

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1441
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Responsible Officer:	Nick England
Land to be developed (Address):	Lot 15 DP 200638, 58 Castle Circuit SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Gloria Yi Tai
Applicant:	Gloria Yi Tai

Application Lodged:	11/10/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	17/10/2023 to 31/10/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 27% 4.4 Floor space ratio: 57%
Recommendation:	Approval

Estimated Cost of Works:	\$ 975,788.88
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EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) as the proposal results in a variation of more than 10.0% to Clauses 4.3 Height of Buildings and 4.4 Floor Space Ratio of the Manly Local Environmental Plan 2013 (MLEP 2013).

The maximum building height permitted under clause 4.3 MLEP 2013 is 8.5m. The proposed building height of 10.8m represents a variation of 27%. In support of the variation is a detailed written Clause 4.6 variation request where compliance with the development standard is considered both

unnecessary and unreasonable in the circumstances of this case. The variation is a result of a proposed pergola on an existing upper level balcony, on the west elevation of the dwelling. This pergola does not increase the overall height of the building and does not result in any impacts on adjoining properties.

The maximum floor space ratio (FSR) permitted under MLEP 2013 is 0.4:1. The proposed FSR is calculated at ratio of 0.63:1, which is a 57% variation with the standard. In support of the variation is a detailed written Clause 4.6 variation request where compliance with the development standard is considered both unnecessary and unreasonable in the circumstances of this case. The variation is a result of additional floor space on Levels 4, 3 and 2 of the dwelling, which predominately result from infill development within the existing footprint of the dwelling.

Despite the requested variations to the aforementioned development standards, the proposed works can demonstrate full compliance with the provisions of Manly Development Control Plan 2013 (MDCP 2013).

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days. One (1) submission was received. The submission raised issue with the amount of floor space associated with the dwelling. For the reasons discussed within the report, the proposal is considered to contain an acceptable amount of floor space.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal (as amended) is a suitable and an acceptable development for the subject site for the reasons outlined in this report.

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

PROPOSED DEVELOPMENT IN DETAIL

The application consists of the alterations and additions to an existing dwelling house. In detail, the works consist of:

- new metal roof, and solar panels;
- works to garage to include a plant room, new entry point and roof / windows;
- entry foyer and internal staircase and enclosure of existing breezeway and demolish the external staircase on Level 3;
- other works on Level 3 to include:
- enclose the existing breezeway on north elevation to create an internal entry foyer and lift;
- new entry door to the retained gym (via the new entry foyer):
- convert the living room to a library;
- new internal staircase and reduced void size;
- reconfigure the existing WIR and ensuite, extending across the hallway to the gym;
- retain and refurbish the existing master bedroom, entry foyer and balconies; and
- windows and doors throughout.

Level 2 works to include:

- extend the dwelling to the north, converting the balcony to a dining room;
- convert the existing dining room to a living room;

- refurbish the existing kitchen, adding a breakfast nook;
- demolish the external stairs and extend to the east, to accommodate a hallway and lift;
- new internal staircase;
- convert bedrooms 2 & 3 to Office 1 & 2;
- retain the guest bedroom;
- refurbish the existing bathroom and balconies; and
- new windows and doors throughout.

Level 1 works to include:

- retain the existing storeroom and internal staircase;
- convert the existing bathroom to a WC and laundry;
- refurbish the existing balcony and recreation room, filling in the south facing window; and
- new windows and doors throughout.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 6.2 Earthworks

Manly Local Environmental Plan 2013 - 6.4 Stormwater management

Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity

Manly Local Environmental Plan 2013 - 6.8 Landslide risk

Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area

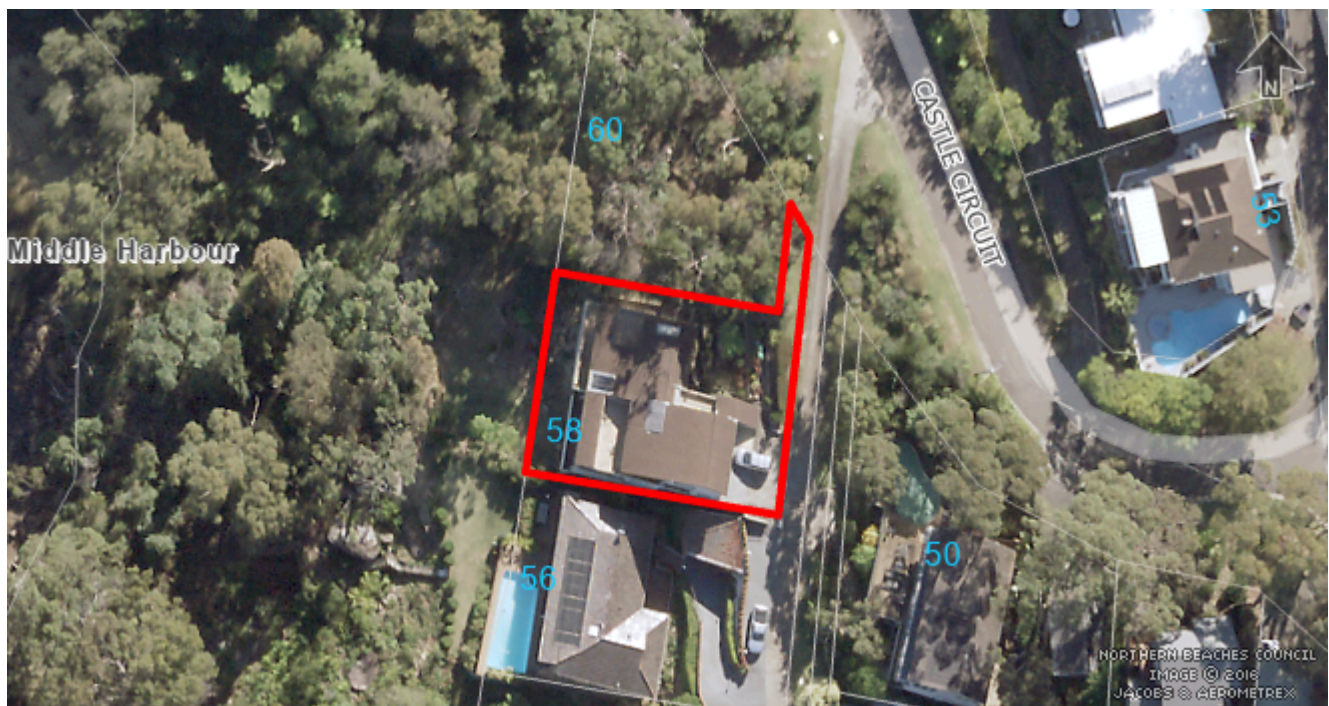
Manly Local Environmental Plan 2013 - 6.12 Essential services

