

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1173
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Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 15A DP 31138, 14 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Alterations and additions to an existing dwelling including landscape works and the construction of a swimming pool
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:	James William Barchard Martin Kathryn Ann Martin
Applicant:	James William Barchard Martin

Application Lodged:	22/09/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	29/09/2020 to 13/10/2020
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	4.3 Height of buildings: 2.5%
Recommendation:	Approval

Estimated Cost of Works:	\$ 1,023,000.00
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EXECUTIVE SUMMARY

The proposal seeks consent for alterations and additions to a existing dwelling house including a new swimming pool and double garage off Ernest Street.

The assessment has found that the proposed development is satisfactory in relation to built form, character, streetscape, and internal and external residential amenity.

The applicant has lodged a request under Clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013) for a variation to the development standard for height of building. The height variation is up to a maximum of 8.709m above the allowable height of 8.5m, representing a maximum variation of

2.5%.

The existing FSR is 0:16:1 (142.2sqm) and the proposal has a total gross floor area of FSR 0.34:1 (295sqm) including the former single garage which is proposed to be utilised for storage, representing compliance with the Floor Space Ratio development standard of 0.45:1 (393.9sqm) under the MLEP.

Council received six (6) submissions objecting to the proposal in response to the application. The issues raised in the submissions have been addressed in the "Public Notification" section of this report and in summary they do not warrant refusal or re-design of the proposal subject to suitable conditions have been imposed where required.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be approved subject to conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposed works are as follows: -

- Alterations and additions to the Ground Floor dwelling house including a first floor addition;

Ground Floor

- *Internal alterations to open up the rear of dwelling to create an open plan living area with kitchen opening onto the deck.*
- *Installation of stairs to new first floor and a bathroom.*
- *Bedroom 2 converted into a study.*
- *Bedroom 1 and lounge room converted into a family room.*
- *Construction of covered rear deck with stairs to lawn*
- *New windows as detailed on plans*
- *New Garage at the front of the dwelling*

First Floor

New first floor including:

- *Master bedroom with walk in robe, ensuite, retreat and balcony*
 - *Bathroom*
 - *Bedroom 2 with built in robe*
 - *Bedroom 3 with built in robe*
 - *Sitting area*
 - *Linen cupboards"*
- Swimming pool and landscaping
 - *"In-ground pool with spa with a volume of 55mL (pool) and 5mL (spa) and dimensions of 11.3m x 4m and maximum depth of 1.8m.*
 - *Raising of lawn by 600mm*
 - *Paved pool surrounds with compliant fencing as detailed on plans*
 - *Retaining wall and planter box"*
 - Front Yard and front fence
 - *"New timber and masonry front fence 1.6m high.*
 - *New path to entry of the dwelling*
 - *New driveway*

- *New lawn area"*

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 - 3.4.1 Sunlight Access and Overshadowing

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

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 15A DP 31138 , 14 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Ernest Street.</p> <p>The site is regular in shape with a frontage of 15.24m along Ernest Street and a depth of 57.435m. The site has a surveyed area of 875.3m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a single storey dwelling with a metal roof and a carport and storage space along the western side boundary (adjacent to the dwelling).</p>

The site slopes from the front boundary down to the rear boundary with a slope of approximately 11%.

The site has a mix of native and exotic species of shrubs, plants and trees. With a substantial large gum tree located within the front road reserve.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by one and two storey dwellings with associated outbuildings/structures and landscaped gardens.

Map:



SITE HISTORY

TA2020/0312 - Tree Application approved Tree Removal (2 trees) approved 27 April 2020

TA2020/0038 - Tree Application approved Tree Removal (1 tree) approved 1 August 2018

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 Matters for Consideration'	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
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)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the survey plan which was not initially submitted with the documentation for this development application. A survey was submitted by the applicant's designer on 30 September 2020.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
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</p>

Section 4.15 Matters for Consideration'	Comments
	impact on the locality considering the nature of the existing and proposed land use.
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 29/09/2020 to 13/10/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 6 submission/s from:

Name:	Address:
Mr Brett David Christie Mrs Anita Catherine Christie	12 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Mr Dieter Heinz Steinbusch	29 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Jenny Mcgrory	Address Unknown
Ms Shannon Elizabeth Walker	7 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Mr Nicholas Ashley Peter Beck	13 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Mr Timothy Dominic Humphreys	23 Ernest Street BALGOWLAH HEIGHTS NSW 2093

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

- Height of building
- East side setback
- East side wall height
- Total open space and landscaping
- Streetscape
- Prevailing front setback

- Pool
- Overshadowing
- Privacy
- Visual bulk
- Alts vs Adds vs New Build
- Impact of trees in the rear yard of 12 Ernest Street
- Floor Space Ratio
- NSW Land & Environment Court Planning Principles
- Suggested amendments
- Height Poles

The matters raised within the submissions are addressed as follows:

- **Height of building**

"A height greater than 8.5m is proposed, at 9.52m (12% non-compliance)"

Comment: Issues were raised that the height of the proposed additions exceeded the building height control by 1.02m (12% variation). Reviewing the Long Section (DA12) completed by Actions Plans, the survey completed by CMS Surveyors and an assessment by Council Planner (including a site inspection) established the building height of the proposal is 8.709m (2.5% variation).

A formal variation via Clause 4.6 Exceptions to Development Standards - Height of Buildings has been lodged with the development application. It is noted that only a small portion of the building exceeds the height control and combined with the slope of the land and the existing dwelling it is considered that the overall height is not excessive. The commentary in the submission in relation to the height of the building was considered in the merit assessment of the proposed height and it is considered that the proposal is reasonable and consistent with adjoining and surrounding buildings within the vicinity.

