

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0727
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Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 1 DP 445281, 12 Clarence Street BALGOWLAH NSW 2093
Proposed Development:	Alterations and additions to a semi-detached dwelling
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:	Matthew Dustin Adams
Applicant:	William Linehan

Application Lodged:	03/06/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	14/06/2022 to 28/06/2022
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	4.4 Floor space ratio: 13.1%
Recommendation:	Approval

Estimated Cost of Works:	\$ 400,000.00
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EXECUTIVE SUMMARY

This matter is referred to the Development Determination Panel (DDP) for the consideration of a Development Application, which seeks approval for alterations and additions to an existing semi-detached dwelling, including the construction of a first floor addition, at 12 Clarence Street, Balgowlah.

The application is referred to the DDP as the proposal results in a breach of the floor space ratio (FSR) development standard by more than 10%. A 13.1% variation to the FSR standard is proposed by the construction of a first floor addition and ground floor extension.

The non-compliance with the FSR standard arises due to undersized nature of the site. It is noted that proposal achieves compliance with the FSR variations permitted within Manly DCP for undersized allotments.

Notification of the application resulted in four (4) objections to the development, relating to;

- Overshadowing,
- Privacy,
- Height of boundary wall,
- Stormwater,
- Sewer,
- Setbacks,
- Floor space ratio.

Overall, it is considered that the proposal has been designed appropriately to remain compatible with the existing built form on the site and in the wider locale. The proposed additions retain the low density residential character, while being built primarily upon the existing footprint and not resulting in the removal of any significant vegetation or require significant alteration to the landform.

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

PROPOSED DEVELOPMENT IN DETAIL

Development application DA2022/727 seeks development consent for alterations and additions to an existing semi-detached dwelling. The proposal comprises;

- construction of a first floor addition, including two bedrooms, one bathroom, rumpus area and rear balcony;
- ground floor rear extension of kitchen/living areas and new outdoor patio;
- internal alterations to existing ground floor; and
- Associated landscaping works.

Amended plans dated 23 August 2023:

Following a preliminary review of the application, Council raised concern with the proposed FSR variation and the development's privacy impacts. Amended plans and a revised Clause 4.6 variation request was received on 23 August 2022. The amendments included:

- Removal of proposed car space and driveway crossover to the front of the property.
- First floor western windows amended (W6, W8, W9, W10, W11 & W12) with a 1700mm high sill.

In accordance with the provisions of the Northern Beaches Community Participation Plan, as the amendments are considered to be minor and will result in a lesser environmental impact on nearby properties and the public domain, re-notification of the application was not required. Notwithstanding, in the public interest, No. 66 Condamine Street (adjoining neighbour) was informed about the submission of the amended plans and were given the opportunity to view and provide comment on the amendments, as these were published on Council's website. The amended plans form basis of the assessment of this proposal.

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 - 3.4.2 Privacy and Security

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

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 1 DP 445281 , 12 Clarence Street BALGOWLAH NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Clarence Street.</p> <p>The site is regular in shape with a frontage of 6.15 metres along Clarence Street and a depth of 54.7 metres. The site has a surveyed area of 334.5m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a single storey semi-detached dwelling. The subject site is contained within the Foreshore Scenic Protection Area.</p> <p>The site relatively flat.</p> <p>The site does not contain any significant environmental features.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>The surrounding area includes residential terraces and other</p>

low density development.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

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	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information.</p>

Section 4.15 Matters for Consideration	Comments
	<p>Additional information was requested in relation to amended 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>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (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 14/06/2022 to 28/06/2022 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 process council is in receipt of 4 submission/s from:

Name:	Address:
Mrs Karen Heather Ryan	6 Clarence Street BALGOWLAH NSW 2093
Mr John Malcolm Travis	8 Clarence Street BALGOWLAH NSW 2093
Mr Dominic Edward McCarthy	66 Condamine Street BALGOWLAH NSW 2093
Ms Lara McCarthy	58 Cliff Street MANLY NSW 2095

The following issues were raised in the submissions:

- **Overshadowing,**
- **Privacy,**
- **Height of boundary wall,**
- **Stormwater,**
- **Sewer,**
- **Setbacks,**
- **Floor space ratio.**

The above issues are addressed as follows:

- **Overshadowing**

The submissions raised concerns that the proposed addition will unreasonably overshadow adjoining properties. In addition, concern is raised that the supporting shadow diagrams do not appropriately demonstrate impacts upon the eastern neighbours.

