

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/1092
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<b>Responsible Officer:</b>	Julie Edwards
<b>Land to be developed (Address):</b>	Lot B DP 104229, 64 Fairlight Street FAIRLIGHT NSW 2094
<b>Proposed Development:</b>	Alterations and additions to a dwelling house including swimming pool
<b>Zoning:</b>	Manly LEP2013 - Land zoned R1 General Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Ian Alexander Donaldson Lucy Katherine Susan Shepherd
<b>Applicant:</b>	MM & J Architects Pty Ltd

<b>Application Lodged:</b>	03/10/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	17/10/2019 to 31/10/2019
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	5
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 12.6% 4.4 Floor space ratio: 16.6%
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 350,000.00
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This application seeks consent for the alterations and additions to residential dwelling including an attic addition, swimming pool within the front setback area and landscaping.

The application has been referred to the Development Determination Panel as the application exceeds the Building Height and Floor Space Ratio requirements of the Manly Local Environment Plan by more than 10%.

The proposed development does not comply with the requirements of Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height), Clause 4.1.4 Setbacks (front, side and rear) and Building Separation, Clause 4.1.5 Open Space and Landscaping and Clause 4.1.9 Swimming Pools, Spas and Water Features. These non-compliance's are discussed in detail within the report.

Each of the variations are considered reasonable and are supported by the assessing officer following merit assessment.

Public exhibition of the proposal resulted in five submission relating to the location of the swimming pool and fire pit within the front setback area, over development of the site and car parking.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable and appropriate development for the subject site.

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 seeking approval for alterations and additions to an existing dwelling house including the following:

### Attic conversion:

- New bedroom with en-suite bathroom and storage areas.
- Windows and six new skylights.
- Accessed via new internal staircase from the first- floor level.
- The proposal includes 18.75m<sup>2</sup> of additional floor space at attic level.

### External:

- Formalised landscape space within the front setback with retaining stone wall and 1250mm.
- Wooden boundary fence and sliding gate.
- Enclosed bin storage area within the front setback.
- A swimming pool and deck within the front yard.

**Planners Note:** The application, as lodged, did not comply with the requirements of the Manly LEP and DCP and was inconsistent with the streetscape. The applicant was requested to withdraw the application and resubmit plans that addressed Councils concerns with the proposal.

The applicant provided amended plans reducing the overall size of the proposed addition.

The amended plans were not re-notified as the development was substantially the same and provided a reduced environmental impact as per the requirements of the MDCP. However, details of the amended plans were provided to those who provided submissions for additional comments.

The assessment of the application is based on the above works relating to the amended plans from MM+J Architects.

## **ASSESSMENT INTRODUCTION**

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

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

**SUMMARY OF ASSESSMENT ISSUES**

- Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
- Manly Local Environmental Plan 2013 - 6.2 Earthworks
- Manly Local Environmental Plan 2013 - 6.4 Stormwater management
- Manly Local Environmental Plan 2013 - 6.8 Landslide risk
- Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
- Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
- Manly Development Control Plan - 4.1.5 Open Space and Landscaping
- Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

**SITE DESCRIPTION**

<b>Property Description:</b>	Lot B DP 104229 , 64 Fairlight Street FAIRLIGHT NSW 2094
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the southern side of Fairlight Street FAIRLIGHT.</p> <p>The site is regular in shape with a frontage of 11.035m along Fairlight Street and a depth of 21.335m. The site has a surveyed area of 235.5m<sup>2</sup>.</p> <p>The site is located within the R1 General Residential zone and accommodates a two storey dwelling.</p> <p>The site sits below the street but is relatively flat.</p> <p>The site has minimal vegetation with a small area of lawn at the front.</p>

**Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by one to two storey residential dwellings and multi-storey residential flat buildings.

Map:



**SITE HISTORY**

A search of Council’s records has revealed the following:

**BC2018/0157**

Timber decking and awning at front of the property, timber decking to the side and rear of the property, hardstand car space and timber stairs.  
Determined - 16 October 2018

**PLM2019/0117**

A Pre-lodgement Meeting was held on 20/06/2019 for Alterations and Additions to a dwelling house. In the meeting and accompanying notes, the applicant was advised that Council would not support the proposed attic conversion as it did not meet the requirements of the MLEP and MDCP. The application as lodged amended the proposal in response to Councils comments.