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

SITE DESCRIPTION

Property Description:	Lot 15 DP 200638 , 58 Castle Circuit SEAFORTH NSW 2092
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the south-western side of Castle Circuit, Seaforth.</p> <p>The site is irregular in shape, with varied dimensions and frontages.</p> <p>The site has a surveyed area of 609.5m².</p> <p>A 2.3m wide access handle on the sites north-eastern corner junctions with Castle Circuit, however this is undeveloped for the purposes of access. The access point and developed frontage of the site is from the adjoining right-of-carriageways / shared driveway (ROWs) to the east of the site. These ROWs also service the adjoining properties, Nos.50, 52, 54 and 56 Castle Circuit.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a multi-level dwelling house. The site is also subject to the Coastal Use area designated under the SEPP (Resilience and Hazards) 2021, mapped as being with the Flame Zone of the NSW Rural Fire Service bush fire prone land mapping and designated as a Foreshore Scenic Protection Area under Manly LEP 2013.</p> <p>The site has a westerly aspect with a moderately steep topography falling down from the front (east) boundary to the rear (west) boundary.</p> <p>No significant vegetation or natural features exist on the site.</p> <p>Adjoining and surrounding development is characterised by dwelling houses to the south and east. Adjoining the north boundary of the site is vacant allotment No.60 Castle Circuit, which currently is subject to an undetermined development application (DA2023/0696). To the west is Castle Circuit Reserve, an public area of remnant native vegetation, which is zoned C2 Environmental Conservation under Manly LEP 2013.</p>

Map:



SITE HISTORY

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

3968/91: Consent granted for "Proposed Attached Dual Occupancy" approved on 27 May 1991. The available records further elaborate that this consent was alterations and additions to an existing dwelling house, with the majority of the works being internal. Despite this development consent, there is no subsequent evidence that the necessary Building Application (as required by Condition No.3) was ever lodged or approved. Hence, the existing building is considered to retain its definition as a dwelling house.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. However, no additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application (prepared by Sydney Bushfire Consultants, dated 31 August 2023). The report stated that the bushfire attack level of the site is “Flame Zone” the report recommended an alternative solution to comply with Planning for Bush Fire Protection.

The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS have been included as part of the recommended conditions of consent. The proposed development is considered to satisfy the requirements of Section 4.14 of the Act.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 17/10/2023 to 31/10/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Ms Deborah Myrtle Barr	53 Castle Circuit SEAFORTH NSW 2092

One (1) submission was received during the notification period. The issues raised in this submission have been summarised and are addressed as follows:

- The proposed floor space ratio will exceed the maximum permitted under Council's standards, and this is not equitable in the context of recent determinations on adjoining properties (specifically No.53 Castle Circuit) where full compliance was required.***

Comment: Council has the discretion to consider a development application on its own merits at

the time that it is lodged, consistent with the relevant without prejudice from any previous determinations or decisions. It also has the responsibility as the consent authority to undertake an assessment in accordance with the relevant legislation, in particular the Environmental Planning and Assessment Act 1979 (the Act), and its associated Regulations. A consideration of Section 4.15 of the Act is provided elsewhere in this report. In regard to the amount of floor space proposed and the floor space ratio, a detailed assessment of the proposed variation to the development standard, pursuant to Clause 4.6 of the Manly LEP 2013, has been undertaken. The conclusion of this assessment is that there are sufficient environmental planning grounds to support the requested variation, and full compliance with the standard is not considered necessary nor reasonable, under the circumstances. It is relevant to note that the most recent consent at No.53 Castle Circuit (DA2020/1477, dated 14 April 2021) also approved a variation to the floor space ratio, estimated at 20% in the planner's assessment report.

In summary, the issues raised in this submission are not considered to warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p><i>Supported, subject to Conditions</i></p> <p>The proposed development has been assessed against the objectives of Manly LEP 2013 clause 6.5 Terrestrial biodiversity and State Environmental Planning Policy (Resilience and Hazards) 2021 clause 2.10 Development on land within the coastal environment area. The development will not result in any removal of significant native vegetation or fauna habitats, and is considered unlikely to have an adverse impact to the integrity and resilience of the ecological values of the site and adjoining land.</p> <p>Limited native planting is proposed due to bushfire constraints. The proposed landscaping area within the front setback is noted, and as this is located away from the adjoining bushland reserve is generally acceptable, however some species substitutions have been conditioned. Therefore the development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>
NECC (Coast and Catchments)	<p><i>Supported, subject to Conditions</i></p> <p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Resilience & Hazards) 2021, Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.</p>

Internal Referral Body	Comments
	<p><i>Coastal Management Act 2016</i> The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Sydney Harbour catchment area. Hence, only Clause 2.12 of the SEPP R & H apply for this DA.</p> <p>Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Watermark Planning Pty. Ltd. Dated September 2023, the DA satisfies requirements under clause 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021</p> <p>Foreshores & Waterways Area</p> <p>The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 6.3 of the Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 will apply in assessing this DA. Development</p>

Internal Referral Body	Comments
	<p>consent, among others, must consider clause 6.28.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Watermark Planning Pty. Ltd. Dated September 2023, it is determined that the relevant clauses of the Part 6.3 including the clause 6.28 have been followed.</p> <p>Manly LEP 2013 and Manly DCP</p> <p>Foreshores Scenic Protection Area Management The subject site is also shown to be as “Manly Foreshores Scenic Protection Area” on Council’s Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Watermark Planning Pty. Ltd. Dated September 2023, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p> <p>As such, it is considered that the application does comply with the requirements of the Manly DCP 2013.</p>
NECC (Development Engineering)	<p><i>Supported, subject to Conditions</i></p> <p>The proposed development adjoins a reserve and as such OSD is not required. The submitted stormwater management plan is acceptable subject to conditions.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p>
Strategic and Place Planning (Heritage Officer)	<i>Supported, subject to Conditions</i>
	Discussion of reason for referral
	This application has been referred as it adjoins a heritage item, being <i>Item I268 - Bantry Bluff, Seaforth</i> listed in Schedule 5 of Manly LEP 2013.
	Details of heritage items affected
	Details of this heritage item in the vicinity, as included within the Heritage inventory, are:

Internal Referral Body	Comments		
	Item I268 - Bantry Bluff, Seaforth		
	<u>Statement of Significance</u>		
	Recognised natural landform and landscape. Significant visual backdrop to Middle Harbour.		
	<u>Physical Description</u>		
	Natural landscape type. Steep slopes with indigenous vegetation in good condition. Scrubland to woodland with localised wet gully flora.		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	Comment if applicable
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	<p>This application is for alterations and additions to an existing multi-level brick dwelling. These mainly involve internal changes, with minor additions on the northern side, largely within the existing building envelope. These additions are to extend the garage and create an entry foyer with new lift, and covered access all levels of the dwelling. An existing balcony is also proposed to be enclosed. The works also include replacing all windows and doors, replacing the roof with Colorbond and installing solar panels.</p> <p>The heritage item, Bantry Bluff, is an area of natural vegetation along Middle Harbour, which adjoins this property on its western boundary. Given that the proposed works are relatively minor and contained within the property boundaries and the existing building footprint, it is considered that here will be no adverse impact upon the significance of the adjoining heritage item. While the dwelling is visible from the heritage item, these proposed changes will have a negligible impact on the appearance of the dwelling when viewed from the heritage item.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of MLEP 2013:</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A</p>		

Internal Referral Body	Comments

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><i>Supported, subject to Conditions</i></p> <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>
Rural Fire Service - Local Branch - EP&A Act, s4.14	<p><i>Supported, subject to Conditions</i></p> <p>The NSW Rural Fire Service have advised that they have no objection to the proposed development, subject to recommended conditions.</p>
Aboriginal Heritage Office	<p><i>Supported, subject to Conditions</i></p> <p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A501120 dated 21 August 2023).