Comment:

The amended shadow diagrams have been prepared in accordance with Council's lodgement requirements for development applications. An assessment of the application against Clause 3.4.2 Sunlight Access and Overshadowing of the Manly DCP finds that the application complies with the requisite provisions for solar access and does not unreasonably overshadow adjoining properties. In addition, it is considered that the proposed development has been adequately modulated to minimise overshadowing impacts on adjoining properties. This has been achieved through the design of the addition sitting well below the maximum allowable height with a low roof pitch.

This matter does not warrant the refusal of this application.

- **Privacy**

The submissions raised concerns that the proposed first floor west facing windows will result in

adverse privacy impacts for the residents at No. 66 Condamine Street.

Comment:

The proposal has been assessed against the privacy provisions of MDCP (see Part 3.4.2 of this report), which stipulates that when buildings are close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy. In addition, narrow, translucent or obscured glass windows are to be used to maximise privacy where necessary. The proposed windows include high sill heights and have been positioned to maintain an acceptable level of privacy. Overall, the proposal will not result in any unreasonable privacy impacts.

This matter does not warrant the refusal of this application.

- **Height of boundary wall**

The submissions raised concerns that the architectural plans do not provide a 'reduced level' (RL) for the top of the common boundary wall.

Comment:

Amended plans have been provided which include a RL for the top of the common boundary wall. Conditions have been recommended for a survey certificate to be provided during works to ensure that the proposal is constructed in accordance with the approved details, ensuring that the wall is correctly constructed.

This matter does not warrant the refusal of this application.

- **Stormwater**

The submissions raised concerns with the site's existing stormwater system, as to where the run-off will be directed to.

Comment:

Conditions relating to stormwater management have formed part of this recommendation. In summary, the stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

This matter does not warrant the refusal of this application.

- **Sewer**

The submissions raised concerns that the proposal will be constructed within proximity of the existing sewer line.

Comment:

Conditions have been recommended which requires the applicant to submit the approved plans, for separate approval of Sydney Water to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

This matter does not warrant the refusal of this application.

- **Setbacks**

The submissions raised concerns that the proposal does not comply with the prescribed side setback control, which gives rise to an adverse visual impact for adjoining properties.

Comment:

This matter is discussed in detail under part 4.1.4 (Setbacks (front, side and rear) and Building Separation) of this report. In summary, the proposal incorporates sufficient design solutions to minimise the non-compliance on a constrained site, and as a result the bulk and scale of the development does not give rise to any unreasonable impacts upon the adjoining properties.

This matter does not warrant the refusal of this application.

- **Floor space ratio**

The submissions raised concerns that the FSR variation proposed under this application is unreasonable and therefore, supported by an inadequate Clause 4.6 assessment.

Comment:

An assessment of the submitted clause 4.6 variation request has been undertaken within the relevant section of this report. The assessment finds the applicant's written request adequately demonstrates that it is unreasonable to apply strict compliance with the development standard and that there are sufficient environmental planning grounds to justify contravening the development standard, principally as the FSR is consistent with the requirements of the DCP for undersized allotments. It is considered that the proposal is consistent with the aims and objectives of the R2 Low Density Residential zone and the Floor space ratio development standard under Manly LEP 2013.

This matter does not warrant the refusal of this application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Landscape Officer	<p>The development application is for alterations and additions to the existing dwelling including a new crossover and driveway, as described and illustrated in the Reports and Plans.</p>

Internal Referral Body	Comments
	<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 where applicable <p><i>updated comments 29/08/2022:</i> Amended Plans are submitted that remove the driveway proposal from the development application. The Landscape Plan indicates the retention of the existing landscaping to the front and rear of the property, with the exception of one Frangipani at the rear that is located within the proposed footprint of the development. No concerns are raised with the removal of this tree as it is an exempt tree under height exemption.</p> <p>Subject to the retention of existing landscaping and the protection of existing street trees, and other trees and vegetation within adjoining properties, Landscape Referral raise no concerns.</p> <p><i>previous comments 29/06/2022:</i> No Landscape Plan nor a Arboricultural Impact Assessment accompanies the application. The proposal requires the removal of a large Brushbox street tree to accommodate the crossover and driveway, as well as one other tree within the rear of the property in the vicinity of the proposed outdoor patio area.</p> <p>Of concern is the proposal to remove the Brushbox street tree, contrary to the requirements of control 3.3.2 Preservation of Trees or Bushland Vegetation. Clarence Street supports many street trees that provide streetscape and environmental amenity. No justification for removal is submitted and it is noted that the Brushbox appears to be in good health and with a long useful life expectancy. No arboricultural nor design investigation into alternative layouts are presented to suggest that there is no alternative approach.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	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.

