

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0077
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Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 20 DP 758044, 1 Tabalum Road BALGOWLAH HEIGHTS 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
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Kevin Scott Mooney
Applicant:	Kevin Scott Mooney

Application Lodged:	30/01/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	24/02/2020 to 09/03/2020
Advertised:	Not Advertised
Submissions Received:	12
Clause 4.6 Variation:	4.3 Height of buildings: 12.9%
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,850,000.00
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EXECUTIVE SUMMARY

The proposal is referred to the Local Planning Panel as it is an application categorised as 'contentious development', having received more than 10 unique submissions.

A 'Clause 4.6' Variation to Building Height under the Manly Local Environmental Plan 2013 accompanies the application and has been assessed in detail against the relevant considerations and is supported. Further, principal environmental impact considerations pursuant to the Manly Development Control Plan 2013 are; storey limit, setbacks, wall height, views, building bulk, landscaping, construction impacts, parking access, privacy, overshadowing, streetscape character and stormwater management.

The submissions received have been considered and addressed within this report. The applicant provided minor amendments to the plans to accommodate/respond to concerns about privacy, bulk,

views, and landscaping works to reduce associated impacts, including deleting the proposed new swimming pool.

Amended plans were sought to illustrate the changes which could have otherwise been conditioned. Re-notification was not required, however the amended plans have been publicly viewable on the website. Conditions have been recommended where appropriate to address remaining issues, including, landscaping, views, traffic safety, construction work and dilapidation.

The proposal will not have an unreasonable impact in relation to view sharing, privacy or solar access. Additional amenity impacts that may arise during construction works are addressed by conditions, including dilapidation, dust, noise and site management.

Overall, the non-compliances with the built form controls are supported on the grounds that the proposal will maintain consistency with the relevant objectives, with no unreasonable amenity impacts, subject to a number of special conditions.

No issues have arisen that would warrant the refusal of the application and therefore the proposed development (as revised) is recommended for approval.

PROPOSED DEVELOPMENT IN DETAIL

The application proposes the demolition of a house and pool and the construction of a new dwelling house with basement garage, including, site preparation, excavation and landscaping.

The development is configured as follows:

- **RL69.1 Basement** - Garage parking, storage, plant / utility rooms, lift and stair access.
- **RL72.50 Level 1** - Terrace, guest room, bathroom, service equipment, demolished pool area landscaping, atrium, stairs and lift access.
- **RL75.56 Level 2** - Deck, bedrooms (4), bathrooms (3), laundry, drying court, storage, void, stairs and lift access.
- **RL78.62 Level 3** - Deck, kitchen, living, dining, family room, home office, bathroom, entry foyer, storage, lift and stair access.
- **RL81.73 to 82.73** - Roof level.

Ancillary works include site clearing/demolition and preparation, drainage and stormwater management, landscaping, driveway and ancillary works.

(**Note:** Originally a new pool/spa was proposed, however this has now been deleted from the application)

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 - 3.1.1 Streetscape (Residential areas)

Manly Development Control Plan - 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

Manly Development Control Plan - 3.5.5 Landscaping

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

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

Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 20 DP 758044 , 1 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	<p>The land is 753.8 square metres (sqm) in area and is located on the north western corner of Tabalum Road and Cutler Road. The site has a frontage of 18.29 metres (m) to Tabalum Road and an arc frontage of 35.05m to Cutler Road. There is a splay corner affecting the site (at the intersection Tabalum Road and Cutler Road).</p> <p>The land falls quite steeply from the Tabalum Road frontage at RL76.66 centrally to the rear boundary abutting No.6 Cutler Road at RL72.0 at the pool area. There is a retaining wall adjacent to the boundary with No.6 Cutler Road. The level at the base on the abutting property being approximately RL 68.18.</p> <p>The site contains a three storey (with attic) brick detached dwelling house with a rear swimming pool located off the Cutler Road frontage.</p> <p>Vehicular access to a three car garage at the lower house level is located off Cutler Road. Access to an additional covered car parking space is available from Tabalum Road adjacent to the house entry. Surrounding development consists of low density detached housing and Sydney Harbour National Park is adjacent the site to the east.</p>

The site is subject to bushfire hazard zone and is in a location where broad views of the Harbour area (toward Sydney Heads and Sydney CBD) are available from the site and surrounding land. From various vantage positions, views to the south, west and north are also available from surrounding land (and the site) due to the ridgeline topography.

There are no significant trees on the site or unique rock outcrops.

Map:



SITE HISTORY

Building Approval No.134/87 for a swimming pool was approved by Council in 1987.

The site will be cleared of all existing structures, including the dwelling, pool, garage, outbuildings and garden areas as part the required site preparation.

Therefore, no further consideration of site history works is required.

Prelodgement Meeting

No pre-lodgement meeting was held in relation to the proposed development.

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) –	See discussion on “Environmental Planning Instruments” in this report.