The BASIX Certificate indicates that the development will achieve the sustainability requirements of the SEPP.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Biodiversity and Conservation) 2021

Chapter 6 – Water catchments

The subject property is located within the Sydney Harbour Catchment and Sydney Harbour Foreshores and Waterways Area therefore the provisions of Chapter 6 Water catchments of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* apply to this development. Accordingly, an assessment under the sections of Chapter 6, which are relevant to the proposed development, has been carried out as follows:

Part 6.2 Development in regulated catchments - Division 2 Controls on development generally

6.6 Water quality and quantity

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—

- (a) whether the development will have a neutral or beneficial effect on the quality of water entering a waterway,*
- (b) whether the development will have an adverse impact on water flow in a natural waterbody,*

- (c) whether the development will increase the amount of stormwater run-off from a site,*
- (d) whether the development will incorporate on-site stormwater retention, infiltration or reuse,*
- (e) the impact of the development on the level and quality of the water table,*
- (f) the cumulative environmental impact of the development on the regulated catchment,*
- (g) whether the development makes adequate provision to protect the quality and quantity of ground water.*

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied the development ensures—

- (a) the effect on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial, and*
- (b) the impact on water flow in a natural waterbody will be minimised.*

Comment:

The proposal has been reviewed by Council's Coastal Officer, Development Engineer and Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the adjoining waterway (subject to recommended conditions).

6.7 Aquatic ecology

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—

- (a) whether the development will have a direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation,*
- (b) whether the development involves the clearing of riparian vegetation and, if so, whether the development will require—*
 - (i) a controlled activity approval under the Water Management Act 2000, or*
 - (ii) a permit under the Fisheries Management Act 1994,*
- (c) whether the development will minimise or avoid—*
 - (i) the erosion of land abutting a natural waterbody, or*
 - (ii) the sedimentation of a natural waterbody,*
- (d) whether the development will have an adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area,*
- (e) whether the development includes adequate safeguards and rehabilitation measures to protect aquatic ecology,*
- (f) if the development site adjoins a natural waterbody—whether additional measures are required to ensure a neutral or beneficial effect on the water quality of the waterbody.*

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following:

- (a) the direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation will be kept to the minimum necessary for the carrying out of the development,*
- (b) the development will not have a direct, indirect or cumulative adverse impact on aquatic reserves,*
- (c) if a controlled activity approval under the Water Management Act 2000 or a permit under the Fisheries Management Act 1994 is required in relation to the clearing of riparian vegetation—the approval or permit has been obtained,*
- (d) the erosion of land abutting a natural waterbody or the sedimentation of a natural waterbody will be minimised,*
- (e) the adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area will be minimised.*

Comment:

The site is located approximately 60m from the adjoining Middle Harbour foreshore to the west. As stated previously, the proposal has been reviewed by Council's Coastal Officer and Bushland & Biodiversity Officer, who have raised no objection to the works and their impacts to the surrounding natural environment. Hence, no adverse impact on the adjoining aquatic ecology is likely.

6.8 Flooding

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the likely impact of the development on periodic flooding that benefits wetlands and other riverine ecosystems.

(2) Development consent must not be granted to development on flood liable land in a regulated catchment unless the consent authority is satisfied the development will not—

- (a) if there is a flood, result in a release of pollutants that may have an adverse impact on the water quality of a natural waterbody, or*
- (b) have an adverse impact on the natural recession of floodwaters into wetlands and other riverine ecosystems*

Comment:

The site is not located within a flood prone area.

6.9 Recreation and public access

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider—

- (a) the likely impact of the development on recreational land uses in the regulated catchment, and*
- (b) whether the development will maintain or improve public access to and around foreshores without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation.*

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following—

- (a) the development will maintain or improve public access to and from natural waterbodies for recreational purposes, including fishing, swimming and boating, without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation,*
- (b) new or existing points of public access between natural waterbodies and the site of the development will be stable and safe,*
- (c) if land forming part of the foreshore of a natural waterbody will be made available for public access as a result of the development but is not in public ownership—public access to and use of the land will be safeguarded.*

Comment: The application will have no adverse impact on access or enjoyment of adjoining areas of recreation and public access.

6.10 Total catchment management

In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consult with the council of each adjacent or downstream local government area on

which the development is likely to have an adverse environmental impact.

Comment:

The proposal has been reviewed by Council's Coastal Officer, Development Engineer, and Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the surrounding natural environment. Based on the expert advice provided and conditions imposed, the proposed works are not considered to have an adverse environmental impact. As such consultation with adjoining local government areas was not undertaken in this instance.

Division 3 Controls on development in specific areas

6.11 Land within 100m of natural waterbody

In deciding whether to grant development consent to development on land within 100m of a natural waterbody in a regulated catchment, the consent authority must consider whether—

- (a) the land uses proposed for land abutting the natural waterbody are water-dependent uses, and*
- (b) conflicts between land uses are minimised.*

Comment:

The proposed works will meet these requirements.

6.13 Hawkesbury-Nepean conservation area sub-catchments

(2) In deciding whether to grant development consent to development in a Hawkesbury-Nepean conservation area sub-catchment, the consent authority must consider the following—

- (a) whether the development will minimise human interference with the condition of the sub-catchment,*
- (b) whether the development will maintain and enhance the structure and floristics of native vegetation in the sub-catchment,*
- (c) whether the development will maintain or enhance the scenic quality of the locality,*
- (d) whether development has previously been carried out on the development site.*

Comment: The proposal has been reviewed by Council's Coastal Officer, Development Engineer, and Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the surrounding natural environment. Based on the expert advice provided and conditions imposed, the proposed works are not considered to have an adverse impact on the adjoining sub-catchment.

6.14 Temporary use of land in Sydney Harbour Catchment

(3) Development consent may be granted to development on land in the Sydney Harbour Catchment for a temporary use for a maximum period of 52 days, whether or not consecutive, in a period of 12 months, even if the development would otherwise be prohibited by this Chapter.

(4) Development consent must not be granted unless the consent authority is satisfied of the following:

- (a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Chapter and any other applicable environmental planning instrument,*

- (b) the temporary use will not have an adverse impact on adjoining land or the amenity of the neighbourhood,*
- (c) the temporary use and location of structures related to the use will not have an adverse impact on environmental attributes or features of the land or increase the risk of natural hazards that may affect the land,*
- (d) at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.*
- (5) Development consent may be granted to development for the temporary use of a dwelling as a sales office for a new release area or a new housing estate for a period exceeding the maximum period specified in subsection (3).*

Comment: Not relevant to the proposed development.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
 - b) coastal environmental values and natural coastal processes,
 - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
 - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
 - e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - f) Aboriginal cultural heritage, practices and places,
 - g) the use of the surf zone.

Comment: The proposed development will present no adverse impact in regard to the matters (a) to (e) listed in Clause 2.10 (1).

- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
 - a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or

- b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment: As stated above, the application will present no adverse risk in respect to those relevant matters within Clause 2.10(1) and hence will be consistent with Clause 2.10 (2).

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock
 - ii) platform for members of the public, including persons with a disability,
 - iii) overshadowing, wind funnelling and the loss of views from public places to
 - iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
 - b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an
 - ii) adverse impact referred to in paragraph (a), or
 - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment: The proposed development will not be inconsistent with those matters outlined in Clause 2.11.

