

DEVELOPMENT APPLICATION ASSESSMENT REPORT

| | |
|----------------------------|-------------|
| Application Number: | DA2020/0189 |
|----------------------------|-------------|

| | |
|---|---|
| Responsible Officer: | Nick Keeler |
| Land to be developed (Address): | Lot 701 DP 1143488, 13 Amiens Road CLONTARF NSW 2093 |
| Proposed Development: | Demolition works and construction of a dwelling house |
| Zoning: | Manly LEP2013 - Land zoned R2 Low Density Residential |
| Development Permissible: | Yes |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Land and Environment Court Action: | No |
| Owner: | Alan Booth Scott Brown |
| Applicant: | Case Ornsby Design Pty Ltd |

| | |
|----------------------------------|--|
| Application Lodged: | 28/02/2020 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Residential - Single new detached dwelling |
| Notified: | 10/03/2020 to 24/03/2020 |
| Advertised: | Not Advertised |
| Submissions Received: | 1 |
| Clause 4.6 Variation: | 4.4 Floor space ratio: 9.1% |
| Recommendation: | Approval |

| | |
|---------------------------------|-----------------|
| Estimated Cost of Works: | \$ 1,800,000.00 |
|---------------------------------|-----------------|

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the demolition of the existing dwelling and detached garage and construction of a new part-two, part-three storey residential dwelling, detached double garage with studio and storage area beneath and associated landscaping and earthworks.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

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

SITE DESCRIPTION

| | |
|-----------------------------------|---|
| Property Description: | Lot 701 DP 1143488 , 13 Amiens Road CLONTARF NSW 2093 |
| Detailed Site Description: | <p>The subject site consists of one (1) allotment located on the western side of Amiens Road.</p> <p>The site is irregular in shape with a frontage of 7.01m along Amiens Road and a depth of 67.5m. The site has a surveyed area of 967m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates three-storey residential dwelling, swimming pool and detached garage.</p> <p>The site falls approx. 21m from the street frontage towards the west.</p> <p>The site contains and number of trees along the southern boundary, a grassed area between the dwelling and garage and a number of gardens throughout. A large canopy tree is located in the street verge to the north of the driveway.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by</p> |

low density residential dwellings with ancillary structures and outbuildings. The topography of the locality is undulating with many areas of exposed rock outcrops.

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:

Application **10.2006.293.1** for Land Subdivision and Boundary Re-alignment to create four (4) lots was approved on 21/02/2007 by the former Manly Development Assessment Unit.

Application **DA2019/0666** for Demolition works and construction of a dwelling house was withdrawn by the applicant on 10/09/2019.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

| Section 4.15 Matters for Consideration' | Comments |
|--|--|
| Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument | See discussion on “Environmental Planning Instruments” in this report. |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument | Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination |

| Section 4.15 Matters for Consideration' | Comments |
|---|---|
| | risk. |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan | Manly Development Control Plan applies to this proposal. |
| Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement | None applicable. |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000) | <p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p> |
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and | <p>(i) Environmental Impact</p> <p>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> |

| Section 4.15 Matters for Consideration' | Comments |
|--|---|
| economic impacts in the locality | <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p> |
| Section 4.15 (1) (c) – the suitability of the site for the development | The site is considered suitable for the proposed development. |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs | See discussion on “Notification & Submissions Received” in this report. |
| Section 4.15 (1) (e) – the public interest | No matters have arisen in this assessment that would justify the refusal of the application in the public interest. |

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

| Name: | Address: |
|----------|-------------------|
| Withheld | CLONTARF NSW 2093 |

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

- View loss
- Privacy
- Amenity
- Dilapidation of existing structures

The matters raised within the submissions are addressed as follows:

- *Concern is raised that the proposed dwelling is unreasonably impact upon view of Chinamans*

Beach enjoyed by the dwelling at 15 Amiens Road.

Comment:

A detailed view loss assessment is included in this report under Clause 3.4.3 of MDCP.

- *Concern is raised that the proposed studio beneath the garage and associated deck will cause unreasonable privacy impact to the front yard area of 15 Amiens Road.*

Comment:

A detailed assessment of the potential privacy impacts of the proposal is included in this report under Clause 3.4.2 of MDCP.

- *Concern is raised that the proposal incorporates a fire pit and that smoke will cause unreasonable amenity impact the adjacent properties.*

Comment:

The submitted plans do not specifically indicate the inclusion of a fire pit as part of the proposed development.

- *Concern is raised regarding the structural integrity of some existing structures on the site that are not proposed to be altered by the proposed development, including the supports for the swimming pool and loose rock retaining walls along the 13/15 Amiens Road boundary. It is requested that the remediation of these structures be included in the development proposal.*

Comment:

Council is unable to compel applicants to alter the proposed scope of development in the development assessment process. To ensure that pre-construction and post-construction site conditions of adjacent properties are recorded, the conditions of consent require the preparation of pre- and post-construction dilapidation reports for 11 and 15 Amiens Road.