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

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any	See discussion on “Environmental Planning

Section 4.15 Matters for Consideration'	Comments
environmental planning instrument	Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) –	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the roof form and attic conversion.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the WManly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made	See discussion on "Notification & Submissions

Section 4.15 Matters for Consideration'	Comments
in accordance with the EPA Act or EPA Regs	Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Mr Bernard Pierre Hemberger	62 Fairlight Street FAIRLIGHT NSW 2094
Mrs Doris Anne-Marie Hemberger	62 Fairlight Street FAIRLIGHT NSW 2094
Ms Marian Kirsten Hambly	2 / 66 Fairlight Street FAIRLIGHT NSW 2094
Mrs Pauline Evelyn Hole	67 Fairlight Street FAIRLIGHT NSW 2094
Kate Farrow	2 / 66 Fairlight Street FAIRLIGHT NSW 2094

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

- Swimming pool and fire pit location - noise, fumes and safety
- Over development of the site - height, floor space ratios
- Parking

The matters raised within the submissions are addressed as follows:

- **Swimming pool and fire pit location - noise, fumes and safety**  
The submissions raised concern with the location of the proposed swimming pool and fire pit within the front setback and issues regrading noise, fumes and potential safety hazard for children in the area

Comment:

The proposed swimming pool and fire pit are to be located within the front setback of the site. The site is separated from the adjoining neighbours at nos. 62 and 66 by two access driveways to the west and a driveway to the east. As recommended condition of consent, the swimming

pool equipment is to be located within an acoustic box and shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary. This is to ensure the proposal complies with the Protection of the Environment Operations Act 1997 and will not unreasonably impact on the amenity of the adjoining properties. Noise as a result of the use of the swimming pool and fire pit is not expected to produce noise above normal residential use and what is consistent with the surrounding residential area.

The proposed swimming pool is separated from Fairlight Street by two fences being the front, side boundary fence and the proposed swimming pool fence and landscaping as shown on the plans submitted with the Development Application. The swimming pool fence is to be installed in accordance with the requirements of the Swimming Pool Act 1992 and Australian Standards. The swimming pool can also not be filled or retain water until safety fencing has been erected in accordance with the relevant legislative requirements. As a condition of the consent, the proposal must comply with the swimming pool act and Australian Standards. All aspects of the proposal will be certified for compliance with the relevant swimming pool legislation and requirements by the Certifying Authority.

The fire pit is to be used in accordance with the *Protection of the Environment Legislation Amendment Act 2014*. If the fire pit unreasonably impacts on the amenity of the adjoining properties in regards to smoke and fumes those impacted should contact Councils Environmental Health team to investigate.

- **Over development of the site - height, floor space ratios**

The submissions raised concern regarding the proposed addition was excessive, an over development of a small site, did not comply with the requirements of the Manly LEP and DCP and was out of character with the streetscape.

Comment:

The matters regarding the non-compliance with the Manly LEP and DCP have been addressed in detail elsewhere in the report. In summary, the assessment of this application has found the development achieves consistency with the underlying objectives of Clause 4.3, Clause 4.4 and Clause 4.6 of the MLEP and that compliance with the standards are unreasonable, unnecessary and that there is sufficient environmental planning grounds to justify and support the variation.

- **Parking**

A submission questioned if car parking was going to be provided on the site.

Comment:

The proposal will be maintaining one off street car parking space on the site.

## REFERRALS

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

## **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. A353081\_02 dated 9 January 2020).

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

#### **SEPP (Infrastructure) 2007**

##### Ausgrid

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

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

##### Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory

period and therefore, it is assumed that no objections are raised and no conditions are recommended.