Division 5 General

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

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

Comment: The proposed development will present no adverse risk in regard to coastal hazards.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment: There are no coastal programs that are relevant to the proposed development.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.8m*	27%	No
Floor Space Ratio	0.4:1 or 244m ²	0.63:1** or 377.4m ²	57%	No

* existing height is estimated at 9.8m or 13% variation

** existing FSR is estimated at 0.55:1 or 38% variation

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

A consideration of non-compliance with both the Height of Buildings and Floor Space Ratio development standards is provided in 1) and 2), below:

1. Height of Buildings of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.8m
Percentage variation to requirement:	27%

An excerpt from the plans of the non-compliance is shown below:

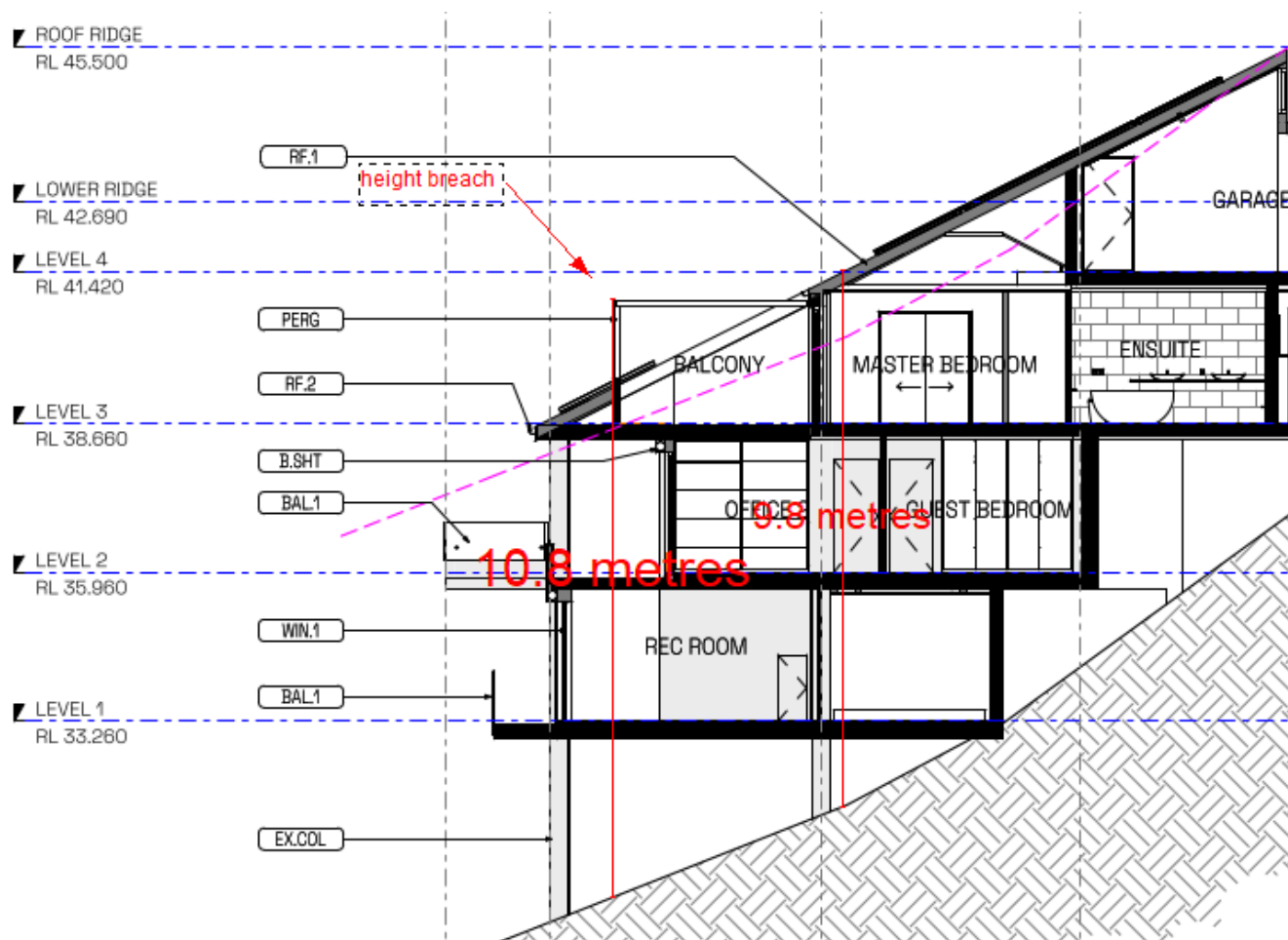


Figure 1: extent of height breach

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required

by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- There is recent precedent for similar variations to Cl 4.3 Building Height of the Manly LEP 2013 being accepted by Council:
- The proposed development does not present with excessive bulk and is of a consistent scale to the existing dwelling and surrounding properties:
- The proposal will not result in any unreasonable impacts;
- The works will allow for the housing needs of the residents to be met, in their current community;
- The existing building has a non-compliant maximum building height and the new works are limited to the replacement of the existing roof and a new open pergola structure over an existing balcony; and

- The objectives of the R2 Low Density Residential zone can be met despite the numerical variation.

With the exception of the argument relating to precedents, the arguments offered are considered valid to justify the proposed variation. A closer examination of the written report shows that the report relies on the "First Way" test applied in the LEC judgement, *Wehbe v Pittwater* [2007] NSW LEC 827.

This test focuses on whether the application can meet the objectives of the standard, notwithstanding the non-compliance. A detailed consideration of the proposal against the objectives of the standard is provided elsewhere in this report. The "first way" test is considered relevant to the application, and critically, the application is considered to readily meet the objectives of the control.

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 pergola will represent an approximately 1m increase in the existing building heights on the site. In numerical terms, this represents a minor increase in the existing height of the building and more pertinently, the pergola is at least 4.6m below the ridge height of

the existing building. Further, the specific works that relate to the non-compliance are a pergola structure over an existing balcony, which is open in structure (no new walls or roof proposed) and results in no significant additional height above the existing topography. The slope on the land is relatively pronounced, with higher projections in building heights not uncommon. Therefore, it is considered that the building height proposed are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality.

b) to control the bulk and scale of buildings,

Comment: As discussed in detail above, the works subject to the proposed variation is a transparent, open structure, with no walls or roof. The total height of the pergola (RL 40.92m AHD) will be well below the existing upper roof height (RL 45.5m AHD) and will not be visible from the road reserve at Castle Circuit. Limited visibility from adjoining properties to the south is likely. Hence, the bulk and scale of the proposed development is considered to be consistent with this objective.

c) to minimise disruption to the following:

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

Comment: As stated above, based on the nature of the proposed works, they are considered to have a negligible visual presence when viewed from adjoining public areas. Whilst the site adjoins a public reserve, the area immediately adjoining the site is heavily vegetated and not readily accessible by the public. The adjoining foreshore to the west is estimated at a distance of 60m from the proposed works. As such, the proposed variation to the standard is not considered to result in an adverse disruption to any views to and from public spaces, from both adjoining residential development and adjoining spaces. Therefore, the application can demonstrate compliance with this objective.

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

Comment: The shadow diagrams provided with the application demonstrate no substantive increase in the existing shadow cast by the proposed development, therefore this objective is achieved.

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: As the site is not located in a recreation or environmental protection zone, this objective is not relevant to the proposed development.

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: As the works relate to alterations and additions to an existing dwelling, this objective is

achieved.

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

Comment: As the works proposed are residential, this objective is not relevant to the proposed development.