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. A35344_03 dated 16 August 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:	8.5 metres	7.7 metres	N/A	Yes
Floor Space Ratio	FSR: 0.45:1 (150.53m ²)	FSR: 0.58:1 (194.3m ²)	13.1%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.45:1 (150.53m ²)
Proposed:	0.58:1 (194.3m ²)
Percentage variation to requirement:	13.1%

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

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

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

Comment:

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

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

s 1.3 of the 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 proposed is permissible with consent within the R2 Zone and is consistent with the relevant objectives of the zone and Clause 4.4 of the LEP.*
- *The siting, bulk, scale and massing of the proposed development is appropriate in the setting. The subject site and applicable FSR fall under the Exception to FSR for Undersized Lots as per Manly DCP Control 4.1.3.1.*
- *The proposed development would not give rise to any harmful impacts on neighbouring amenity given the high-level windows on the western elevation, proximity from the proposed development and the privacy screen to the western section of the open balcony.*

It is agreed that the proposed extension will remain compatible within the immediate locality without rise to any adverse amenity impacts, as the built form is appropriately modulated and sited, such that the proposal achieves an acceptable level of compliance with the relevant built form controls and meets the objectives of the relevant controls. Furthermore, it is acknowledged that the proposal constrained to the proportions of the host dwelling, which is located on an undersized lot as per Clause 4.1.3 of MDCP. Overall, the requested variation is reasonable in terms of its impacts and strict compliance with this development standard would not provide a net benefit to the immediate locality, as the proposal is considered an appropriate design within a low-density residential setting, which preserves an acceptable level neighbourhood amenity.

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 Floor space ratio 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:

The immediate streetscape character is defined by residential terraces and other low density development, including detached dwelling houses that range between one to two storeys. In this regard, the streetscape is characterised by low-density development ranging in size, construction

and age.

The proposed first floor addition is 7.7 meters when measured from ground level (existing) to the highest point of the building. The height of buildings development standard is designed to control building height ensuring the development is consistent with that of the surrounding area. The proposed addition is 0.8 meters lesser than the maximum (8.5 meters) and is considered consistent with the height of surrounding low density development.

The proposed first floor addition is 4.9 meters wide and is reasonably constrained by the narrow lot width of 6.2 meters. Notwithstanding, the proposal is suitably articulated through gradually stepping the building down towards the rear boundary, along with fenestration and an innovative roof form. In addition, the proposed first floor provides generous building separation from the front boundary (12.4 meters). In this regard, the proposal has been appropriately designed and sited to minimise bulk and scale, thereby remaining consistent with the existing and desired streetscape character.

It is considered that the development satisfies 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:

As outlined, the proposal has been effectively modulated to minimise building bulk. Further, the amended proposal maintains the existing street tree and landscaping within the frontage. Overall, the development is not expected to cause unreasonable impacts to landscape and townscape features.

It is considered that the development satisfies this objective.

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

Comment:

The proposed first floor is adequately set back from the frontage and screened by existing vegetation. In addition, proposed development does not seek the removal of any significant vegetation. As such, the proposal will maintain an appropriate visual relationship with the existing character of the area, which contains a mix of older dwellings and more recent contemporary developments.

It is considered that the development satisfies this objective.

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

Comment:

The proposed development has been adequately set back from adjoining boundaries within context of the site constraints, which ensures that no adverse environmental impacts (including privacy and overshadowing), will impede upon surrounding sites. These matters are discussed in further detail under 3.4.2 Privacy and Security of this report. Overall, the amenity of adjoining land and the public domain will be suitably maintained by this proposal.

It is considered that the development satisfies 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:

This objective does not apply as the site is not within a business zone.

It is considered that the development satisfies 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 seeks the alterations and additions to an existing attached dwelling, which is a permissible use in this zone. The additional floor area is considered to provide for the current housing needs of the occupants of the site and is compatible with that of nearby comparable development.

It is considered that the development satisfies this objective.

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

Comment:

No change to the existing residential land use is proposed.

It is considered that the development satisfies 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 Floor space ratio Development Standard associated with a single dwelling house (Class 1 building).