**Manly Local Environmental Plan 2013**

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.6m	12.9%	No
Floor Space Ratio	FSR: 0.6:1	FSR: 0.71:1	16.6%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes

Detailed Assessment

**4.6 Exceptions to development standards**

Description of non-compliance:

Development standard:	Height of buildings / Floor space ratio
Requirement:	Height of Building - 8.5m Floor Space Ratio - 0.6:1
Proposed:	Height of Building - 9.5m Floor Space Ratio - 0.7:1
Percentage variation to requirement:	Height of Building - 12.9% Floor Space Ratio - 16.6%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings and Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty*

*Limited v Council of the City of Sydney [2019] NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.*

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.1 - Minimum subdivision lot size OR Clause 4.3 – Height of Buildings and Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

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

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

cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

Building Height

- *'The proposed additional bedroom within the attic level requires additional height to accommodate a BCA compliant ceiling. The additional height is not highly perceptible from the public domain or the street and would not impact upon the streetscape presentation of the dwelling.*
- *The proposal conforms to the bulk, scale and rhythm of buildings in the locality and has been designed to be read as a contemporary attic addition.*
- *The proposal generally sits comfortably within the existing roof form and is adequately recessed from the walls of the floor below.*
- *The proposal does not result in unacceptable solar impacts nor does it interrupt views.*
- *The site is flanked by a double driveway to the west and a driveway to the east. The additional space around the building creates space for the height to be accepted without impact.*

- *The proposed contemporary attic addition allows for the interpretation of the original roof form and does not dominate the existing dwelling. The over height element does not contain any windows and will not introduce any opportunities for overlooking.*
- *The site and the surrounding locality can support the increased height, as the primary controls for setbacks are generally maintained, and the proposal would not unreasonably overshadow or present a bulk and scale impact upon adjoining properties as surrounding dwellings are either located well above or well away from the proposed dwelling.'*

### Floor Space Ratio

- *'The proposed additional floor area resulting in a variation is located entirely within the attic level and does not result in an increased building footprint.*
- *The floor plate within the attic level allows for an additional bedroom and ensuite and is not an overdevelopment of the site.*
- *The site is zoned R1 General Residential, the proposal conforms to the bulk, scale and rhythm of buildings in the streetscape and therefore, it would not look out of place in the locality.*
- *The proposal does not result in undue impacts including acoustic and visual privacy, solar access, nor does it interrupt views.*
- *The site and the surrounding area can support the increased floor space rate, as the primary controls for setbacks are maintained, overshadowing does not adversely affect enjoyment of the private open space areas or the internal living rooms of the neighbouring properties. It should be noted that the site adjoins a double width driveway to its west and a driveway to the east which gives the additional floor area ample space to be absorbed into the setting without impact.'*

As mentioned in the Applicant's written request the development will not result in any unreasonable amenities impacts to neighboring properties in regards to building height. The development has been designed to ensure the visual integrity of the existing pattern of development and amenity through the use of articulation with dormer windows and recessed walls where possible. The proposed request argues that the increase in gross floor area is contained within the existing building footprint. As such there is no loss of landscape open space from the increased floor area. It is also noted by the applicant that the proposal is located within the R1 General Residential zone and that the size and scale of the attic addition are consistent with that development within the area, and as such there is no discernible or unreasonable visual impact upon the streetscape.

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposed development is located within the R1 General Residential zone. The area has a mixture of development types and styles with single storey residential dwellings and three storey residential flat buildings within the immediate vicinity. The area does not have a prevailing building height, however, the MLEP requires buildings to be a maximum of 8.5m. The existing dwelling exceeds the 8.5m height control and the proposed addition will result in a slight increase to this. The proposal involves building bulk that is separated and buffered from the surrounding streets to ensure the development is in keeping with the character of the area. The proposed building height is reasonable given the fall of the land, design of the existing dwelling and the height of other development within the area. Given the inconsistent building height and the varied roof forms for surrounding development, the non-compliance with the building height development standard would not result in an undesirable outcome for the streetscape.

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

Comment:

The proposed addition is contained within the existing building footprint, suitably articulated and has been stepped back at the front, rear and eastern elevation. As a result of the design of the addition the bulk and scale is minimised when viewed from the street and adjoining properties. It is considered that the bulk and scale of the development is suitable for the locality.

*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:

Due to the site's location it is not anticipated that the proposal will give rise to any unreasonable or detrimental view loss from surrounding properties. Therefore, it is considered that views to and from public spaces will not be significantly compromised as a result of the proposed development.

*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 subject site and adjacent properties are orientated with a north south aspect. As such, private open spaces and habitable rooms within the subject site and adjacent properties will maintain sufficient access to sunlight. As a result, the provisions for solar access will be maintained within these properties.

