

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2021/0009
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Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 81 DP 4889, 27 Alan Avenue SEAFORTH NSW 2092
Proposed Development:	Review of Determination of Application DA2019/1447 for demolition works, Torrens Title subdivision of 1 lot into 2 lots and construction of a dwelling house and swimming pool and fencing on each lot
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:	Yes
Owner:	Lucy Therese Giuliano Darren Sean O'Hanlon Ra El Khouri
Applicant:	Darren Sean O'Hanlon

Application Lodged:	15/03/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	23/03/2021 to 06/04/2021
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,431,000.00
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Executive Summary

The proposed development is for the demolition of the existing structures, subdivision of the land and construction of two dwelling houses, swimming pools and associated landscaping. This application is a Review of Determination of DA2019/1447 which was refused by the Development Determination Panel (DDP) on 15 September 2020. The reasons for refusal are outlined later in this assessment report. The application is referred back to the DDP for determination as required by the delegation for a review of determination.

A Class 1 Appeal for the refusal of DA2019/1447 was filed with the NSW Land and Environment Court on 26 February 2021. Following this, the subject review of determination was lodged with Council on 15 March 2021. This review of determination included an amended set of plans and updated documentation in response to the reasons for refusal of DA2019/1447 which included increased side setbacks, reduction of gross floor area, reduction of the three storey component of the building and increased front setback to the upper floor levels, the full extent of changes listed later in the development description.

The application was publicly notified for a period of 14 Days and a total of seven (7) public submissions were received. The issues raised pertained to visual bulk and scale, streetscape character, inconsistency with the subdivision pattern, privacy, solar access, excavation, noise and non-compliance with the planning controls. Each of the submission issues have been addressed later within this assessment report and conditions have been recommended where appropriate to address the submission issues.

The amended plans and documentation submitted with the review of determination have been considered against the reasons for refusal of DA2019/1447 and is discussed in detail later in this assessment report. In summary, this assessment has found that the proposal has been amended in a satisfactory way to respond to the reasons for refusal and the applicant has put forward further supporting documentation and reasons to warrant support of the proposed subdivision pattern as part of this review. Consequently, it is recommended that the reasons for refusal should not be maintained following the detailed assessment of the amended plans and documentation submitted with the application and the application is recommended for approval to the DDP for the reasons outlined in this report.

The application has been assessed against the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs) and Council policies. The outcome of this assessment is detailed within this report.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for the demolition of the existing dwelling house and associated structures.

The proposal then seeks the Torrens title subdivision of one lot into two lots and construction of a dwelling house on each lot.

The dwelling houses consist of:

- Lower floor level: Garage, plant and subfloor area
- Ground floor level: Entry, family room, laundry, bathroom, bedroom, kitchen, dining and living room and swimming pool
- First floor level: Four (4) bedrooms (main with ensuite) and bathroom'

Associated landscaping, driveway and services to facilitate the development.

Changes from DA2019/1447

This application is a review of determination of DA2019/1447 and the following changes have been made from the previous proposal which can be seen in the submitted architectural plans, which shows

the previous extent of the proposal marked up on the proposed plans:

- Reduction of floor space ratio from 0.5:1 to 0.45:1 to comply with the FSR development standard
- Reduce the extent of the three storey component to limit this to a maximum of 8% of the building footprint, down from a maximum of 22% of the building footprint
- Bring garage forward for both dwellings and increase the front setback to levels 1 and 2, making the upper levels of the building more recessive in the streetscape stepping back from the lower garage level.
- Increase side setbacks for each elevation of the building between 150mm and 400mm, as demonstrated on the plans.
- Implement privacy measures for balconies and windows where necessary along each elevation (the privacy measures proposed are described in detail later in this report).

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

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3

Manly Local Environmental Plan 2013 - 6.2 Earthworks

Manly Local Environmental Plan 2013 - 6.4 Stormwater management

Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.9 Mechanical Plant Equipment

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

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

Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 81 DP 4889 , 27 Alan Avenue SEAFORTH NSW 2092
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Alan Avenue.</p> <p>The site is regular in shape with a frontage of 20.115m along Alan Avenue and a depth of 60.96m. The site has a surveyed area of 1226m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates single storey dwelling house.</p> <p>The site has a 5% fall from the rear southern boundary to the front northern boundary.</p> <p>The site has a mixture of native and exotic species of plants, shrubs and trees.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by single and two storey dwellings with associated structures and landscaping gardens. Immediately to the west of the site is a single storey dwelling and immediately to the east of the site is a two storey dwelling. Across the road to the north area a mixture of one and two storey residential dwellings.</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:

DA2019/1447 - 'Demolition works, torrens title subdivision into two lots and the construction of a dwelling house and swimming pool on each lot' was refused by the Development Determination Panel on 15 September 2020. The reasons for refusal were as follows:

- *1. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.*
- 2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the objectives of Clause 4.1 Minimum subdivision lot size of the Manly Local Environmental Plan 2013.*
- 3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause 3.1.1 Streetscape (Residential areas) of the Manly Development Control Plan 2013.*
- 4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause 4.1.2.1 Wall Height of the Manly Development Control Plan 2013.*
- 5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause 4.1.2.2 Number of Storeys of the Manly Development Control Plan 2013.*
- 6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause 4.1.4.2 Side Setbacks of the Manly Development Control Plan 2013.*

A Class 1 Appeal was submitted to the NSW Land and Environment Court on 26 February 2021 to appeal the refusal of DA2019/1447.

The subject Review of Determination application REV2021/0005 was submitted on 15 March 2021 with amended plans and supporting information in response to the above reasons for refusal by the DDP.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

As the determination was made within the 'prescribed period' as outlined in Division 8.10 (1)(b), a request for the review must be made and determined within 12 months after the date of determination of the application. The application was determined on 15 September 2020 and the notice of determination was issued on 15 September 2020. The review was lodged on 15 March 2021 and is to be considered by the Development Determination Panel on 12 May 2021, which is within 12 months of the date of determination.

Section 8.3 (3) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the 'Detailed Description of Works' section of this report.

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act.

Assessment of Reasons for Refusal DA2019/1447

How has the 8.2 Application Responded to The Reasons for Refusal?

The applicant has amended the proposal and has provided additional information. Consequently, the Reasons for Refusal of DA2019/1447 that are stipulated in the Notice of Determination are examined below to determine if they remain applicable or should be overturned:

1. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.

Comment: This assessment report finds that the proposed development following amendments to the application is compliant with the key development standards contained within the Manly LEP and the variations to the DCP proposed do not result in unreasonable amenity impacts that would warrant refusal of the application due to not being within the public interest. The issue of setting an undesirable precedent due to the subdivision pattern is addressed below and the development is found to have an acceptable presentation within the streetscape, for the reasons outlined within this report. The submissions made against the development application are addressed later within this assessment report.

