

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0936
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Responsible Officer:	Nick Keeler
Land to be developed (Address):	lot 11 DP 1026519 Maritime Lic 30002506, 39 Seaforth Crescent SEAFORTH NSW 2092 lot 11 DP 1026519 Maritime Lic 30002506, 39 Seaforth Crescent SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Ronald Shaw Thomson Pamela Robertson-Gregg
Applicant:	Ronald Shaw Thomson

Application Lodged:	04/07/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	13/07/2022 to 27/07/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 31.65%
Recommendation:	Deferred Commencement Approval

Estimated Cost of Works:	\$ 560,181.00
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EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to a breach of the building height development standard by more than 10% and involves a Class 1 dwelling.

The clause 4.6 request for the non-compliance with the building height development standard arises from alteration of an existing element of the building that is above the maximum permitted building

height. The building height of the proposed development has been measured at 11.19m which represents a variation of 31.65% to the maximum prescribed building height of 8.5m.

The proposal does not increase the overall height of the existing dwelling and all new elements are contained within the existing building footprint and envelope. The proposal does not discernibly alter the existing bulk and scale of the dwelling when viewed from the street, foreshore or adjacent properties.

The application was notified in accordance with Council's Community Participation Plan to the adjoining properties. No submissions have been received.

Potential amenity issues to surrounding properties and the public domain have been reviewed and have been determined to be reasonable having regard to the spatial characteristics of the site and its context within the locality.

A site inspection revealed that construction of some internal works that consent under this development application is sought has commenced, including the following:

- internal room reconfiguration
- partially constructed stud walls

These elements do not cause any environmental impact to adjacent properties or the public domain. As such, a deferred commencement condition is recommended requiring the applicant obtain a Building Information Certificate for the commenced works prior to the operation of the development consent.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to the existing dwelling.

The elements of the proposal are summarised below:

Level 1

- Internal alterations to reconfigure kitchen create internal room within the dining/lounge
- Extend balcony at southwest corner
- New gas fireplace

Ground Floor Level

- Extend dwelling to the west to provide bedroom with deck
- Extend existing rear balcony
- Internal layout alterations

Lower Ground Floor Level

- New outdoor cooking area and wet bar within existing covered terrace
- Internal alterations to suite room reconfiguration

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.8 Waste Management

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

SITE DESCRIPTION

Property Description:	lot 11 DP 1026519 Maritime Lic 30002506 , 39 Seaforth Crescent SEAFORTH NSW 2092 lot 11 DP 1026519 Maritime Lic 30002506 , 39 Seaforth Crescent SEAFORTH NSW 2092
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Seaforth Crescent.</p> <p>The site is irregular in shape with a frontage of 25.17m along Seaforth Crescent and a maximum depth of 76.3m. The site has a surveyed area of 1,307m².</p> <p>The site is located within the C3 Environmental Management zone and accommodates a three storey dwelling. An attached garage is located on the west of the dwelling and the existing swimming pool is located at the rear of the dwelling on the lower ground floor terrace.</p> <p>The site falls approx. 40m from the north to the foreshore at the south. The slope falls across the property at an average angle of 30 degrees to the waterfront. The slope above the property eases to moderate angles.</p>

The site contains rock outcrops, lawn areas, mature trees, garden beds and a range of low lying and medium lying shrubs. There are no details of any threatened species on the subject site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by predominately large multi level single detached dwellings oriented to the south to maximise water views.

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:

Application **DA0535/2004** for Alterations and additions including construction of new swimming pool was approved on 21/01/2005 by Council staff.

Application **DA2022/0808** for Construction of a spa was approved on 15/08/2022 by Council staff.

Application **DA2022/1305** for Alterations and additions to a dwelling house was under assessment at the time of writing.

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
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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)(iia) – 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 amended architectural plans.</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> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact</p> <p>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>

Section 4.15 Matters for Consideration	Comments
	<p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 13/07/2022 to 27/07/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	The proposed development has been assessed against Manly LEP Clause 6.5 Terrestrial Biodiversity. The proposed works are generally within the existing development footprint and will not require removal of native vegetation or wildlife habitat. The proposal is therefore considered to comply with the applicable biodiversity control
NECC (Coast and Catchments)	<p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2018 (section 2.12); • Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005;

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005; and • Relevant LEP and DCP clauses. <p>The application meets the requirements of the relevant Environmental Planning Instruments and policies.</p> <p>The site is bisected by the foreshore building line, as shown on the Foreshore Building Line Map of MLEP 2013. No works are proposed within the foreshore area.</p> <p>The application is supported subject to conditions:</p> <ul style="list-style-type: none"> • Installation and maintenance of erosion and sediment controls (prior to commencement)

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>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of 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>

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. A457054_04, dated 23/05/2022). 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 (Biodiversity and Conservation) 2021

Chapter 10 – Sydney Harbour Catchment

The subject property is located within the Foreshores and Waterways Area therefore the provisions of this Chapter apply to this development.

