

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/1677
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Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 2 DP 534838, 7 Cliff Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a semi-detached dwelling
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Katherine Marian Keenan

Application Lodged:	17/12/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	13/01/2025 to 27/01/2025
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 29.06% 4.4 Floor space ratio: 9.24%
Recommendation:	Approval

Estimated Cost of Works:	\$ 1,655,000.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a semi-detached dwelling.

The application is referred to the Development Determination Panel (DDP) due to a variation greater than 10% to the building height development standard of the Manly Local Environment Plan 2013. There is also a proposed variation of the floor space ratio (FSR) development standard of the Manly Local Environment Plan 2013, however this variation is less than 10%.

Concerns raised in the one submission received predominantly relate to potential visual privacy impacts on the adjoining property to the east.

Critical assessment issues included assessment of the proposed variations to height of building and

FSR development standards, assessment of potential visual privacy impacts, as well as assessment of proposed variations to the following Manly Development Control Plan built from controls:

- 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
- Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
- Clause 4.1.7 First Floor and Roof Additions
- Clause 4.1.10 Fencing

The 4.6 request for the non-compliance with the building height standard arises from the proposed construction of alterations and additions at the roof level to create a Level 3 within the roof form. The existing roof is partially above the 8.5m height standard, with a maximum ridge line RL of 25.23m AHD. Additions will extend the roof form rearward, maintaining this maximum RL. However, as the site slopes away to the rear, the result is an increased height breach, reaching a maximum of 10.97m, a 29.06% variation to the 8.5m development standard. The proposed development does not increase the overall ridge height and additions are largely proposed to the rear, maintaining the existing street character. Most importantly, the subject dwelling is part of a pair of two semi-detached dwellings with 5 Cliff Street, and the proposed alterations and additions generally mirror previously approved and constructed alterations and additions made to this adjoining semi-detached dwelling. Therefore, the development will remain of a size and scale that will not be out of character within this environment.

The 4.6 request for the non-compliance with the FSR standard arises from a 21.8sqm increase in floorspace. The existing building has an existing FSR of 0.594:1 (209.9sqm), which is just under the FSR development standard of 0.6:1 (212.1sqm). The proposed development would increase this to 0.655:1 (231.7sqm), creating a 9.24% (19.6sqm) variation to the standard. The additional GFA is considered to be minor and will only negligibly impact the perceived overall bulk and scale as compared to the existing dwelling. The additional floorspace is mostly located within the proposed roof form, thereby reusing the existing roof to create a Level 3 within part of the existing built form. Again, the most important factor to note is symmetry with the neighbouring semi-detached dwelling at 5 Cliff Street, with the proposed alterations and additions generally reflective of previously approved and constructed alterations and additions made to this adjoining semi-detached dwelling. It is also noted more generally that this area of Manly is characterised by large and narrow dwelling houses and semi-detached dwellings, located on small allotments, many with recently approved FSR variations. Therefore, the proposed development will not be out of character within this environment.

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

PROPOSED DEVELOPMENT IN DETAIL

This Development Application seeks development consent for alterations and additions to a semi-detached dwelling. Specifically, the following is proposed:

Level 1

- Demolition of rear portion of existing dwelling and provide new addition to rear in similar location.
- Floor plan reconfigured to provide secondary entry, two bedrooms, bathroom/laundry and living room.
- New terrace to rear addition with screened walkway.

Level 2

- Demolition of rear portion of existing dwelling and provide new addition to rear in similar location.
- New tiled deck to rear elevation.
- Demolition bay window on front elevation and provide new wall with French doors.
- Reconfigure floor plan to provide bedroom with ensuite, WC, office and kitchen/dining room.

Level 3

- New first floor level to provide for bedroom, ensuite and rear balcony.

Other works

- Existing masonry wall and timber gate will be demolished and replaced with a new low sandstone wall with screening above to match the fence at No. 5 Cliff Street. A new retractable gate will be provided to provide pedestrian access.
- Upgrade existing stormwater system.

Additional information was requested in relation to Manly Local Environmental Plan 2013 Clause 4.4 Floor space ratio & Clause 4.6 Exceptions to development standards, as well as Manly Development Control Plan Clause 3.4.2 Privacy and Security, Clause 4.1.4 Setbacks (front, side and rear) and Building Separation & Clause 4.1.5 Open Space and Landscaping. Amended plans and additional information was submitted in response, which did not require re-notification (in accordance with the Northern Beaches Community Participation Plan).

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 - Zone R1 General Residential
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 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 - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.7 First Floor and Roof Additions
 Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 2 DP 534838 , 7 Cliff Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the north-western side of Cliff Street.</p> <p>The site is regular in shape with a frontage of 7.595m along Cliff Street and a depth of 45.82m. The site has a surveyed area of 353.5sqm.</p> <p>The site is located within the R1 General Residential zone and accommodates a semi-detached dwelling.</p> <p>The site slopes from the front (south-east) down towards the rear (north-west), with a fall across the site of approximately 12.9m.</p> <p>The site contains garden beds, trees and vegetation. The site is located within declared habitat for the endangered population of Long-nosed Bandicoots at North Head.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential development, primarily semi-detached dwellings and dwelling houses.</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:

Development Application No. DA0548/2002 for "Path/Wall/External Steps" was approved by former Manly Council on 16 December 2002. This application was subsequently modified on 18 January 2004.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.

Section 4.15 Matters for Consideration	Comments
<p>Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)</p>	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Manly Local Environmental Plan 2013 Clause 4.4 Floor space ratio & Clause 4.6 Exceptions to development standards, as well as Manly Development Control Plan Clause 3.4.2 Privacy and Security, Clause 4.1.4 Setbacks (front, side and rear) and Building Separation & Clause 4.1.5 Open Space and Landscaping.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
<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>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the</p>	<p>The site is considered suitable for the proposed development.</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 13/01/2025 to 27/01/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr Paul Thomas Whittard	17 Malcolm Street NARRABEEN NSW 2101

The following issue was raised in the submission:

- Visual privacy**

The submission raised concerns that the proposed development would have an unreasonable visual privacy impact on the adjoining property to the east (9A Cliff Street).