Section 4.15 Matters for Consideration'	Comments
Provisions of any environmental planning instrument	
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information.</p> <p>Amended plans were submitted to assist in resolving/addressing issues relating to building bulk/scale, privacy, setbacks landscaping, views and the like. The amendments are minor design considerations appropriate to be addressed by conditions, however the applicant offered to include those matters on the plans as an alternative approach to using conditions to achieve the same outcome. This includes deletion of the new pool component from the DA to no longer include that element (replaced with landscape area). The principal objector was made aware that the amended plans were available to be viewed on Council's website. Formal re-notification was not required in accordance with the Community Participation Plan.</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 as all existing building structures on site are to be demolished.</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, access, building work / materials the development). This matter is subject to BCA compliance for Construction Certificate stage for the new build rather than 'upgrade' of existing.</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</p>

Section 4.15 Matters for Consideration'	Comments
	consider the provisions of the Building Code of Australia (BCA also known as the National Construction Code). This matter has been addressed via a condition of consent. This includes but is not limited to fire safety, access, building work / materials the development. This matter has been addressed via a condition of consent and fire safety and is subject to BCA compliance appropriate for <i>Construction Certificate</i> stage.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the residential nature and 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 subject to conditions.
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	<p>Subject to conditions, no matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p> <p>All submission issues have been considered and relevant considerations under the Manly LEP and Manly DCP including, but not limited to, surrounding amenity, views, landscaping, traffic, parking, construction/demolition and the built form of the proposal including ancillary works.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

A Bushfire Assessment Report dated 21.8.2019 has been provided to address fire safety and includes relevant requirements to comply with *Planning for Bushfire Protection* to ensure a a reasonable and satisfactory level of bushfire protection to the subject development. Appropriate conditions are recommended to comply with the relevant bushfire safety requirements.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 24/02/2020 to 09/03/2020 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 12 submission/s from:

Name:	Address:
Mrs Peggy Alice Bawmer	6 Cutler Road CLONTARF NSW 2093
Gian Gazzilli	Address Unknown
Gianandrea Gazzilli	3 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
Mr Anthony Robert Bannerman Mrs Lisa Jane Bannerman	9 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
Ms Carolyn Lesley Punshon	13 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
Mrs Jennifer Maree Menzies Mr Robert Menzies	26 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
Mr Johnson Hsu	5 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
Mr John Symon Marjory Symon	18 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
Mr James Francis Doyle Mrs Frances Mary Doyle	4 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
Mr Phillip John Thrush	6 Tabalum Road BALGOWLAH HEIGHTS NSW 2093
Jan Ritchie	Address Unknown
Mr Anthony Carmelo Raco Mrs Isabella Raco	24 Tabalum Road BALGOWLAH HEIGHTS NSW 2093

The following issues were raised in the submissions:

1. Building height in the streetscape
2. View impacts
3. Dilapidation risk including construction works
4. Garage structures
5. Privacy
6. Overshadowing
7. Setbacks and pool structure
8. Noncompliance with development controls
9. Other Manly DCP Manly LEP matters

The matters raised within the submissions are addressed as follows:

- **1. Concerns with regard to height and streetscape impacts of the corner location and use of materials for the adjacent bushland setting of the National Park.**

Comment:

The site is zoned for Low Density Residential land use (urban land) and is situated on a ridgeline area close to Sydney Harbour National Park (adjacent). The site is separated from the National Park by a public road and does not share a common boundary with the National Park

land (unlike other properties in Tabalum Road). Landscaping considerations have been addressed in detail by Council's Landscape Officer and subject to conditions, including bushfire protection requirements and view considerations, the proposal has a compliant landscaped area pursuant to the Manly DCP requirements.

The proposal is consistent with setback requirements for properties with two frontages (corner lots) pursuant to the Manly DCP and detailed consideration of this issues has been made under *Clause 3.1.1 Streetscape (Residential area)*, *Clause 4.1.4 Setbacks (front , side and rear)* and *Building Separation*, within this report.

With regard to overdevelopment considerations, the building complies with the floor space ratio (FSR) and dwelling density provisions under the Manly LEP and DCP. Considerations of building height (including wall and maximum height controls) are addressed within this report under Manly LEP *Clause 4.6 Exceptions to development standards* and Manly DCP *Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)*. In response to this issue and need to reduce height and bulk, the applicant has accommodated those matters with the current plans. A number of amendments have been incorporated into revised plans, including the deletion of the swimming pool from the proposal, a minor reduction in roof height, inclusion of a privacy screen and a narrower balcony/eave width.

Due to the slope of the land, the proposal has sought to capitalise on positioning the garage areas within a new basement area, with 3 levels above, that "step-up" the slope. The non-compliance with the wall height and overall height are confined to the lower (leeward) side of the site and are partly influenced by the design maintaining continuity with the existing levels of the building and existing private open space level, with similar building setbacks. A landscape setting is provided for the building, including the use of landscape planters along terrace areas with materials and colours that are consistent with *Clause 5.4.1 Foreshore Scenic Protection Areas* and *Clause 5.4.1.1 Additional matter for consideration*.

In summary, the proposal will alter the existing shadow pattern toward adjacent land, however the proposal is consistent with the objectives of the Manly DCP control to maintain reasonable solar access to adjacent land.

