site to minimise stormwater runoff and maximise water infiltration. The proposal complies with landscaped area. The proposed development is considered to satisfy this objective.

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

Comment:

The proposed development is not likely to increase the spread of any weeds, or degradation of private or public open space. The proposed development is considered to satisfy this objective.

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

Comment:

The proposed works are not expected to affect wildlife habitat. The proposal is compliant with total open space and landscaped area requirements. Existing wildlife corridors will be retained. The proposed development is considered to satisfy this objective.

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

4.1.9 Swimming Pools, Spas and Water Features

Clause 4.1.9.1 Height above ground requires that pools/spas be built on or in the ground and not elevated more than 1m above natural ground level.

Clause 4.1.9.2 Location and Setbacks requires that the outer edge of any pool/spa curtilage must be setback from the side and rear boundaries at least 1m, and the water line must be at least 1.5m from the boundary.

The site contains an existing swimming pool, with a minimum curtilage setback from the western side boundary of 0.4m and waterline setback from the western side boundary of 1.5m. The pool is also elevated up to 3.4m above ground level.

The pool is existing, however, the proposal includes minor alterations to the pool, including the reconfiguration of pool shape and removal of steps to 'square off' the pool. These minor alterations do not contribute to or worsen any existing non-compliances with the requirements of Clause 4.1.9 Swimming Pools, Spas and Water Features.

As such, a detailed merit assessment is not required in this instance. The proposal is supported on merit, in this particular circumstance.

4.4.5 Earthworks (Excavation and Filling)

Description of non-compliance

The control requires natural and undisturbed ground levels to be maintained within 0.9 metres of side and rear boundaries. New retaining walls and fill are proposed within 0.9 metres of the side and rear boundaries, which does not satisfy the prescribed requirement.

Moreover, approximately 2.9m of excavation is proposed to accommodate for the proposed garage, which exceeds the numeric requirement of 1m. Whilst an exception to this control is provided for basements parking and pools, the proposed excavation also provides for access including stairs and a lift.

Merit consideration

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

Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- *Limiting excavation, "cut and fill" and other earthworks;*
- *Discouraging the alteration of the natural flow of ground and surface water;*
- *Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- *Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

Comment:

The application has been accompanied by a Geotechnical Report which stipulates that the proposed development will achieve an acceptable level of risk to neighbouring properties, subject to compliance with certain recommendations. The recommendations of the report are included in a condition of consent. It is noted that the earthworks proposed are not likely to create any adverse environmental impacts. Furthermore, the works are supported, subject to conditions, by Council Development Engineers in regards to stormwater. A further condition of consent has also been included regarding Dilapidation Reports on neighboring properties. Subject to conditions, the proposed development is considered to satisfy this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental

Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$6,098 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$609,840.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environment Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings 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.

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 4.4 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.

PLANNING CONCLUSION

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

When assessed against the MLEP 2013 and MDCP objectives, the proposed development is considered to align with the relevant aims and requirements of these policies, noting that the environmental and amenity impacts resulting from the development are acceptable.

The development is commensurate with the character of the area and will maintain an appropriate visual relationship with the surrounding environment.

Therefore, the application is recommended for approval (subject to conditions).

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 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.

That Northern Beaches Council as the consent authority vary clause 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 Council as the consent authority grant Development Consent to DA2022/2208 for Alterations and additions to a dwelling house on land at Lot 33 DP 200638, 77 Castle Circuit, SEAFORTH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA 010, Issue C, Site Analysis	12 May 2023	Hot House Architects
DA 098, Issue C, Basement	12 May 2023	Hot House Architects
DA 099, Issue C, Pool and Terrace	12 May 2023	Hot House Architects
DA 100, Issue C, Ground Floor	12 May 2023	Hot House Architects
DA 101, Issue C, First Floor Plan	12 May 2023	Hot House Architects
DA 102, Issue C, Second Floor Plan	12 May 2023	Hot House Architects
DA 103, Issue C, Third Floor Plan	12 May 2023	Hot House Architects
DA 110, Issue C, Roof Plan	12 May 2023	Hot House Architects
DA 200, Issue C, East Elevation	12 May 2023	Hot House Architects
DA 201, Issue C, West Elevation	12 May 2023	Hot House Architects
DA 202, Issue C, Street (North) Elevation	12 May 2023	Hot House Architects
DA 203, Issue C, South Elevation	12 May 2023	Hot House Architects
DA 300, Issue C, Section	12 May 2023	Hot House Architects
DA 301, Driveway Sections	12 May 2023	Hot House Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
D1, Issue B, Details, Notes & Legend	8 June 2023	NY Civil Engineering
D2, Issue B, Stormwater Management Basement Plan	8 June 2023	NY Civil Engineering
D3, Issue B, Stormwater Management Terrace/Ground Floor Plan	8 June 2023	NY Civil Engineering
D4, Issue B, Stormwater Management First/Second Floor Plan	8 June 2023	NY Civil Engineering
D5, Issue B, Stormwater Management	8 June 2023	NY Civil Engineering