Consequently, it is recommended that this reason for refusal should not be maintained following the detailed assessment of the amended plans and documentation submitted with the application.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the objectives of Clause 4.1 Minimum subdivision lot size of the Manly Local Environmental Plan 2013.

Comment: The DDP raised that the proposal was inconsistent with the objectives of the development standard, notwithstanding the subdivision was compliant with the minimum lot size of 600sqm (proposed Lots A and B each 613.17sqm). The applicant has put forward the following response to this reason for refusal based on the objectives of the development standard:

- *We note that this reason for refusal does not relate to non-compliance with the numerical standard but rather alleged inconsistency with the objectives of the subdivision lot size standard. The relationship of the numerical standard and its associated objectives was dealt with by Justice Preston in *Wehbe v Pittwater Council* [2007] NSWLEC 827 where at paragraph 43 he states:*

43 The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a

development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved.

Adopting this position, a development that satisfies the numerical subdivision allotment size standard is deemed to comply with the associated objectives. We consider this to be the case as clearly demonstrated within this statement and accordingly there are insufficient environmental planning grounds to justify the refusal of the application on this basis.

Notwithstanding, we consider the side-by-side subdivision pattern proposed, whereby both properties have direct street frontage, should be preferred over the alternate battle-axe arrangement seen elsewhere in the locality where dwelling houses are introduced into the rear yard of lots where they immediately adjoin the rear yard of adjoining properties. This dwelling house arrangement has the potential to create significantly greater residential amenity impacts in terms of views, solar access and privacy compared to the dwelling house arrangement proposed whereby the dwellings maintain the same built form rhythm in the street with large landscaped rear yards creating a sense of openness and privacy as viewed from the rear yards of the adjoining properties.

In this regard, the propose subdivision lot size and arrangement to be fully compliant with the subdivision lot size standard and entirely appropriate given the subdivision pattern established by adjoining development.

Having reviewed the above response by the application, the assessment of this review of determination adopts the above position, whereby the objectives of the development standard are achieved by way of numerical compliance. The issues pertaining to the resulting streetscape outcome and character of the locality as a result of the development and subdivision pattern are addressed in detail in point 3 below. The assessment of this review of determination has formed the opinion that a side-by-side subdivision pattern is a superior outcome in terms of residential amenity for and from the development.

The DDP raised issue that the proposed subdivision pattern would result in a precedent being set for the rest of the street, which would fundamentally change the streetscape character by providing for additional narrow allotments into the future. The applicant has addressed this concern in their submission as follows:

- *The minutes of the DDP meeting of 15th September 2020 included a concern that approval of the application would set an undesirable precedent which would extend to at least 8 other lots in the street and has the potential to transform the established character of the area in a manner that is contrary to the planning controls.*

In this regard, we note that the properties located on the northern side of Alan Avenue have a minimum subdivision lot size requirement of 750 square metres being 150 square metres greater than the minimum 600 square metre minimum subdivision lot size applicable to the land located on the southern side of the street including the subject property. Having reviewed the lot sizes established by the balance of the properties located along Alan Avenue we can confirm that, with the exception of No. 25 Alan Avenue, no other properties in the street are of a size that would enable them to be subdivided in accordance with the minimum lots size standard.

Under such circumstances no undesirable precedent would be created through approval of the proposed subdivision.

The assessment of this review application included a review of the existing lot sizes within the

immediate site context and the minimum permissible lot size on both sides of Alan Avenue. The above assertions made by the applicant are agreed with following this review, in that only one other site in the immediate vicinity could be subdivided with a compliant in lot size. Therefore, the proposal is not considered to set a precedent for future development in Alan Avenue going forward.

Consequently, it is recommended that this reason for refusal should not be maintained following the detailed assessment of the amended plans and documentation submitted with the application.

3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause 3.1.1 Streetscape (Residential areas) of the Manly Development Control Plan 2013.

Comment: Clause 3.1.1.1(a) requires that development should be designed to 'complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality'.

The matter of assessing the character compatibility of development has been examined by the Land and Environment Court in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 and *Project Venture Developments v Pittwater Council (2005)* NSWLEC 191 where Senior Commissioner Roseth set out Planning Principles to better evaluate how a development should respond to the character of its environment. The following provides an assessment against the Planning Principles established in those two cases.

In the case of '*GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268' Senior Commissioner Roseth developed the following Planning Principles:

- *The first principle is that buildings in a development do not have to be single-storey to be compatible with the streetscape even where most existing buildings are single storey. The principle does not apply to conservation areas where single storey dwellings are likely to be the major reason for conservation.*

Comment:

Firstly, the site is not within a heritage conservation area which would guide the architectural style and building form required to compliment any particular heritage character or theme. The surrounding context is mostly two storey and some single storey buildings within the 8.5m building height under the MLEP 2013. Although the proposed development is partially three stories, the building is within the 8.5m height limit which guides the maximum desired building height and scale of development for the area. As explained later within this report, the non-complying 3 storey element is a minor portion of the building (5% and 8% of the building footprint for each lot) and the building design has been amended to reduce the extent of three storey elements and provide increased stepping of the building form for the upper levels.

As the planning principle states, a building does not have to be single storey to be compatible with the streetscape even where most existing building are single storey. The same could be said for compatibility of a three storey building within a streetscape consisting mainly of two storey buildings, where the proposed three storey building is within the permissible height limit and comparable with the height of the two storey buildings in the vicinity of the site. For comparison, the maximum ridge height of the adjoining property 25 Alan Avenue is RL65.3 and the ridge of that dwelling running parallel to the street frontage for the width of the building. The proposed development has a ridge height of RL65.75 and RL65.2 and therefore is comparable in height of the adjoining two storey building.

In this regard, it is considered that the scale of the development is compatible with the streetscape

and consistent with the first principle.

- *The second principle is that where the size of a development is much greater than the other buildings in the street, it should be visually broken up so that it does not appear as one building. Sections of a building, or separate buildings should be separated by generous breaks and landscaping.*

Comment:

The proposed development reads clearly as two separate dwelling houses with separation between the buildings that is capable of providing landscaping. The building has provided a front setback that reflects the two adjoining properties and the buildings are setback an appropriate distance from the street edge to be in harmony with the existing buildings. The proposed development is compliant with the required 55% open space, 35% landscaping requirements under the DCP and the 0.45:1 Floor Space Ratio under the LEP which guides the general size and configuration of the building footprint for future development.

In this regard, the development is considered to be compatible with the size and scale of surrounding development and consistent with the second principle.

- *The third principle is that where a site has existing characteristics that assist in reducing the visual dominance of development, these characteristics should be preserved. Topography that makes development appear smaller should not be modified. It is preferable to preserve existing vegetation around a site's edges to destroying it and planting new vegetation.*

Comment:

The development has been designed to retain the significant Port Jackson Fig in the north-eastern corner of the site which will assist in preserving the character of the front setback area and reduce the visual dominance of the development. An area is provided in the north-western corner of the site for another new canopy tree to add to the landscaped front setback and be consistent with the landscaped setting of the locality. Natural ground levels are maintained along the side setbacks of the building adjoining the two neighbouring properties.