REFERRALS

| Internal Referral Body | Comments |
|------------------------|--|
| Landscape Officer | <p>The development application is for the demolition of the existing dwelling house and construction of a new dwelling house, garage and studio below, landscaping and site works at 13 Amiens Road, Clontarf.</p> <p>Additionally, updated development application plans deleted the Inclinator from the application.</p> <p>The development application is assessed by Council's Landscape Referral section against the landscape controls of Manly DCP 2013, section 3: General Principles of Development, and section 4:</p> |

| Internal Referral Body | Comments |
|----------------------------------|--|
| | <p>Development Controls and Development Types.</p> <p>A Arboricultural Impact Assessment prepared by Complete Arborcare is submitted with the application in accordance with DA Lodgement Requirements. It is noted that the report is based on the submitted development application documents with the Inclinator included in the works. The review of this report shall be against the updated architectural plans without the Inclinator as part of the application. Five trees were initially impacted by the Inclinator and external works nearby including the reflection pond, stairs and retaining walling. On tree identified as T4 (Jacaranda) is Exempt and does not require Consent for removal. Of the four remaining trees identified in the report, removal of trees T5, T6, and T7 (all Cheese Trees) are impacted by the proposed reflection pond, stairs and retaining walling. Existing tree T3 (Tea Tree) does not require removal and was only impacted by the Inclinator proposal.</p> <p>Three replacement trees are required as replacement planting for T5, T6, and T7. All other trees and vegetation in the vicinity of the works shall be retained and protected.</p> <p>A Landscape Concept Plan is submitted with the application. The information is inadequate and an amended Landscape Plan shall be provided prior to Construction Certificate, in accordance with DA Lodgement Requirements.</p> |
| NECC (Bushland and Biodiversity) | <p>The proposed development has been assessed against SEPP (Coastal Management) 2018 .cl. 13 Coastal Environment area.</p> <p>The proposal has been designed, sited and will be managed to minimise the impact to ecological environments and flora and fauna habitats.</p> <p>I note the comments from Council's Landscape Officer requesting amendments to the Landscape Plan, including replacement of the three trees approved for removal.</p> |
| NECC (Coast and Catchments) | <p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Coastal Management) 2018, Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p>The application has also been assessed using Northern Beaches SREP assessment template.</p> <p><i>Coastal Management Act 2016</i></p> <p>The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</p> |

| Internal Referral Body | Comments |
|------------------------|--|
| | <p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Coastal Management) 2018</p> <p>As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Clauses 13 (coastal environment area) and 14 (coastal use area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment, the DA satisfies requirements under Clause 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Sydney Regional Environment Plan (Sydney Harbour Catchment) 2005</p> <p>Harbour Foreshores & Waterways Area</p> <p>The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence, Part 1, Part 2, Clause 14 and Part 3, Division 2 apply in assessing this DA.</p> <p>As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Lockery Planning & Development Solutions Pty.Ltd dated 25 February 2020 and Council accepts the assessment, it is determined that the Planning principles and matters for consideration of the Area have been met.</p> <p>Manly LEP 2013 and Manly DCP</p> <p>The subject site is also shown to be as "Manly Foreshores Scenic Protection Area" on Council's Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site.</p> |

| Internal Referral Body | Comments |
|----------------------------------|--|
| | <p>Foreshores Scenic Protection Area Management</p> <p>As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Lockery Planning & Development Solutions Pty.Ltd dated 25 February 2020 and Council accepts the assessment, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p> <p>As such, it is considered that the application complies with the requirements of the Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p> |
| NECC (Development Engineering) | No objection to approval, subject to conditions as recommended. |
| NECC (Riparian Lands and Creeks) | <p>This application will be assessed under Manly LEP Clause 6.4 Stormwater management Manly DCP 3.7 Stormwater management Manly DCP 3.5.8 Water Sensitive Urban Design Manly Policy S190 Stormwater Control SEPP (Coastal Management) - Coastal Environment Zone SREP Sydney Harbour Foreshores and Waterways Area</p> <p>As the applicant intends to increase impervious area by more than 50sqm, they are required to install a sediment control pit on their stormwater prior to discharge from the land. A sediment and erosion control plan must be provided prior to Construction Certificate. Sediment and erosion controls must be installed prior to any work on the land, including demolition, and maintained until all work is complete and groundcover re-established.</p> <p>With water quality management in place, this application is not expected to have any direct impact on the adjacent waterway.</p> <p><u>Planner Note:</u></p> <p>Conditions relating to the requirement for an Erosion and Sediment Control Plan and Installation and Maintenance of Sediment and Erosion Control have been removed as the same conditions have been imposed by the Coast & Catchments referral.</p> |

| External Referral Body | Comments |
|------------------------|--|
| Ausgrid: (SEPP Infra.) | The proposal was referred to Ausgrid. No objections are raised subject to compliance with referral comments. |

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1016680S_02 dated 24 February 2020). The BASIX Certificate is supported by a BDAV Assessor Certificate (see Certificate No. 0003879236-01 dated 20 February 2020).