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

Comment:

The height of the building does not create unreasonable impacts over land in recreation or environmental protection zone, that might conflict with bush land and surrounding uses.

### **Objectives of development standard**

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

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

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

Comment:

The bulk and scale of the proposal is deemed reasonable when viewed from the street. The proposed development is suitably articulated and has been stepped in from the front, rear and eastern side elevation to ensure the bulk and scale of dwelling is minimised.

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

Comment:

The proposed development will increase landscaping on the site, particularly at the front and along the eastern boundary. The proposal will not impact upon or obscure landscape and townscape features.

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

Comment:

The landscaped character of the site will be enhanced within increased vegetation and landscaping within the front and eastern side boundary setback. The proposed development will sit appropriately within the residential setting in a manner that is consistent with the character and landscape of the area.

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

Comment:

The development is not considered to result in unreasonable impacts upon the amenity, views, access to sunlight or privacy of the adjoining dwellings

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

Comment:

The proposed development maintains a residential use within the R1 General Residential zone.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

The underlying objectives of the R2 Low Density Residential zone:

- *To provide for the housing needs of the community.*

Comment:

The proposed development retains the residential use of the site.

It is considered that the development satisfies this objective.

- *To provide for a variety of housing types and densities.*

Comment:

The proposal will maintain the site as a dwelling house, which is considered to continue to provide a variety and alternate housing typology for the local area.

It is considered that the development satisfies this objective.

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

Comment:

The proposal maintains the residential land use.

It is considered that the development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings / Floor space ratio Development Standard is assumed by the Local Planning Panel, for which Council has an exemption for dwelling houses that can be determined by the Development Determination Panel.

## **6.2 Earthworks**

The proposal will see very limited excavation of the site. Following detailed assessment of the proposed development, Council can be satisfied of the following:

- The proposal is not likely to cause disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development as listed in clause 3(a);
- The proposal is not likely to effect of the development on the likely future use or redevelopment of the land as listed in clause 3(b);
- The proposal is not likely to cause disruption to the quality, source or destination of the fill or the soil to be excavated, or both as listed in clause 3(c) & (e);
- The proposal is not likely to effect of the development on the existing and likely amenity of adjoining properties as listed in clause 3(d);
- There are no relics on the site, therefore clause 3(f) is not applicable;
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(g); and
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(h).

As such, the proposal is considered to be consistent with the provisions and the matters prescribed by sub-clauses 1, 2 and 3 of Clause 6.2 Earthworks within the MLEP 2013.

## **6.4 Stormwater management**

The proposal includes amendments to the stormwater management on the site. Following detailed assessment of the proposed development, Council can be satisfied of the following:

- The proposal is reasonably designed to maximise the use of water permeable surfaces on the land as listed in clause 3(a);
- The proposal includes on-site stormwater retention for use as listed in 3(b); and
- The proposal has been reasonably designed avoid adverse impacts on the matters listed in clause 3(c).

As such, the proposal is considered to be consistent with the matters prescribed by sub-clauses 1, 2 and 3 of Clause 6.4 Stormwater Management within Manly Local Environment Plan 2013.

A condition has been included in the consent requiring the stormwater drainage works to 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 final Occupation Certificate.

## **6.8 Landslide risk**

The site is identified as being within the G4 area on the Landslip Hazard Map, and the objectives of this clause are applicable in relation to the proposal.

The proposal (as amended) continues to have limited excavation as a result of the proposed alterations and additions.

Following detailed assessment of the proposed development, Council can be satisfied of the following:

- The proposal design has taken into account the existing layout and access as listed in clause 3 (a);
- The proposal is not likely to effect unreasonably impact the site or the surrounding sites through the design of the proposal, and the construction methods satisfying the matters as listed in clause 3(b);
- The proposal is not likely to cause disruption to the quality, source or destination of the fill or the soil to be excavated, or both as listed in clause 3(c);
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(d);
- There proposal has reasonably addressed the existing geotechnical constraints of the site as listed in clause 3(e);
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(f); and
- The proposal has been designed, sited and will be managed, to avoid adverse impacts on the matters listed in clause 4(a)(b) & (c).

The proposal is considered to be consistent with the matters prescribed by sub-clauses 1, 2, 3 and 4 of Clause 6.8 Landslide Risk, within the Manly Local Environment Plan 2013.