Comment:

Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for a detailed assessment of visual privacy. In summary, issue was raised with the Applicant during the assessment process regarding privacy, noting this submissions and the proximity of proposed windows and balconies to the adjoining neighbour. In response, the proposed development was amended to include additional privacy solutions. Overall, the amended proposal is considered to meet the requirements and objectives of this control in regard to the design of windows and balconies in response to privacy. Privacy screening and fixed / obscure glazing have been employed where necessary to improve on the existing privacy situation and mitigate privacy impacts to an appropriate level.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p><i>Supported, subject to conditions.</i></p> <p>The subject site is located within declared habitat for the endangered population of Long-nosed Bandicoots at North Head. As such, a threatened species 'test of significance' is required to be undertaken in accordance with Section 7.3 of NSW Biodiversity Conservation Act 2016. This assessment has been undertaken and concludes that the proposal will not result in a significant impact to the endangered population. The new fencing will be designed to maintain bandicoot access to habitat on the site.</p>
Strategic and Place Planning (Heritage Officer)	<p><i>Supported, subject to conditions.</i></p>
	<p>HERITAGE COMMENTS</p>
	<p>Discussion of reason for referral</p>
	<p>The proposal has been referred to Heritage, as the site is in the vicinity of two heritage items and adjoins a heritage item, listed in Schedule 5 of Manly LEP 2013:</p> <p>Item I95 - Group of 6 semi-detached houses - 2–12 Cliff Street, Manly</p> <p>Item I96 - House, “Strathmore” - 14 Cliff Street</p> <p>Item I2 - All stone kerbs - Manly municipal area (Along Cliff Street)</p>
	<p>Details of heritage items affected</p>
	<p>Details of the heritage items as contained within the Heritage Inventory are:</p> <p>Item I95 - Group of 6 semi-detached houses <u>Statement of Significance</u> Six Federation Queen Anne style semi-detached houses which form a unified group. <u>Physical description</u> Single storey brick semi-detached houses in the Federation Queen Anne style with hipped unglazed terracotta tile roofs with a central gablet over front entries, roughcast stucco to gablet ends, sandstone foundations, timber balustrading and fretwork and elaborately turned timber verandah posts to front verandahs.</p> <p>Item I96 - House, “Strathmore” <u>Statement of Significance</u> An intact and finely detailed representative example of a Federation Queen Anne style house. <u>Physical description</u> Single storey Federation Queen Anne style brick house with hipped and gabled slate roof with unglazed terracotta ridge capping, sandstone foundations, timber fretwork to front return</p>

Internal Referral Body	Comments		
	<p>verandah, elaborate Art Nouveau influenced leadlight to front door, fanlight and front windows. Elaborate timber fretwork to gable ends.</p> <p>Item I2 - All stone kerbs</p> <p><u>Statement of significance</u></p> <p>Stone kerbs are heritage listed.</p> <p><u>Physical description</u></p> <p>Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century.</p> <p>Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight.</p>		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	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	No	
	Consideration of Application		
	<p>The proposal seeks consent for alterations and additions to an existing two storey - late Federation semi-detached dwelling, built in the early 1900s. The subject property is not a heritage item, however, its original form is still discernible and it is located opposite the heritage listed Group of 6 semi-detached houses.</p> <p>The proposed works include internal alterations, a new first floor level addition, removal of the ground floor bay window at the street frontage and replacement of the existing front fence. The proposed first floor is in a dormer style addition on the eastern side elevation, similar to the dormer on the adjoining semi-detached dwelling at No. 5 Cliff Street, except the adjacent dormer is further set back from the street.</p> <p>It is considered that the proposed works are consistent with the character of Cliff Street as the overall form of the existing building at the Cliff Street frontage is retained, except the removal of the bay window at the entry level and the addition of a skylight at the street frontage, similar to the adjoining semi. The proposed first floor dormer style addition is almost symmetrical to the adjacent semi. The new front fence replacing the existing masonry fence is also similar to the adjoining semi, including a 2.5 m wide sliding</p>		

Internal Referral Body	Comments
	<p>gate to the eastern side of the front boundary.</p> <p>Given the proposed works are mainly confined to the rear, and there is no work proposed impacting the heritage listed stone kerbs, the impact of the proposal upon the heritage items is considered tolerable.</p> <p>Therefore, no objections are raised on heritage grounds subject to two conditions.</p> <p><u>Consider against the provisions of CL5.10 of MLEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><i>Supported, subject to conditions.</i></p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A1765426_02, issued 23 April 2025).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.97m	29.06%	No
Floor Space Ratio (Site Area: 353.5sqm)	FSR: 0.6:1 (212.1sqm)	FSR: 0.655:1 (231.7sqm)	9.24% (19.6sqm)	No

Compliance Assessment

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

Detailed Assessment

Zone R1 General Residential

The underlying objectives of the R1 General Residential zone:

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

Comment:

The proposal is for alterations and additions to a semi-detached dwelling, which will adapt the existing dwelling for the changing housing needs of the owners / occupants, and thereby the community.

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

Comment:

The proposal is for alterations and additions to a semi-detached dwelling. In adapting the existing dwelling for the changing housing needs of the owners / occupants, and thereby the community, the development will provide for a variety of housing types and densities.

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

Comment:

The proposal is for alterations and additions to a semi-detached dwelling, which will service the residential needs of residents and is located in proximity to other facilities and services to meet other day to day needs of residents

The proposed development satisfies the underlying objectives of the R1 General Residential zone.