Third Floor/Roof Plan		
D6, Issue B, Stormwater Details	8 June 2023	NY Civil Engineering
D7, Issue B, Stormwater Details	8 June 2023	NY Civil Engineering
D8, Issue B, Stormwater Details	8 June 2023	NY Civil Engineering
D9, Issue B, Sediment Control Plan	8 June 2023	NY Civil Engineering
D10, Issue B, Sediment Control Details	8 June 2023	NY Civil Engineering

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A478115	14 December 2022	Hot House Studio
Bushfire Assessment Report	3 December 2022	Sydney Bushfire Consultants
Bushfire Risk Assessment Certificate	3 December 2022	Sydney Bushfire Consultants
Arboricultural Impact Assessment	9 December 2022	Hugh The Arborist
Geotechnical Report, J4559	11 October 2022	White Geotechnical Group

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	21 October 2022	Jonathan Algar C/O Hot House Architects

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. **Compliance with Other Department, Authority or Service Requirements**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	19/01/2023 (on EDMS)

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on

Council's website www.northernbeaches.nsw.gov.au)

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

3. **Prescribed Conditions**

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

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

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

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

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars

- of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. **General Requirements**

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's

footpaths, roadways, parks or grass verges without Council Approval.

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

- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

- (k) Prior to the commencement of any development onsite for:

- i) Building/s that are to be erected
- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation

area for any wastewater system and is separate from any onsite stormwater management system.

- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

5. **No Approval for Secondary Dwelling**

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

Reason: To ensure compliance with the terms of this consent.

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$6,098.40 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$609,840.00.

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

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

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

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

7. **Security Bond**

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

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

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

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

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

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

8. Landscape Plan

A landscape plan shall be issued to the Certifier prior to the issue of a Construction Certificate to include the following details:

- a) detailed planting scheme for the on slab planter above the garage,
- b) species selection must include shrubs and groundcovers (grasses, perennials or succulents can be included if desired),
- c) selected shrubs are to achieve a minimum mature height of 1.5 metres at maturity and be installed towards the southern side of the planter, for the full width.

Certification shall be provided to the Certifier that these amendments have been documented.

Reason: Landscape amenity.

9. On Slab Landscape Works

Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections.

The following soil depths are required to support landscaping: 600mm.

Design certification shall be submitted to the Certifier by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and ensure waterproofing and drainage is installed.

10. On-Site Stormwater Detention Details

The applicant is provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by NY Civil Engineering, drawing number E230246 D1 - D10 Revision B, dated 08/06/2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

11. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

12. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 4 metres wide at the kerb to 5 metres wide at the boundary in accordance with Northern Beaches Council Standard Drawing Normal High Profile in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

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

Reason: To facilitate suitable vehicular access to private property.

13. **Compliance with Standards**

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

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

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

14. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. **Tree Removal Within the Property**

This consent approves the removal of existing trees on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:

- a) tree 13 - *Banksia integrifolia*, and tree 21 - *Elaeocarpus reticulatus*,
- b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

16. **Pre-Construction Dilapidation Report**

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

Property / Properties:

- 79 Castle Circuit SEAFORTH

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

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works.

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

17. **Protection of Rock and Sites of Significance**

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

Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

18. Tree and Vegetation Protection

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

- i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

c) The arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as compliant to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

19. Condition of Trees

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture during the

works. In this regard all protected trees shall not exhibit:

- a) a general decline in health and vigour,
- b) damaged, crushed or dying roots due to poor pruning techniques,
- c) more than 10% loss or dieback of roots, branches and foliage,
- d) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- e) yellowing of foliage or a thinning of the canopy untypical of its species,
- f) an increase in the amount of deadwood not associated with normal growth,
- g) an increase in kino or gum exudation,
- h) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- i) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist/Project 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.

20. **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.

21. **Removing, Handling and Disposing of Asbestos**

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

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- o The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

22. **Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

23. **Survey Certificate**

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

Details demonstrating compliance are to be submitted to the Principal Certifier when the

external structure of the building is complete.

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

24. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

25. **Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Planning and Environment.

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the Department of Planning and Environment.

Reason: Aboriginal Heritage Protection.

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

26. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plan(s), and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan(s),
- c) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
- d) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone,
- e) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

Prior to the issue of an Occupation Certificate, details from a landscape architect, landscape designer or qualified horticulturalist shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

27. **Geotechnical Certification Prior to Occupation Certificate**

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been

constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

28. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge the Legal Documents Authorisation Application with Council. The application shall include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), and Civil Engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgment with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted.

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

29. **House / Building Number**

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

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

Reason: Proper identification of buildings.

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

30. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan(s) and any conditions of consent.

A maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

The approved landscape area shall in perpetuity remain as planting under the development consent.

Reason: To maintain local environmental amenity.

31. **Geotechnical Recommendations**

Any ongoing recommendations (if any) of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

32. **Swimming Pool/Spa Motor Noise**

The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

33. **Lift Noise**

The lift shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.