An assessment of the proposal against Section 10.1(2) (aims of the Chapter), Section 10.11 (nominated planning principles), Section 10.20 (relating to public access to and use of foreshores and waterways), Section 10.21 (relating to maintenance of a working harbour), Section 10.23 (relating to interrelationship of waterway and foreshore uses), Section 10.23 (relating to foreshore and waterways scenic quality), Section 10.24 (relating to maintenance, protection and enhancement of views) and Section 10.24 (relating to boat storage facilities) has been undertaken. The proposal is considered to be consistent with the above provisions of the Chapter. Given the scale of the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 5 General

2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

Council is satisfied the proposed development will not cause an increased risk of coastal hazards on the site or surrounding land.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (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	11.19m	31.65%	No
Special height provisions:	RL 41.58	RL 41.57 (existing)	N/A	Yes
Floor Space Ratio:	0.4:1 (522.8m ²)	0.384:1 (501.8m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.3A Special height provisions	Yes
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes

Clause	Compliance with Requirements
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	11.19m
Percentage variation to requirement:	31.65%

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 additions/alterations to the dwelling house are located beneath the existing roof form and requiring strict compliance would prohibit any further work to the upper level of the existing dwelling. The alterations and additions do not extend above the height of the existing dwelling.

Council agrees with the applicant's justification to vary the building height development standard as the overall height of the existing dwelling is not increased by the proposed development. No additional amenity impacts upon adjacent properties or the public domain will result from the proposal.

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 C3 Environmental Management 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 proposed development does not increase the overall height of the existing dwelling. The existing roof form is to remain. The development is consistent with the prevailing height of other dwellings in the locality.

b) to control the bulk and scale of buildings,

Comment:

As above, the proposed development does not increase the overall height of the existing dwelling. The proposed alterations will not increase the bulk and scale of the existing dwelling.

c) to minimise disruption to the following:

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

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

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

Comment:

The proposed development will not impact upon existing view corridors.

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

Comment:

The proposed development will not alter the existing amount of solar access enjoyed by adjacent properties.

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 proposed development maintains the overall height of the existing dwelling. The proposal is considered to appropriately respond to the site topography.

Zone objectives

The underlying objectives of the C3 Environmental Management zone are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

Comment:

The proposed development is contained within the existing footprint of the dwelling. No adverse impact to the natural significance of the site is expected.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

Comment:

The proposal maintains the existing low density residential land use.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

Comment:

No trees are required to be removed to facilitate the proposed development. The overall height of the dwelling is to be maintained and therefore will not cause unreasonable visual dominance or detract from the scenic quality of the foreshore.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

Comment:

As above, the proposed development is contained within the existing footprint of the dwelling. The proposal will not result in the loss of natural vegetation or impact upon natural features on the site.

- *To encourage re-vegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Comment:

The proposed development does not increase the total amount of hard surface on the site.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment:

The overall height of the dwelling is to be maintained. The existing bulk and scale of the building will not be significantly altered by the proposal. The development is considered to be compatible with the existing vegetation, topography and surrounding land uses.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C3 Environmental Management 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).

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1,307m²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	E: 8m (based on gradient 1:4)	12.4m (existing)	Existing	Acceptable, as existing
	W: 8m (based on gradient 1:4)	10.6m (existing)	Existing	Acceptable, as existing
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	2.2m, consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 4.09m (based on wall height)	3.2m (existing)	Existing	Acceptable, as existing
	W: 3.5m (based on wall height)	Garage - Nil (existing)	Existing	Acceptable, as existing
4.1.4.5 Foreshore Building Lines and Foreshore Area	Above FSBL	Above FSBL	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (784.2m ²)	62.2% (812.8m ²)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (325.1m ²)	87.2% (708.7m ²)	N/A	Yes
4.1.5.3 Private Open Space	18m ²	>18m ²	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	No	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)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.8 Waste Management

A detailed waste management plan has not been submitted with the application. To ensure proper disposal of demolition and builders' wastes, a condition has been included in the consent requiring details prior to the issue of a construction certificate.