In this regard, it is considered that effective methods have been employed in the design of the development to reduce its visual dominance and is consistent with the third principle.

- *The fourth principle is that a development should aim to reflect the materials and building forms of other buildings in the street. This is not to say that new materials and forms can never be introduced only that their introduction should be done with care and sensitivity.*

Comment:

The streetscape currently consist of a mixture of older style single storey and two storey brick dwellings with pitched roofs, along with the occasional newly constructed two storey dwelling which consist of more modern facade elements, materials and architectural features such as a flat roof and parapets.

Whilst the proposal is not necessarily the same as the existing development along the street in terms of its form and architecture, the use of a flat roof is not unseen in the Seaforth locality and Alan Avenue (notably the dwelling at 10 Alan Avenue) and there are examples of contemporary building forms with a flat roof in the locality of Seaforth which reflect a newer style of architecture that can still be sympathetic

to the spatial proportions of the street, scale and landscape character of the area, whilst allowing a contemporary style of building and use of high quality materials.

Materials such as sandstone, timber batten garage doors, weatherboard cladding and rendered brick facade, together with landscape planting which is consistent with the surrounding materials and treatments. The materials selected are considered to be of high quality and add visual interest for the development, resulting in a contemporary and high quality addition to the streetscape. The schedule of materials and finishes submitted with the application are sympathetic and compatible with the surrounding context.

In this regard, the development is considered to be consistent with the fourth principle.

The above Principals were further developed in *Project Venture Developments v Pittwater Council* (2005) NSWLEC 191 to include the following:

- *Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*

Comment:

The physical impacts of the development on surrounding properties are assessed as consisting of constraints on the development potential of surrounding sites, privacy, overshadowing and noise.

Constraints on the development potential of surrounding sites

The development does not constrain future development potential of the adjoining sites in terms of overshadowing or privacy, outlook or building separation.

Privacy

The proposal provides for the reasonable retention of privacy for the reasons outlined later in this assessment report.

Overshadowing

The proposal provides for the reasonable retention of solar access for the reasons outlined later in this assessment report.

Noise

The proposal will not result in adverse impacts in regards to noise and noise from any pool pumps is addressed in the recommended conditions.

Conclusion to character assessment

The above character assessment has found that, in the context of the Land and Environment Court Planning Principles, the proposal is compatible with the character of the local area and surrounding wider locality.

Consequently, it is recommended that this reason for refusal should not be maintained following the detailed assessment of the amended plans and documentation submitted with the application.

4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause 4.1.2.1 Wall Height of the Manly Development Control Plan 2013.

Comment: The issue of wall height non-compliance is discussed in detail later within this assessment report. The wall height non-compliance is considered minor in nature and does not result in unreasonable amenity impacts or result in a building that is excessive in bulk and scale for the site.

Consequently, it is recommended that this reason for refusal should not be maintained following the detailed assessment of the amended plans and documentation submitted with the application.

5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause 4.1.2.2 Number of Storeys of the Manly Development Control Plan 2013.

Comment: The amended plans submitted have reduced the extent of the three storey component of the building. The merit consideration and details of the non-compliance is discussed in detail later within this assessment report and in detail in Point 3 regarding the compatibility of the development for the streetscape.

Consequently, it is recommended that this reason for refusal should not be maintained following the detailed assessment of the amended plans and documentation submitted with the application.

6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause 4.1.4.2 Side Setbacks of the Manly Development Control Plan 2013.

Comment: The amended plans submitted have increased the side setbacks to each boundary of the proposed dwelling, including the setbacks to the adjoining properties. Although still non-compliant, the merit consideration of the non-compliance is discussed in detail later within this assessment report and the proposal does not result in unreasonable amenity impacts and maintains reasonable spatial separation that would be expected in a residential context.

Consequently, it is recommended that this reason for refusal should not be maintained following the detailed assessment of the amended plans and documentation submitted with the application.

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 23/03/2021 to 06/04/2021 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 6 submission/s from:

Name:	Address:

Name:	Address:
Mr John Coumanias	12/600 Military Road MOSMAN NSW 2088
Mr William Victor Anderson	29 Alan Avenue SEAFORTH NSW 2092
Mr Domenico Ferragina	64 A Edgecliffe Esplanade SEAFORTH NSW 2092
Mr Shane Henry	31 Alan Avenue SEAFORTH NSW 2092
Mrs Sejal Monik Kotecha Outlook Planning & Development	25 Alan Avenue SEAFORTH NSW 2092
Mrs Kathryn Elizabeth Whiting	62 A Edgecliffe Esplanade SEAFORTH NSW 2092

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

- The proposed development is out of character for the area with regards to building design and subdivision pattern.
- The building is excessive in size, bulk and scale and is non-compliant with the side setbacks, wall height and number of stories
- Impact upon adjoining properties as a result of excavation for the proposed development
- Visual privacy and overlooking impact for adjoining properties
- Solar access impact upon adjoining properties
- Noise from pool filters and pumps
- Proposed vegetation along the rear boundary will create overshadowing
- The FSR calculation excludes the garage, plant and store area. The garage is not considered to be a basement the floor level of the storey immediately above is greater than 1m above ground level. The proposal is therefore non-compliant with FSR.

The matters raised within the submissions are addressed as follows:

- *The proposed development is out of character for the area with regards to building design and subdivision pattern.*
Comment:
A full assessment has been undertaken with regards to the subdivision pattern and character of the development at the beginning of this report, including an assessment against the reasons for refusal. The amended plans have been considered against the planning principles established by *Project Venture Developments v Pittwater Council (2005) NSWLEC 191* with regards to compatibility of the development in the streetscape and the proposal is considered consistent with the planning principle. For this reason, the proposal is recommended for approval.
- *The building is excessive in size, bulk and scale and is non-compliant with the side setbacks, wall height and number of stories*
Comment:
A merit assessment has been undertaken later within this assessment report against each of the above controls, in addition to the assessment against the planning principles for streetscape character. The proposed development achieves the objectives of each of the controls, notwithstanding the numerical non-compliances and is therefore supported on merit.
- *Impact upon adjoining properties as a result of excavation for the proposed development*

Comment:

Conditions of consent have been recommended for dilapidation reports to be prepared for 25 and 29 Alan Avenue. The application is accompanied by a geotechnical report which makes reference to the updated plans and the recommendations of the geotechnical report are to be included as recommended conditions to ensure the development is carried out in a way that will not cause impacts or hazards for adjoining properties.

- *Visual privacy and overlooking impact for adjoining properties*

Comment:

As assessment regarding visual privacy and overlooking carried out later within this assessment report, including details of the measures proposed to minimise direct overlooking. The assessment concludes the proposal does not have a unreasonable impact.