- **2. Concerns with regard to view impacts created by the proposal for properties overlooking the site, along Tabalum Road.**

Comment:

A view analysis has been provided by the applicant (reference View Analysis by *Sanctum Design*). The subject site and surrounding lands were inspected during a site visit to consider view sharing, including access to alternate view lines available. Where direct access was not available, a direct view line was considered in best proximity and comparative consideration to view lines (including survey datum) analysis and taking into account particular submissions regarding views as received or identified following the notification of the application.

A detailed consideration of view sharing is provided within this report under *Part 3.4.3 Maintenance of Views*. In summary, the proposal will have a minor impact on existing views from particular adjacent and surrounding properties as assessed pursuant to the view assessment criteria. On balance, the proposal is consistent with the objectives of the Manly DCP control and the LEC Planning Principle in relation to views and does not warrant refusal of the application.

- **3. Concern that the proposal will affect dilapidation to adjacent properties, including**

noise, dust and amenity impacts during demolitions and construction work hours.

Comment:

A geotechnical report has been submitted that has assessed slope, stability and site conditions in the context of the proposed works pursuant to Clause 4.1.8 Development on sloping sites of MDCP. Recommendations from the Geotechnical report and standard conditions regarding excavation, construction methods (including OHS and compliance with relevant Australian Standards and the BCA) are imposed to address this issue. A dilapidation report will be required prior to works to ensure appropriate consideration/response to dilapidation risks for adjacent property assets (private and public). Site operational management including standard construction work hours, noise, dust, erosion control and the like are addressed by conditions and also form part of the Construction Certificate stage requirements and operational conditions.

In summary, this objection issue is not considered to warrant refusal of the application.

- ***4. Concern that the proposal has garage structures within the setback to Tabalum Road that creates streetscape impacts.***

Comment:

The site has two road frontages and is formally known as No.1 Tabalum Road, with the principle outlook from within the existing dwelling towards the harbour and city horizon. Due to the corner location the dwelling, it has a strong street presence along the two frontages. The proposed garage excavation and pool structure are to be demolished as part of the proposed works. The new garage is in a basement floor level similarly located to the existing lower level garage. The swimming pool has now been deleted in favour of reducing the scope of works, with replacement lawn area shown on the amended plans and appropriate re-instatement, including integrated refurbishment of the existing retaining structures as part of the construction certificate works.

This issue is addressed in further detail under *Part 4.1.4 Setbacks (front, side and rear) and Building Separation* within this report.

This issue does not warrant refusal of the application.

- ***5. Concern that the privacy screening to adjoining properties in Tabalum Road and Cutler Road overlooking potential toward adjacent land / property***

Comment:

This issue has been considered, including terrace areas, window near side boundaries, incorporation of fixed louvre privacy screens and site levels to ensure no unreasonable privacy impacts arise in relation to surrounding land. Mutual screen planting is provided and rooms and windows are appropriately located to ensure no unreasonable impact. High use areas such as living and kitchen areas are appropriately designed to maintain privacy to adjacent land with the principal outlook toward the south-west and maintaining a wide setback to No.6 Cutler Road. Low use rooms (bedrooms) are appropriately located and have been designed to not create unreasonable privacy impacts to adjacent land including acceptable window placement / style along side setback areas.

Therefore, this issue does not warrant refusal of the application.

- ***6. Concern that the building and landscape elements will encroach on future views across the site toward the Harbour and surrounding views.***

Comment:

The inclusion of canopy trees is a requirement of the Manly DCP and the applicant has shown the landscape planting design drawn by *Paul Scrivener (revision C)*. Consideration of views includes alternative plant selection (addressed by condition) within the Tabalum Road frontage as there is a view line along the front setback area from the adjacent dwelling. Generally, the proposal includes a mix of small and medium trees and mixed species that have a height commensurate with the landscape setbacks and are suitably spaced around the perimeter of the dwelling to provide a landscape setting.

In summary, it is considered that the landscaping plan and recommended tree planting will not create an unreasonable impact on the amenity of surrounding land, subject to conditions as recommended.

This issue is not considered to warrant refusal of the application.

- **7. Concern that the proposal will create overshadowing impacts.**

Comment:

This issue has been considered pursuant to *Part 3.5.1 Solar Access* of the Manly DCP, including detailed consideration of the shadow diagrams (Rev B) provided by *Sanctum Design*. In summary, the building height, orientation, setbacks, wall height do not create any unreasonable impact on adjacent land. Compliant solar access is maintained between 9am and 3pm on 21 June for private open space and adjacent amenity that is appropriate for the low density residential environment.

This issue is not considered to warrant refusal of the application.

- **8. Concern that the proposal does not fully comply with all aspects of Councils development controls or requirements, including landscaping.**

Comment:

The proposal has been assessed in accordance with the Manly DCP and LEP development controls and consideration has been given to the submission including, but not limited to building height, FSR, wall height, storeys, setbacks, streetscape, amenity, pool position, excavation, fencing and landscaping. While there are a number of non-compliances, these are assessed on merit and overall the proposal is considered to be consistent with the objectives of those controls and has provided reasonable areas and quality of landscaping.