## Manly Development Control Plan

### Built Form Controls

Built Form Controls - Site Area: 235.5m <sup>2</sup>	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	N: 6.5m	Existing - 8.8m	35.3%	No
	S: 6.5m	Existing - 8.1m	24.6%	No
	E: 6.5m	Existing - 5.2m	N/A	Yes
	W: 6.5m	8.5m	30.7%	No
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	4.12m	64%	No
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Addition - 6.9m, consistent with prevailing setback	N/A	Yes
		Swimming pool - 1m	83.3%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	E - 2.9m	4.2m	N/A	Yes
	W - 3m	0.7m	76.67%	No
	Windows: 3m	W - 0.795m	73.7%	No
4.1.4.4 Rear Setbacks	8m	5.1m	63.7%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (129.53m <sup>2</sup> ) of site area	41.64% (98.06m <sup>2</sup> )	24.3%	No
4.1.5.2 Landscaped Area	Landscaped area 35% (34.321m <sup>2</sup> ) of open space	35.12% (34.44m <sup>2</sup> )	N/A	Yes
	1 native trees	0 trees	N/A	No
4.1.5.3 Private Open Space	18m <sup>2</sup> per dwelling	25.2m <sup>2</sup>	N/A	Yes

4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	2.8m	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0.4m	N/A	Yes
	1m curtilage/1.5m water side/rear setback	W - 3.4m E - 4.1m N - 16.8m	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	1 spaces	N/A	No

### Compliance Assessment

<b>Clause</b>	<b>Compliance with Requirements</b>	<b>Consistency Aims/Objectives</b>
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
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.1.10 Fencing	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

## Detailed Assessment

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

#### Description of non-compliance

Clause 4.1.2.1 of the Manly Development Control Plan 2013 (MDCP 2013) stipulates that the maximum wall height permitted on each elevation is as follows:

North elevation 6.5m,  
South elevation 6.5m,  
Eastern elevation 6.5 and  
Western elevation 6.5m.

The application proposes the following walls heights:

North elevation - no change,  
South elevation - no change,  
Eastern elevation 6.5m; and  
Western elevation 8.9m;

As a consequence, the proposed development fails to comply with the requirements of this Control for the western elevation.

Clause 4.1.2.3 Roof Height requires a max roof height of 2.5m. The proposal has a height of 4.1m. The existing dwelling has a roof height of 3.9m.

#### Merit Assessment

With regard to the consideration for a variation, the proposed development is considered against the underlying objectives of the Control. This control relies upon the objectives specified within Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP 2013). Accordingly, the proposal is considered against the following objectives:

- (1) (a) To provide for building heights and roof forms that are consistent with the topographic landscape, prevailing height and desired future streetscape character of the locality.

#### Comment:

The proposed development is located with R1 General Residential zone. The area has a mixture of development types and styles with single storey residential dwellings and three storey residential flat buildings within the immediate vicinity. The area does not have a prevailing building height, however, the MLEP requires buildings to be a maximum of 8.5m. The existing dwelling exceeds the 8.5m height control and the proposed addition will result in a slight increase to this. The proposal involves building bulk that is separated and buffered from the surrounding streets to ensure the development is in keeping with the character of the area. Given the inconsistent building height and the varied roof forms for surrounding development, the non-compliance with the building height development standard would not result in a undesirable outcome for the streetscape.

- (1) (b) *To control the bulk and scale of buildings.*

#### Comment:

The proposed addition is contained within the existing building footprint and has been stepped back at the front, rear and eastern elevation. As a result of the steps backs the bulk and scale is

minimised when viewed from the street and adjoining properties. It is considered that the bulk and scale of the development is suitable for the locality.

- *1(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 harbour and foreshores).*

Comment:

Due to the sites location it is not anticipated that the proposal will give rise to any unreasonable or detrimental view loss from surrounding properties. Therefore, it is considered that views to and from public spaces will not be significantly compromised as a result of the proposed development.

- (1) (d) To provide solar access to public and private open space and maintain adequate sunlight access to private open spaces and to habitable rooms of adjoining dwellings.