- *Solar access impact upon adjoining properties*

Comment:

An assessment against the solar access controls are carried out later within this assessment report. The proposal will maintain a reasonable level of solar access for adjoining properties, as discussed later in this report.

- *Noise from pool filters and pumps*

Comment:

Conditions of consent have been recommended to require pool equipment to not generate noise above 5dbA background noise levels. In addition, the proposed pool filters are housed within a soundproof structure and located a minimum 1m from the rear boundary. The combination of the soundproof structure and conditions of consent are considered to address this in a reasonable way.

- *Proposed vegetation along the rear boundary will create overshadowing*

Comment:

A condition of consent is recommended for the proposed landscape screening along the southern boundary to be of a species that will not exceed 3m in height at maturity to ensure reasonable privacy is able to be maintained between properties, whilst limiting overshadowing for the southern property.

- *The FSR calculation excludes the garage, plant and store area. The garage is not considered to be a basement the floor level of the storey immediately above is greater than 1m above ground level. The proposal is therefore non-compliant with FSR.*

Comment:

A detailed assessment against the definition of 'Gross floor area' as defined within the LEP and the definition of a 'basement level' has been considered in calculating the FSR. The LEP definition of GFA excludes garages and plant rooms, as well as basement storage. The storage area is considered to be 'basement storage' as the floor level above is no greater than 1m above the ground level, as demonstrated in section A and Section B of the submitted plans. Therefore, the proposed floor space has been calculated in accordance with the LEP definition and the proposal is compliant with the development standard.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Landscape Officer	<p>The application is for demolition, torrens title subdivision of 1 Lot into 2 Lots and the construction of a dwelling house and swimming pool on each Lot.</p> <p>The review application documents includes minor landscape changes including planter box arrangement within the front setback. No revised Landscape Plans are provided with the review application, and conditions of consent shall be imposed for updated landscape plans to be coordinated with the updated architectural plans should the application be approved. An updated Arboricultural Impact Assessment is provided inclusive of no changes to the request for tree removal from DA2019/1447.</p> <p>All street trees along the road reserve of Alan Avenue are listed as items of Local Heritage value (i264) within the Manly Local Environmental Plan, including the central medium along Alan Avenue and the Brushbox fronting the development site. A Tree Protection Plan is required for the existing Brushbox and additionally the Tree Protection Plan shall provide comments on the protection advice of all other Local Heritage Trees in the road reserve to be protected from impacts from construction deliveries and illegal storage or dumping.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP 2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types.</p> <p>The review application is assessed by an alternative Landscape Referral Officer to DA2019/1447. The landscape component of the proposal is acceptable subject to the protection of existing trees and vegetation and the completion of landscaping.</p>
NECC (Development Engineering)	<p>The applicant has not provided a stormwater management plan in this review application.</p> <p>In accordance with the stormwater management plan of the DA2019/1447, Development Engineering has no objection to the application.</p> <p>The stormwater plan, which was prepared by NB Consulting Engineers, job number 1909132, dated 6/12/2019, must be submitted and formed a part of this approval.</p>

Internal Referral Body	Comments		
	If any change of the stormwater plan, this application shall be referred back to Development Engineering for assessment and comment.		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	The proposal has been referred to Heritage as the subject site adjoins a heritage item		
	I264 - Street Trees - Alan Avenue		
	Details of heritage items affected		
	Details of the item as contained in the Manly inventory is as follows:		
	Statement of significance: Historic and aesthetic street tree planting and streetscape.		
	Physical description: Ficus Rubiginosa trees as centre road planting. Unique layout to Manly.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	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	N/A		
Consideration of Application			
The proposal seeks consent for the construction of two dwellings and the torrens title subdivision of 27 Alan Avenue. Heritage notes this is a review of determination application following on from the refusal of the previous application known as DA2019/1447 on the site. While the proposal has been modified, Heritage's comments remain mostly the same as per the previous application. The proposal is considered to not impact upon the significance of the heritage items. Heritage recommends one condition that the heritage street trees be protected during construction works.			
Therefore Heritage raises no objections and requires one condition.			
Consider against the provisions of CL5.10 of MLEP.			

Internal Referral Body	Comments
	<p>Is a Conservation Management Plan (CMP) Required? No</p> <p>Has a CMP been provided? No</p> <p>Is a Heritage Impact Statement required? No</p> <p>Has a Heritage Impact Statement been provided? No</p> <p>Further Comments</p> <p>COMPLETED BY: Brendan Gavin, Principal Planner</p> <p>DATE: 16 March 2021</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, 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. 105366S_02 and 1063239S_02 dated 11 February 2021).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed

Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	81

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. No issues were raised by ausgrid subject to their usual terms and conditions.

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
Minimum subdivision lot size:	600sqm	Lot 1: 613.17sqm	N/A	Yes
		Lot 2: 613.7sqm		
Height of Buildings:	8.5m	8.2m from NGL	N/A	Yes
Floor Space Ratio	FSR: 0.45:1	FSR: 0.446:1	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

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: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

- (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: The excavated material will be processed according to the Waste Management Plan for the development.

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

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. 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: The excavated material will be processed according to the Waste Management Plan for the development.

- (f) the likelihood of disturbing relics*

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

(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 the 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 WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) 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: On-site stormwater retention has been incorporated into the development.

(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.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1226.3sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 2 dwellings	2 dwellings (1 dwelling per new	N/A	Yes

		lot)		
	Dwelling Size: 124sqm (minimum)	27 Alan 270.2sqm 27A Alan 276.7sqm	N/A	Yes
4.1.2.1 Wall Height	E: 6.8m (based on gradient 1:20)	6.5m - 7.1m	4%	No
	W: 6.8m (based on gradient 1:20)	5.9m - 7.4m	9%	No
4.1.2.2 Number of Storeys	2	2 - 3 stories	33%	No
4.1.2.3 Roof Height	Height: 2.5m	1.1m	N/A	Yes
	Parapet Height: 0.6m	0.3m	N/A	Yes
	Pitch: maximum 35 degrees	2 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line 7.85m / 6m minimum (average of two adjoining)	27 Alan 7.715m 27A Alan 8.815m	1.7%	No Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	27 Alan East - 2.16m to 2.36m 27 Alan West - 2.13m to 2.33m 27A Alan East - 1.96m to 2.33m 27A Alan West - 1.96m to 2.46m (based on varied proposed wall height)	1.7m - 3.6m 1.3m - 2.9m 1.3m - 3.05m 1.71m - 3.51m	0% - 28%	No
	Windows: 3m	1.3m minimum	56%	No
4.1.4.4 Rear Setbacks	8m	27 Alan 18.2m 27A Alan 18.3m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (674.5sqm)	55% (676.5sqm)	N/A	Yes
	Open space above ground 25% of total open space (168.7sqm)	13% (91sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (236.1sqm)	69% (465sqm)	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	Minimum 18sqm per dwelling provided	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or	Maximum 50% of frontage up to maximum	4.9m / 48%	N/A	Yes

Hardstand Areas	6.2m			
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	In ground pool	N/A	Yes
	1m curtilage/1.5m water side/rear setback	1m curtilage side/1.5m water side/7m rear	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces per dwelling	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The issue of compatibility with the streetscape is discussed in detail earlier in this assessment report in response to the reasons for refusal of the original DA, whereby an assessment is made against the planning principles as established by the Land and Environment Court case *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003) NSWLEC 268* and *Project Venture Developments v Pittwater Council (2005) NSWLEC 191*.