Conclusion on Height of Buildings variation:

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

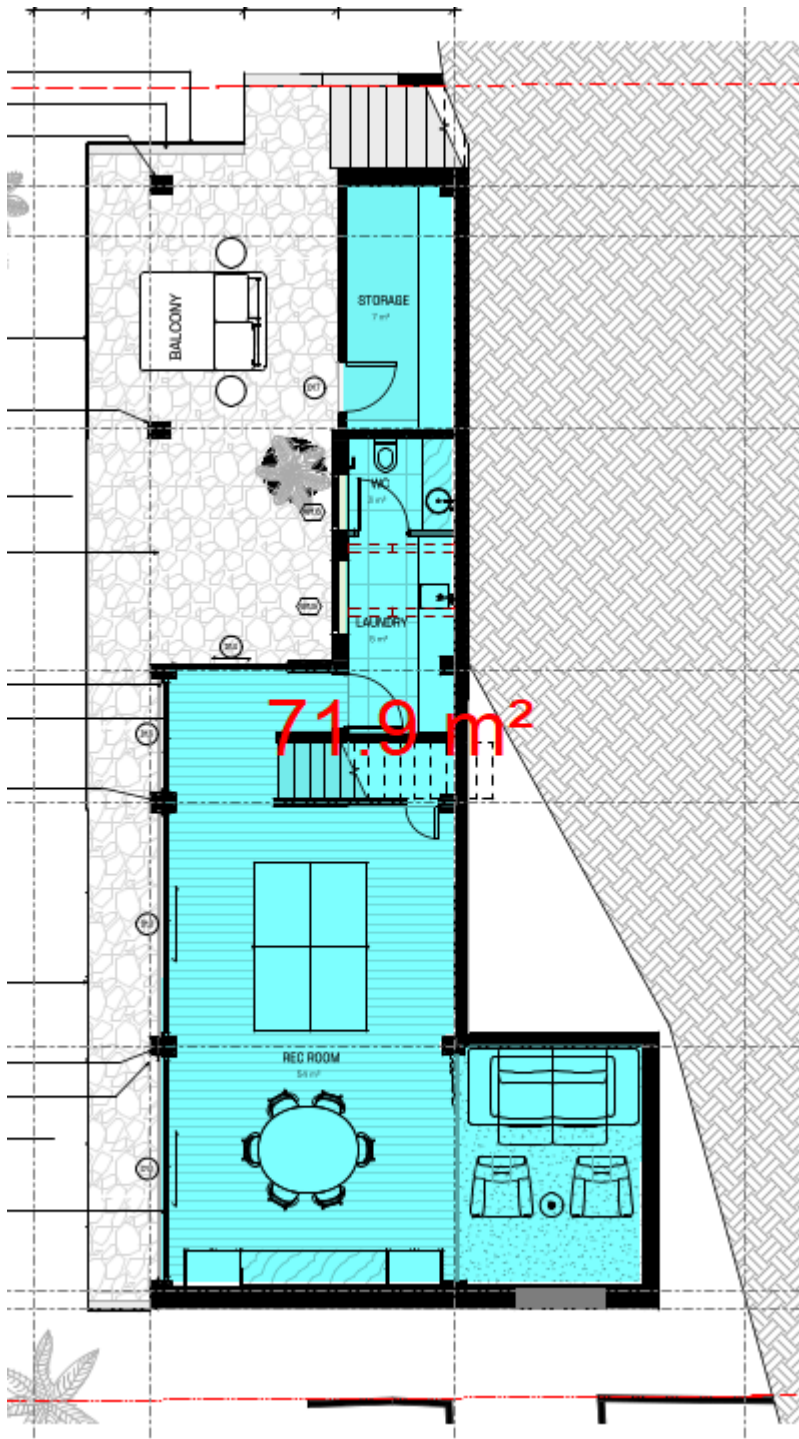
It is considered on balance, that having regard to the particular circumstances, being the: minor increase in the existing building height; no increase to the upper building height of the building; limited visibility of the proposed pergola from the adjoining public domain and residences; and its negligible contribution to existing bulk and scale, the proposed departure from the development standard is acceptable and it is reasonable that flexibility in the application of the standard be applied.

2. Floor Space Ratio non-compliance:

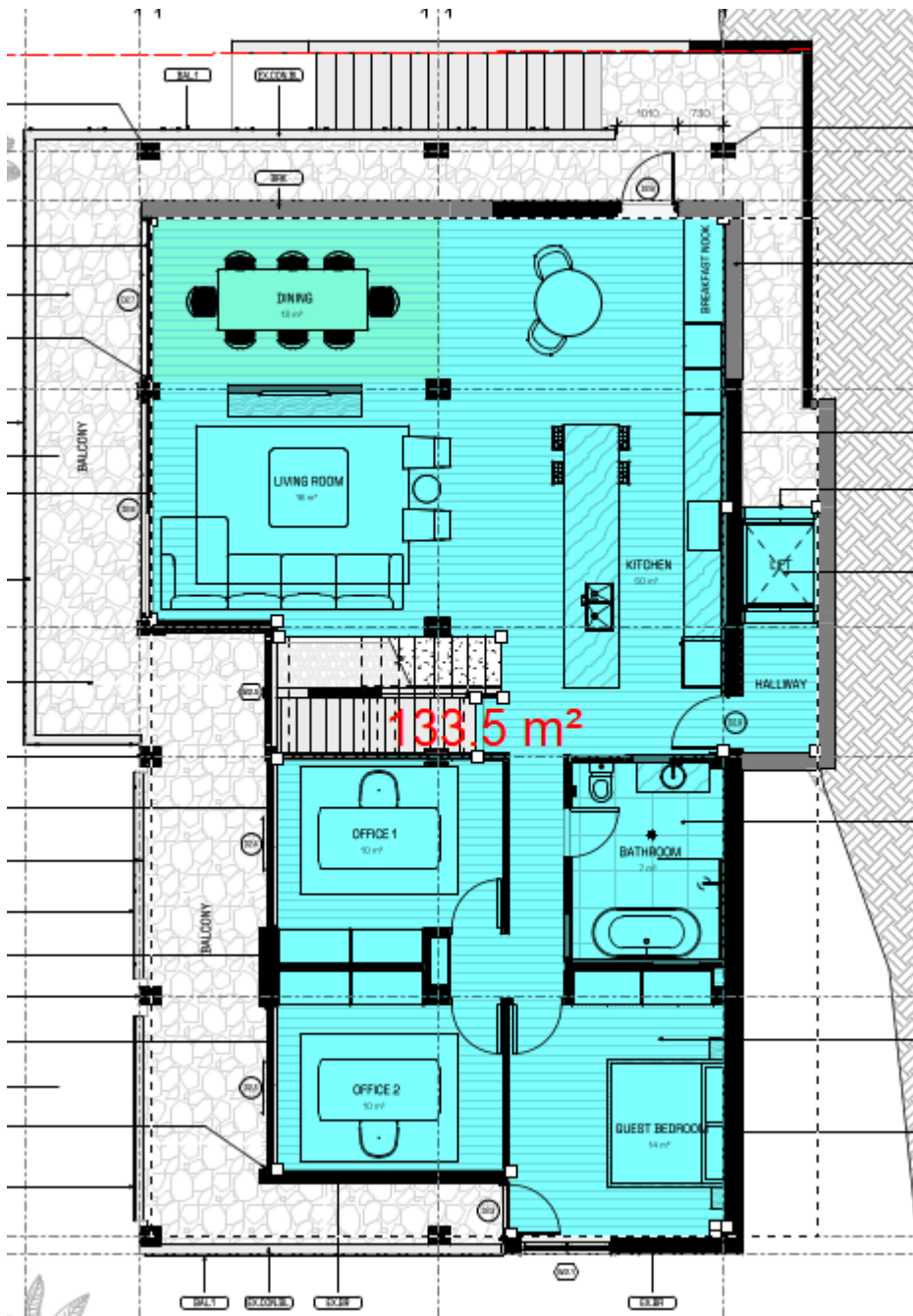
Development standard:	Floor space ratio
Requirement:	244m ² or 0.4:1*
Proposed:	384m ² or 0.63:1
Percentage variation to requirement:	57%

* Part 4.1.3 of Manly DCP would permit up to 300m², based on the undersized allotment.