Comment:

The subject site and adjacent properties are orientated with a north south aspect. As such, private open spaces and habitable rooms within the subject site and adjacent properties will maintain sufficient access to sunlight. As a result, the provisions for solar access will be maintained within these properties.

- (1) (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 any any other aspect that might conflict with bushland and surrounding land uses.*

Comment:

The subject site is not located within a recreation or environmental protection zone. Furthermore, the proposed development will not result in the removal of any vegetation or trees. Therefore, the proposed development will not be detrimental to existing flora or fauna on both the subject site and surrounding properties.

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

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

##### Description of non-compliance

Clause 4.1.4 of the MDCP 2013 requires buildings to be setback:

- One third of the proposed wall height from side boundaries;
- Windows to be setback at least 3m from side boundaries; and
- Development to be setback 8m from rear boundary.

The application proposes the following non-compliant setbacks on the southern elevation:  
Western elevation - 0.7m for external wall, which fails to comply with the 3m requirement (one third wall height);

The application also proposes one (1) window on the western elevation located 0.7m from the western side boundary, which fails to comply with the 3m requirement.

The Attic addition is setback 5.1m from the rear boundary which does not comply with the 8m requirement.

Merit consideration:

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

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

Comment:

The proposed addition is located within the existing building footprint of the dwelling and has been stepped in from the front, rear and eastern side elevation. The western elevation of the proposal maintains the existing side setback established on the site but has been articulated to lessen the visual impact when viewed from the street. As a result of the topography of the site, landscaping and proposed front fence, the proposed swimming pool within the front setback will not be visible from the street and will maintain and enhance the streetscape.

- *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 proposal will ensure that adequate provisions for access to light, sunshine and air movement within the subject site and adjoining properties are maintained. The proposal is maintaining the existing setbacks established on the site and therefore will not alter the existing spatial pattern of development within the locality. The proposal will not impact road visibility or traffic conditions within the locality. Due to the height and location of the site it is unlikely the proposal will unreasonably impact on views from surrounding properties. The proposed development allows for adequate visual privacy to be retained between the subject site and neighbouring properties. The proposed windows will not unreasonably increase the potential for direct overlooking to neighboring properties.

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

Comment:

The proposed setbacks are considered to be reasonable in promoting siting flexibility due to the

constrained nature of the site.

- *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 proposed addition is within the existing building footprint and will maintain the existing setbacks established on the site. The proposed swimming pool within the front setback and associated landscaping will increase the overall landscaping on the site

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

Comment:

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

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

#### **4.1.5 Open Space and Landscaping**

Description of non-compliance

Clause 4.1.5.2 of the Manly DCP requires at least 55% of the site area be total open space. The proposed total open space 41.64%, non-compliant with the numeric control.

Merit consideration:

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

- *Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.*

Comment:

The proposed development does not require the removal of any significant vegetation and demonstrates compliance with the landscaped area requirement. The development therefore adequately retains the landscape features of the site.

- *Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.*

Comment:

The existing site provides minimal, non-compliant landscaped areas. The proposed

development achieves compliance with the landscaped area requirements and increases the landscaped areas and vegetation on the site.

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

Comment:

The proposed development will not unreasonably impact upon the amenity of the site, the streetscape and surrounding properties.

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

Comment:

The proposed development achieves compliance with the minimum landscaped area requirements, and as such water infiltration to the water table and the minimisation of stormwater runoff is achieved as a result of the proposed development.

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

Comment:

The proposed landscaping is unlikely to result in the spread of weeds and the degradation of private and public open space.

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

Comment:

The proposed development does not compromise any wildlife habitats or potential wildlife corridors.

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

#### **4.1.9 Swimming Pools, Spas and Water Features**

Description of non-compliance

The proposed swimming pool is located within the front setback of the site.

Clause 4.1.9.2 Location and Setbacks control states that swimming pools and spas must not be located within the front setback. Consideration of any exception to the required location must demonstrate that any swimming pools and/or spa and their curtilage and/or concourse:

- i) does not detract from the amenity or character of the neighbourhood; and
- ii) is a minimum distance from the front boundary equivalent to at least twice the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level.

The proposed swimming pool meets both the allowable exceptions under the control.

Merit Consideration:

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

- Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties.