Given the above it is considered that the proposed alterations and additions to this dwelling house are consistent with surrounding and adjoining dwellings within the area and the variation is supported.

- **East side setback**

Comment: A review of the proposed side setbacks has been considered and assessed under Clause 4.1.4 (front, side and rear) and Building Separation of MDCP. Particular issue was raised in relation to first floor level (front portion) will be sited over the existing ground floor level. The proposed setbacks of 1.358m (49.1% variation) at the first floor level (front portion) is noted, however the first floor level (rear portion) has a side setback of 2.73m which is compliant with the side setback control of 2.67m. It is noted that a portion of this building will be located adjacent to the two storey dwelling at 12 Ernest Street is located approximately 1m away from the common side boundary shared with 14 Ernest Street.

Given the above it is considered that this issue does not warrant refusal and/or further amendr

- **East wall height**

Comment: Issue was raised that the proposed wall height will be 8.2m a 14% variation a non-compliant with the control of 7.2m wall height. Council has assessed the wall height varying from 6.3m - 8m (Nil - 11.1% variation) on the eastern elevation and 6m - 7.7m (Nil - 6.5% variation) on the western elevation. Please refer to Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) of the MDCP.

It is considered that the proposed wall heights are considered generally consistent with recent approvals granted under the current controls of the MLEP 2013 and MDCP.

Given the above it is considered that this issue does not warrant refusal and/or further amendment via condition(s).

- **Total open space and landscaping**

Comment: Issue was raised about the non compliance with the total open space and landscaping by objectors. The total open space requirement under Clause 4.1.5.1 Minimum Residential Total Open Space (TOS) Requirements Residential Open Space Area: OS3 is 55% (481.4sqm) of site area. It is noted that the proposed open space is under this requirement by 10.62sqm (2.2%) with a proposed open space of 53.8% (470.79sqm) of the site. An assessment under Clause 4.1.5 of Manly Development Control Plan (MDCP) has been undertaken and considered the variation acceptable based on the improved on the existing amount of TOS on the site is 50.4% (441.55m²) and it was concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, the assessment finds that the proposal is supported, in this particular circumstance.

The required landscaping under Clause 4.1.5.2 of MDCP was 35% (168.49sqm) of open space. The proposed landscape open space was assessed as compliant 70.6% (339.89sqm).

- **Streetscape**

Comment: Issue were raised by objectors that the proposed alterations and additions to the existing dwelling would create a *"negative impact on the streetscape and general neighbourhood"*

A review of the relevant control of MDCP Clause 3.1.1 Streetscape (Residential areas) states:-

"Streetscape is defined (see Dictionary in this plan) and represents the inter-relationship between buildings, landscape and open spaces in the street scene. Local amenity and identity are closely linked to streetscape character. Development should recognise predominant streetscape qualities, such as building form, scale, patterns, materials and colours and vegetation which contributes to the character of the local area."



- **16 Ernest Street**
Street

18 Ernest



20 Ernest Street

Reviewing the streetscape there are many examples of garages and parking structures at street level take a large portion of their respective site frontage.

Given the above it is considered that the proposal is consistent with the existing streetscape of Ernest Street. It is therefore considered that this issue does not warrant refusal and/or further amendment via condition(s).

- **Prevailing front setback**

Issues were raised that the proposal did not comply with the prevailing front setback. Clause 4.1.4.1 Street Front setbacks of the MDCP states: -

"a) Street Front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity.

b) Where the street front building lines of neighbouring properties are variable and there is no prevailing building line in the immediate vicinity i.e. where building lines are neither consistent nor established, a minimum 6m front setback generally applies. This street setback may also need to be set further back for all or part of the front building façade to retain significant trees and to maintain and enhance the streetscape."

Comment: The existing setbacks of 16 Ernest Street and 12 Ernest Street would state the prevailing front setback could be 12.806m, however point (b) states *"Where the street front building lines of neighbouring properties are variable and there is no prevailing building line in*

the immediate vicinity i.e. where building lines are neither consistent nor established, a minimum 6m front setback generally applies. This street setback may also need to be set further back for all or part of the front building façade to retain significant trees and to maintain and enhance the streetscape."

The front setbacks of dwellings along the northern side of Ernest Street are variable and this can be seen from the below aerial. Given this it is considered that the proposed setback to the garage (6.962m) and the additions to the dwelling (10.6m) are compliant with Clause 4.1.4.1 Street Front Setbacks.



Source: Spatial Enabled Application (SEA)

- **Pool**

Comment: Issues were raised about the swimming pool given it's height above natural ground and it's position to the eastern side boundary (shared with 12 Ernest Street). Additionally issues were raised about the proposed location of the swimming pool fence would be located on the common side boundary and privacy issues.

The proposed swimming pool fails to comply with specific requirements of Clause 4.1.9 Swimming Pools, Spas and Water Features. The proposed height of the pool is 1.23m above natural ground level (which is a variation of 23%) above the 1m high requirement. The position of the swimming pool from the eastern side boundary fails to comply with the 1m curtilage requirement (proposed curtilage of 0.9m (10%) and 1.5m water side setback (proposed water side setback of 1.196m (20.3%)).

Given the above it is considered three elements (height, curtilage and water side setback) will be conditioned accordingly to ensure that the setback and height of the swimming pool is compliant with these relevant controls of the MDCP.

The fence will be 1.2m high fence is to be located on the eastern most edge of the curtilage/coping,

it is considered that is a reasonable outcome and compliant with AS1926 Swimming Pool Safety Fencing.