4.6 Exceptions to development standards

Clause 4.3 Height of Buildings

The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.3 Height of Buildings

Requirement: 8.5m

Proposed: 10.97m

Percentage of variation: 29.06%

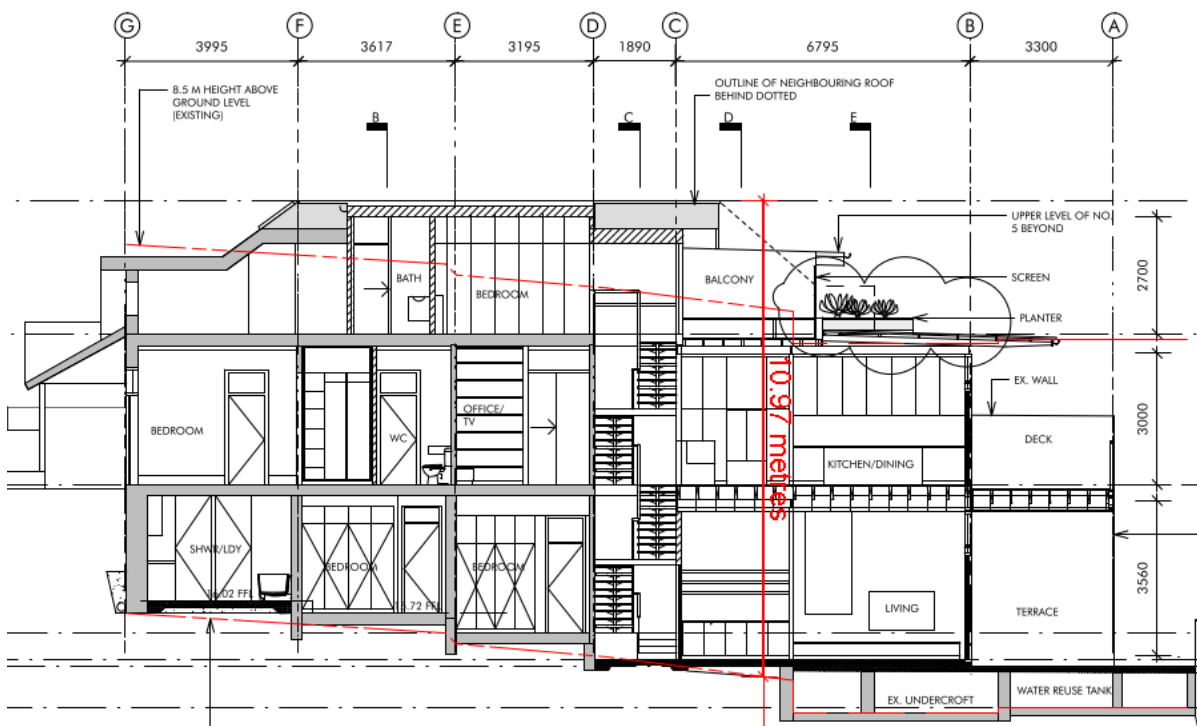


Figure 1 - Extract from Section AA (Drawing No. A 303) depicting building height.

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

(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.*

Comment:

The objectives of this clause have been considered pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979*.

Subclause (2) of this clause provides that:

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

Comment:

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

Subclause (3) of this clause provides that:

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 Height of Buildings is unreasonable or unnecessary in the circumstances of this application for the following reasons:

The 4.6 request addresses the first method outlined in *Wehbe v Pittwater Council [2007] NSWLEC 827*, that is demonstrating that the objectives of the standard are achieved despite the non-compliance with the standard. The objectives of the development standard are addressed within the 4.6 request 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,

Response from the Applicant:

"The proposed additions have been designed having regard to the existing roof form of the subject site and the built form of the adjoining semidetached dwelling at No. 5 Cliff Street.

The proposed additions merely seek to extend the existing roof ridge to the rear, consistent with the additions at No. 5 Cliff Street. The existing dwelling on the subject currently exceeds the height of building control and the extension of the existing roof ridge which in conjunction with the significant slope further exceeds the height control.

The proposed additions do not exceed the ridge height of the existing dwelling on site and does not exceed of the existing dwelling of the adjoining semi-attached dwelling, No. 5 Cliff Street.

The resultant dwelling is compatible with the prevailing building height in the immediate locality, particularly having regard to No. 3, 5 and 9 Cliff Street.

The proposed additions are located behind the existing roof form and will predominately be obscured from the public domain and streetscape as it will be largely screened by the existing dwelling. In this regard, the resultant dwelling will continue to present as single level dwelling."

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

Response from the Applicant:

"The proposed additions which result in the non-compliance with the height control, merely relates to the existing of the existing roof ridge towards the rear. The resultant dwelling is consistent the bulk and

scale with the adjoining semi-detached dwelling at No. 5 Cliff Street. The subject dwelling is part of a pair of two semi-detached dwellings with No. 5 Cliff Street and additions have designed to generally reflect the adjoining semi-detached dwelling.

The proposed additions are predominantly obscured from the public domain as it is located behind the front façade of the existing dwelling. The resultant dwelling will continue to present as a single level dwelling with rooms within the roof form. This is compatible with the existing surrounding development."

(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),*

Response from the Applicant:

"The proposed additions are located behind the existing front façade and roof form and will not obstruct views to nearby development from public spaces.

The site is well separated from the foreshore and will not impacts from the foreshore to the adjoining dwellings.

The proposed additions will not obstruct existing views from nearby residential development. In relation to properties on the opposite (southern) side of Cliff Street, with the additions not exceeding the existing ridge height, there will be no loss of views. With regard to the two adjoining properties, No. 5 and 9A Cliff Street, the proposed additions do not extend beyond the rear wall of the adjoining dwellings. The proposal will not obstruct any existing views from the adjoining properties.

The proposal will not obstruct any existing views between public spaces."

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

Response from the Applicant:

"Detailed shadow diagrams have been prepared and submitted with the application. This demonstrates only minimal additional shadow cast to a very small portion of the balcony of No. 5 Cliff Street. The proposal continues to provide a reasonable level of solar access in accordance with Council's DCP."

(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.

Response from the Applicant:

"The site is not within a recreation or conservation zone and as such this clause does not apply."

The arguments provided by the applicant in response to each objective are generally concurred with. The proposed development does not increase the overall ridge height of the existing semi-detached dwelling. Rather the proposal seeks to alter and extend the existing roof form rearward, which due to the sloping site results in an increased height breach. The roof form alterations and additions are largely obscured from the street by being located behind the existing roof. Most importantly, the proposal development will be consistent with the bulk and scale of the adjoining semi-detached dwelling at 5 Cliff Street. The subject dwelling is part of a pair of two semi-detached dwellings with 5 Cliff Street and the proposed alterations and additions generally reflect previously approved and

constructed alterations and additions made to this adjoining semi-detached dwelling. Overall the objectives of the standard are achieved despite the non-compliance with the standard.

(b) 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.'

The Clause 4.6 Request argues, in part:

"The site is currently occupied by a two storey dwelling which exceeds the maximum height control and is a part of a pair of semi-detached dwellings with No. 5 Cliff Street. The proposal merely seeks to provide an addition similar to that constructed at No. 5 Cliff Street which results in the non-compliance. The proposed development is consistent with the objectives of the zone and objectives of the building height control. The non-compliance does not result in any adverse impacts on the adjoining properties. The non-compliance does not result in any loss of views. The area of exceedance does not contribute to visual bulk."

