

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2554
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Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot 16 DP 758044, 39 Heathcliff Crescent BALGOWLAH HEIGHTS NSW 2093
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
Land and Environment Court Action:	No
Owner:	Todd James Delaney Janelle Maree Delaney
Applicant:	Eugene Du Plessis

Application Lodged:	04/01/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	14/01/2022 to 28/01/2022
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 228,000.00
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PROPOSED DEVELOPMENT IN DETAIL

This development application seeks consent for alterations and additions to a residential dwelling, pursuant to the *Manly Local Environmental Plan (MLEP) 2013*, including:

- Extension of the dwelling on the terrace level to accommodate Bedroom 1 (inclusive of an en-suite and walk-in robe).
- Internal stairs for access from the first floor level to the proposed bedroom 1 on the roof terrace level.

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 Development Control Plan - 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

SITE DESCRIPTION

Property Description:	Lot 16 DP 758044 , 39 Heathcliff Crescent BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Heathcliff Crescent.</p> <p>The site is irregular in shape with a frontage of 15.24m along Heathcliff Crescent and a maximum depth of 41.935m. The site has a surveyed area of 613.4m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a two and three storey residential dwelling within a landscaped setting.</p> <p>The site has an easterly orientation and is located on a generally flat block, with the rear yard stepped down from the street and dwelling level.</p> <p>The site has areas of turf both within the front and rear yards. The rear yard has a rocky outcrop in the south-western area.</p> <p>Detailed Description of Adjoining/Surrounding</p>

Development

Adjoining and surrounding development is characterised by dwellings of similar sizes within a landscaped setting. Some adjoining and nearby dwellings are currently under construction.

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:

- **DA0642/1999** was lodged with Council seeking consent for alterations and additions to a residential dwelling. This application was approved on 26 June 2000, subject to conditions.
- **DA0184/2001** was lodged with Council seeking consent for alterations and additions to a residential dwelling, including a swimming pool and garage. This application was approved on 5 December 2001, subject to conditions.
- **DA0236/2002** was lodged with Council seeking consent for alterations and additions to a residential dwelling. This application was approved on 25 September 2002, subject to conditions.
- **PLM2021/0142** was held with Council's Planners whereby planning advice was provided for concept plans.
- **PLM2021/0242** was held with Council's Planners whereby planning advice was provided for concept plans.

APPLICATION HISTORY

Council requested additional information from the applicant regarding clarification on past approvals. This information was requested on 21 April 2022. A response was received on 3 May 2022. As detailed elsewhere in this report, this information did not clarify Council's concerns and, as such, a condition of consent has been included to ensure the consent being granted refers to the proposed works under this consent.

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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 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 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Council requested additional information from the applicant regarding clarification on past approvals. This information was requested on 21 April 2022. A response was received on 3 May 2022. As detailed elsewhere in this report, this information did not clarify Council's concerns and, as such, a condition of consent has been included to ensure the consent being granted refers to the proposed works under this consent.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent</p>

Section 4.15 Matters for Consideration	Comments
	<p>authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 14/01/2022 to 28/01/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mrs Lee-Ann De Souza	37 Heathcliff Crescent BALGOWLAH HEIGHTS NSW 2093
Mr Christopher Eldon Jessop Ms Anthoulla Masoombee Mohamudally	41 Heathcliff Crescent BALGOWLAH HEIGHTS NSW 2093

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

- **Wall height, number of storeys and the effect on the streetscape, and the unapproved construction of the existing roof top terrace**
- **Privacy impact**
- **Solar access impact**

The matters raised within the submissions are addressed as follows:

- *The submissions raised concern regarding the comments made about the proposed wall height and number of storeys and the fact that these are existing non-compliances. Further, both submissions note the unconfirmed reports that the existing rooftop terrace was never approved and that enclosing a portion of this unauthorised area of the dwelling would subsequently be unacceptable.*

Comment:

The proposed wall height exceeds the maximum numeric requirement (as indicated in the built form control table within this report), notwithstanding, the proposed development is compliant with the maximum building height (being 8.5m). A further discussion on the non-compliant wall height can be found under section 4.1.2 of this report. Additionally, whilst a maximum two (2) storey limit applies to the subject site, the existing dwelling essentially creates a partial third (3rd) storey from the access point to the existing roof top terrace. The articulation of the proposed development (that is, the external walls are stepped in along the southern and western elevations), and the fact it is setback over 12.0m from the front boundary, and over 19.0m from the rear boundary, ultimately reduces the perception of an additional storey. This does not warrant reason for refusal.