It is therefore considered that this issue does not warrant refusal subject to the above conditions as recommended.

- **Overshadowing (solar access)**

Comment: Issues were raised by 12 Ernest Street which is located to the east of the subject site stating overshadowing the living area, kitchen, study and bedroom (northwest corner first floor).

Comment: Please refer to Clause 3.4.1 Sunlight Access and Overshadowing of the MDCP for a detailed assessment. In short it is was considered that the proposal was acceptable and consistent with the provisions of this Clause and the development allows for sufficient solar access to the private open space of and living rooms of 12 Ernest Street and does not warrant refusal and/or further amendment via condition(s).

- **Privacy**

Comment: Issues was raised about privacy from new windows on the eastern elevation on the ground and first floor levels of the proposed alterations and additions. Ground floor new windows W02 (kitchen), W03 (pantry/laundry) & W04 (water closet) are to be treated or fitted with obscured or frosted glazing on the ground floor. First floor windows W20 (bathroom) & W21 (bedroom 2) have a minimum sill height of 1.5m above the finished floor level are adequate to provide reasonable amenity for both parties. Windows W17 (ensuite) & W19 (stairs) are to be treated or fitted with obscured or frosted glazing. Window W16 (retreat) is to be either fitted or treated with obscured or frosted glazing or replaced with a window with a minimum sill height of 1.5m above the first floor level to ensure reasonable amenity of both parties.

Given the above it is considered that the proposal will satisfy Clause 3.4.2 Privacy and security of the MDCP and does not warrant refusal of this application subject to the above conditions as recommended.

- **Visual bulk**

Comment: Issues have been raised in relation to bulk and scale of the proposed alterations and additions to the dwelling house.

It is considered that the proposal provides an articulated built form consistent with the surrounding context.

Given the above it is considered that this issue does not warrant refusal and/or further amendment (s) via condition.

- **Height poles**

Comment: A request was made by the owner of 12 Ernest Street for the erection of height poles by a registered surveyor to identify the height, bulk and scale. Council has assessed these issues during a number of site inspections to the subject site and the adjoining residence to the east known as 12 Ernest Street. Council's Planner attended site on 12 February 2021 and 16 February 2021 and considered that the erection of height poles was not required and an assessment of the proposal could be fully undertaken based on these site inspections and review of the submitted plans with this development application.

- **Floor space ratio (FSR)**

Comment: A submission claimed that the proposal exceeded the FSR requirement of the MLEP 2013 - Clause 4.4 Floor space ratio. Based on the site area (875.3m²) and the allowable FSR of 0.45:1 (393.9sqm) and the applicant's planner and designer claimed that the FSR was 0.31:1 (275.8sqm). However, the existing single garage which is proposed to be utilised for storage must be added to the FSR calculations as it is no longer used for parking and is not located within the subfloor area/footprint of the dwelling. Therefore, with the addition of this space (former single garage) the proposed FSR is 0.34:1 (295sqm).

Given the above the proposal is fully compliant with Clause 4.4 Floor space ratio of the MLEP 2013.

- **Alts vs Adds vs New Build**

Comment: Issue was raised that the proposal was not alterations and additions to an existing dwelling was a new build (dwelling). A review of the plans demonstrates that the proposed works represent "alterations and additions" as per the Planning Principals of the Land and Environment Court case Edgar Allen Planning Pty Limited v Woollahra Municipal Council 2006 LGERA 1 and Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187.

- **Impact of trees in the rear yard of 12 Ernest Street**

Comment: The neighbouring owners raised the possible impacts of the swimming pool on a gum tree located in the northwest corner (rear yard) and the two mango tree located on the common side boundary shared with the subject site. A review of the proposal was undertaken by Council's Senior Landscape Architect and the following comments were: -

"No Landscape Plans are provided with the application. The site contains existing landscape within the front setback that remains largely unchanged and the rear yard includes new landscape works including raised lawn area associated with the swimming pool works and thus screen planting shall be a condition of consent along the east and west rear boundaries to the extent of the raised lawn and swimming pool alignment. One small tree is proposed to be removed within the rear to accommodate the swimming pool works, and no design alternative is available to retain this tree. Additional two exempt species (by type or height) are required to be removed for the swimming pool works.

Landscape works shall include the provision of replacement tree planting to satisfy the requirement of clause 4.1.5.2 (c) minimum number of native trees to be supported within the site (existing or proposed), that is a total of three in this case.

Landscape Referral provide no objections to the proposal subject to conditions of consent.

The proposal is therefore supported."

On the 16 February 2021 by Council's Planner undertook a further site inspection and had further discussions with Council's Senior Landscape Architect after that site inspection it is considered that the following condition will ensure reasonable protection for these trees:-

"Tree and vegetation protection

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

i) all trees and vegetation within the site not approved for removal, 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), vi) and vii) 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) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,*
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,*
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.*

c) Tree protection by fencing shall be installed around the existing large Gum within the road verge. As a minimum the tree protection fencing shall consist of 1 standard 2.4m panel length to four sides, and placed at the back of kerb on one side and along the existing driveway along on the one side, and installation shall be 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. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the fencing nor the canopy dripline.

The Certifying Authority must ensure that:

- d) 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.*

Note: All street trees within the road verge and trees within private property 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.

Reason: tree and vegetation protection."

It is considered that matter has been addressed and does not warrant refusal and/or further amendment via condition(s).