The arguments provided by the applicant are general concurred with. The proposal seeks to construct alterations and additions continuing the existing maximum RL, located behind the existing roof form. The proposal is considered to be commensurate to surrounding built form, noting very similar previously approved and constructed alterations and additions made to the adjoining semi-detached dwelling at 5 Cliff Street. Furthermore, as alterations and additions, the proposal is designed to adapt an existing structure, with existing non-compliances. Flexibility in the application of the development standard will allow adaptation and reuse of existing built form for the changing needs of owners and occupants and promote ecologically sustainable development.

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.3 Height of Buildings for the following reasons:

- 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, thereby satisfying objects 1.3(c) and (g) of the EPA Act.
- Flexibility in the application of the development standard will allow adaptation and reuse of existing built form for the changing needs of owners and occupants. This promotes ecologically sustainable development and the orderly development of land, thereby satisfying objects 1.3(b) and (c) of the EPA Act.

Public Interest:

Matters relevant to public interest in respect of the development are considered in the relevant sections of this report as per Section 4.15(1)(e) of the EPA Act.

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the MLEP 2013.

It is considered on balance, that having regard to the particular circumstances, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

Clause 4.4 Floor Space Ratio

The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.4 Floor Space Ratio

Requirement: 0.6:1 (212.1sqm)

Proposed: 0.655:1 (231.7sqm)

Percentage of variation: 9.24% (19.6sqm)

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

(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.*

Comment:

The objectives of this clause have been considered pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979*.

Subclause (2) of this clause provides that:

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

Comment:

Clause 4.4 Floor Space Ratio is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.4 Floor Space Ratio is unreasonable or unnecessary in the circumstances of this application for the following reasons:

The 4.6 request addresses the first method outlined in *Wehbe v Pittwater Council [2007] NSWLEC 827*, that is demonstrating that the objectives of the standard are achieved despite the non-compliance with the standard. The objectives of the development standard are addressed within the 4.6 request as follows:

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

Response from the Applicant:

"The proposed additions have been designed having regard to the existing roof form of the subject site and the built form of the adjoining semi-detached dwelling at No. 5 Cliff Street.

The proposed additions merely seek to extend the existing roof ridge to the rear, consistent with the additions at No. 5 Cliff Street. The additional floor area is contained at the rear of the site and within the extended roof form. This portion of the additions are predominantly obscured from the street given the slope of the site and the existing built form.

The proposed additions provide for a development, when viewed from Cliff Street, that is consistent and matches the existing adjoining semi-detached dwelling at No. 5 Cliff Street.

The resultant dwelling is compatible with the floor area in the immediate locality, which comprises a number of multi-dwelling developments and large dwelling houses.

The proposed additions are located behind the existing roof form and will predominately be obscured from the public domain and streetscape as it will be largely screened by the existing dwelling. In this regard, the resultant dwelling will continue to present as single level dwelling when viewed from Cliff Street."

(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,

Response from the Applicant:

"The proposed additions which result in the non-compliance with the floor space ratio control, is consistent with the bulk and scale with the adjoining semi-detached dwelling at No. 5 Cliff Street. The subject dwelling is part of a pair of two semi-detached dwellings with No. 5 Cliff Street and additions have designed to generally reflect the adjoining semi-detached dwelling.

The proposed additions are predominantly obscured from the public domain as it is located behind the front façade of the existing dwelling. The resultant dwelling will continue to present as a single level dwelling with rooms within the roof form. This is compatible with the existing surrounding development.

The additional floor area and the resultant dwelling will not obscure any important landscape or townscape features and is therefore consistent with this objective."

(c) to maintain an appropriate visual relationship between new development and the existing character

and landscape of the area,

Response from the Applicant:

"The proposed additions, including the non-compliance with the floor space ratio controls, results in a development that is appropriate with regard to the adjoining development as is depicted in the streetscape elevations above. The dwelling will continue to present as a single level dwelling with rooms within the roof form when viewed from the street frontage and public domain. The additional roof form is contained predominantly within the roof form and as such does not result in unreasonable bulk. The upper level is provided with an increased side boundary setback (at least 3.03m) which ensures sufficient visual separation to the adjoining built form.

The proposed additions do not reduce the existing landscaped area, rather it provides for some additional landscaping in the rear yard. The proposal does not require the removal of existing vegetation."

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

Response from the Applicant:

"The proposed additions are located behind the existing front façade and roof form and will not obstruct views to nearby development from public spaces.

The site is well separated from the foreshore and will not impacts from the foreshore to the adjoining dwellings.

The proposed additions will not obstruct existing views from nearby residential development. In relation to properties on the opposite (southern) side of Cliff Street, with the additions not exceeding the existing ridge height, there will be no loss of views. With regard to the two adjoining properties, No. 5 and 9A Cliff Street, the proposed additions do not extend beyond the rear wall of the adjoining dwellings. The proposal will not obstruct any existing views from the adjoining properties.

The proposal, and in particular the additional floor area, will not obstruct any existing views between public spaces.

Shadow diagrams have been submitted with the application demonstrating that the proposal continues to provide sufficient solar access to the adjoining properties.

The proposal, and in particularly, the additional floor area will not result in a loss of privacy to the adjoining properties. The proposal incorporates considered window placement, privacy screens and glazing in conjunction with increased setbacks to the upper level to ensure visual separation."

(e) to provide for the viability of Zone E1 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.

Response from the Applicant:

"The site is not within E1 zone and as such this objective does not apply."

The arguments provided by the applicant in response to each objective are generally concurred with. The proposed development seeks to create habitable space within a roof area by extending the existing roof form. Most importantly, the proposal development will be consistent with the bulk and scale of the adjoining semi-detached dwelling at 5 Cliff Street. The subject dwelling is part of a pair of two semi-detached dwellings with 5 Cliff Street and the proposed alterations and additions generally

reflect previously approved and constructed alterations and additions made to this adjoining semi-detached dwelling. When viewed from the street or adjoining properties, the proposed development will visual match that already located at 5 Cliff Street and will not be out of character within the locality. Overall the objectives of the standard are achieved despite the non-compliance with the standard.

(b) 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.'