Following assessment against this planning principle the proposal is found to be compatible with the streetscape character and therefore consistent with the planning controls which require development to complement (but not necessarily replicate) the predominant building form, distinct building character, building material and finishes and architectural style in the locality.

3.4.1 Sunlight Access and Overshadowing

The DCP requires the following in regards to solar access for a north-south facing lot:

- adjacent buildings the level of solar access presently enjoyed must be maintained to windows and glazed doors of living rooms for a period of at least 4 hours 9am to 3pm mid-winter.
- New development must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm mid-winter.

A review of the floor plans for 29 Alan Avenue show that the eastern elevation consists of a ground floor window to a garage and a window to a dining room. For the purpose of this control, the garage window is not required to receive solar access (as it is not a habitable space). The proposed development will result in some additional overshadowing to the eastern facing dining room window, as shown in the submitted elevation shadow diagrams.

It is considered however, that this window would be susceptible to overshadowing from any two storey development on the subject site, and retention of a full 4 hours would be difficult noting that solar access is not possible during the afternoon period, being an eastern facing window.

However, the dwelling at 29 Alan Avenue has a north facing family room which directly adjoins the pool area, this window will receive a minimum 4 hours and will not be impacted by the development. Therefore, although some additional overshadowing will result to the dining room area as a result of the site orientation, a high level of solar access will be maintained to the north facing family room which is considered a reasonable outcome and retention of solar access for the adjoining property.

The dwelling on 25 Alan Avenue will maintain solar access in accordance with the controls, with only a minor amount of overshadowing to the rear yard at 3pm mid-winter.

The applicant has demonstrated in the submitted shadow diagrams that solar access will be maintained to the adjoining properties private open space in accordance with the control, which takes into consideration the north facing pool area for 29 Alan Avenue.

3.4.2 Privacy and Security

It is noted that the first floor of the proposed dwellings contain bedrooms, bathrooms and circulation spaces only. None of these spaces are considered to give rise to a unreasonable visual privacy impact or a high occupancy rooms (unlike a living room, dining room or kitchens, which are all located on the ground floor of the proposed development).

However, in consideration of the reasonable retention of privacy for the two adjoining properties, the following has been proposed:

Eastern Elevation 27 Alan Avenue

- Obscure glazing up to 1.5m for WA.16, WA.18 and WA.19 upon first floor.
- Highlight window along stairwell first floor.
- Front elevation balcony setback and separated by planter box.

Western Elevation of 27A Alan Avenue

- Fixed privacy screen 1.65m from floor level for the front elevation balcony to prevent direct overlooking of pool within front setback of 25 Alan Avenue.
- Fixed external privacy screens for WB.21, WB.22, WB.24, WB.26, WB.27.
- Obscure glazing up to 1.5m for WB.28.
- Obscure glazing up to 1.5m fro WB.13 which is a ground floor window (to prevent overlooking of pool within front setback of 25 Alan Avenue).

Overall, the proposed development has implemented appropriate measures to mitigate direct overlooking impacts for adjoining properties.

3.9 Mechanical Plant Equipment

The proposed development includes a nominated plant room within each dwelling which measures 2.5m x 5.4m. The DCP allows for a plant room to be provided for a residential dwelling, provided it is not excessive in size and is used for the purpose of a plant room only, and therefore would not contribute to additional floor space within the development.

The proposed plant room is considered reasonable in size, matching the width of the proposed garage (which makes structural sense) and a depth of 2.4m, to allow plant and reasonable access to that plant. Any air-conditioning units, heating/cooling systems or future battery systems for the proposed photovoltaic panels can be reasonably accommodated within this subfloor space and will allow any noise of unsightliness to be contained within the plant room. The proposed plant room is therefore supported.

It is noted that the definition of 'gross floor area' within the Manly LEP excludes 'plant rooms' from the GFA calculation. It also excludes 'basement storage' from the GFA calculation. Therefore, the area of basement storage and the plant room does not contribute to FSR of the development as per the definition in the Manly LEP.

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

DCP Control

The DCP requires that buildings are a maximum of 2 stories. The proposed development is majority 2 stories, however the following portions of the development are 3 stories as described below and in the below figure:

- 27 Alan 1.6m length of building footprint, or 5% of the building footprint.
- 27A Alan 2.5m length of the building footprint, or 8% of the building footprint.