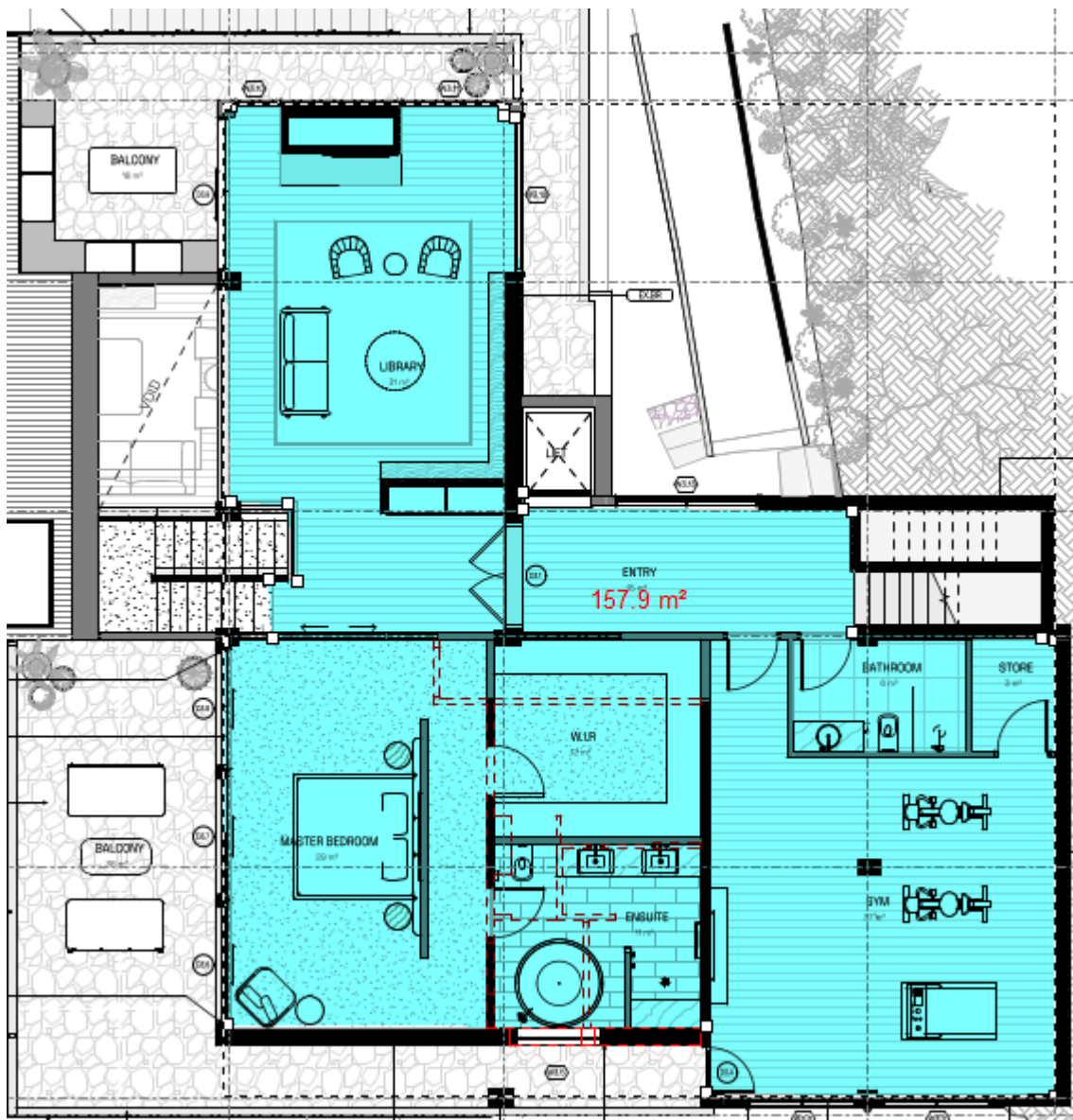
Extract from the working plans of the estimated gross floor area (GFA) for each level is shown below:



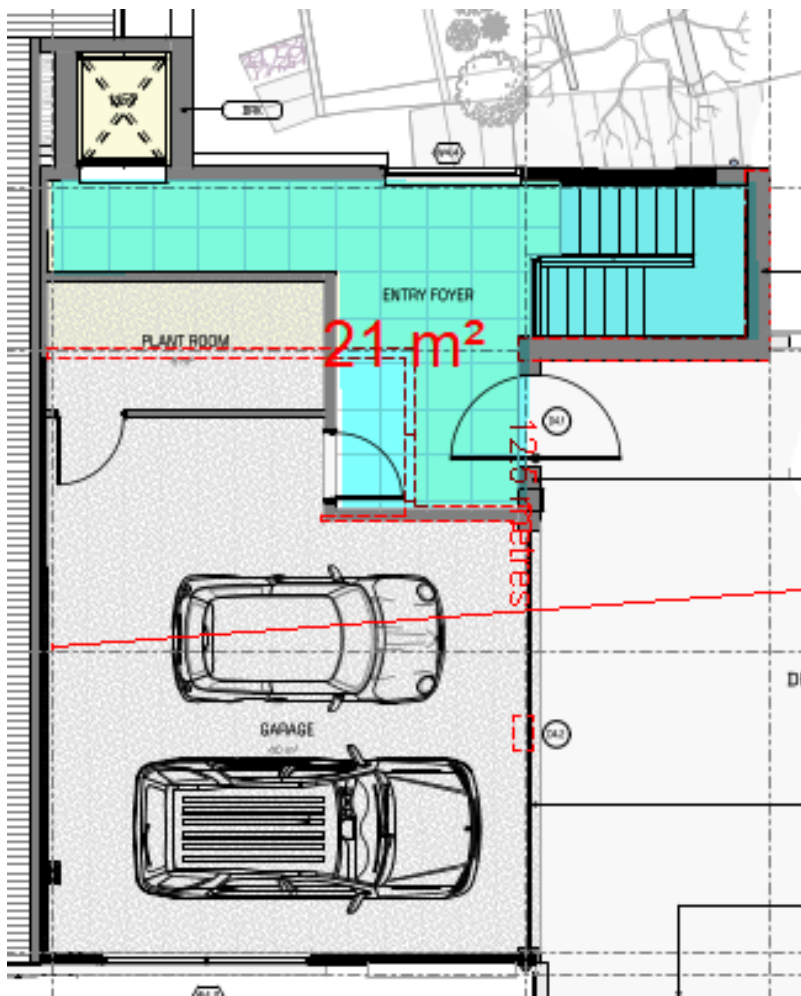
Level: 1: 71.9m²



Level 2: 133.5m²



Level 3: 157.9m²



Level 4: 21m²

Figure 2: GFA calculations

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- There is recent precedent for similar variations to CI 4.4 FSR of the Manly LEP 2013 being accepted by Council;
- The proposed development does not present with excessive bulk and is of a consistent scale to the existing dwelling and surrounding properties;
- The proposal will not result in any unreasonable impacts;
- The works will allow for the housing needs of the residents to be met, including the opportunity to work from home, in their current community;
- The development proposes a minor increase of 29.31m² to the existing GFA, as such is considered minor and appropriate; and
- The objectives of the R2 zone can be met despite the numerical variation.