The Clause 4.6 Request argues, in part:

"The site is currently occupied by a two storey dwelling and is a part of a pair of semi-detached dwellings with No. 5 Cliff Street. The proposal merely seeks to provide an addition similar to that constructed at No. 5 Cliff Street which results in the non-compliance. The proposed development is consistent with the objectives of the zone and objectives of the floor space ratio control. The non-compliance does not result in any adverse impacts on the adjoining properties. The non-compliance does not result in any loss of views. The area of exceedance does not contribute to unreasonable visual bulk."

The arguments provided by the applicant are general concurred with. The proposal is considered to be commensurate to surrounding built form, noting very similar previously approved and constructed alterations and additions made to the adjoining semi-detached dwelling at 5 Cliff Street. Furthermore, as alterations and additions, the proposal is designed to adapt an existing structure, with existing non-compliances. Flexibility in the application of the development standard will allow adaptation and reuse of existing built form for the changing needs of owners and occupants and promote ecologically sustainable development.

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.4 Floor Space Ratio for the following reasons:

- 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, thereby satisfying objects 1.3(c) and (g) of the EPA Act.
- Flexibility in the application of the development standard will allow adaptation and reuse of existing built form for the changing needs of owners and occupants. This promotes ecologically sustainable development and the orderly development of land, thereby satisfying objects 1.3(b) and (c) of the EPA Act.

Public Interest:

Matters relevant to public interest in respect of the development are considered in the relevant sections of this report as per Section 4.15(1)(e) of the EPA Act.

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the MLEP 2013.

It is considered on balance, that having regard to the particular circumstances, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 353.5sqm	Requirement	Proposed	% Variation	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings (1 dwelling per 250sqm)	1	-	Yes
	Dwelling Size: 117sqm (4 bedroom, 4 bathroom)	231.7sqm	-	Yes
4.1.2.1 Wall Height	East: 7.8m (based on gradient 1:4.5)	7.7m	-	Yes
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	3m	20%	No but existing
	Pitch: maximum 35 degrees	39 degrees	11.4%	No but existing
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	3.7m, consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East: L1: 1.4m (based on 4.1m wall height) L2 Wall: 2.6m (based on 7.7m wall height) L2 Balcony Planter: 1.9m (based on 5.8m wall height) L3 Dorma: 3.5m (based on 10.4m wall height) L3 Balcony: 3.1m (based on 9.3m wall height)	L1 Wall: 2.1m - 1.9m L2 Wall: 2.1m - 1.9m L2 Balcony Planter: 2.1m - 1.5m L3 Dorma: 3.1m - 3m L3 Balcony: 3.1m	- Max. 26.9% Max. 21.1% Max 14.3% -	Yes No but existing No No Yes
	No new or altered windows within 3m of a side boundary	9 new or altered within 3m of a side boundary	N/A	No

4.1.4.4 Rear Setbacks	8m	20.6m		Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (194.425sqm)	69% (244sqm)	-	Yes
	No more than 25% of open space above ground (61sqm)	16.6% (40.6sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (85.4sqm)	25% (60.9sqm)	28.7% (24.5sqm)	No but existing
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	0 spaces	100%	No but existing

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
3.6 Accessibility	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.3 Floor Space Ratio (FSR)	N/A	N/A
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)	No	Yes
4.1.7 First Floor and Roof Additions	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Description of non-compliance

One submission has raised privacy concerns regarding the potential impact on the adjoining property to the east (9A Cliff Street).

The assessment of potential privacy impacts of a proposal requires consideration of the requirements and objectives of this Clause, as well as planning principals established within *Meriton v Sydney City Council [2004] NSWLEC 313*, which hold that when applying judgment to assess privacy impacts, consideration should be given to density, separation, use and design.

This Clause requires the following:

3.4.2.1 Window Design and Orientation

- a) Use narrow, translucent or obscured glass windows to maximise privacy where necessary.*
- b) When building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.*

3.4.2.2 Balconies and Terraces

- a) Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.*
- b) Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.*

Issue was raised with the Applicant during the assessment process regarding privacy, noting this

submissions and the proximity of proposed windows and balconies to the adjoining neighbour. In response, the proposed development was amended to include additional privacy solutions. These include:

- Fixed and obscure glazing on windows across the eastern elevation where appropriate, particularly at the stairwell.
- Notation of screening details for the proposed Level 1 Deck fixed privacy screen.
- Fixed privacy screening to the Level 2 Deck and adjoining windows of the Level 2 Kitchen / Dining and notation of the screening details. This screen extends approximately half the depth of the deck, which is appropriate given the relative positioning of the two dwellings and considering it is an improvement to the currently unobscured view from this deck. It also allows the Applicant to maintain views towards the north.
- Shrinking of the Level 3 Deck and incorporation of a greater non-trafficable planter area. The roof form has also been altered to provide privacy screening to the west via the roof form itself. These changes move the trafficable area of the deck away from the eastern side boundary and adequately screen overlooking to the east, whilst preserving views to the north. The smaller deck size also lowers usability and therefore potential traffic / dwell time at the Level 3 deck.

Overall, the amended proposal is considered to meet the requirements of this control in regard to the design of windows and balconies in response to privacy. These amendments ensure that potential privacy impacts are mitigated. Any remaining impacts are considered to be reasonable within the context of this residential environment. Nonetheless, for the benefit of a full assessment, the proposed development is considered against the underlying Objectives of the Control as follows:

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

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

Comment:

As above, the proposed development is considered to meet the requirements of this control in regard to the design of windows and balconies in response to privacy. As such, loss of privacy to adjacent and nearby development has been adequately minimised by appropriate design.

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

Comment:

The proposed development will not unreasonably impact access to light and air. Outlook and views are adequately balanced.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal will not compromise neighbourhood security or casual surveillance of the street frontage.

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.

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

Description of non-compliance

Clause 4.1.2.1 Wall Height stipulates that the wall height shall not exceed 7.8m (based on gradient 1:4.5) at the east elevation. With a wall height of 7.7m (noting that this excludes Level 3 as this level is located in the roof form), the proposed development complies with this control.

Clause 4.1.2.2 Number of Storeys stipulates a number of stories limit of two (2) storeys for this site. The proposed development will create a third storey (3) within the roof form, therefore creating a non-compliance with this control.