- **NSW LEC Planning Principles**

- **Height, bulk and scale - Veloshin v Randwick Council [2007] NSWLEC 428 at 32-33**

"The impacts are not consistent with the impacts that would be reasonably expected under the controls. The proposals are non-compliant in multiple areas, and the Applicant has not quantified the difference between the impacts of a complying and a non-complying development."

Comment: The proposed development has been assessed against the controls of both the MLEP and MDCP controls and reviewed against other development within the vicinity.

It is considered via the submitted information and assessment that the impacts are reasonable and consistent.

- **General impact - Davies v Penrith City Council [2013] NSWLEC 1141 at [116] to [121]**

Issues were raised about floor space and amenity could be achieved while reducing the impacts.

Comment: As previously stated the proposed floor space is consistent with other developments within the vicinity.

Additionally amenity issues have also been considered and subject to condition these privacy issues can be suitably addressed.

- Project Venture Developments v Pittwater Council (2005) NSW LEC 191, NSW LEC considered character:**

"whether most observers would find the proposed development offensive, jarring or unsympathetic in a streetscape context, having regard to the built form characteristics of development within the site's visual catchment"

Commentary:

"The non-compliant elements of the proposed development, particularly caused from the non-compliant front setbacks, the excess height, and the 5m boundary walls, would have most observers finding 'the proposed development offensive, jarring or unsympathetic in a streetscape context.'"

Comment: As stated previously the proposal is deemed to be compliant with the front setback control (numeral), assessment of the building height and wall heights have also been addressed within this assessment report. The proposal is considered to be consistent with surrounding and nearby development and demonstrates sufficient articulation and spatial separation to adjoining dwellings. The resultant dwelling will address the streetscape with adequate setbacks and visual modulation to ensure harmonious consistency with the existing streetscape of Ernest Street.

- **Suggested amendments**

- *"Increase Eastern First Floor Side Setback to 2.75m*

- *Reduce Building Roof Height to be below 8.5m maximum building height*
- *Reduce eaves to 300mm*
- *Reduce Roof to 2-degree pitch*
- *Raise sills to 1.6m high to windows W02, 03, 04 & W16, 17, 18, 19, 20, 21*
- *The pool fencing shall be located entirely within the subject site and be set back a minimum of 2.0m from the boundary. The pool to be relocated with a greater side setback. The pool must not be more than 1m above ground level existing in any location, and to be lowered below RL 36.5, and not exceed the RL 35.5 contour. Landscape zone in the 2m side setback zone adjacent the pool to be deep soil, dense planted with species 3m high at close centres."*

Comment: The proposed first floor demonstrates varying side setbacks to both properties with the eastern side setbacks varying from 1.3m to 2.73m and on the western side setbacks varying from 3.319m to 5.3m. It is considered that the proposed first floor demonstrates sufficient variation and articulation (in particular as the dwelling slope further down the site).

The proposed building height has previously discussed and it is considered the minor non-compliance, the fact that the application is for alterations and additions to a dwelling and the slope (11% grade) are supportable in this instance.

The eaves are 0.4m and it is considered these are not excessive.

Windows on the eastern elevation have been previously addressed in this section of this assessment report. Proposed windows are either considered to be satisfactory and/or conditioned accordingly with frosting/obscuring or the replaced with high sill window(s) to ensure reasonable amenity for both parties.

Consideration of the recommendations for the proposed swimming pool have been looked at and it is considered that condition the reduction of the swimming pool height to 1m above natural ground level, the water side to be conditioned to 1.5m and the curtilage be located 1m from the eastern side boundary. It is noted that the Senior Landscape Architect from Council has stated the following:-

"The site contains existing landscape within the front setback that remains largely unchanged and the rear yard includes new landscape works including raised lawn area associated with the swimming pool works and thus screen planting shall be a condition of consent along the east and west rear boundaries to the extent of the raised lawn and swimming pool alignment."

It is considered that matter has been addressed and does not warrant refusal and/or further amendment via condition(s).

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>

Internal Referral Body	Comments
Landscape Officer	<p>The proposal is for alterations and additions to an existing dwelling and the construction of a swimming pool.</p> <p>Council's Landscape Referral section have assessed the application against the Manly Local Environment Plan, and against the following landscape controls of Manly DCP 2013:</p> <ul style="list-style-type: none"> • section 3: General Principles of Development, including but not limited to clauses 3.3.1 Landscape Design, and 3.3.2 Preservation of Trees and Bushland Vegetation, • section 4: Development Controls and Development Types, including but not limited to clauses 4.1.5 Open Space and Landscaping. <p>No Landscape Plans are provided with the application. The site contains existing landscape within the front setback that remains largely unchanged and the rear yard includes new landscape works including raised lawn area associated with the swimming pool works and thus screen planting shall be a condition of consent along the east and west rear boundaries to the extent of the raised lawn and swimming pool alignment. One small tree is proposed to be removed within the rear to accommodate the swimming pool works, and no design alternative is available to retain this tree. Additional two exempt species (by type or height) are required to be removed for the swimming pool works. Landscape works shall include the provision of replacement tree planting to satisfy the requirement of clause 4.1.5.2 (c) minimum number of native trees to be supported within the site (existing or proposed), that is a total of three in this case.</p> <p>Landscape Referral provide no objections to the proposal subject to conditions of consent.</p>
NECC (Development Engineering)	<p>The proposed method of stormwater disposal is satisfactory. The proposed reconstruction of the driveway crossing and internal driveway is also satisfactory.</p> <p>No objection to approval, subject to conditions as recommended.</p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A383818_02 dated 21 July 2020).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid 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.