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 334.50sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	N: 6.5 metres (based on gradient 0)	6.5 metres	N/A	Yes
	S: 6.5 metres (based on gradient 0)	5.8 metres	N/A	Yes
	E: 6.7 metres (based on gradient 1:30)	7.0 metres	N/A	Yes
	W: 6.7 metres (based on gradient 1:30)	6.5 metres	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5 metres	0.8 metres	N/A	Yes
	Pitch: maximum 35 degrees	8 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6 metres	12.4 metres	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: Semi-detached dwelling	Nil to boundary wall	N/A	Yes
	W: 2.2 metres (based on wall height of 6.7 metres)	1.2 metres (Ground and first floor additions) Nil (rear patio)	45.5% - 100%	No
	Windows: 3 metres	1.2 metres	60%	No
4.1.4.4 Rear Setbacks	8 metres	17.3 metres	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (184m ²)	46.4% (155.3m ²)	15.6%	No
	Open space above ground 25% of total open space	-	-	N/A
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (54.4m ²)	57.8% (89.8m ²)	N/A	Yes
	2 native trees	2 trees	N/A	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	>18m ²	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
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Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 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
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Description of non-compliance

Proposed windows on the western elevation do not comply with the privacy requirements of Part 3.4.2 of the DCP.

Merit consideration:

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

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

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

Comment:

Amended plans were provided to ensure that all the first floor bedroom and bathroom windows have a minimum sill height of 1.7 metres above the finished floor level (FFL), which is consistent with the requirements of this control. It is also noted that the stairwell window (W7) is a 2.2 meter high window opening with its sill height at the first-floor level. However, the window is located adjacent to the middle landing of the stairwell and as such, when applying the planning principal of *Meriton v Sydney City Council [2004] NSWLEC 313* it is considered that this space has a relatively low impact in terms of its transient usage, as individuals are not likely to spend extended periods of time observing over the western boundary from this space.

It is considered that because of the factors outlined above, including, high sill levels, and the low use rooms it is accessed from, the proposal will not result in any unreasonable privacy impacts for adjoining building at No.66 Condamine Street.

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

Comment:

The fenestration of the proposed addition allows for greater access to light and air without creating unreasonable privacy outcomes, while retaining suitable outlooks and views from the proposed rooms.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The development maintains passive surveillance and awareness of neighbourhood security.

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

4.1.3 Floor Space Ratio (FSR)

Whilst the proposed floor area does not exceed the maximum variation to FSR for undersized lots as described under this clause, the development is technically non-compliant with the FSR requirement as prescribed under Clause 4.4 of the Manly LEP 2013. Refer to the discussion under Clause 4.6 of this report for the relevant considerations concerning the varying of this development standard.

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

Description of non-compliance

Side setback

The proposed first floor addition includes a western side setback of 1.1 metres. MDCP requires a minimum western setback of 2.2 metres (based on wall height of 6.7 metres).

Windows

The proposed western elevation includes 12 windows that are within 3.0 metres of the western

boundary.

Merit consideration:

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

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

Comment:

The proposed first floor is set back 12.4 meters from the front boundary and sits well below the prescribed height limit. The proposal has been amended to retain the existing street tree located within the road reserve and landscaping contained within the frontage, which provides adequate screening of the development. Overall, the proposal has been appropriately designed to remain consistent with the existing and desired streetscape character.

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:

An assessment has been completed under Section 3.4.2 (Privacy and Security) of this report to determine the proposed first floor addition's impact on privacy for the adjoining site to the west. In summary, the proposed west facing windows will not have readily accessible views into the adjoining properties as they have been sufficiently offset from sensitive areas and include high sill levels. Notwithstanding the setback non-compliances the proposal has been designed to preserve local amenity through providing reasonable privacy between buildings.

The proposed addition will result in additional overshadowing to the western sites rear yards at 9am, however, no additional shadowing will occur to these sites from midday onwards. In summary, it is considered that the proposal maintains equitable access to sunlight between sites in accordance with Section 3.4.1 (Sunlight Access and Overshadowing) of MDCP.

The proposal will not result in the loss of views.

As mentioned elsewhere the proposal has been designed to maintain acceptable streetscape outcomes.

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

Comment:

The proposed setback breach is considered to be acceptable given the characteristics of the site and the absence of any adverse amenity impacts.

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 provides landscaped area which is consistent with the control for nearby dwellings and proposes vegetation to the front of the site. This provides a reasonable circumstance for natural features.