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

| Commitment | Required Target | Proposed |
|------------------------|------------------------|-----------------|
| Water | 40 | 42 |
| Thermal Comfort | Pass | Pass |
| Energy | 50 | 53 |

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No objections are raised subject to compliance with referral comments.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Refer to Coast & Catchments referral comments.

SEPP (Coastal Management) 2018

Refer to Coast & Catchment referral comments.

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 | 8.5m | N/A | Yes |
| Floor Space Ratio | 0.4:1 (386.8m ²) | 0.437:1 (422.12m ²) | 9.1% (35.32m ²) | No |

Compliance Assessment

| Clause | Compliance with Requirements |
|---|------------------------------|
| 4.3 Height of buildings | Yes |
| 4.4 Floor space ratio | No |
| 4.6 Exceptions to development standards | Yes |
| 6.1 Acid sulfate soils | Yes |
| 6.2 Earthworks | Yes |
| 6.4 Stormwater management | Yes |
| 6.8 Landslide risk | Yes |
| 6.9 Foreshore scenic protection area | Yes |
| 6.12 Essential services | Yes |

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

| | |
|--------------------------------------|-------------------|
| Development standard: | Floor space ratio |
| Requirement: | 0.4:1 |
| Proposed: | 0.437:1 |
| Percentage variation to requirement: | 9.1% |

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) *the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of*

the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural*

heritage),

(g) to promote good design and amenity of the built environment,

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

- *the studio is the built form which triggers the departure. The studio does not have any identifiable impact on neighbouring properties, does not contribute to the visible overall bulk and scale and furthermore is not readily visible from the surrounding public domain;*
- *the dwelling's overall height is less than that of the existing built form which departs from the LEP 2013 height standard. The proposed dwelling house critically complies with the LEP 2013 height standard;*
- *substantial GFA / FSR is not visible from the surrounding public domain or is provided below ground level existing. It therefore has no identifiable impact on neighbouring properties or the surrounding public domain;*
- *it has been demonstrated within the SEE that the FSR non-compliance will not result in material environmental impacts to neighbouring properties and the surrounding public domain. In this regard the resultant built form provides for an acceptable and equitable planning outcome in relation to:*
 - *solar access and overshadowing;*
 - *access to natural daylight and ventilation;*
 - *aural and visual privacy;*
 - *views and vistas; and*
 - *visual impact;*

It is considered the applicant's justification that there are sufficient environmental planning grounds to vary the floor space ratio development standard is well-founded.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The overall bulk and scale of the proposal is consistent with similar development in the locality. The proposal demonstrates compliance with the building height development standard. While the proposal incorporates some variations to DCP controls, it is considered the development is generally consistent with the existing and desired streetscape character.

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

Comment:

The proposed building density and bulk is consistent with that of other dwellings in the locality. The development will not obscure important landscape or townscape features.

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

Comment:

The visual character between the new development and existing locality landscape will not fundamentally be altered. While the garage at the street frontage is to be larger than the existing structure, existing canopy trees in the street verge will still dominate the visual character of the public domain. The dwelling will not readily be discernible from the public domain as it is positioned substantially lower than the street level.

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

Comment:

The proposal is not expected to cause unreasonable environmental impact to adjoining land and public domain. The existing view corridor from the street frontage towards Middle Harbour will be marginally impacted by the new garage structure, however a reasonable view is maintained. The overall development is generally consistent with the existing development on site. No

fundamental change to the existing environmental impact to adjoining land is expected.

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

Comment:

Not applicable

Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

- To provide for the housing needs of the community within a low density residential environment.*

Comment:

The proposal incorporates the construction of a new dwelling with detached garage and studio. It does not alter the existing low density residential use on the site.