Manly Local Environmental Plan 2013

Is the development permissible?	Yes
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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	8.709m	2.5%	No
Floor Space Ratio	FSR: 0.45:1 (393.9sqm)	Proposed FSR: 0.34:1 (295sqm) Existing FSR 0:16:1 (142.2sqm)	N/A N/A	Yes Yes

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
Part 6 Additional local provisions	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	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:	8.709m
Percentage variation to requirement:	2.5%

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*

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the 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 is consistent with the bulk and scale of the neighbourhood. The variation is minor and is largely the result of the topography of the site and desire to ensure the dwelling is consistent with the desired future streetscape character in the locality.

The proposed height and built form is considered to be consistent with other approved dwelling houses with the locality on sloping sites, which breach the height limit.

The proposed variation is just 3.45% or 0.294metres. The resulting dwelling is considered to be compatible with the prevailing height of buildings and streetscape character within the locality, despite the non-compliance, with the variation largely attributed to the sloping topography of the site. It is considered this objective is met, despite the numerical variation."

Reviewing the argument put forward by the applicant the proposed development (overall) combined with the moderate slope of land (over 11% grade) it is concurred that the variation to the building height is justified in this instance with the expectation that Council's Planner has assessed the variation of 2.5% and 0.209m above the 8.5m building height control (proposed height 8.709m).

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

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

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

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

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

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

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

Objectives of development standard

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

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

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

Comment: The proposed development is considered to be consistent and compatible in terms of height with the surrounding dwellings demonstrating varying roof form and overall building height that is general consistent with adjoining and surrounding buildings. The breach is contained to the middle portion of the building encroaches the maximum building height. The resultant dwelling demonstrates good modulation and varying side setback to assist in providing sufficient articulation and maintain the

desired future streetscape character in the locality.

b) to control the bulk and scale of buildings,

Comment: The proposed development incorporates a combination of open balconies, decks and varied setbacks which adds modulation to the building. The resultant bulk and scale of the development is consistent with surrounding development along the Ernest Street and surrounding streets and will not result in any unreasonable amenity impacts within the locality. The proposed bulk and scale is satisfactory in this circumstance.

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: Given the the location of the site, topography and the design will ensure that the proposal will minimise any view disruption from adjoining and surrounding dwellings from or to the public spaces.

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: Given the site location and proximity to adjoining and surrounding properties the solar impacts of this aspect of the development are minor and acceptable.

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 building height non-compliance does not create amenity impacts over land in recreation or environmental protection zones, that might conflict with bush land and surrounding land uses.

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 proposed development retains the residential use of the site.

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: The proposal will still allow for other land uses or services required to meet the day to day needs of residents within the area.

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 PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 599.1sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling	1	N/A	Yes
	Dwelling Size: 112sqm (minimum)	275.58sqm	N/A	Yes
4.1.2.1 Wall Height	E: 7.2m (based on gradient 1:9)	6.3m - 8m	11.1%	No
	W: 7.2m (based on gradient 1:9)	6m - 7.7m	6.5%	No
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.8m	N/A	Yes
	Parapet Height: 0.6m	0.4m	N/A	Yes
	Pitch: maximum 35 degrees	12 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m (Ernest Street)	6.962m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 2.67m (based on wall height)	1.343m	49.7%	No
	W: 2.57m (based on wall height)	0.9m*	65.0%	No
	Windows: 3m	1.348m - 3.319m	Nil - 55.1%	No
4.1.4.4 Rear Setbacks	8m	28.756m	N/A	Yes
4.1.5.1 Minimum Residential Total Open	Open space 55% (481.4sqm) of site area	53.8% (470.79sqm)	2.2% 10.62sqm	No

Space Requirements Residential Open Space Area: OS3	Open space above ground (maximum) 40% (192.56sqm) of total open space	10.8% (52.12sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% (168.49sqm) of open space	70.6% (339.89sqm)	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	30.9sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.8m	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	1.23m	23%	Yes**
	1m curtilage/1.5m water side/8m rear setback	0.9m (curtilage), 1.196m (water side), 8.7m (rear setback)	10% (curtilage) 20.3% (water side)	Yes***
Schedule 3 Parking and Access	Dwelling - 2 spaces	2 spaces	N/A	Yes

* Side setback to garage (0.9m) additions to the dwelling are compliant with the numeric control
(western side setback - 3.319m(dwelling))

** Height of swimming pool to be conditioned to 1m above ground

*** Curtilage conditioned to 1m and water side to 1.5 from the from eastern side boundary to ensure compliance.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part 3	Yes	Yes
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3 Landscaping	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
Part 4	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	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.1.10 Fencing	Yes	Yes
4.4 Other Development (all LEP Zones)	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
Schedules	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 3 - Parking and Access	Yes	Yes
Schedule 3 - Part B - Minimum Dimensions for parking, access and loading	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