The development controls assist to ensure appropriate design response is provided and minimise amenity impacts of development on the natural and surrounding environment. Variation to the development controls is considered on merit and enables site constraints and other influencing factors to be accommodated, without unreasonable or unnecessary strict compliance. Manly DCP and LEP controls are permitted to be varied with appropriate considerations and in this case, subject to conditions, the proposal does not create an unreasonable precedent or impact against the planning control or to the amenity of surrounding land and the natural environment.

In summary, this objection issue is not considered to warrant refusal of the application, and has been the subject of detailed consideration within this report and conditions where appropriate.

- **9. Concern that the proposal is not consistent with listed elements of the Manly DCP and Manly LEP (as detailed in written submissions including matters outlined therein).**

Comment:

The assessment of the proposal has considered the submission matters in the context of the

proposed development and where appropriate the application information has addressed matters where clarification was sought in context with the relevant planning controls (with extensive and lengthy inclusions of the DCP / LEP). The matters raised have been considered in context to the application and addressed collectively where appropriate on balance with the whole of the LEP and DCP including context with the established pattern of surrounding development in the low density residential environment. A detailed response is not required where it is considered conventional matters are addressed appropriately by standard conditions. This includes matters that are appropriate to the construction certificate stage (site works, safety, BCA, excavation management). In further addressing those matters, the applicant has responded and accommodated the submission concerns with a considered approach, including minor amendments to the plans to reduce building bulk, height and improve amenity (privacy, views and the like). In addition, the applicant has deleted the swimming pool from the proposal (demolition of the pool remains). As those changes are relatively minor or otherwise achievable by conditions for the construction certificate plans, no re-notification of the revised plans was required as they materially improve amenity considerations by further reducing impacts on surrounding land.

This issue has therefore been considered by revisions to reasonably accommodate considerations by an inclusive design approach for the proposal. On balance the proposal is consistent with the objectives of the DCP and LEP and merit consideration has been made of the design in so far that issue is not considered to warrant refusal of the application subject to conditions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The development application is for the demolition of the existing house and swimming pool, and the construction of a new dwelling house, basement parking and associated landscape works. The amended site plans include deletion of the proposed pool, which shall be documented in the amended site and landscape plans as landscaping.</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: Development Controls and Development Types, and in particular clauses 3.1 Streetscapes and Townscapes; 3.3.1 Landscaping Design; 4.1.5 Open Space and Landscaping; and 4.1.10 Fencing.</p> <p>Landscape Plans and Arboricultural Impact Assessment are submitted with the application in accordance with Northern Beaches Council's DA Lodgement Requirements.</p> <p>The landscape proposal includes augmenting the existing landscaping within the road verge of Cutler Road, through additional landscaping and street trees. Council do not support new landscaping of the road verge except for street trees and turf, and the road verge is to be utilised for safe pedestrian passage without obstruction. The proposed street trees are located to potentially obstruct pedestrian passage. A clear turfed width of at least 1.5 metres wide must be available for</p>

Internal Referral Body	Comments
	<p>pedestrian access with the road verge. The existing landscape within the planters at the southern west end of the site upon Council land is proposed to be refurbished through replacement of the planter walling as required, and existing planting shall be retained and enhanced as proposed.</p> <p>Subject to amended Landscape Plans in accordance with the conditions of consent to achieve an appropriate landscape outcome in consideration of 3.3.1 Landscaping design, the landscape outcome is satisfactory. The recommendations of the Arboricultural Impact Assessment raise no issues.</p> <p><u>Planning Comment</u> Landscape assessment comments are concurred with, including recommended conditions of approval.</p>
NECC (Development Engineering)	<p>No Development engineering objections subject to conditions.</p> <p><u>Planning Comment</u> Engineering assessment concurred with, including recommended conditions of approval.</p>

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

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. 1040129S_04 dated 20 January 2020).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	50

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. A referral response was not received within the 21 day statutory period and no objections are raised and no conditions are recommended from Ausgrid.

Other Service Infrastructure Authorities

The proposal was not required to be referred to the *Roads and Maritime Service* and no other service infrastructure referral issues are raised pursuant to the SEPP.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is not located within the Sydney Harbour Catchment as the boundary extends along the southern side of Cutler Road and eastern (opposite) side of Tabalum Road.

Given the close proximity of the SREP boundary line and visibility of the site the SREP is

considered. The scale of the proposed building and context with the existing house, adjacent urban backdrop and the works proposed (including height, materials, landscaping, topography and the like), referral to the *Foreshores and Waterways Planning and Development Advisory Committee* is not considered necessary. In context of the location the proposal and SREP boundary extending around the sides of the site the proposal remains consistent with the provisions of the SREP.

SEPP (Coastal Management) 2018

The site is not subject to SEPP Coastal Management (2018) as the boundary extends along the southern side of Cutler Road and eastern (opposite) side of Tabalum Road.