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

Comment:

The proposal is consistent with the existing residential use of the site.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Floor space ratio Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

Manly Development Control Plan

Built Form Controls

| Built Form Controls - Site Area: 967m ² | Requirement | Proposed | % Variation* | Complies |
|---|-------------|----------|-----------------|----------|
| | | | | |

| | | | | |
|---|---|----------------------------|-------|-----|
| 4.1.1.1 Residential Density and Dwelling Size | Density: 1 dwelling per 1,150m ² | 1 dwelling | N/A | Yes |
| | Dwelling Size: 122m ² | 352.59m ² | N/A | Yes |
| 4.1.2.1 Wall Height | Dwelling - N: 7.8m (based on gradient 1:4.5) | 8.2m | N/A | No |
| | Dwelling - S: 7.8m (based on gradient 1:4.5) | 8.2m | N/A | No |
| | Garage - N: 7.7m (based on gradient 1:5) | 7.2m | N/A | Yes |
| | Garage - S: 7.3m (based on gradient 1:7.5) | 6.5m | N/A | Yes |
| 4.1.2.2 Number of Storeys | 2 | 3 | N/A | No |
| 4.1.2.3 Roof Height | Height: 2.5m | 0.1m | N/A | Yes |
| | Parapet Height: 0.6m | No parapet | N/A | N/A |
| | Pitch: maximum 35 degrees | 4.3 degrees | N/A | Yes |
| 4.1.4.1 Street Front Setbacks | 6m | Garage - 7.6m | N/A | Yes |
| | | Garage room - Nil | 100% | No |
| 4.1.4.2 Side Setbacks and Secondary Street Frontages | Dwelling - N: 2.7m (based on wall height) | 1.7m | 37% | No |
| | Dwelling - S: 2.7m (based on wall height) | 1.1m | 59% | No |
| | Garage - N: 2.4m (based on wall height) | Nil | 100% | No |
| | Garage - S: 2.15m (based on wall height) | Nil | 100% | No |
| | Windows: 3m | 1.2m | 60% | No |
| 4.1.4.4 Rear Setbacks | 8m | 8.2m | N/A | Yes |
| 4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4 | Open space 60% of site area | 74% (715m ²) | N/A | Yes |
| | Open space above ground 25% of total open space | 4.4% (31.6m ²) | N/A | Yes |
| 4.1.5.2 Landscaped Area | Landscaped area 40% of open space | 41% (292.5m ²) | N/A | Yes |
| 4.1.5.3 Private Open Space | 18m ² per dwelling | >18m ² | N/A | Yes |
| 4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas | Maximum 50% of frontage up to maximum 6.2m | 7.1m | 14.5% | No |
| Schedule 3 Parking and Access | Dwelling 2 spaces | 2 spaces | N/A | Yes |

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

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| 3.1 Streetscapes and Townscapes | Yes | Yes |
| 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 |
| 3.5.8 Water Sensitive Urban 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 |
| 4.1.3 Floor Space Ratio (FSR) | No | Yes |
| 4.1.4 Setbacks (front, side and rear) and Building Separation | No | Yes |
| 4.1.5 Open Space and Landscaping | Yes | Yes |
| 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) | No | Yes |
| 4.1.8 Development on Sloping Sites | Yes | Yes |
| 4.4.1 Demolition | 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 |

Detailed Assessment

3.4.2 Privacy and Security

Merit consideration:

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

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

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

Comment:

The proposed development has the potential to impact upon the privacy of adjacent properties, specifically from the under garage studio and deck and the floor-to-ceiling windows of the dwelling.

It is considered that privacy impacts caused by the proposed studio and deck can be appropriately managed as to limit the impact on the adjacent properties. The location of the studio and deck is further west than the rear of the existing garage with a proposed floor level close to the existing ground level. Any potential overlooking of 15 Amiens Road would be concentrated to the hardstand parking area and roof of the dwelling. A condition is included in the consent to ensure it is not used as a separate occupancy to the dwelling. This will have the effect of limiting the user traffic of the area, leading to a lessened impact to overlooking and privacy. No privacy impact is expected to 11 Amiens Road as an elevated driveway is located immediately adjacent to the studio and deck.

The floor-to-ceiling windows of the dwelling are considered acceptable as the orientation of the dwelling compared to adjacent dwellings is not expected to cause any direct overlooking into the internal living spaces of those dwellings. While some upper level have the potential to cause direct overlooking of the private open space of adjacent properties, the rooms associated with the windows are not living spaces and will not generally be occupied for long periods of time. As such, the privacy impact from the upper level windows is considered to be reasonable.

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 demonstrates an adequate balance between privacy and amenity, including access to light and air. Highly valuable views are able to be achieved from the habitable rooms and private open space of the dwelling.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal involves sufficient openings and outdoor open spaces to encourage awareness of neighbourhood security.

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 s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.4.3 Maintenance of Views

Merit consideration:

The development is considered against the Objectives of the Control:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Comment:

The proposed development has the potential to impact upon existing views enjoyed by the occupants of 15 Amiens Road.

As raised by the objector, the view that has the potential to be impacted is one of Chinamans Beach on the western foreshore of Middle Harbour. As this is a view that includes the interface between land and water, the view is considered to be highly valuable. However, there are a number of obstructions to this view which reduces its retention value.