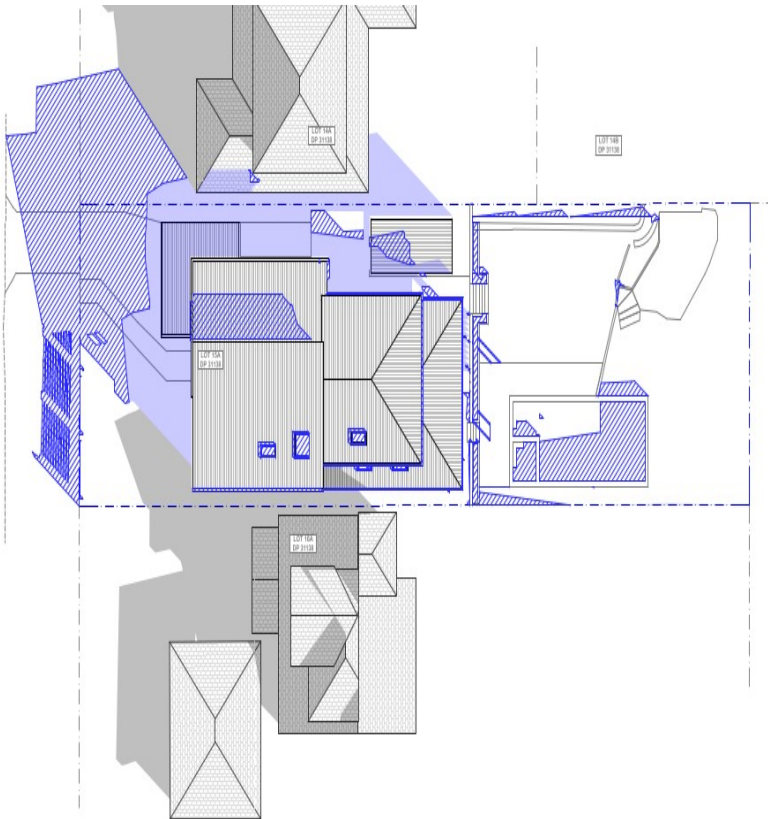
The proposed alterations and additions is considered to demonstrate sufficient solar access to the north facing living room at 12 Ernest Street.

This clause states the following: -

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

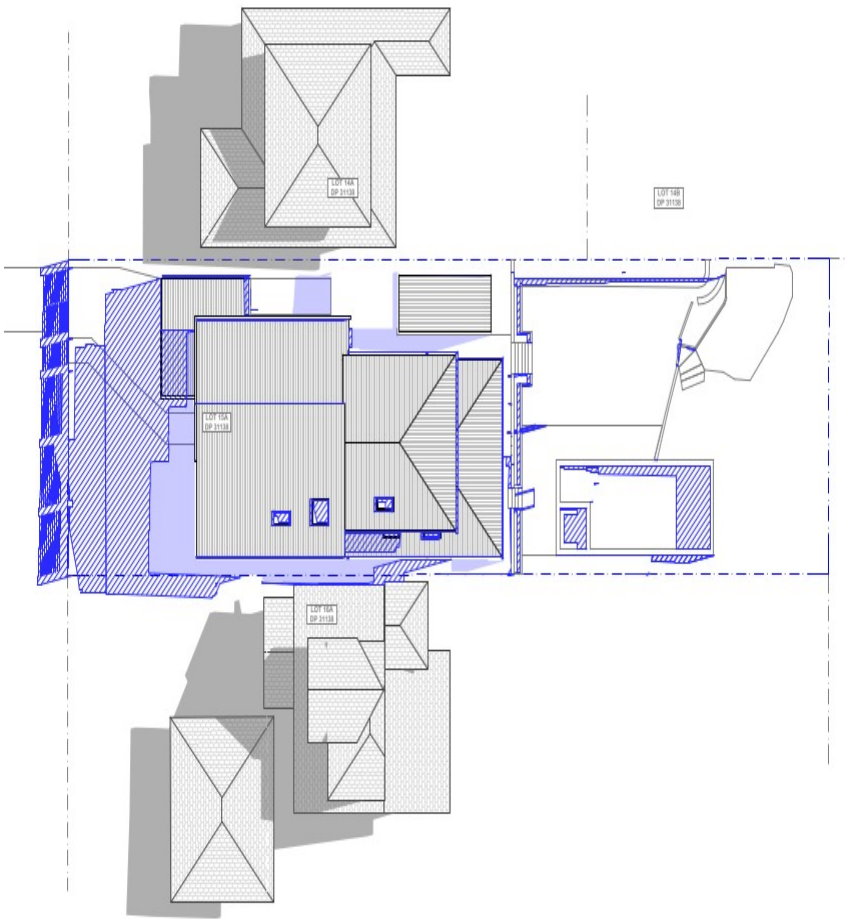
Comment: As demonstrated by the submitted solar access diagrams the northern facing ground floor living room window will achieve this required. Additionally, the private open space will also achieve the required hours of solar access.

It is considered that the proposal is compliant with this clause and does not warrant refusal or further amendments via condition(s).