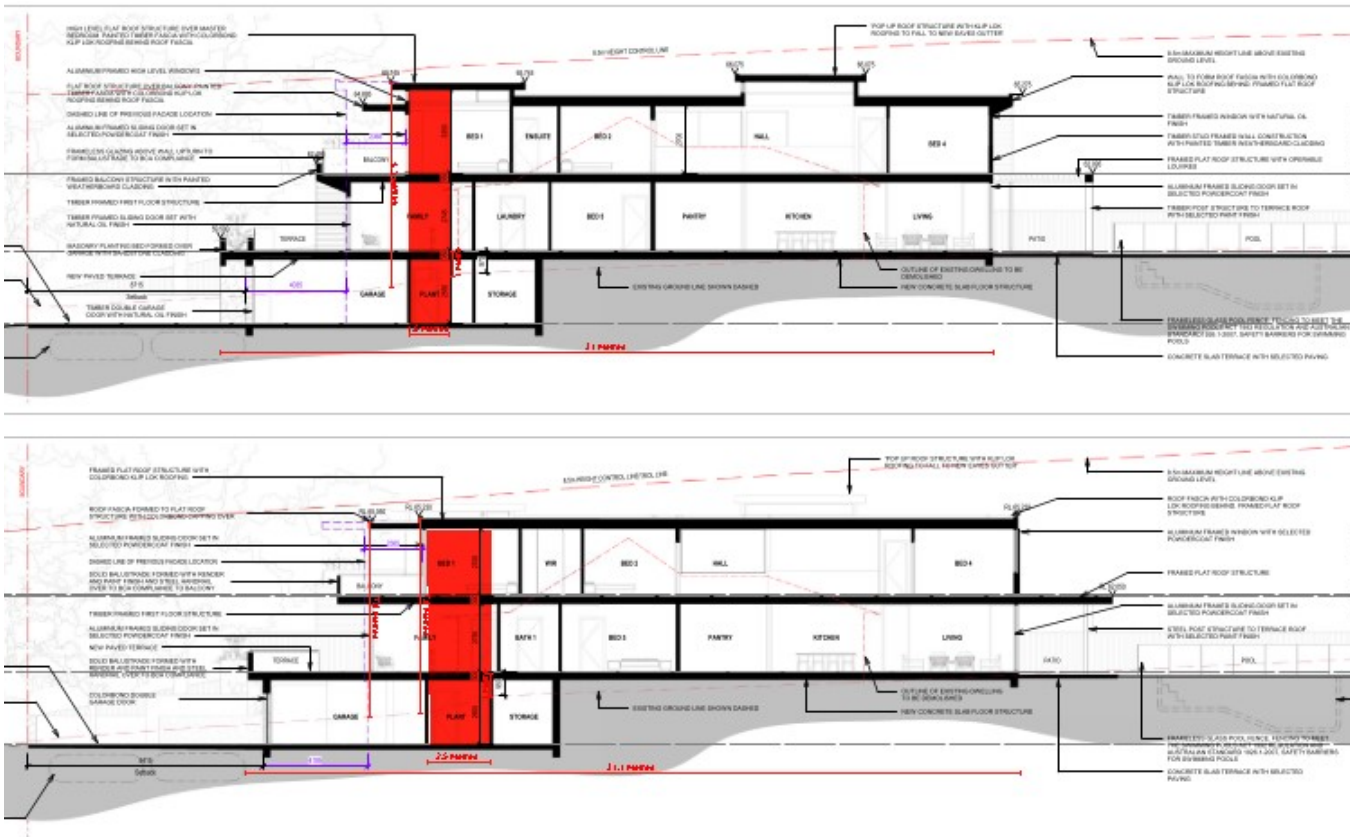


Figure 1 - Section plan showing area of three storey building.

The DCP requires that the building have a maximum wall height based on the height on gradient of the land. In the case of the subject site, the average gradient across the building footprint is 1:20 and therefore the maximum wall height is 6.8m. The development has a wall height of between 6.5m and 7.4m, with the non-compliance shown in the below figures. The non-compliance is a point encroachment, with the majority of the building compliant with wall height.

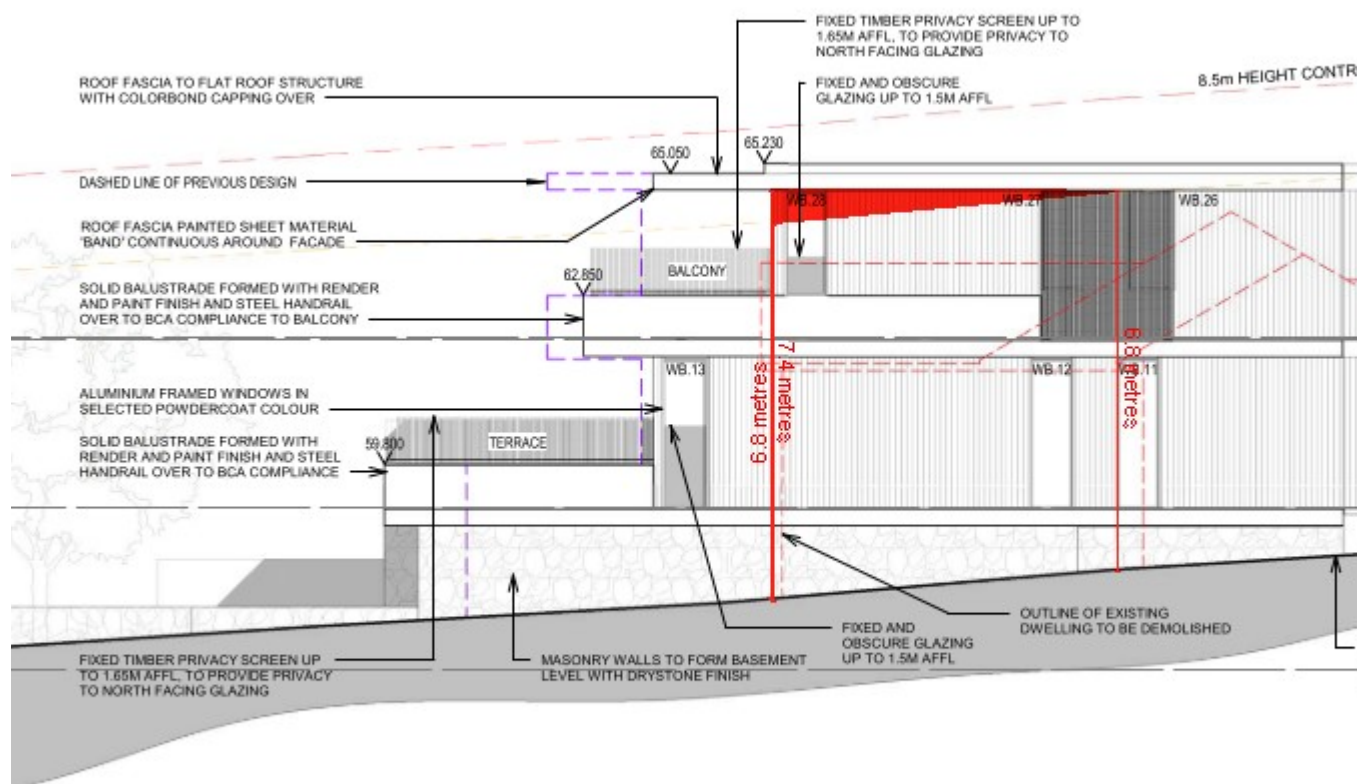


Figure 3 - 27A Alan western elevation showing area of wall height non-compliance.

Merit Consideration

In considering a variation to the control, the application is assessed against the objectives of the control as follows (which are the same objectives for the height of buildings development standard).

(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 character of the locality is predominantly one and two story dwellings, with an occasional three storey dwelling in the vicinity of the site. It can be said that the 8.5m maximum building height development standard sets out the expected scale of the development in terms of height for the desired future character of the locality and the proposed development is compliant with this development standard. It is therefore considered that the height of the building is within the expectations of the desired future character, being compliant with the development standard. A full assessment against the planning principle in regards to character is undertaken earlier in this report.

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

Comment: The proposed development has been amended to step back with the topography of the land and include open balcony and terrace features at the upper levels to break up the bulk and scale of the facade. The proposed development is an improvement over the previous design, which reduces the extent of the development which is three stories and further modulates the front building facade. The

point encroachment for the wall height are not considered to render the development excessive in bulk and scale.

The proposed development has been amended from the previous proposal to comply with floor space ratio to reduce the bulk and scale and be within the expected maximum floor area for the locality. The portion of development that is three stories is relatively minor in the context of the building (5% and 8% of the building footprint length) and is located within the subfloor, not directly visible from the street.

(c) to minimise disruption to the following—

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

Comment: The proposed development does not result in view impacts.