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

Comment:

The view of Chinamans Beach is obtainable from the rear living area and sunroom of the dwelling at 15 Amiens Road. The view is mostly obtainable from a standing position across the side boundary. The view is generally not attainable from a seating position as the side boundary fencing and hedging completely obscures the view.



The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Comment:

As the view of Chinamans Beach is obtained across a side boundary, the complete retention of such a view is generally unrealistic. In the context of the development site, the rear of the site is wider than the front meaning that siting of the dwelling further towards the front is not considered to be feasible.

When considering the full extent of view enjoyed by 15 Ameins Road, the proposed development will have a negligible impact as the existing view towards the west and northwest will not be impacted. This view corridor also contains highly valuable elements including the interface between land and water.



The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Comment:

While the proposed development has the potential to cause an impact to part of the existing view enjoyed by 15 Amiens Road, the extent of impact is very minor. The existing view towards the west and northwest is not impacted by the proposed development. While the proposed development incorporates non-compliant side boundary setbacks, the repositioning of the building to demonstrate setback compliance will not fundamentally alter the level of view loss caused by the development. As such, it is considered the view impact caused by the proposed development is reasonable.

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 s 1.3 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

4.1.2.1 Wall Height

Based on a gradient of 1:4.5, the maximum permitted wall height is 7.8m. The proposed dwelling is to have a maximum wall height of 8.2m. This represents a 5.1% variation to the control requirement.

4.1.2.2 Number of Storeys

Buildings must not exceed 2 storeys. The proposed dwelling is to partially incorporate a 3 storeys.

Variation to the maximum number of storeys may be considered:

- i) where specific physical site constraints warrant an exception to this requirement. In these circumstances the development must still fully comply with other numeric height controls and development standards; and
- ii) to allow an additional understorey where that storey satisfies the meaning of basements in the LEP.

In this case, the site's topography allows for the construction of an understorey without exceeding the maximum permitted building height. The 3 storey element of the proposed dwelling is therefore considered acceptable.

Merit consideration

Clause 4.1.2 relies on the objectives of Clause 4.3 Height of Buildings of the MLEP 2013, therefore the development is considered against the underlying objectives of such Clause as follows:

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

Comment:

The surrounding area contains a mix of roof forms including many examples of skillion form. The proposal also provides a skillion form to complement this character. The proposed development also steps down the site with the topography and this reduces the presentation of bulk to provide a desirable outcome for the locality.

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

Comment:

The proposed dwelling is generally sited in a similar location to the existing dwelling. The height of the proposed dwelling is substantially less than the existing dwelling. As such, the bulk and scale of the proposed dwelling is considered to be appropriate in the context of the site and surrounds.

(c) to minimise disruption to the following—

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

Comment:

As discussed under Clause 3.4.3, the proposal will not have any unreasonable impact on views, and provide viewing corridors through the site as a result of reasonable setbacks and appropriate

modulation.

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

Comment:

The proposal provides sufficient modulation and stepping toward the rear of the site to allow for corridors for sunlight. The proposal also complies with the numerical requirements for sunlight under Clause 3.4.1 of the Manly 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.

Comment:

Not applicable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in s1.3 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 proposed development has a floor space ratio of 0.437:1 (422.12m²), which represents a variation of 9.1% to the prescribed 0.4:1 (386.8m²) FSR requirement.

Refer to Clause 4.6 Exceptions to Development Standards of MLEP 2013 for a detailed assessment.

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

Description of non-compliance

4.1.4.1 Street Front setbacks

The control requires front setbacks to relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity of the site. Where the street front building lines of neighbouring properties are variable and there is no prevailing building line in the immediate vicinity, a minimum 6m front setback generally applies. In this instance, there is no prevailing building line in the immediate vicinity of the site.

The proposed dwelling and garage demonstrate compliance with the 6m front setback requirement, however the proposed garbage area on the northern side of the driveway is to incorporate a zero setback to the front boundary.

4.1.4.2 Side setbacks and secondary street frontages

This control requires side setbacks to be one third of the wall height. In this instance, the side boundary setbacks for the dwelling are to be 2.7m from the northern and southern side boundaries. The side boundary setbacks for the garage are to be 2.4m from the northern boundary and 2.15m from the southern boundary.

The proposed dwelling is to incorporate setbacks of between 1.7m and 7.7m to the northern side boundary, resulting in a maximum variation of 37%, and 1.1m to the southern side boundary, resulting in a variation of 59.2%. The proposed garage is to incorporate a zero setback to the northern and southern side boundaries.

This clause also requires windows to be setback a minimum of 3m from a side boundary, which is subsequently not achieved.