Development consent was granted for alterations and additions to the existing dwelling under DA236/02 - a final occupation certificate was obtained for this consent. Council does not appear to have records of the details of the final occupation certificate. As such, Council cannot be completely certain that the rooftop terrace, as constructed and existing, is unauthorised. In this instance, a condition of consent will be included within this report to ensure that consent is not granted for anything other than the proposed alterations and additions to the dwelling house (that is, the addition of a master suite).

- *The submissions raised concern that the enclosure of a portion of the existing rooftop terrace will encourage greater and more frequent use of this space and, subsequently, will impact upon the privacy experienced in the adjoining rear yards, and homes.*

Comment:

The proposed development will be sited along the southern elevation of the existing rooftop terrace, with no windows proposed to the southern and western elevations. Further, the proposed addition comprises bedroom 1, an en-suite and walk-in robe, with access to the

rooftop terrace. The addition of a bedroom to this space is likely to limit general access to the rooftop terrace. In addition, the spatial separation between the external wall of the addition to the northern side boundary is 7.6m, which is ample spatial separation between buildings. In this instance, the potential impact upon the privacy of adjoining properties is minimal. The use of the existing rooftop terrace does not change to that which is existing. A further discussion on this can be found under section 3.4.2 of this report. This does not warrant reason for refusal.

- *The owners of 37 Heathcliff Crescent are concerned that the proposed development will adversely impact upon the solar access to the northern side of their dwelling, particularly to the ground floor living area. The submission acknowledges this area of the dwelling experiences shadowing in the morning and the concern is that the proposed development will exacerbate this.*

Comment:

Shadow diagrams have been provided with this application. The proposed development will result in marginal additional shadows at 9am, 12noon and 3pm to the adjoining southern property. A further discussion on the solar access can be found elsewhere in this report under section 3.4.1. This does not warrant reason for refusal.

REFERRALS

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who advised a decision was not required.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A440753_02, dated 9 December 2021).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who advised a decision was not required.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5	8.5m	N/A	Yes
Floor Space Ratio	FSR: 0.45:1 (276.03m ²)	FSR: 0.39:1 (244.4m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 613.4m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	N: 6.9m (based on gradient 1:15)	8.4m	21.7%	No
	S: 6.9m (based on gradient 1:15)	8.1m - 8.2m	18.8% (max.)	No
4.1.2.3 Roof Height	Height: 2.5m	0.3m	N/A	Yes
	Pitch: maximum 35 degrees	2.2 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	6m	12.3m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.8m (based on proposed wall height)	Northern boundary: 7.6m	N/A	Yes
	2.7m (based on proposed wall height)	Southern boundary: 2.7m	N/A	Yes
	Windows: 3m	7.6m	N/A	Yes
4.1.4.4 Rear Setbacks	8m	19.4m - 19.8m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (337.37m ²) of site area	63.8% (391.9m ²) (ground level existing and unchanged)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% (118.0m ²) of open space	91.7% (309.5m ²)	N/A	Yes
4.1.5.3 Private Open Space	18sqm	>18sqm	N/A	Yes

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: 38/40 x 100 = 95 then 100 - 95 = 5% variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

Merit consideration

Objective 1) To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts.

Comment:

The building, as existing, has a large rooftop terrace with glass balustrading around the outer edges. This currently provides little to no privacy consideration of adjoining properties. The development proposes to partially enclose this roof top terrace to accommodate internal floor space which will be used as a master suite. No windows are proposed to the southern and western elevations. Windows are, however, proposed along the northern elevation, and a replacement window is proposed for the eastern elevation. Based on the significant spatial separation between the subject site and the property to the north, from a privacy perspective, the proposed development is acceptable.