(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 application demonstrates that a reasonable amount of solar access is retained to the private open space and living room windows of the adjoining properties. This is explored in detail elsewhere within 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: Not applicable to this site.

The proposed development is considered to meet the objectives of the control, notwithstanding numerical non-compliance. Therefore, the variation to the control is supported in this particular circumstance.

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

DCP Control

The DCP requires the front setback to be consistent with the prevailing building line, or 6m, whichever is the greater. The prevailing building line is taken to be the average of the two adjoining properties (in this case 25 and 29 Alan Avenue). This results in a predominant building line of 7.85m. The proposed dwelling on 27 Alan Avenue is 7.715m (non-compliant by 135mm) and the building on 27A Alan Avenue is compliant at 8.815m.

However, the above setbacks are considered an appropriate 'transition' along the streetscape, as the garage on 25 Alan Avenue is set at 7.6m and forward of the proposed development on 27 Alan Avenue. The building on 27A Alan Avenue is setback further in response to the 8m setback of 29 Alan Avenue. Each dwelling is therefore setback behind the each respective adjoining property.

The DCP requires side setbacks to be provided at one third of the proposed wall height. Due to the sloping nature of the site, the side setbacks are varied across the building footprint based on the wall height of between 1.96m and 2.46m, depending on the section of building. The development provides a minimum 1.7m setback to the two adjoining existing properties and a 1.3m setback to the internal boundary between the two dwellings. In addition, an internal courtyard is proposed to provide modulation and break up the side elevation of each dwelling and this section is compliant with the side

setback.

The DCP requires windows to be setback 3m from the side boundary. The proposal includes windows 1.3m-1.7m from the side boundary. However, the proposed windows within the development have been provided with a privacy treatment where necessary to limit direct overlooking.

Merit Consideration

In considering a variation to the controls, the proposal is assessed against the objectives of the control as follows:

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

Comment: The streetscape is characterised by landscaped front setbacks with a variety of low lying trees and taller canopy trees throughout the front setback area. The proposed front setback non-compliance of 135mm for 27 Alan Avenue is not visually discernible from the street and provides an appropriate transition between the existing dwellings in the street and proposed development.

The proposed development provides a sufficient amount of deep soil area within the front setback to provide canopy tree planting to meet the landscape character of the locality, with additional planter boxes used on the upper terrace of 27 Alan Avenue and planter boxes adjoining the dwelling entrance on 27A Alan Avenue. The proposal retains a significant tree (Port Jackson Fig) in the front setback area in front of 27 Alan Avenue. Council's landscape officer has provided conditions to ensure adequate soil depth is used to facilitate planting to add to the landscaped setting. Another canopy tree is provided in front of 27A Alan Avenue to add to the landscape street character.

Objective 2) To ensure and enhance local amenity by:

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

Comment: The proposed development is found to provide a reasonable level of solar access and maintain visual privacy for the adjoining developments as discussed in detail elsewhere within this report. The proposal does not result in a view impact. The proposal does not compromise traffic safety.

In regards to appropriate space between buildings, the proposed 1.7m setback to the southern property at 29 Alan Avenue is sufficient to establish landscape planting (as proposed in the landscape plan) to soften the development and contribute to the landscape character of the development.

The eastern setback area of the dwelling on 27 Alan Avenue proposes a timber deck, to give access to the laundry and internal courtyard. The inclusion of this timber deck reduces the ability to provide meaningful deep soil planting along the boundary. Therefore, a condition of consent is recommended to delete the timber deck and stairs within the eastern side setback of 27 Alan Avenue and to replace with soft landscaping and landscape planting adjoining the boundary. A landscape pathway may be provided within the setback to provide access to the rear yard, as reflected in the proposed condition.

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

Comment: The building is configured to allow access and maintenance around the building footprint.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied*

Comment: The proposal provides a compliant amount of landscape open space and deep soil zone to provide landscape planting in the front and rear setback, as well as centrally within the internal courtyards.

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

Comment: Not applicable to this development.

Overall, the proposed development is considered to meet the objectives of the development standard and a variation to the control is supported in this particular circumstance.

4.4.5 Earthworks (Excavation and Filling)

The application is accompanied by a geotechnical report which makes recommendations to ensure the works are carried out in a way that does not impact adjoining properties. The recommendations of the geotechnical report will be incorporated in to the consent conditions.

The natural ground levels are maintained within 0.9m of the side setback area, as required by the DCP.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$24,310 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,431,000.

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

In summary, a detailed assessment has been required for the following specific issues:

- Variations to the DCP with regards to setbacks, wall height and number of stories.
- Assessment of the amended plans against the reasons for refusal of DA2019/1447; and
- The issues raised in the public submissions.

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 REV2021/0009 for Review of Determination of Application DA2019/1447 for demolition works, Torrens Title subdivision of 1 lot into 2 lots and construction of a dwelling house and swimming pool and fencing on each lot on land at Lot 81 DP 4889, 27 Alan Avenue, SEAFORTH, 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
DA-000, Issue 3	17/02/2021	Buck and Simple
DA-100, Issue 3	17/02/2021	Buck and Simple
DA-101, Issue 3	17/02/2021	Buck and Simple
DA-200, Issue 3	17/02/2021	Buck and Simple
DA-201, Issue 3	17/02/2021	Buck and Simple
DA-202, Issue 3	17/02/2021	Buck and Simple
DA-700, Issue 1	17/02/2021	Buck and Simple
DA910, Issue 1	17/02/2021	Buck and Simple
DA911, Issue 1	17/02/2021	Buck and Simple
DA-930, Issue 1	17/02/2021	Buck and Simple
DA-940, Issue 1	17/02/2021	Buck and Simple
DA-960, Issue 1	17/02/2021	Buck and Simple

Engineering Plans		
Drawing No.	Dated	Prepared By
D01, D02 and D04 Issue B, D03 and D05 Issue A	6/12/2020	NB Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment	6 February 2021	Tom Hare
Geotechnical Investigation J2403A	29 April 2021	White Geotechnical Group

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
LSCP 1676	25 October 2019	Tranquillity Landscape Design

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By

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 2019

A monetary contribution of \$24,310.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$2,431,000.00.

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

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

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

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

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

5. Security Bond

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment)

is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

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

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

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

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

6. **Amended Landscape Plan**

Amended Landscape Plans based on drawing numbers LSCP 1376 documents 1 Landscape Site Plan, 2 Front Detail, and 3 Rear Detail, shall be issued to the Certifying Authority prior to the issue of a Construction Certificate to include the following details:

- i) landscape works are to be coordinated with the architectural layout,
- ii) all nominated tree planting (*Syzygium oleosum* and *Tristaniaopsis laurina* 'luscious') within the site shall be minimum 75 litre container size, and shall be located within a 9m² deep soil area wholly within the site and be located a minimum of 3 metres from existing and proposed buildings, and other trees, and at least 2 metres from common boundaries,
- iii) tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree location may impact upon significant views,
- iv) all nominated *Rhapiolepis* species (capable of self seeding into natural bushland) shall be deleted and replaced with a similar shrub species in form and size.
- v) The landscaping along the southern (rear) boundary is to be a species that is capable of not reaching a mature height greater than 3m.