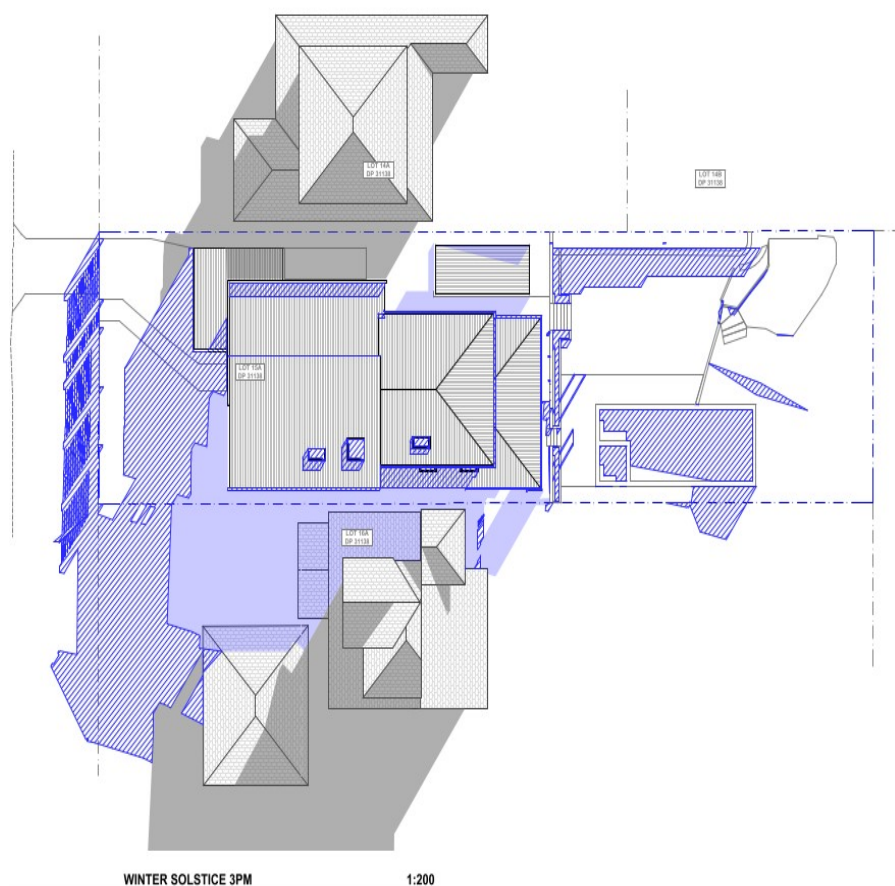
WINTER SOLSTICE 9AM

1:200



WINTER SOLSTICE 12PM

1:200



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

This Clause relies upon the objectives of Clause 4.3 under MLEP 2013. An assessment of the proposal against the objectives of Clause 4.3 has been provided within this report. This assessment has found the proposal to be consistent with the objectives of Clause 4.3.

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

Description of non-compliance

Clause 4.1.4.1 of the Manly DCP requires development be setback 6m from the front boundary.

Clause 4.1.4.2 of the Manly DCP requires development be setback at least 2.05m from the eastern boundary and 2.403m from the western boundary. Further, new windows facing side boundaries are to be setback at least 3m from the side boundary.

Clause 4.1.4.4 of the Manly DCP requires development be setback at last 8m from the rear boundary.

The development proposes the following:

Front setback- 6.962m, compliant with the the numeric control.

East side setback- 1.343m - (34.4% variation to the numeric control).

West side setback- 0.9m (garage) (62.5% variation to the numeric control) - additions to the dwelling

are compliant with the numeric control.

Rear setback- 28.756m, compliant with the the numeric control.

Windows- 1.348m (55.1% variation to the numeric control).

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 development proposed a new garage with a compliant front setback to the front southern boundary. Similar types of parking arrangements are seen along the northern side of Ernest Street. This proposed development is consistent with the spatial proportions of the street and the street edge.

The development proposes landscaping elements within the front setback area plantings to ensure consistency with this merit consideration.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed development allows for adequate visual and acoustic privacy to be retained between the subject site and neighbouring properties. In regards to sunlight access, the proposed development is consistent with the numeric requirement for solar access under Clause 3.4.1 of the Manly DCP. The proposed development will ensure views will be retained from surrounding properties. There is no significant impact on the streetscape given the location of the garage with adequate vertical and horizontal spatial separation to the street which also complemented with landscaping.

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

Comment:

Flexibility is provided in this circumstance as the proposed works will not result in any unreasonable impacts (solar access, privacy) upon adjoining properties.

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:

Suitable landscaping is proposed across the site. The proposed development is not the close vicinity of any Open Space Lands or National Parks.

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

Comment:

The subject site is not located in bush fire prone land.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

4.1.5.1 Minimum Residential Total Open Space Requirements

The site is located in the OS3 area, which requires a minimum 55% (481.41m²) of site area 875.3m² to be classified as Total Open Space (TOS).

The proposed development incorporates of 53.8% site area (470.79m²) as TOS, representing a variation of 2.2% (10.62m²).

The existing amount of TOS on the site is 50.4% (441.55m²).

The proposed development demonstrates compliance with the maximum open space above ground with a proposed 10.8% (52.1m²) and landscape area requirements 70.6% (339.9m²).

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 proposed development does not result in the removal of any significant or native vegetation.

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 site is compliant in terms of landscaped area.

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

Comment:

The proposed development is not expected to result in unreasonable amenity impact to adjacent properties by way of solar access, privacy and view loss.

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

Comment:

The proposed landscaped area is sufficient and will assist in water infiltration, thereby decreasing stormwater runoff.

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

Comment:

The proposal will not lead to a significant spread of weeds.

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

Comment:

The proposal will not compromise potential wildlife habitat within the locality.

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

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 2019

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

A monetary contribution of \$10,230 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,023,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

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

Conclusions on the Assessment of the Application

As addressed within this assessment report the proposed development does not comply with the Clause 4.3 Height of buildings and a formal request via Clause 4.6 Exceptions to development standard was lodged by the applicant's planning consultant was assessed and considered acceptable in this instance given the existing building footprint of the existing, moderate sloping nature of the subject site (11% sloping grade within the building footprint) and the proposal has been considered as alterations and additions to existing dwelling versus a new dwelling.

Variations to the MDCP 2013 controls Clause 4.1.2 Height of Buildings (Incorporating Wall Height), Clause 4.1.4 Setbacks (side) and Clause 4.1.5 Open space and landscaping have been considered

and addressed and supported. The proposed design does not give rise to any unreasonable amenity impact or visual impact, and is consistent with the objectives of the MLEP 2013 and MDCP 2013.

In this case, the proposed development provides a design that involves sufficient modulation and sufficient physical separation from neighbouring dwelling(s). Conditions have been included to ensure reasonable amenity (privacy and acoustic) is achieved to adjoining and surrounding properties and are maintained. Furthermore, an assessment against the objectives of the development standards and DCP controls has found the proposal to be consistent with those provisions and reasonable.