Clause 4.1.2.3 Roof Height stipulates a roof height control of 2.5m and a roof pitch control of 35 degrees. The roof form has a height of 3m and a pitch of 39 degrees. However, the roof form is an existing feature and is only added to by the proposed development.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. The proposal has been assessed against these objectives under clause 4.6, above in this report. In summary, the proposal is considered to meet the objectives of the height of buildings development standard.

Having regard to the above, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / 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.

4.1.3 Floor Space Ratio (FSR)

The provisions of this Clause providing for variation of the FSR development standard for undersized allotments is not applicable in this case, as the subject site is compliant with the minimum lot size control. Refer to the section of this report on MLEP 2013 Clause 4.6 Exceptions to Development Standards for a detailed assessment of the proposed FSR variation.

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

Description of non-compliance

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages stipulates that the setbacks between any part of a building and the side boundary must not be less than one third of the wall height. At the eastern side boundary, the following setbacks are required and exhibited:

- L1: 1.4m (based on 4.1m wall height), 2.1m - 1.9m exhibited, complies.
- L2 Wall: 2.6m (based on 7.7m wall height), 2.1m - 1.9m exhibited, a maximum 26.9% variation.
- L2 Balcony Planter: 1.9m (based on 5.8m wall height), 2.1m - 1.5m exhibited, a maximum 21.1% variation.
- L3 Dorma: 3.5m (based on 10.4m wall height), 3.1m - 3m exhibited, a maximum 14.3% variation.
- L3 Balcony: 3.1m (based on 9.3m wall height), 3.1m exhibited, complies.

Notably, Level 1 and Level 2 dwelling wall side setbacks are existing.

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages also requires that no new windows be located within 3m of side boundaries. The proposed development includes replacement / alteration of existing windows within 3m of side boundaries, and the creation of new windows within 3m of side boundaries. There are a total of nine (9) new or altered windows within 3m of a side boundary. Nonetheless, the proposed windows are considered acceptable from a visual privacy perspective (refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for a detailed assessment of visual privacy).

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 alterations and additions maintain the established existing building setbacks. Proposed works will add to and alter some of these walls, as well as construct a new Level 3 with the roof form, which will create some side setback non-compliances. However, these alterations and additions are primarily located to the rear of the existing dwelling and will not significantly impact the desired spatial proportions of the street, the street edge and the landscape character of the street. Furthermore, the proposed development has been designed to generally reflect the previously approved and constructed alterations and additions made to the adjoining semi-detached dwelling at 5 Cliff Street, exhibiting a similar built form to the streetscape where visible. Windows on the side elevations proposed within 3m of side boundaries do not compromise the desired streetscape. Given these factors, the streetscape is not considered to be adversely impacted.

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 is considered to meet the requirements of relevant clauses of the MDCP relating to amenity. The development is not considered to create unreasonable overshadowing on public or private spaces, or to unreasonably impact views from or to public or private spaces. The proposal is also considered to maintain existing streetscape characteristics and not to detrimentally impact on traffic conditions or the privacy of surrounding dwellings. Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for a detailed assessment of visual privacy. Overall, the amended proposal is considered to meet the requirements and objectives of this control in regard to the design of windows and balconies in response to privacy.

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

Comment:

Flexibility is required in the siting of alterations and additions to existing structures as the proposal must contend with existing non-compliances. By allowing the adaption and alteration of existing structures to suit the changing needs of owners and occupants, sustainability is encouraged. The proposed development is not expected to result in any unreasonable amenity impacts on surrounding properties and it has demonstrated it meets the underlying objectives of controls where non-compliance arise. As such, flexibility is warranted in this instance.

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:

Refer to the section of this report on MDCP Clause 4.1.5 Open Space and Landscaping for discussion of total open space, landscaped area and landscaping. In summary, the proposal is non-complaint with the required level of landscaped area. However, this is an existing feature of the site and is not reduced by the proposed development as all proposed works are within the footprint of existing hard surfaces.

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

Comment:

The site is not classified as 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

The subject site is located within Residential Open Space Area OS3, which requires at least 55% (194.425sqm) of the site to be open space. In addition, at least 35% (85.4sqm) of the proposed total open space is to be landscaped area and no more than 25% (61sqm) of total open space can be provided above ground level.

The proposed development exhibits the following:

- Total open space: 69% (244sqm) of site area, complies.
- Total open space above ground: 16.6% (40.6sqm), complies.
- Landscaped area: 25% (60.9sqm) of total open space, a 28.7% (24.5sqm) variation to the control.

It is noted that these site features are largely result of the existing site layout. The proposed development only increases total open space and total open space above ground through the addition of above ground deck areas. The proposed development does not change the level of landscaped area provided at the site as all proposed works are within the footprint of existing hard surfaces.

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 proposal will not result in the removal of any significant topographical or landscape features, given all works are located within the footprint of existing hard surfaces. In this regard, the proposal retains and augments important landscape features and vegetation, in that it does not worsen the existing situation.

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:

Existing trees, vegetation and landscaped area are retained.

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

Comment:

The proposal does not result in any unacceptable impacts to amenity including sunlight, privacy, and views. Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for a detailed assessment of visual privacy. Overall, the amended proposal is considered to meet the requirements and objectives of this control in regard to the design of windows and balconies in response to privacy. The proposal is consistent with the surrounding area and streetscape character.

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

Comment:

An acceptable amount of soft landscaping is provided on site to minimise stormwater runoff and maximise water infiltration, considering the existing landscaping situation is maintained.

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

Comment:

The proposed development is not likely to increase the spread of any weeds, or degradation of private or public open space.

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

Comment:

The subject site is located within declared habitat for the endangered population of Long-nosed

Bandicoots at North Head. Council's Bushland and Biodiversity team has reviewed the proposed development and concluded that the proposal will not result in a significant impact to the endangered population. The team has recommended suitable conditions of consent to ensure fencing is passable to native fauna. As such, the proposed works are not expected to significantly affect wildlife habitat. Existing wildlife corridors will be retained.

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.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

For semi-detached dwellings this Clause requires the provision of two (2) off-street parking spaces. As existing, the semi-detached dwelling provides nil (0) off-street parking spaces and this arrangement is not proposed to be changed.

Whilst the proposed development is numerically non-compliant with Schedule 3 of the MDCP 2013 that requires two (2) off-street parking spaces, the provision of any additional parking spaces on the subject site is not achievable within the existing context, nor expected in this instance considering the nature of the proposed alterations and additions and the existing site context. Requiring the provision of parking at the site would negatively impact the existing built form and streetscape. As this non-compliance is existing and unchanged, further merit assessment is not required, in this instance.