Certification shall be provided to the Certifying Authority that these amendments have been documented.

Reason: Landscape amenity.

7. **Heritage Listed Trees**

The site is adjacent to Heritage Listed Trees as identified in the Local Environmental Plan under Schedule 5, item 264. Heritage Listed Trees are to be protected from damage during construction, including:

- i) street trees located within the central median and within road verges fronting residential lots.

A Tree Protection Plan is to be prepared by an Arborist with minimum AQF Level 5 in arboriculture incorporating the following:

- ii) protection of the existing Brushbox located within the frontage of the development site and as protected under Appendix 3 of the Arboricultural Impact Assessment,
- iii) tree protection plan for other street trees within Alan Avenue incorporating commentary on general tree protection measures such as delivery of construction materials, restrictions on motor vehicles access upon the central median and road verges, and restrictions on storage upon the central median and road verges.

All tree protection measures shall be in accordance with AS4970 Protection of Trees in Development Sites.

The Tree Protection Plan for the Heritage Listed Trees shall be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of significant community assets.

8. **Amendments to the approved plans**

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

- The deck along the eastern edge of the proposed dwelling on 27 Alan Street shall be deleted and replaced with soft landscaping along the boundary. A landscaped pathway (including landscape pavers) may replace the deck.

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

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

9. **Boundary Identification Survey**

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

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

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

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

10. **On-site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater management in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003, and generally in accordance with the concept drainage plans prepared by NB Consulting Engineers, job number 1909132, dated 06/12/2019. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

11. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural

Engineer, except where site conditions permit the following:

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

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

Reason: To provide public and private safety.

12. Vehicle Crossings Application

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

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

Reason: To facilitate suitable vehicular access to private property.

13. Protection Of Heritage Listed Street Trees

- a) The street trees in Alan Avenue are heritage listed trees under Schedule 5 of Manly LEP 2013. The heritage listed trees are to be protected from damage during construction.
- b) Details of the method of protection of the trees must be submitted to the Certifying Authority by the Project Arborist for approval prior to the issue of the Construction Certificate.
- c) Annotated photographs of the trees, with particular emphasis on the lower part of the trees, must be submitted to the Certifying Authority prior to the commencement of any building work.

Reason: To ensure appropriate tree protection measures are adopted to preserve significant community heritage assets.

14. Compliance with Standards

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. Project Arborist

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection.

The Project Arborist is to supervise all demolition, excavation and construction works near all trees to be retained, including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works, unless approved by the Project Arborist.

Existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, including:

- i) demolition of existing front wall and pier & beam construction near street tree identified as number 1 (Brushbox),
- ii) demolition works and construction footing piers near existing tree identified as 2 (Port Jackson Fig),
- iii) ground, trunk and branch protection works for existing trees identified as as number 1 (Brushbox) and 2 (Port Jackson Fig),
- iv) tree protection works for existing trees identified as number 1 (Brushbox), 2 (Port Jackson Fig), 3 (Brushbox), and 6 (Macadamia),
- v) all works under the Tree Protection Plan, including protection of Heritage Listed Trees.

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifying Authority that all recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:

- i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.
- ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

16. Tree Removal Within the Property

This consent approves the removal of the following tree(s) within the property (as recommended in the Arboricultural Impact Assessment):

- i) tree numbered 4 (Bracelet Honey Myrtle)
- ii) tree numbered 5 (Narrow-leaved Black Peppermint)

Note: Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal.

Reason: To enable authorised building works.

17. Pre-Construction Dilapidation Report

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural

members and other similar items.

Properties: 25 Alan Avenue and 29 Alan Avenue

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

18. Public Liability Insurance - Works on Public Land

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

19. Protection of Rock and Sites of Significance

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

20. Protection of Existing Street Trees

All existing street trees in the vicinity of the works shall be retained during all construction stages and the street trees fronting the development site shall be protected by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on

Development Sites.

Any tree protection fencing for street trees as advised by the Project Arborist shall consist of standard 2.4m panel length to four sides unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture.

All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: Tree protection.

21. **Tree and Vegetation Protection**

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

- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period,

and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment.

The Certifying Authority must ensure that:

d) The arboricultural works listed in c) are undertaken and certified by an Arborist as compliant to the recommendations of the Arboricultural Impact Assessment.

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

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree (s) is prohibited.

Reason: Tree and vegetation protection.

22. 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.

23. Demolition Works - Asbestos

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

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

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

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

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

24. Survey Certificate

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

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

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

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

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

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

25. Vehicle Crossings

The Applicant is to construct 2 vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/2 NH and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

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

26. Landscape Completion

Landscaping is to be implemented in accordance with the approved Amended Landscape Plan.

Prior to the issue of any Occupation Certificate details (from a landscape architect or landscape designer) shall be submitted to the Principal Certifying Authority certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

27. Condition of Retained Vegetation - Project Arborist

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

28. Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian

Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

29. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

30. **Reinstatement of Kerb**

The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

Reason: To facilitate the preservation of on street parking spaces.

31. **Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)**

The units within the development are to be numbered in accordance with the Australia Post Address Guidelines (https://auspost.com.au/content/dam/auspost_corp/media/documents/Appendix-01.pdf).

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website Unit Numbering for Multi-Unit Developments Form

External directional signage is to be erected on site at driveway entry points and on buildings and is to reflect the numbering in the table provided. Unit numbering signage is also required on stairway access doors and lobby entry doors.

It is essential that all signage throughout the complex is clear to assist emergency service providers in locating a destination within the development with ease and speed, in the event of an emergency.

Details are to be submitted with any Interim/Final Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

32. **Swimming Pool Requirements**

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

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

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

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

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life.

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

33. **Landscape Maintenance**

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

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

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

34. **Geotechnical Recommendations**

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

35. **Swimming pool filter and air-conditioning units (noise)**

The swimming pool filters and air-conditioning units are not to create any noise which exceeds over 5dB (A) above the ambient background noise levels when measured from any property boundary.

Reason: Ensure reasonable acoustic amenity.

CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE

36. **Provision of Services for Subdivision**

The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan of subdivision. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure that utility services have been provided to the newly created lots.

37. **Sydney Water Compliance Certification**

The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and fees to be paid. Please make early contact with the coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

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

38. **Release of Subdivision Certificate**

The final plan of subdivision will not be issued by Council until the development has been completed in accordance with terms and conditions of the development consent.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

39. **Subdivision Certificate Application**

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, four copies of the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

40. **Title Encumbrances**

The Applicant shall ensure all easements, rights of carriageway, positive covenants and restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

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

Reason: To ensure proper management of land.