Comment:

The proposal is however considered to be consistent with Clause 14 and 15 of SEPP Coastal Management (2108) given the close proximity to the "Coastal Use Area" and "Development in the Coastal Zone Generally" areas.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.6m	12.9%	No*
Floor Space Ratio	FSR:0.4:1	FSR: 0.398:1	N/A	Yes

*Refer to detailed merit consideration and assessment within this report under the heading "Clause 4.6".

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes

Clause	Compliance with Requirements
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance:

Development standard:	Building Height
Requirement:	8.5m
Proposed:	9.6m
Percentage variation to requirement:	12.9%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings 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 4.3 – Height of Buildings 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 site has a slope of 4:1 and has been excavated for the current building level. The new dwelling has a flat roof and is proposed to replace the existing pitched roof. The non-complying section consists of part of the clerestory well setback from the street frontages and the roof over the rear verandah on level 3. The non-compliance is not visible from Tabalum Street and not prominent in Cutler Road where stepping in response to site slope is apparent. The areas of non-compliance are of light weight construction and visually recessive.*
- *When viewed from Tabalum Rd the building sits mostly below the height limit and the non-compliance is on the lower slope (opposite side the building away from overlooking dwelling in Tabalum Road) below the height limit.*
- *The proposed development produces new built form that is contextual to the locality and produces a form that is of well-considered contemporary design. The development steps down the site and responds more thoughtfully to the site characteristics than the existing building in achievement of objective 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;*
- *The height encroachment is not apparent in the Tabalum Road streetscape being well setback from the street elevation where the building is well under the control and is visually recessive from Cutler Road and adjoining premises due to the steep topography which reduces visibility significantly. The proposal is contextual in scale and achieves objective to control the bulk and scale of buildings.*
- *The proposed encroaching portions of roof do not cause any significant effect on views from adjacent properties having regard to the tests in Tenacity v Warringah Council thus not offending objective to minimise view disruptions to and from residential land, including associated public spaces.*
- *The height of the proposed building does not exceed the top ridge level of the existing development (up to 1.17m less) and has a maximum rl below that of the abutting house No. 3 Tabalum Road (refer north elevation profile of NO.3 showing a 10.67m maximum overall height) again supporting the appropriateness of the proposed height in achievement of objectives to maintain development that is in context with the pattern and scale of surrounding development.*
- *The proposed height is well within the development potential of the site noting again that the existing building height exceeds MLEP 2013. A built form that is consistent with the surrounding built form and which successfully achieves and adds to the character of the locality will result.*

The upper level section that breaches the control is articulated and light weight in form, setback and not readily visible from the street frontages;

- *The breach of the control does not cause any adverse impact on the amenity of surrounding properties in relation to overlooking or overshadowing (refer shadow diagrams) in achievement of objective 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.*
- *The proposed development incorporates a high level of design skill. The rationale behind the design was having regard to the south facing slope to provide a clerestory in order to achieve the penetration of northern light into the proposed house;"*

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 an acceptable design that will not unreasonably impact the amenity of the surrounding urban or natural 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).

In considering the proposal, it is noted that a reduction in the bulk, height, setbacks and selected elements of the proposal have been amended in response to submission issues and further detailed assessment considerations made with regard to the Manly DCP and LEP. The subject land is a corner site with a moderately steep slope (including existing excavation) that influence the design response such as floor levels, side and front setbacks, building footprint and future amenity considerations.

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 standards

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of Buildings' of the MLEP 2013 are:

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

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

Comment:

The proposed building height is below the 8.5m height control (including the maximum wall height) when viewed from the Tabalum Road frontage and therefore the building height is acceptable with regard to the streetscape when viewed in context with adjacent dwellings in Tabalum Road. The land has a gradient of 1:4 and therefore the building steps down the site with the resultant breach of the building height materialised on the low side of the site whereby roof elements exceed the height corresponding to height plane where it falls sharply to follow the existing ground level below.

The subject site is a corner lot and therefore Cutler Road frontage has a narrower setback however, open balcony elements and roof eaves with a flat roof form are used to reduce building bulk on the lower side of the building where the building transitions to the lower side of the site. Wide setbacks are maintained to No.6 Cutler Road for private open space and pool area. The position of the proposed dwelling is consistent with existing dwelling position in terms of streetscape and landscape setbacks.

b) to control the bulk and scale of buildings,

Comment:

The proposal complies with floor space requirements for the residential zone and the proposal includes the use of balcony elements, landscaping, changes in wall materials and variable setback to break up building bulk. The roof form is flat and includes a clerestory element for visual interest and internal amenity. The clerestory element has been reduced in size to reduce bulk and minimise any non-compliance with this element.

It is considered that the proposal is consistent with this objective.

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:

Detailed view considerations have been made with the assessment of the proposal, including consideration made by the applicant to future reduce potential view impacts with selected minor changes made to address concerns raised with regard to views from nearby residential development across the site toward any harbour, foreshore or district views and the like. The site is not in a location where principal public views lines are gained across the site from a public space (beach / lookout or similar). It is considered that the proposed building height variation maintains consistency with this objective.

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:

Detailed solar access diagrams are provided to demonstrate that the proposed height variation does not create any unreasonable impact on solar access to adjacent land. (See diagrams A18 to A23 drawn by *Sanctum Design*). It is considered that the proposed building height variation maintains consistency with this objective.