The shadow diagrams provided indicate that the proposed development will not create adverse

additional shadows to adjoining and nearby properties.

Further, the proposed enclosure of the existing rooftop terrace will not adversely impact upon existing views obtained by adjoining properties.

Council can be satisfied that the general amenity of adjoining and nearby properties will be maintained.

Objective 2) To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.

Comment:

The proposed development will provide sufficient open space for the recreational needs of the occupants of the dwelling.

In this instance, Council can be satisfied the proposed development will provide an acceptable level of amenity for the occupiers of the subject site, and those of adjoining properties.

3.4.2 Privacy and Security

Description of non-compliance

A submission received in objection to the proposed development sited privacy concerns. As such, an assessment of the proposed development against the underlying objectives of this control is conducted below.

Merit consideration:

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

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

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

Comment:

There is an existing rooftop terrace on the dwelling at 39 Heathcliff Crescent (the 'subject site'). This rooftop terrace is unroofed and entirely open along the northern, western, eastern elevations, and partially open along southern elevation. A full height screen wall extends for a portion of the southern elevation. There is glass balustrading along the most outer edges of the rooftop terrace. The proposed development will obstruct views of the rooftop terrace from a southerly perspective. Further, the proposed development does not include any windows along the southern and western elevations, thus achieving privacy for the occupants of the subject site and those of adjoining properties. The resultant rooftop terrace will have a setback to the southern side boundary of approximately 7.5m, which is ample spatial separation between buildings.

The proposed development does, however, include windows and doors to the northern and eastern elevation of bedroom 1. These proposed windows capitalise on the north-facing aspect that the dwelling house enjoys. These windows and doors are glass, with the windows to the en-suite being a frosted

material so as to provide privacy to those using the en-suite. In any case, the proposed northern side boundary setback distance is 7.6m, thus achieving ample spatial separation between the proposed development northern side boundary.

In this instance, the location of the proposed windows and ample spatial separation between buildings means the proposed development results in an acceptable level of privacy between buildings.

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

Comment:

The proposed spatial separation and location of windows/doors means that an acceptable level of privacy is achieved for the occupants of the subject site and those of adjoining properties. The privacy afforded to adjoining properties is done so without compromising solar access and air flow, and allows for the balancing of views.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development allows for passive surveillance of the street frontage.

The proposed development satisfactorily meets the underlying objectives of this control. Council is satisfied the proposed development achieves an acceptable level of privacy between buildings.

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

Description of non-compliance

Control 4.1.2.1 Wall Height of the MDCP requires the maximum external wall height to be calculated based on the slope of the land sited under the proposed new wall. The gradient of the land along the northern and southern elevations are as follows:

- Northern elevation: 1:15
- Southern elevation: 1:15

In this instance, the maximum wall height requirement for the northern and southern elevations is 6.9m.

In this instance, the proposed development seeks to vary this requirement by 21.7% to the northern elevation, and 18.8% to the southern elevation.

As detailed elsewhere in this report, the proposed development achieves compliance with Clause 4.3 Height of Buildings under the *Manly LEP 2013*.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This clause instead relies on the objectives for the Height of Buildings at clause 4.3 in the *Manly LEP 2013*. An assessment against these objectives is as follows:

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

Comment:

The proposed development is setback 12.3m from the front boundary line, and is sited to the south-western corner of the top floor of the dwelling. Additionally, the addition will maintain the existing roof form of the dwelling, being a generally flat roof form with a 2.2 degree pitch. In this instance, the proposed development provides a compliant building height with a roof form that is consistent with the existing dwelling, topographic landscape. The desired future streetscape character of the locality is considered to be achieved.

(b) to control the bulk and scale of buildings,

Comment:

Notwithstanding the numeric non-compliant wall height, the proposed development will retain the existing building design (including the roof form). As stated above, the location of the proposed development is within the south-western corner of the top floor of the existing dwelling - this is beneficial in controlling the bulk and scale of the built form as it results in compliant front and side setbacks, as well as achieving satisfactory building articulation (rather than a continuous blank wall). The proposed development is considered to satisfactorily control the bulk and scale of the building.