Comment:

The proposed swimming pool has been located within the front setback due to site circumstances, being a front subdivided property with a battleaxe site at the rear and access along the the western boundary. The location of the swimming pool sits much lower than the street frontage and with the proposed fence and landscaping will maintain privacy between the neighbouring properties.

- *Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality.*

Comment:

The location and design of the swimming pool within the front setback will not be visual from the street. The front setback of the site sits approximately 1m lower than the council reserve. The proposed location, landscaping and design maintain the established character of the locality.

- *Objective 3) To integrate landscaping.*

Comment:

The proposal incorporates adequate landscaping on the side boundaries to minimise any impacts of the swimming pool.

- *Objective 4) To become an emergency water resource in bush fire prone areas.*

Comment:

The subject land is not classified as bush fire prone land, therefore, this objective is not applicable.

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

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly effect 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 \$3,500 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$350,000.

## **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

Council is satisfied that:

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

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

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

Accordingly

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

- Building height and floor space ratio, the proposed development breaches the control with a height of 9.5m and FSR of 0.7:1.
- Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height), the proposal does not comply with the wall height requirement along the western elevation and has a roof height greater than 2.5m.
- Setbacks (front, side and rear) and Building Separation, the proposed swimming pool is located within the front setback area and the attic addition does not comply with the western side boundary and rear boundary setback requirements.
- Total open space requirement, the proposal does not meet the 55% total open space requirement with a open space of 41.64%.
- The swimming pool is located within the front boundary setback area.

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

## RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2019/1092 for Alterations and additions to a dwelling house including swimming pool on land at Lot B DP 104229, 64 Fairlight Street, FAIRLIGHT, 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

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA02 - Issue D - Area Calculations	08.01.2020	MM+J Architects
DA03 - Issue C - Site Plan	08.01.2020	MM+J Architects
DA04 - Issue B - Excavation / Erosion & Sediment Control Plan	08.01.2020	MM+J Architects
DA05 - Issue B - Demolition Plan	08.01.2020	MM+J Architects
DA06 - Issue C - Ground Floor Plan	08.01.2020	MM+J Architects

DA07 - Issue C - First Floor Plan	08.01.2020	MM+J Architects
DA08 - Issue D - Second Floor Plan	08.01.2020	MM+J Architects
DA09 - Issue C - Sections	08.01.2020	MM+J Architects
DA10 - Issue D - Elevations	08.01.2020	MM+J Architects
DA11 - Issue B - Swimming Pool Plans	08.01.2020	MM+J Architects

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
BASIX Certificate Certificate number: A353081_02	9 January 2020	MM+J Architects

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:

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
L.SK.01 - Landscape Sketch Plan	17.09.19	Scape Design
L.SK.02 - Landscape Planting Plan	17.09.19	Scape Design

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) 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) 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.
- (j) 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.
- (k) 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 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.
- (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 \$3,500.00 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 \$350,000.00.

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](http://www.northernbeaches.nsw.gov.au)

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

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

#### 5. **Security Bond**

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security 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, 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](http://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. **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.

#### 7. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

8. **Compliance with Standards**

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

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

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

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

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

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

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

10. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

## **CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

11. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act
- Work Health and Safety Regulation
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)] and
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)]
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005.
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

12. **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.

13. **Waste Management During Development**

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

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

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

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

14. **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.

**Note:** The following Standards and Codes applied at the time of determination:

(a) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003 - Plumbing and drainage - Stormwater drainage

(b) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003/Amdt 1 - 2006 - Plumbing and drainage - Stormwater drainage

(c) National Plumbing and Drainage Code.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)

15. **Swimming Pool Requirements**

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

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

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

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

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life (DACPLF09)

16. **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 final Occupation Certificate.

Note: The following Standards and Codes applied at the time of determination:

(a) Australian/New Zealand Standard AS/NZS 3500.3 - 2003 - Plumbing and drainage - Stormwater drainage

(b) Australian/New Zealand Standard AS/NZS 3500.3 - 2003/Amdt 1 - 2006 - Plumbing and drainage - Stormwater drainage

(c) National Plumbing and Drainage Code.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)

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

### **17. Swimming Pool Equipment**

The swimming pool equipment that is capable of generation noise such as the swimming pool pump, is to be located within an acoustic box and shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure the proposal complies with the Protection of the Environment Operations Act 1997.