With the exception of the argument relating to precedents, the arguments offered are considered valid to justify the proposed variation.

The written report relies on the "First Way" test applied in the LEC judgement, *Wehbe v Pittwater* [2007] NSW LEC 827. This test focuses on whether the application can meet the objectives of the standard, notwithstanding the non-compliance. A detailed consideration of the proposal against the objectives of the standard is provided elsewhere in this report. The "first way" test is considered relevant to the application, and critically, the application is considered to readily meet the objectives of the control.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

Comment: The proposed works, in respect to additional floor space, is effectively "infill" of the existing building footprint, on the west and north elevations of the dwelling. These relate to: enclosure of existing stairway and access breezeway on Levels 4 and 3; infill of existing balcony on Level 2 to extend living room by 13m²; and inclusion of lift to service Level 2 and 3. The proposed lift represents the only additional area of building footprint. This will result in a proposed bulk and scale that is predominantly similar to the existing building and in turn, is consistent with this objective.

b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

Comment: The subject site is located in a relatively inconspicuous location, with the existing dwelling (and works) approximately 20m from the Castle Circuit road reserve and critically, approximately 10m below the level of the adjoining formed road reserve. This would have the effect of making the works not readily visible from the adjoining road reserve. Also, in regard to

the adjoining public reserve and foreshore to the west, the works on the north and east elevations will not be visible from these areas. In this regard, the proposed building bulk would not obscure important landscape and townscape features, and the development can demonstrate compliance with this objective.

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

Comment: As stated above, the proposed works are not readily visible from the adjoining road reserve, nor other significant public areas. In regard to the dwellings that directly adjoin the site, the existing dwellings situated on the shared right-of-carriageway (Nos. 50, 52, 54 and 56) share similar siting characteristics, in regard to close building proximity to the "frontage" adjoining the shared driveways. Hence, the application is consistent with this objective.

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

Comment: No specific amenity impacts to adjoining land, and the adjoining public domain, is likely as a result of the proposed variation to the floor space ratio. Therefore, this objective is achieved.

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

Comment: As the site is not located in a business zone, this objective is not relevant to the proposed development.

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: As the works relate to alterations and additions to an existing dwelling, this objective is achieved.

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

Comment: Not relevant to the proposed development.

Conclusion on Floor Space Ratio variation:

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

It is considered on balance, that having regard to the particular circumstances, in particular: the substantial retention of the existing building footprint; the new floor space being in effect "infill" of existing floor areas; the negligible visual impact of the works, when viewed from both adjoining existing dwellings and areas of the public domain, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

Exception to Development Standards conclusion

The submitted written Clause 4.6 variation requests for both the Height of Buildings and Floor Space Ratio development standards, are considered to be well founded having regard to the circumstances of the development, which have been elaborated upon in this section of the report. It is therefore considered appropriate that in this instance, flexibility in the application of the development standards, Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio be applied. In this context the proposal meets the Objects of the Environmental Planning and Assessment Act 1979, contained in Section 1.3, having considered the relevant provisions under s.4.15 of the Act. Consequently, the development is considered to be in the public interest, subject to conditions.

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

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

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

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*
- (b) to allow earthworks of a minor nature without requiring separate development consent.*

In this regard, before granting development consent for earthworks, Council must consider the following matters:

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development*

Comment: No significant earthworks are incorporated into the proposed alterations and additions, hence no adverse impacts in this regard are likely.

- (b) the effect of the proposed development on the likely future use or redevelopment of the land*

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

- (c) the quality of the fill or the soil to be excavated, or both*

Comment: A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties*

Comment: Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

(e) the source of any fill material and the destination of any excavated material

Comment: A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

Comment: The development was referred to the Aboriginal Heritage Office who provided comments and conditions that have been included in the consent.

(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area

Comment: The site is not located in close vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment: Conditions are included in the recommendation of this report that will minimise the impacts of the development.

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

6.4 Stormwater management

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and

Comment: The development will provide a suitable amount of permeable surfaces given the zoning of the land and the proposed use. In this regard, Council is satisfied that the design will maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water.

(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and

Comment: Council's Development Engineer has advised that the proposed development adjoins a reserve and as such OSD is not required. The submitted stormwater management plan are acceptable, subject to recommended conditions of consent.

(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

Comment: The proposal has been assessed by Council's Development Engineers who have raised no objections to approval, subject to conditions. In this regard, Council is satisfied that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

6.5 Terrestrial biodiversity

The objective of this clause is to maintain terrestrial biodiversity by:

- (a) protecting native fauna and flora, and*
- (b) protecting the ecological processes necessary for their continued existence, and*
- (c) encouraging the conservation and recovery of native fauna and flora and their habitats.*

In this regard, before determining a development application for development on land to which this clause applies, the consent authority must consider:

- (a) whether the development is likely to have:*
 - (i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
 - (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
 - (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
 - (iv) any adverse impact on the habitat elements providing connectivity on the land, and*
- (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment: Council's Biodiversity Officer has reviewed the application and has advised that there is no significant concern with the regard to potential impacts on biodiversity in the surrounding area.

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

The proposed development is considered to be designed, sited and managed to avoid any significant adverse environmental impact.

6.8 Landslide risk

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

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

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

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

Comment:

A geotechnical report was provided with the application that demonstrates that the proposal will represent no unacceptable geotechnical or hydrological risk.

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

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

Comment:

Council's Development Engineer has advised that the proposal will represent no adverse stormwater / drainage issue.

6.9 Foreshore scenic protection area

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) measures to protect and improve scenic qualities of the coastline,*
- (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
- (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Comment: Despite the numerical non-compliances proposed in the application, in regard to building height and floor space, the extent of the proposed works are such that they will not represent: any change to the existing building footprint; no change to the overall existing building height of the dwelling; and in the case of the proposed floor space, no substantial or unreasonable increase in the existing floor space on the site.

In visual terms, when viewed from the adjoining coastal foreshores, the works will remain mostly imperceptible, in contrast to the existing dwelling. There are no adjoining public places adjoining the site that will lose any existing views / vistas as a result of the proposed works. In turn, there will be no adverse impact on the scenic qualities of the surrounding coastline and the application is, by its innovative design, suitable for its location within the coastal foreshore area.

The proposed development will result in no conflict with any land-based and water-based coastal activities.

In summary, the proposed development has sufficiently demonstrated compliance with the provisions of Clause 6.9.

6.12 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,
- (b) the supply of electricity,
- (c) the disposal and management of sewage,
- (d) stormwater drainage or on-site conservation,
- (e) suitable vehicular access.