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:

While the majority of the proposed development demonstrates desired spatial proportions, the enclosed and roofed design garbage area is considered to unreasonably dominate the street frontage. The proposal incorporates a 3.4m high wall on the front boundary with limited design benefits. To reduce the impact of this element on the public domain while still screening the garbage bins, a condition is included to ensure the garbage area is unroofed and the wall along the street frontage and screen on the northern elevation be no higher than 1.5m above the finished floor level.

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 development is considered to provide reasonable amenity including privacy, solar access and view sharing for the dwelling occupants and those of adjoining and surrounding properties for the reasons discussed within the Clauses of Part 3.4 Amenity of the MDCP. The development is also considered to appropriately respond to the site constraints and prevailing pattern of development seen within the vicinity of the site whilst maintaining safe and adequate traffic conditions.

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

Comment:

The development generally maintains the orientation and siting of the existing dwelling and that of adjoining properties. No unreasonable amenity impacts are considered likely to arise (as detailed under Clause 3.4) and the dwelling house will appear visually consistent and comparable with other

developments within the locality.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal demonstrates compliance with the landscaped area requirement. Conditions have been included by Council's Landscape Officer to improve the proposed landscaping treatment of the site.

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

Comment:

Not applicable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in s1.3 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)

Description of non-compliance

The control stipulates that the maximum width of any garage, carport or hardstand area must not exceed a width equal to 50% of the frontage, up to a maximum width of 6.2m. The width of the proposed carport is 7.1m, which fails to satisfy this requirement.

Merit consideration:

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

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

The proposal provides two off-street parking spaces, demonstrating compliance with the required parking rate.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

The proposed off-street parking will reduce the on-street parking demand as one additional space is provided to that of the existing site conditions.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

No change to the existing driveway and crossover layout is proposed. A turntable is proposed to allow for ingress and egress in a forward direction.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment:

Limited excavation is required to provide the required parking spaces.

Objective 5) To ensure the width and number of footpath crossings is minimised.

Comment:

No change to existing.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

Due to the narrow site frontage, landscaping integration is not practical. However, existing canopy trees in the street verge and neighbouring sites will break up the built form of the garage structure.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

Not applicable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect threatened species, populations or ecological communities, or

their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$18,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,800,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

2) The proposed development will be in the public interest because it is consistent with the objectives of

the standard and the objectives for development within the zone in which the development is proposed to be carried out.

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2020/0189 for Demolition works and construction of a dwelling house on land at Lot 701 DP 1143488, 13 Amiens Road, CLONTARF, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

| Architectural Plans - Endorsed with Council's stamp | | |
|---|------------------|--------------------|
| Drawing No. | Dated | Prepared By |
| DA_02 B | 15 April 2020 | Case Ornsby Design |
| DA_03 A | 20 February 2020 | Case Ornsby Design |
| DA_04 A | 20 February 2020 | Case Ornsby Design |
| DA_05 A | 20 February 2020 | Case Ornsby Design |
| DA_06 A | 20 February 2020 | Case Ornsby Design |
| DA_07 A | 20 February 2020 | Case Ornsby Design |
| DA_08 B | 15 April 2020 | Case Ornsby Design |
| DA_09 B | 15 April 2020 | Case Ornsby Design |
| DA_10 A | 20 February 2020 | Case Ornsby Design |
| DA_11 B | 15 April 2020 | Case Ornsby Design |
| DA_12 A | 20 February 2020 | Case Ornsby Design |
| DA_13 B | 15 April 2020 | Case Ornsby Design |
| DA_14 B | 15 April 2020 | Case Ornsby Design |
| DA_15 B | 15 April 2020 | Case Ornsby Design |
| DA_16 B | 15 April 2020 | Case Ornsby Design |

| | | |
|---------|---------------|--------------------|
| DA_17 B | 15 April 2020 | Case Ornsby Design |
| DA_18 B | 15 April 2020 | Case Ornsby Design |
| DA_19 B | 15 April 2020 | Case Ornsby Design |
| DA_20 B | 15 April 2020 | Case Ornsby Design |
| DA_21 B | 15 April 2020 | Case Ornsby Design |
| DA_22 B | 15 April 2020 | Case Ornsby Design |
| DA_23 B | 15 April 2020 | Case Ornsby Design |
| DA_24 B | 15 April 2020 | Case Ornsby Design |
| DA_25 B | 15 April 2020 | Case Ornsby Design |

| Engineering Plans | | |
|-------------------|--------------|------------------------------|
| Drawing No. | Dated | Prepared By |
| 190305 D01 Rev A | 11 June 2019 | iStruct Consulting Engineers |
| 190305 D02 Rev A | 11 June 2019 | iStruct Consulting Engineers |

| Reports / Documentation – All recommendations and requirements contained within: | | |
|--|------------------|--------------------------|
| Report No. / Page No. / Section No. | Dated | Prepared By |
| BASIX Certificate No. 1016680S_02 | 24 February 2020 | Certified Energy |
| NatHERS Certificate No. 0003879236-01 | 20 February 2020 | Certified Energy |
| Arboricultural Impact Assessment | 8 November 2019 | Complete Arborcare |
| Geotechnical Impact Assessment (Ref: MU 31713) | 24 May 2019 | Jack Hodgson Consultants |