(c) to minimise disruption to the following—

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

Comment:

The proposed wall height non-compliance is unlikely to give rise to any adverse impact upon views obtained by adjoining allotments, both public and private. It is noted that no submissions were provided with regards to potential view loss from adjoining properties.

(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:

Shadow diagrams accompany this application. Notwithstanding the minor non-compliance to the wall height requirement, the proposal will provide an acceptable and adequate level of sunlight to adjoining properties, both public and private. A further discussion on the provision of solar access to public and private open spaces, and adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings can be found under section 3.4.1 of this report.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

The proposed development is sited to an existing dwelling house within a residential zone (being R2 Low Density Residential zone). This objective does not apply to the subject site.

Notwithstanding the numerical non-compliance to the wall height requirement, Council is satisfied that the proposed development can achieve the underlying objectives of Clause 4.3 of the Manly LEP 2013. Therefore, the proposed variation can be supported on its merits, in this particular instance.

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 2021

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$2,280 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$228,000.

CONCLUSION

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

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

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

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

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

It is considered that the proposed development satisfies the appropriate controls and that all processes

and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/2554 for Alterations and additions to a dwelling house on land at Lot 16 DP 758044, 39 Heathcliff Crescent, BALGOWLAH HEIGHTS, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A.01 (Issue 2) - Site Plan	03.12.2021	Du Plessis + Du Plessis Architects
A.08 (Issue 2) - Proposed First Floor Plan	03.12.2021	Du Plessis + Du Plessis Architects
A.09 (Issue 2) - Proposed Roof Terrace Plan	03.12.2021	Du Plessis + Du Plessis Architects
A.10 (Issue 2) - Proposed Roof Plan	03.12.2021	Du Plessis + Du Plessis Architects
A.11 (Issue 2) - Section X-X, Section Y-Y, Section Z-Z	03.12.2021	Du Plessis + Du Plessis Architects
A.12 (Issue 2) - West Elevation and North Elevation	03.12.2021	Du Plessis + Du Plessis Architects
A.13 (Issue 2) - East Elevation and South Elevation	03.12.2021	Du Plessis + Du Plessis Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
D4 Sediment Control Details (Revision A)	11.11.2021	NY Civil Engineering
D1 - D3 Stormwater Management Plan (Revision A)	11.11.2021	NY Civil Engineering

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate A440753_02	9 December 2021	Du Plessis + Du Plessis Architects
Checklist for Preliminary Assessment	21/12/2021	Eugene Du Plessis

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

c) The development is to be undertaken generally in accordance with the following:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	6.12.2021	Du Plessis + Du Plessis Architects

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

2. **Prescribed Conditions**

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

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

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

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

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

Reason: Legislative requirement.

3. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety

- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

4. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$2,280.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$228,000.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

5. **Security Bond**

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

6. Stormwater Drainage Disposal

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

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifying Authority prior to the issue of a Construction Certificate.

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

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

Reason: To ensure satisfactory management of stormwater.

7. Boundary Identification Survey

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

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

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

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

8. **Compliance with Standards**

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

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

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

9. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

Details demonstrating compliance are to be submitted to the Certifying Authority 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. (DACPLC03)

10. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11. **Survey Certificate**

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

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

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

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

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

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

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

13. Stormwater Drainage Disposal Certification

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

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

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

Reason: To ensure satisfactory management of stormwater.

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

14. Authorised works

No approval is granted under this consent to any other portion of the existing dwelling outside of what is proposed under this development application, being the construction of bedroom 1 comprising a walk-in robe, en-suite and an internal staircase from the first floor to bedroom 1 on the roof terrace plan.

Reason: To ensure compliance with relevant development approval(s).

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Megan Surtees, Planner

The application is determined on 27/05/2022, under the delegated authority of:



Phil Lane, Acting Development Assessment Manager