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

Comment:

The dwelling is adjacent a lookout point and carpark. The height and bulk of the proposed dwelling does not create any adverse impact (such as overshadowing or blocking public harbour views) on recreational land or existing vegetation for the adjacent National Park. It is considered that the proposed height variation maintains consistency with this objective.

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 proposed height variation does not offend this objective of the zone in that the use of the remains (for detached housing) and is provided within a landscape setting that is compatible with the height, density and pattern of surrounding development.

It is considered that the development satisfies this objective.

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

Comment:

This clause is not relevant to the proposal as no other (non-residential services or facilities) are proposed.

It is considered that the development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the 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 Height of buildings Development Standard is assumed by the Local Planning Panel.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area:	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 600sqm	Residential Area Dwelling - proposed 753.8sqm	N/A	Yes
	Dwelling Size: Minimum 134sqm (includes 5 bed 5 bathroom)	Dwelling 300 sqm	N/A N/A	Yes Yes
4.1.2.1 Wall Height*	North Elevation: 8.0m (based on site gradient 4.6:1)	7.8m	N/A	Yes
	South Elevation: 8.0m (based on site gradient 4.6:1) (Cutler Road)	8.2m	1.5%	No*
	East Elevation: 8.0m (based on site gradient 4.6:1) (Tabalum Road)	6.8m	N/A	Yes
	West Elevation: 8.0m (based site gradient 4.6:1)	7.8m	N/A	Yes
4.1.2.2 Number of Storeys	2	3 (basement garage, lift access / stairway and basement service, storage)	50%	No*
4.1.2.3 Roof Height	Height: 2.5m	1.13m	N/A	Yes
	Parapet Height: 0.6m	0.4m	N/A	Yes

	Pitch: maximum 35 degrees	0 to 1 degree	N/A	Yes
4.1.4.1 Street Front Setbacks (Tabalum Road)	Prevailing building line / 6m (Tabalum Road)	Consistent with prevailing setback *Awning reduced by condition	N/A	Yes*
4.1.4.2 Side Setbacks and Secondary Street Frontages (North, West and Cutler Road frontage)	Windows: 3.0m	4.9m to 5.9m (North) 15.2m (West)	N/A N/A	Yes Yes
	North (No.3 Tabalum Road)	2.2m to 3.6m	N/A	Yes
	West (No.6 Cutler Road)	10.0m	N/A	Yes
	Secondary street frontage: (Cutler Road)	Consistent with prevailing setback* 3.3m Garage (Basement) 1.5m Landscape balcony planter (L1) 5.0m to 7.2m Dwelling wall (L2) 2.0m balcony to 4.4m Dwelling wall (L3)	N/A N/A N/A	Yes Yes* Yes* Yes*
	Minimum frontage <50% for garage structures	<50% for garage on Cutler Road		
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Total Open space (60%) area (Total site area req. 452sqm)	548sqm Site total 75%	N/A	Yes
	Open space above ground <40% of total open space	45 sqm 14.8%	N/A	Yes
4.1.5.2 Landscaped Area (500sqm to 800sqm site area) (Total site area 753.8.1sqm)	Landscaped area 40% of open space 160sqm	395 sqm 52% (Total LOS by Revision B)	N/A	Yes
	3 native trees	3 trees	N/A	Yes
4.1.5.3 Private Open Space	18 sqm per dwelling	262 sqm Ground Level 1	N/A	Yes
4.1.6.1 Parking Design and the	Maximum 50% of	6.0m garage	N/A	Yes

Location of Garages, Carports or Hardstand Areas*	frontage up to maximum 6.2m	34m road frontage		
Schedule 3 Parking and Access	2 spaces per dwelling	2 spaces per dwelling	N/A	Yes

* Refer to detailed merit assessment under the heading 'Built Form Controls' within this report.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	No	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	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
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	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)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	No
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
Schedule 1 – Maps accompanying the DCP		

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The DCP requirements and objectives, pursuant to Clause 3.1.1 Streetscape (Residential area), including sections 3.1.1.1 to 3.1.1.5, are addressed as follows:

Merit Assessment Comments:

- The proposal is required to be consistent with Complementary Design and Visual Improvement design outcomes including streetscape considerations for setbacks, materials and built form. As outlined in the built form controls table, the external walls of the dwelling are consistent with the DCP requirements and have acceptable materials in conjunction with articulation along wall planes to address visual impact on the street and adjacent land.
- Wall heights have been varied due to the sloping site, however the use of landscaping, window fenestration and other elements (such as balconies, openings) assist to ensure no unreasonable impacts of bulk. The building does however include ancillary elements that extend / protrude into the streetscape setback areas that are inconsistent with objectives of the control. This includes avoiding elevated structures such as elevated open space terraces, pools and the like that would dominate public space of the street boundary /setback area and complementing the existing character which should consider roof forms, front fences and garages. In this regard, the applicant has selected to delete the proposed pool, originally intended to be located in the south-west corner of the site. Therefore, this building structure has been deleted from the development application plans to reduce impacts on Cutler Road.
- In consideration of the Tabalum Road frontage the building has a lower profile presenting as part 2 storey (with a flat roof form) and the clerestory roof feature has been reduced in size to reduce roof bulk and also improve view sharing. The dwelling profile when viewed from Tabalum Road is consistent with or lower than adjacent houses on the same side of the road as the subject site. The Tabalum Road streetscape is also characterised sloping the natural topography either side of the road in that dwellings on the lower side generally have higher rear elevation / setting with 2 to 3 storey built form and those on the high (northern) side of the road are in an alternative elevated positions with 2 storeys overlooking the street, being positioned at a higher natural ground level. The variation to the 3 storey control does not create an unreasonable impact on surrounding land and is consistent with the pattern of surrounding