On balance, the proposal should be approved (subject to standard and specific conditions) as the design is reasonable for the site and locality by virtue of a presentation which is consistent with characteristics of the area and also provides sufficient spacing and modulation to reduce any unreasonable impact caused by building bulk.

Therefore, the application is recommended for approval.

It is considered that all processes and assessments have been satisfactorily addressed and that proposed development constitutes the proper and orderly planning for the site or the locality. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

Accordingly Council as the consent authority grant Development Consent to DA2020/1173 for Alterations and additions to an existing dwelling including landscape works and the construction of a swimming pool on land at Lot 15A DP 31138, 14 Ernest Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA02	31 August 2020	Action Plans
DA03	31 August 2020	Action Plans
DA04	31 August 2020	Action Plans
DA05	31 August 2020	Action Plans
DA06	31 August 2020	Action Plans
DA07	31 August 2020	Action Plans
DA08	31 August 2020	Action Plans
DA09	31 August 2020	Action Plans

DA10	31 August 2020	Action Plans
DA11	31 August 2020	Action Plans
DA12	31 August 2020	Action Plans
DA13	31 August 2020	Action Plans
DA14	31 August 2020	Action Plans
DA17	31 August 2020	Action Plans
DA21	31 August 2020	Action Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Preliminary Geotechnical Assessment	30 July 2020	Ascent Geotechnical Consulting

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	10 September 2020	James & Kathryn Martin

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	20 October 2020

(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.

4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final 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.

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$10,230.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$1,023,000.00.

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

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

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

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

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

6. **Security Bond**

A bond (determined from cost of works) of \$10,000 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

7. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the inter-allotment drainage easement benefiting the site.

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

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

8. **Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- Ground floor new windows W02 (kitchen), W03 (pantry/laundry) & W04 (water closet) are to be treated or fitted with obscured or frosted glazing on the ground floor.
- Windows W17 (ensuite) & W19 (stairs) are to be treated or fitted with obscured or frosted glazing.
- Window W16 (retreat) is to be either fitted or treated with obscured or frosted glazing or replaced with a window with a minimum sill height of 1.5m above the first floor level.
- The swimming pool height to be no higher than 1m above natural ground level, the water side to be located 1.5m from the eastern side boundary and the curtilage be located 1m from the side boundary.
- Front fencing height is to be a maximum up to 1.5m and at least 30 percent of the fence is open/ transparent for at least that part of the fence higher than 1m.

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

9. **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.

10. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the

protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

11. Vehicle Crossings Application

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

12. 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.

13. 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 THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

14. Tree removal within the property

This consent approves the removal of the following trees within the property:

- trees (x 3) as identified for removal as determined by drawing number DA01 and DA02.

Reason: to enable authorised building works.

Note: Any request to remove a tree approved for retention under the development application is subject to a Section 4.55 modification application, or an assessment by an Arborist with minimum AQF Level 5 in arboriculture that determines that the tree presents an imminent risk to life or property.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. Road Reserve

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

16. 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.

17. 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.

18. **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 Certifying Authority.

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

19. **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.

20. **Vehicle Crossing**

The Applicant is to re-construct the vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/3 NL and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

21. **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.

22. **Tree and vegetation protection**

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

- i) all trees and vegetation within the site not approved for removal, 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), vi) and vii) 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) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection by fencing shall be installed around the existing large Gum within the road verge. As a minimum the tree protection fencing shall consist of 1 standard 2.4m panel length to four sides, and placed at the back of kerb on one side and along the existing driveway along on the one side, and installation shall be 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. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the fencing nor the canopy dripline.

The Certifying Authority must ensure that:

d) 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.

Note: All street trees within the road verge and trees within private property 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.

Reason: tree and vegetation protection.

23. Landscape completion

Landscaping is to be implemented in accordance with the following conditions:

- i) three (3) native canopy trees shall be planted within the site, selected in accordance with Schedule 4, Part B - Native Tree Selection or in accordance with Council's Native Plant Species Guide - Manly Ward, including two (2) located within the rear setback,
- ii) tree planting shall be installed at a minimum 75 litre container pot and shall be located within a 9m² deep soil area and be located a minimum of 5 metres from existing and proposed buildings,
- iii) tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree location may impact upon significant views,
- iv) along the eastern and west boundary to the extent of the swimming pool / paved area, and the levelled lawn area, screening planting shall be installed to achieve residential screening amenity, and shall be installed at minimum 1 metre intervals and be of a minimum container size of 200mm at planting in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch, and capable of attaining 3 metres in height at maturity,
- v) all planting near swimming pools shall be non-climbable to satisfy the relevant swimming pool Australian Standard,
- vi) all other garden beds shall be either retained existing vegetation or new planting.

Prior to the issue of an Occupation Certificate, details shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: environmental amenity.

24. Stormwater Disposal

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

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

25. Garbage and Recycling Facilities

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

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

Reason: To prevent pollution of the environment and to protect the amenity of the area.
(DACPLF03)

26. Swimming Pool Requirements

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;

- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite 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. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

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

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

Reason: To protect human life (DACPLF09)

27. Swimming pool filter (noise)

The swimming pool filter is not create any noise which exceeds over 5dB(A) above the ambient background noise levels when measured from any property boundary.

Reason: Ensure reasonable acoustic amenity.

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

28. Landscape maintenance

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the conditions of consent.

Reason: to maintain local environmental amenity.