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

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

| Waste Management Plan | | |
|-----------------------|------------------|----------------------------|
| Drawing No/Title. | Dated | Prepared By |
| Waste Management Plan | 6 June 2019 | Alan & Gillian Scott Brown |
| DA_33 A | 20 February 2020 | Case Ornsby Design |

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

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

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

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

| Other Department, Authority or Service | EDMS Reference | Dated |
|---|---------------------------|--------------|
| Ausgrid | Ausgrid Referral Response | 6 April 2020 |

(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 Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

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

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

5. **Use of Studio**

The studio may only be used in conjunction with the dwelling. It may not be used for the purpose of a secondary dwelling or separate occupancy.

Reason: To ensure the work is carried out in accordance with the determination of Council and to minimise impacts upon nearby residences.

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$18,000.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$1,800,000.00.

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

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

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

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

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

7. 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 to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

8. Stormwater Disposal from Low Level Property

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003.

Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

9. Construction Management Program

An application for Traffic Management Plan is to be submitted to Council and approved by Council. The Traffic Management Plan shall be prepared to RMS standard by an appropriately certified person.

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

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable

inconvenience to the community

10. Vehicle Driveway Gradients

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Driveway gradients within the private property are to comply with AS/NZS 2890.1:2004. Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure suitable vehicular access to private property.

11. Amendments to the approved plans

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

- The street front garbage area is to be unroofed.
- The eastern wall and northern screen of the street front garbage area be no higher than 1.5m above the finished floor level.

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

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

12. Boundary Identification Survey

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

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

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

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

13. Structural Adequacy and Excavation Work

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

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

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

Reason: To provide public and private safety.

14. **Vehicle Crossings Application**

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

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

Reason: To facilitate suitable vehicular access to private property.

15. **Amended Landscape Plan**

An amended landscape plan shall be provided to the Certifying Authority for approval prior to the issue of a Construction Certificate.

The Landscape Plan must illustrate:

- proposed surface treatments and materials, including but not limited to structures, features, walling, fences, pavements, gardens, lawns, ground stabilisation, drainage, irrigation etc.,
- existing and proposed ground levels,
- outline of proposed buildings, driveways and structures, including swimming pools, pavements, walls and fences, all consistent and co-ordinated with building and services plans,
- location, height and materiality of proposed retaining walls and fences,
- existing street trees or trees on neighbouring properties that may be impacted by the proposed development,
- existing trees and other vegetation to be retained or removed. All trees are to be located, identified and numbered, and shall coincide with the arborists report,
- proposed planting scheme including species selection, location, quantities, mature heights and pot sizes,
- rock outcrops and other landscape features,
- location of any underground services,
- soil depth of planter boxes on-slab, and
- any irrigation systems.

Specifically, the amended landscape plan shall demonstrate that the intent of Manly DCP clause 3.3.1 Landscaping Design and clause 4.1.5 Open Space and Landscaping is satisfied, and that the number of trees to be provided within the site in accordance with 4.1.5.2 (c) Minimum Tree Planting. It is expected that the lawn open space areas between the dwellings shall support new tree planting as replacement for trees removed.

New tree planting shall meet the following requirements:

- located within natural ground areas of substantial area (minimum 12m²) for each tree,
- located away from common boundaries,
- planted at least 4-5 metres from buildings, and at least 4-5 metres from all other trees, and
- shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree locations may otherwise be positioned to minimise any significant loss of views.

The Certifying Authority must be satisfied that all of the relevant requirements listed above have been included in the amended landscape plan.

Reason: ensure the landscape treatments soften the built form.

16. **Water Quality Management**

The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment

17. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). 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 areas and site facilities);
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls;
- North point and scale.

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

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

18. **Compliance with Standards**

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

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

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

19. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

20. **Pre-Construction Dilapidation Report**

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

Properties:

- 11 Amiens Road, Clontarf
- 15 Amiens Road, Clontarf

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

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

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

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

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

21. **Tree removal within the property**

Approval is granted for tree removal as recommended in the Arboricultural Impact Assessment prepared by Complete Arboricare, including:

- Tree 5 (Cheese Tree)
- Tree 6 (Cheese Tree)
- Tree 7 (Cheese Tree)

Tree 4 (Jacaranda) is Exempt and does not require Council consent.

No other existing trees may be removed. Any subsequent request for tree removal is subject to a Section 4.55 modification application, or an assessment by a AQF level 5 Arborist that determines that the tree presents an imminent risk to life or property.