development on similar sloping positions.

The proposal includes a 7sqm walled portico awning at the road boundary pedestrian gate which is not a feature evident in the local streetscape precedent (such as a free standing entry awnings normally associated with higher density development). The entry area also has wide eaves with blade wall protruding to 4.4m with the front door setback 6.8m. Therefore the walled awning detracts from the prevailing streetscape low density streetscape and is inconsistent with Clause 3.1.1.2. It is recommended that this elements be deleted and a normal gate entry only to Tabalum Road with the blade walls reduced to maintain an open streetscape view line.

- No issue is raised with respect to clause 3.1.1.5 for the bin storage area as this is concealed from view as part of the basement garage excavation.

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

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

General Amenity considerations pursuant to *Clause 3.4 Designing for Amenity* are considered as follows:

Merit Assessment Comments:

- Design considerations have been made to minimise loss of sunlight, privacy, views, noise and vibration impacts and other nuisance (odour, fumes etc.) for neighbouring properties and also to the proposed development for the new dwelling. Relevance of the density and pattern of development adjacent (commonly 2-3 storey dwellings) and local prevailing amenity, including privacy and solar access have been accommodated in the design, including screens, room orientation, windows, wall setbacks and landscaping. A number of selected changes to the plans have been made to accommodate issues raised by neighbouring properties to improve views, reduce bulk, improve privacy and address those concerns. While these changes could have been addressed by conditions, the applicant agreed to accommodate those matters directly into the plans, being a practical responsive approach.
- The design of the proposal is of a contemporary architecture and does not detract from the scenic amenity of the area. In particular, the visual pattern of bulk and design of a development is consistent with adjacent and nearby dwellings and has been considered from surrounding public and private viewpoints. In this regard, the applicant has responded to submissions made and reduced the extent of various elements of height, roof span, bulk, including deleting the pool element thereby reducing setback impacts.
- Adequate space on site is retained for open space to provide a landscape setting and meet the recreational needs of the occupier for the proposed open space areas and dwelling design for the redeveloped site for new house.
- The materials and finishes selected are suitable for the surrounding urban environment in terms of reflectivity including the roof material and style and window glazing extent for walls. The use of screens, wall articulation, natural materials and colours are appropriate for the residential

nature of the building and do not detract from the existing streetscape and surrounding amenity.

- In summary, the proposal has been designed to ensure no unreasonable amenity of existing and future residents and including privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts, subject to conditions.

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

3.4.2 Privacy and Security

Specific privacy requirements and objectives, pursuant to *Clause 3.4.2 Privacy and Security*, are considered as follows:

Merit Assessment Comments:

- The proposal has been designed to ensure no unreasonable loss of privacy to adjacent and nearby development by the use of design responses including window size and placement of privacy screens, use of translucent glass and window design (width, position and sill heights) to maintain reasonable privacy for the urban environment, including by the configuration of ground level spaces and landscaping (ground level or planter boxes).
- Where walls are close to the adjacent boundaries of No. 3 Tabalum Road and No.9 Cutler Road windows are off-set where practicable or designed to ensure no unreasonable impact on the adjacent dwellings with regard to viewing across private open space. The building separation and landscaping is also provided to mitigate impacts on privacy appropriate to residential living in the surrounding residential environment.
- The proposed dwelling for No.1 Tabalum Road has been designed with appropriate response to ensure no unreasonable impacts on privacy (both acoustical and visual) including the consideration of the floor plan elements (bathrooms, bedrooms, living area, fencing, landscaping and the like) so that direct viewing is limited or consistent with the surrounding residential environment. Generally, the orientation of the dwelling is toward the south and westerly similar to the existing dwelling outlook. The proposal does not create direct unreasonable viewing toward properties adjacent the site in Tabalum Road or Cutler Road.
- Landscaping and privacy screening devices have been incorporated to mitigate direct viewing between windows and/or outdoor living areas of adjacent buildings. Overall the proposal provides an appropriate level of privacy in the context of the surrounding density of the residential living environment without unreasonably compromising access to light and air. Bedrooms areas, being normally occupied less during the day and used for sleeping at night will not be unreasonably impacted.
- In summary, the design of the proposed new dwelling provides a balanced street outlook and well located habitable rooms, including private open space with appropriate residential security consideration.