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

Description of non-compliance

The wall height of the existing dwelling do not comply with the control requirement. It is noted that the proposal does not increase the existing height of the dwelling walls.

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 proposed development is acceptable as it does not increase the overall height of the existing dwelling. No additional amenity impacts upon adjacent properties or the public domain are expected.

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 \$5,602 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$560,181.

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 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.

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

RECOMMENDATION

DEFERRED COMMENCEMENT APPROVAL

A. 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.

Accordingly Council as the consent authority grant a Deferred Commencement Development Consent being subject to a two (2) year time frame for Deferred Commencement Consents detailed within Clause 76 of the Environmental Planning and Assessment Regulation 2021 to DA2022/0936 for Alterations and additions to a dwelling house on land at lot 11 DP 1026519 Maritime Lic 30002506,39 Seaforth Crescent, SEAFORTH, lot 11 DP 1026519 Maritime Lic 30002506,39 Seaforth Crescent, SEAFORTH, subject to the conditions printed below:

B. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part A of this recommendation.

DEFERRED COMMENCEMENT CONDITIONS

1. **Building Information Certificate**

The applicant must obtain a Building Information Certificate for the internal works that have been carried out without development consent as highlighted in yellow on the following stamped plans:

- DA.03 Issue Q, prepared by All Australian Architecture, dated 23/05/2022
- DA.04 Issue Q, prepared by All Australian Architecture, dated 23/05/2022
- DA.05 Issue Q, prepared by All Australian Architecture, dated 23/05/2022

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Clause 76 of the Environmental Planning and Assessment Regulation 2021. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

2. **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.02 Issue Q	23/05/2022	All Australian Architecture
DA.03 Issue Q	23/05/2022	All Australian Architecture
DA.04 Issue Q	23/05/2022	All Australian Architecture
DA.05 Issue Q	23/05/2022	All Australian Architecture
DA.06 Issue Q	23/05/2022	All Australian Architecture
DA.07 Issue Q	23/05/2022	All Australian Architecture
DA.08 Issue Q	23/05/2022	All Australian Architecture
DA.09 Issue Q	23/05/2022	All Australian Architecture
DA.10 Issue Q	23/05/2022	All Australian Architecture
DA.11 Issue Q	23/05/2022	All Australian Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A457054_04	23/05/2022	All Australian Architecture

Geotechnical Investigation (Ref: J4201B)	14/06/2022	White Geotechnical Group
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b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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.

3. **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	22/07/2022

(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.

4. **Approved Land Use**

Nothing in this consent shall authorise the use of the site beyond the definition of a *dwelling house*, as defined by the Manly Local Environment Plan 2013 Dictionary.

Any variation to the approved land use beyond the scope of the above definition will require the submission to Council of a new development application.

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

5. **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.

6. 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.

7. **Wet Bar**

Built-in cooking facilities are not permitted to be installed in the wet bar/kitchenette at the lower ground floor.

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

FEES / CHARGES / CONTRIBUTIONS

8. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$5,601.81 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 \$560,181.00.

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.

9. **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

10. **Stormwater Drainage Disposal**

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil

Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Principal Certifier prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Principal Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Principal Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

12. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

13. **Waste Management Plan**

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

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

Reason: To ensure that any demolition and construction waste, including excavated material, is

reused, recycled or disposed of in an environmentally friendly manner.

14. **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 Principal Certifier prior to the issue of the Construction Certificate.

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

15. **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 Principal 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.

16. **Fireplace**

The proposed fireplace must not utilise solid fuel or oil combustion for heating.

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

Reason: To ensure air pollution is mitigated and residential amenity is maintained.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. **Installation and Maintenance of Sediment and Erosion Control**

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

18. **Wildlife Protection**

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

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

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

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

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

20. **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.

21. **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.

22. **Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site.

23. **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.

24. **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 to assess the finds.

Should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) must be contacted.

Reason: Aboriginal Heritage Protection.

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

25. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Details demonstrating compliance are to be provided to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To protect wildlife habitat.

26. **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works.

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

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

27. **Stormwater Drainage Disposal Certification**

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Principal Certifier prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the 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), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. 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 detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate

prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the authority 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 for the on-site stormwater detention system 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 satisfactory management of stormwater.

28. **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.

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

29. **Geotechnical Recommendations**

Any ongoing recommendations 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.