Comment:

The site is adequately serviced by utilities, to cater for the proposed development.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 690.5m²	Requirement	Proposed	% Variation	Complies
4.1.2.1 Wall Height	North: 8m (based on gradient 1:4+)	5.7m	N/A	N/A
	South: 8m (based on gradient 1:4+)	No change	N/A	N/A
	East: 7.1m (based on gradient 1:8)	2.7 - 3.8m	N/A	N/A
	West: 7.3m (based on gradient 1:7)	No change	N/A	Yes
4.1.2.2 Number of Storeys	2	No change	N/A	N/A
4.1.4.1 Street Front Setbacks*	Prevailing building line / 6m	17.7m to Castle Circuit	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages*	1.2m (based on max. wall height of 3.8m on east elevation)	2.6m	N/A	Yes
	Windows: 3m	6m (east) 12.6m (west)	N/A N/A	Yes Yes

4.1.4.4 Rear Setbacks*	8m	No change	N/A	N/A
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	No change	N/A	N/A
	Open space above ground 25% of total open space	No change	N/A	N/A
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	No change	N/A	N/A
4.1.5.3 Private Open Space	18m ²	120m ²	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	No change	N/A	N/A
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

* for the purposes of the assessment, the north boundary is considered the frontage, the side setbacks are from the east and west boundaries and the rear boundary is south boundary.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 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
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

4.1.3 Floor Space Ratio (FSR)

The site is located in area designated as "U" under the Minimum Lot Size map of Manly LEP 2013, which specifies a minimum allotment size of 1,150m².

The subject site is 609.5m² in area, hence the application is subject to the "Undersized Lots" control.

Under Part 4.1.3, the maximum floor space in the proposed development could be assessed at the rate of a 750m² allotment.

This permits a maximum floor space of 300m², as opposed to the development standard which sets a maximum of 244m².

The proposed floor space is estimated at 377.4m², which exceeds the control set by Part 4.1.3.

A detailed consideration of the circumstances of the proposed variation is provided elsewhere in this report. As the objectives of Part 4.1.3 are in effect the same objectives contained within the development standard for Floor Space Ratio in Clause 4.4 of MLEP 2013, the commentary within that part of the assessment holds true for the relevant objectives. As such, despite the variation, the application is considered to meet the objectives of Part 4.1.3.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$9,758 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$975,789.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and

b) There are sufficient environmental planning grounds to justify the contravention.

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

PLANNING CONCLUSION

This proposal, for alterations and additions to an existing dwelling house, has been referred to the DDP due to variations to both the Height of Buildings and Floor Space Ratio development standards of MLEP 2013, which exceed 10.0%.

The proposed 27% variation to the Height of Buildings development standard is considered, under the circumstances, to be acceptable based generally on: the limited visual presence of the proposed additions; the negligible bulk and scale of the structure that relates to the non-compliance; no definable

adverse amenity impact on the adjoining private and public domains; and clear and consistent compliance with both the objectives of the standard.

The proposed 57% variation to the Floor Space Ratio development standard is considered, under the circumstances, to be acceptable based generally on: the additional floor space being located largely within the footprint of the existing building; the limited visual impact of the proposal; no definable adverse amenity impact on the adjoining private and public domains; and clear and consistent compliance with both the objectives of the standard.

The issues raised in the submission received during the notification period would not warrant the refusal of the application.

Based on the detailed assessment provided in this report, it is therefore recommended that the application be **approved**, subject to condition.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority permits a contravention of both clauses 4.3 Height of Buildings and 4.4 Floor Space Ratio development standards, pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2023/1441 for Alterations and additions to a dwelling house on land at Lot 15 DP 200638, 58 Castle Circuit, SEAFORTH, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A0.03 - 5	5	Exterior Materials + Finishes	Dieppe	31 August 2023

A0.11 - 5	5	Site Plan	Dieppe	31 August 2023
A0.21 - 3	3	Ext Floor Plans	Dieppe	31 August 2023
A1.11 - 5	5	Level 1	Dieppe	31 August 2023
A1.12 - 5	5	Level 2	Dieppe	31 August 2023
A1.13 - 5	5	Level 3	Dieppe	31 August 2023
A1.14 - 5	5	Level 4 (Garage)	Dieppe	31 August 2023
A1.15 - 3	3	Roof Plan	Dieppe	31 August 2023
A2.01 - 3	3	Elevations 1	Dieppe	31 August 2023
A3.01 - 3	3	Section 1	Dieppe	31 August 2023
A0.12 - 1	1	Landscape Plan	Dieppe	31 August 2023

Approved Reports and Documentation			
Document Title / No	Version Number	Prepared By	Date of Document
Bushfire Assessment Report 79BA-2660-2	2	Sydney Bushfire Consultants	31 August 2023
BASIX Certificate A501120	-	Dieppe Design	21 August 2023
Preliminary Geotechnical Assessment AG 23187	1	Ascent Geo	12 May 2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	1 November 2023

NSW Rural Fire Service	Referral - RFS - 58 Castle Circuit Seaforth	27 October 2023
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(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

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

3. Prescribed Conditions

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

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

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

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

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% 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.

- ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (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.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or 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 demolishedThe 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.

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

5. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$9,757.89 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$975,788.88.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. **Amendment of Landscape Plans**

The submitted Landscape Plan is to be amended in accordance with the following:

- deletion of Grevillea species cultivars
- replacement with locally native shrubs and groundcovers species selected from the Manly Ward section of the Native Planting Guide available on Council's website.

The Landscape Plan is to be amended by a qualified landscape architect and provided to the Principal Certifier prior to issue of the Construction Certificate.

Reason: To maintain and replace habitat on the site.

8. Stormwater Disposal

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with the concept design by Aiden Hogan, drawing number 2305 C02 Rev A, C03 Rev A and C04 Rev A dated 07/09/23 and AS/NZS 3500 and Council's Water Management for Development Policy. The plans are to be prepared by an appropriately qualified and practicing Civil Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) , 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 a suitably designed level spreader. The design is to be checked and certified by a Geotechnical Engineer to ensure it complies with the recommendations of the Geotechnical Report by Ascentgeo Geotechnical Consulting, Ref: AG 23014 dated 9 February 2023.

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

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

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

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

11. 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 Certifier prior to the issue of any Construction Certificate.

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

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 Certifier prior to the issue of the Construction Certificate.

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

13. External Finishes to Roof

The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.46 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a metallic steel or reflective finish is not permitted.

Green roofs and areas where solar panels (PV) are installed are excluded from conforming to the SA range.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

14. Sydney Water "Tap In"

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

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

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

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

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

DURING BUILDING WORK

15. Protection of Habitat Features

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected

by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

16. 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.

17. 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.

18. Geotechnical Requirements

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

Reason: To ensure geotechnical risk is mitigated appropriately.

19. Survey Certificate

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

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

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

20. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

21. Aboriginal Heritage

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

Department of Planning and Environment.

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

Reason: Aboriginal Heritage Protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

22. No Weeds Imported On To The Site

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

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

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

23. Priority Weed Removal and Management

All Priority weeds (as specified in the Northern Beaches Local Weed Management Plan) within the development footprint are to be removed using an appropriate control method.

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

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

24. Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably Civil Engineer.

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

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

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

25. Protection of Habitat Features

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

Reason: To protect wildlife habitat.