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

Comment:

Not applicable.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The DCP requires that the site consist of 55% (184m²) open space with minimum dimensions of 3 metres. The proposed development consists of 46.4% (155.3m²) open space, which represents a 15.6% variation of the control.

Notwithstanding the numerical non-compliance with the control, the development is considered to be consistent with the desired outcomes of the control and this is discussed in detail 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 retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The development does not result in the removal of significant canopy trees which would result in the character of the site being compromised or impact populations of flora and fauna.

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 reasonably maximises soft landscaped areas and open space at ground level that includes appropriate tree planting and vegetation coverage within the low density residential setting. Furthermore, the proposal is considered to provide an area of private open space that is of high amenity.

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

Comment:

The proposal achieves compliance with the solar access requirements under MDCP and does not impact upon views. In addition, the proposal's privacy impacts have been mitigated through a responsive window design and adequate separation from boundaries. Further, the works have been effectively designed to minimise any streetscape impacts. Overall, the proposal enhances the subject site's amenity through the provision of additional living areas and an enhanced open space provision, while not creating unreasonable amenity impacts for the surrounding area.

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

Comment:

The proposal will retain sufficiently sized landscape areas across the site that are capable of water infiltration, which will assist in minimising stormwater run-off.

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

Comment:

No major landscaping works are proposed within this application.

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

Comment:

The development does not impact significant canopy trees which would be used for habitat.

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 inconsistent 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 \$4,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$400,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 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 4.4 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.

In summary, the application has been assessed with regard to the relevant Manly LEP and DCP controls which guide the future desired character of the site and locality, along with the public submission received during the notification period.

The issues raised in the submissions are considered to be addressed by way of the amended plans and conditions of consent.

Subject to the recommended conditions of consent, it is considered that the proposal will result in a development that displays reasonable size, scale and density which is compatible with the existing site and surrounding development and will not result in unreasonable amenity impacts to surrounding properties. Overall, the proposal is considered a reasonable response to the site constraints and relevant planning controls.

Accordingly, the application is referred to the DPP with a recommendation for approval. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

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 4.4 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 DA2022/0727 for Alterations and additions to a semi-detached dwelling on land at Lot 1 DP 445281, 12 Clarence Street, BALGOWLAH, 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
Sheet 1 - DA/7	16 August 2022	Evolving Design & Drafting
Sheet 2 - DA/7	16 August 2022	Evolving Design & Drafting

Sheet 3 - DA/7	16 August 2022	Evolving Design & Drafting
Sheet 4 - DA/7	16 August 2022	Evolving Design & Drafting
Sheet 5 - DA/7	16 August 2022	Evolving Design & Drafting
Sheet 6 - DA/7	16 August 2022	Evolving Design & Drafting
External finishes schedule Job No. 117-18	Not stated	Evolving Design & Drafting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A35344_03	16 August 2022	Evolving Design & Drafting
Geotechnical Assessment	31 March 2022	AscentGeo Consulting Geotechnical Engineers'

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	19 January 2022	Evolving Design & Drafting

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	Response Ausgrid Referral	29 June 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.

3. Prescribed Conditions

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

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

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

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

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

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

Reason: Legislative requirement.

FEES / CHARGES / CONTRIBUTIONS

4. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$4,000.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2022. The monetary contribution is based on a development cost of \$400,000.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2022 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

5. **Security Bond**

A bond (determined from cost of works) of \$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 Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed

with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

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

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

6. Stormwater 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 Certifying Authority 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 Certifying Authority 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.

7. 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 Certifying Authority 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.

8. 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 Certifying Authority prior to the issue of the Construction Certificate.

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

9. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

10. **Protection of Existing Street Trees**

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street trees fronting the development site shall be protected by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites. As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

All street trees within the road verge are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) is prohibited. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees. Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: Street tree protection.

11. **Tree and Vegetation Protection**

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

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

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an 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 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 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 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 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 Certifying Authority,
 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 Australian Standard 4970-2009 Protection of Trees on Development Sites,
 ix) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees, and should additional pruning be required an application to Council's Tree Services shall be submitted for approval or otherwise.

The Certifying Authority must ensure that:

c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Reason: Tree and vegetation protection.

12. **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.

13. **Demolition Works - Asbestos**

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

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

disposed to a lawful waste disposal facility.

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

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

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

14. Survey Certificate

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

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

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

15. 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.

16. 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 Certifying Authority.

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

17. **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 Certifying Authority 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 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 for the on-site stormwater detention system is to be submitted.

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

Reason: To ensure satisfactory management of stormwater.