4.1.7 First Floor and Roof Additions

MDCP Clause 4.1.7.2 states as follows:

"Habitable rooms will be permitted in a roof structure subject to compliance with all other controls in this plan and the LEP including height and FSR in the LEP. However alterations and additions to a building which existed prior to 2007 may involve habitable rooms within an existing roof structure that is above the maximum wall and roof height; (see paragraph 4.1.2 of this plan) subject to the rooms not detracting from the character or integrity of the roof structure and not adversely impacting on the amenity of adjacent and nearby properties and the streetscape. Similarly, alterations and additions which exceed the maximum height must not increase the overall height of the building. Consideration may be given in this paragraph to the application of LEP clause 4.6 in considering exceptions to the LEP Building Height standard."

The proposal includes the addition of habitable space within a roof structure of a dwelling house built before 2007. However, the proposal exceeds the building height development standard and technically increases the the overall height of the building (due to sloping land at the rear). The proposal also does not comply with the FSR development standard of the MLEP 2013. Nonetheless, both the building height and FSR development standard non-compliances are addressed within the section of this report on MLEP 2013 Clause 4.6 Exceptions to development standards.

Notwithstanding the non-compliances, it is considered that the habitable rooms within the roof structure have been appropriately designed to be within the existing building footprint, do not detract from the character or integrity of the roof structure and do not adversely impact on the amenity of adjacent and nearby properties and the streetscape. The proposal also seeks to closely replicate previously approved and constructed alterations and additions at the adjoining semi-detached dwelling at 5 Cliff Street, demonstrating consistency with adjacent built form. Furthermore, the effect of this Clause in promoting the creation of habitable rooms in the roof structure should be considered in

regards to the height of buildings development standard non-compliance, given the building was built prior to 2007 and the ridge height RL is maintained.

4.1.10 Fencing

Description of non-compliance

Under Clause 4.1.10, fences between the front street boundary and the building are to be no more than 1m high above ground level at any point. The fence height may be increased up to 1.5m where the fence is open / transparent for at least the part of the fence higher than 1m.

The proposed development includes demolition of the existing brick wall on the front boundary and replacement with new low sandstone wall with screening over. The low wall is up to 0.8m high and the screening is up to 1.8m high. A new sliding gate is also proposed, which is up to 1.5m high. The overall design is similar in style to that currently exhibited by the adjoining semi-detached dwelling at 5 Cliff Street, which also has a low wall topped by open screening with the same relative heights.

The low wall is compliant with the 1m front fence height control. However, the screening above the wall is over the stipulated 1.5m height for open / transparent elements.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying objectives of the control. The control relies upon the objectives of MDCP Clause 3.1 Streetscapes and Townscapes.

Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.

Comment:

Notwithstanding the variation, the fencing design is considered to be adequate, sufficiently low in height, open / transparent above 1m, and in keeping with the streetscape character (particularly noting that it seeks to replicate the fencing style exhibited by the adjoining semi-detached at 5 Cliff Street). The proposed variation is relatively minor. Negative visual impacts are adequately minimised.

Objective 2) To ensure development generally viewed from the street complements the identified streetscape.

Comment:

The proposed frontage fence will not be out-of-character with the locality and will complement the streetscape, whilst still providing a sense of privacy and security to the front porch of the subject site. It is noted that Council's Heritage team has recommended a condition of consent requiring details of the new front fence, including the height, material and colour, to be provided to Council for approval prior to the issue of the Construction Certificate. This will ensure the new fence is appropriate within the heritage context.

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

Comment:

The proposed frontage fence is reasonable in this circumstance and therefore a soft landscape alternative is not required in this instance.

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 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 2024

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2024.

A monetary contribution of \$16,550 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,655,000.

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

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

Council is also satisfied that the Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify variation of the development standard contained within Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a semi-detached dwelling, has been referred to the Development Determination Panel (DDP) due to a variation greater than 10% to the building height development standard of the Manly Local Environment Plan 2013. There is also a proposed variation of the floor space ratio (FSR) development standard of the Manly Local Environment Plan 2013, however this variation is less than 10%.

Privacy concerns raised in the one submission received have been addressed and resolved via amendments made to the plans during the assessment process.

Critical assessment issues included assessment of the proposed variations to height of building and FSR development standards, assessment of potential visual privacy impacts, and assessment of proposed variations to the following Manly Development Control Plan built from controls:

- 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
- Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
- Clause 4.1.7 First Floor and Roof Additions
- Clause 4.1.10 Fencing

Overall, the development is considered to be of a design that mirrors previously approved and constructed alterations and additions to the adjoining semi-detached dwelling at 5 Cliff Street, thereby demonstrating that the proposal is consistent with the existing streetscape and character of the area. The development, as amended during the assessment process, will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

REASON FOR DETERMINATION

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 the development standards contained within Clause 4.3 Height of Buildings & Clause 4.4 Floor Space Ratio, pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013, because the Applicant’s written requests have adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2024/1677 for Alterations and additions to a semi-detached dwelling on land at Lot 2 DP 534838, 7 Cliff Street, MANLY, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A 201	B	Proposed Site Plan	Barbara Bagot Architecture	22 April 2025
A 202	B	Level 1 Plan	Barbara Bagot Architecture	22 April 2025
A 203	B	Level 2 Plan	Barbara Bagot Architecture	22 April 2025
A 204	B	Level 3 Plan	Barbara Bagot Architecture	22 April 2025
A 205	B	Level 1 Demolition Plan	Barbara Bagot Architecture	22 April 2025
A 206	B	Level 2 Demolition Plan	Barbara Bagot Architecture	22 April 2025
A 301	B	East Elevation	Barbara Bagot Architecture	22 April 2025
A 302	B	South and North Elevation	Barbara Bagot Architecture	22 April 2025

A 303	B	Proposed Section AA	Barbara Bagot Architecture	22 April 2025
A 304	B	Sections BB + CC	Barbara Bagot Architecture	22 April 2025
A 304	B	Sections DD + EE	Barbara Bagot Architecture	22 April 2025

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. A1765426_02	-	BASIX Certificate Centre	23 April 2025
Waste Management Plan - 7 Cliff Street, Manly	-	-	November 2024

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

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Referral - Ausgrid	Undated

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

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

3. **Prescribed Conditions**

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

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

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

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. General Requirements

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,

- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) 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.
- (d) At all times after the submission of the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (e) 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.
- (f) 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.
- (g) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (i) 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.