22. Installation and Maintenance of Sediment and Erosion Control

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

23. Maintenance of Road Reserve

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety.

24. 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.

25. Traffic Control During Road Works

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works.

Reason: Public Safety

26. Vehicle Crossings

The Applicant is to construct one vehicle crossing 4.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/3 NL and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be

restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

27. Tree protection measures

A Project Arborist with AQF minimum Level 5 qualification in arboriculture/horticulture is to be appointed to supervise and certify tree protection measures for existing trees to be retained and protected, requiring site attendance during demolition, excavation and construction works, in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4, and the recommendations of the Arboricultural Impact Assessment prepared by Complete Arboricare.

This shall include all tree sensitive works in the vicinity of the existing trees that have been identified in the Arboricultural Impact Assessment as: Section 9.1, including:

- arborist supervision is undertaken when the removal of the existing driveway crossover is conducted. The method of removal must be non-destructive and guided by the arborist.
- stem protection around tree T1 Angophora costata (as described in Appendix C of this report) must be installed before any works commence and stay in place until the completion of the project,

and the following added requirement

- arborist attention to ensure no impact to T2 Angophora costata in the adjoining property, with all works prohibited within the tree protection zone of T2.

The Arborist shall submit certification that the works described in the above sections have been correctly installed and adhered to during the construction period.

The tree protection measures specified in this clause must:

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

The Certifying Authority or a Project Arborist AQF Level 5 must ensure that:

- vi) the activities listed in section 4.2 of AS4970- 2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and
- vii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.

Reason: to ensure tree protection is provided and maintained.

28. Tree and vegetation protection

a) Existing trees and vegetation shall be retained and protected as recommended in the Arboricultural Impact Assessment prepared by Complete Arboricare, including:

- i) all trees and vegetation within the site not approved for removal, specifically T3, excluding exempt vegetation under the relevant planning instruments of legislation,

- ii) all trees and vegetation located on adjoining properties, and specifically T2,
- iii) all trees and vegetation within the road reserve, specifically T1.

b) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF minimum Level 5 Arborist,
- iii) existing ground levels shall remain under the tree protection zone of trees to be retained, unless authorised by AQF minimum Level 5 Arborist,
- iv) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an AQF minimum Level 5 Arborist. Details including photographic evidence of works undertaken shall be submitted to the Certifying Authority,
- v) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- vi) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a AQF minimum Level 5 Project Arborist on site,
- vii) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF minimum Level 5 Arborist on site,
- viii) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with a AQF minimum Level 5 Arborist, including advice on root protection measures,
- ix) should either or all of vi), vii) and viii) occur during site establishment and construction works, a AQF minimum Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- x) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009,
- xi) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

c) All protected trees are to be retained for the life of the development, or for their safe natural life. Trees that die or are removed by approval must be replaced with a locally native canopy tree

Reason: to retain and protect significant planting on development and adjoining sites.

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

29. Landscape works completion

Landscape works are to be implemented in accordance with the approved amended landscape plan.

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the approved amended landscape plan and with any conditions of consent.

Reason: to ensure that the landscape treatments are installed to provide landscape amenity and

soften the built form.

30. **Condition of retained vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with AQF minimum Level 5 qualifications in arboriculture/horticulture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, and specifically T1, T2 and T3, including the following information:

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

Reason: to retain and protect significant planting on development and adjoining sites.

31. **Post-Construction Dilapidation Report**

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

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

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

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

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

32. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

33. **Works as Executed Drawings - Stormwater Treatment Measures**

Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment

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

34. **Landscape maintenance**

Any existing landscaping including trees required to be retained together with any additional landscaping required by this consent is to be maintained for the life of the development.

A 12 month establishment period shall apply for all new landscaping. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. All planting must be maintained for the life of the development, or for their safe useful life expectancy. Planting that may die or is approved for removal must be replaced.

Reason: to maintain local environmental amenity and ensure landscaping continues to soften the built form.

35. **Control of Weeds**

Prior to the completion of works, all priority weeds (as listed under the Biosecurity Act 2015) are to be removed/controlled within the subject site using an appropriately registered control method. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>). All environmental weeds are to be removed and controlled. Refer to Council website http://www.pittwater.nsw.gov.au/environment/noxious_weeds

Reason: Weed management.

36. **Maintenance of Stormwater Treatment Measures**

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment

37. **No Planting Environmental Weeds**

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

Reason: Weed management.

38. **Works to cease if item found**

If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.

Reason: To protect Aboriginal Heritage.

39. **Dead or Injured Wildlife – Manly LEP Clause 6.5**

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

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

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

Signed



Nick Keeler, Planner

The application is determined on 01/05/2020, under the delegated authority of:



Matthew Edmonds, Manager Development Assessments