- (j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (l) 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.
- (m) 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.
- (n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (o) Should any construction cranes be utilised on site, they are to be fitted with bird deterrents along the counterweight to discourage raptor (bird) nesting activity. Deterrents are to remain in place until cranes are dismantled. Selection of deterrent methods is to be undertaken in accordance with the recommendations of a suitably qualified ecologist.
- (p) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

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

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

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$16,550.00 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 (as amended).

The monetary contribution is based on a development cost of \$1,655,000.00.

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

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

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

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

6. **Security Bond**

A bond (determined from cost of works) of \$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 Certifier prior to the issue of the Construction Certificate.

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. Fencing for Wildlife Passage

Any new permanent fencing (with the exception of swimming pool fencing) is to be made passable to native fauna through the provision of access gaps or raised fencing to provide appropriate ground clearance. Any access gaps are to be a minimum of 150mm wide x 100mm high at ground level and distance between gaps is not to exceed more than 6 metres.

Plans are to be certified as complying with this condition and provided to the Certifier prior to issue of the Construction Certificate.

Reason: To preserve wildlife corridors.

8. Stormwater Drainage Disposal

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

9. Boundary Identification Survey

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

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

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

10. **Front fence**

Details of the new front fence including the height, material and colour should be provided to Council for approval prior to the issue of the Construction Certificate.

Reason: To ensure the new fence is appropriate within the heritage context.

11. **Compliance with Standards**

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

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

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

12. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

13. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier 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.

Property:

- 5 Cliff Street, Manly

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier 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 Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report

is required.

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 Certifier prior to the commencement of any works on site.

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

14. **Sediment and Erosion Controls**

For developments that include more than 2500sqm of disturbance:

A Soil and Water Management plan (SWMP), in accordance with section 2.3 of the Blue Book, must be prepared and certified by a suitably qualified professional.

For sites larger than 250sqm and less than 2500sqm of disturbance:

An Erosion and Sediment Control Plan (ESCP) must be prepared by a suitably qualified person in accordance with the following considerations and documents:

- Sites that have slopes exceeding 20% (measured in any direction across the site), and/or where works are within the high-water mark or adjacent to a waterway or watercourses are considered environmentally sensitive areas. These sites require a site-specific ESCP which must be prepared and certified by a suitably qualified professional,
- The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate – Volume 1, 4th Edition (2004)' (the Blue Book), and
- The 'Guidelines for Erosion and Sediment Control on Building Sites' (Department of Planning, Housing and Infrastructure).

The ESCP must include the following as a minimum:

- Site Boundaries and contours,
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application),
- Location of site access, proposed roads and other impervious areas (e.g. parking area and site facilities),
- Existing and proposed drainage patterns with stormwater discharge points,
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected,
- North point and scale,
- Type of erosion control measures to divert and slow run-off around and within the site.

Environmentally sensitive areas (i.e. Sites that have slopes exceeding 20% and/or where works are within the high-water mark or adjacent to a waterway or watercourses) must also consider:

- Identify and mark any environmentally sensitive areas on and immediately next to the site and how you will protect these, including any appropriate buffer zones (for

- example, marking them out as 'no-go' areas),
- Details on vegetation you will clear, as well as areas of vegetation you will keep (mark no go areas),
- Detail on soil information and location(s) of problem soil types, especially dispersive soils and potential or actual acid sulfate soils,
- Location of any natural waterways that could receive run-off and how these will be protected these from run-off.

For sites smaller than 250sqm or where the disturbance is less than 50sqm:

Run-off and erosion controls must be implemented to prevent soil erosion, water pollution or the discharge of loose sediment on the surrounding land by:

- Diverting uncontaminated run-off around cleared or disturbed areas, and
- Erecting a silt fence and providing any other necessary sediment control measures that will prevent debris escaping into drainage systems, waterways or adjoining properties, and
- Preventing the tracking of sediment by vehicles onto roads, and
- Stockpiling top soil, excavated materials, construction and landscaping supplies and debris within the lot.
- Identifying any environmentally sensitive areas on and immediately next to the site, and demonstrating how these will be protected (for example, by designation as no-go areas).

Details demonstrating compliance with the relevant requirements above are to be submitted to the Certifier, and the measures implemented, prior to the commencement of works.

Reason: To ensure no substance other than rainwater enters the stormwater system and waterways.

DURING BUILDING WORK

15. **Wildlife Protection**

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

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

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

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

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

17. **Survey Certificate**

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

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

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

18. **Maintenance of Sediment and Erosion Controls**

Erosion and sediment controls must be adequately maintained and monitored at all times, particularly surrounding periods of rain, and shall remain in proper operation until all development activities have been completed and the site is in a state where no substance other than rainwater can enter the stormwater system and waterways.

All sediment control measures must be maintained at, or above, their design capacity.

Where more than 2500 square metres of land are disturbed or if the site has a slope of more than 20%, a self-auditing program must be developed for the site. A site inspection using a log book or inspection test plan (ITP) must be undertaken by the site supervisor:

- at least each week
- immediately before site closure
- immediately following rainfall events that cause runoff.

Details demonstrating compliance must be provided to the Certifier during demolition and building works.

Reason: Protection of the receiving environment and to ensure no substance other than rainwater enters the stormwater system and waterways.

19. **Heritage listed sandstone kerbs**

The heritage listed sandstone kerbs are to be protected at all times during demolition and construction works on site.

Reason: To ensure the current contribution of the heritage listed sandstone kerbs to the streetscape is maintained.

20. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

21. **No Weeds Imported On To The Site**

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

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

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

22. Waste Disposal Verification Statement

On completion of demolition work:

- a signed statement must be submitted to the Certifier verifying that demolition work, and any recycling of materials, was undertaken in accordance with the waste management plan approved under this consent, and
- if the demolition work involved the removal of asbestos, an asbestos clearance certificate issued by a suitably qualified person, must be submitted to the Certifier within 14 days of completion of the demolition work.

Reason: To provide for the submission of a statement verifying that demolition waste management and recycling has been undertaken in accordance with the approved waste management plan.

23. House / Building Number

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.