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

3.4.3 Maintenance of Views

Specific view considerations and objectives, pursuant to *Clause 3.4.3 Maintenance of Views*, are addressed as follows:

Merit Assessment Comments:

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 views affected include water views toward the city skyline, Middle Harbour, Mosman and Sydney Heads. Tabalum Road and Cutler Road are in a ridgeline position with Sydney Harbour National Park separating the adjacent housing from the harbour foreshore area. At present the view is already affected by the high hipped roof profile of the existing house on the subject land. Impacts in the view also include power line structures, trees and other surrounding development that interrupt views at various points or angles / directions. Generally the site and surrounding residences have broad vistas with some views extending across 180 degrees from upper balconies or windows. Views at ground level are more interrupted by landscaping, buildings and associated structures.

The applicant has provided a view impact comparison, using the existing house superimposed with the proposed building outline to demonstrate views including iconic or valuable elements of water, foreshore, city skyline and the like. The view analysis demonstrates that some elements / margins of the view are gained (due to the lower roof) while other elements / margins are lost due to the wider building footprint. In the context of the whole of the water and land views the reduced margins are minor extensions / interruptions and do not fully obscure iconic elements. In this regard, views lines include a number of focal elements such as Sydney Heads, foreshore, marinas, public foreshore buildings, CBD skylines (Sydney/Chatswood).

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:

Views across the site from No.2 to No.6 Tabalum Road are sitting and standing views and above

ground floor level (being the first storey, where existing), the height advantage gives a more favourable view that is less affected since the subject site is substantially lower and falls away steeply from Tabalum Road. The views from No.3 & No.5 Tabalum Road are at a greater side view angle, being over the side boundary of the subject site if looking southward toward the Harbour area / Middle Head. Further away from the site in Tabalum Road (such as No.12 Tabalum) the view impact is diminished due to the separation distance and alternate outlook dictated by the subdivision pattern. The adjacent dwelling of No.6 Cutler Road is significantly lower than the site and therefore has no principal outlook across the subject site. An alternative view across the front setback exists from No.3 Tabalum Road (corner window - living area) which is interrupted by the front gate awning and protruding blade walls at the front door proposed. This issue is proposed to be addressed by the following minor amendments (at CC stage) to the design:

- The external blade wall extensions on either side of the front entry are to be setback 5.0m from Tabalum Road boundary;
- The entry awning structure and side walls for the pedestrian gate entry to Tabalum Road is to be deleted; and
- Tree planting within the front setback to Tabalum Road is to be amended to ensure plants have a natural height that is 3.0 metres, or less, in order to minimise view impacts.

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:

The affected properties are on the opposite side of Tabalum Road that overlook the site in a westerly to south westerly direction and alternatively properties north of the site. View lines are at various angles in relation to distance from the site and floor levels from a particular viewing point. Surrounding properties are multi-storey dwellings with terraces, glazing and windows that overlook the street from the front of those dwellings or include front and side windows at first floor level. The opposite side of Tabalum Road (easterly) is approximately 2.0m higher at the building line. Building on the lower side of Tabalum Road generally have garage access at grade with broad views available from the rear (west)

Due to the angle street alignment the most direct view corridor is from No.4 Tabalum with other surrounding houses having a more diagonal view line over the subject site (except for No.2 Tabalum that faces south). Notwithstanding this all properties have a significant vistas southeast city horizon with the iconic views of the harbour area, including Middle Harbour area. The view across the site has partly encroached water views of North Harbour due to the pattern of development along Tabalum Road. In this regard the applicant has reduced the extent of some building elements (eaves, balcony, clerestory roof) to further positively reduce the view encroachment.

In this regard, the views from above ground floor that also overlook the site includes the wider district outlook toward Chatswood, Sydney CBD and Sydney Heads. The building alignment of the proposal is comparable (with the exception of the protruding blade walls and entry gate awning) with the existing house and overall has a minor view impact being across a side boundary with the view line generally being over the rear private open space and not the major building elements (see landscape comments regarding tree replacement considerations). Landscaping in the front setback will potentially impact the view line across the front setback area from No.3 Tabalum (see Landscape Site Plan - Paul)

Scrivener Landscape Architect Sheets 1 to 4). To address this impact a condition for planting selection within the front setback to Tabalum Road be limited to a maximum 3m natural height.

On balance, considering the whole of the view, alternative view lines, pattern of surrounding development, district outlooks and the existing roof profile of the proposed dwelling in comparison to the proposed new roof, the view loss is qualitatively considered to be **minor**.

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:

An assessment of the non-compliance with the planning controls has been made and in summary the proposed roof form and height (include wall planes) does create any unreasonable impact due to maintaining a low roof profile with the building bulk including articulated wall plans and recessed elements (such as balconies). Roof elements have included in the roof style (being flat) does not create an unreasonable view impacts having been refined by the applicant minimise the minor non-complying elements for the upper level and roof elements. The blade walls at the front entry and front awning will interrupt the view from the front corner window (living area) of No.3 Tabalum, therefore a reduction of these elements is recommended to avoid view impact on the iconic view line of Sydney Heads (including Middle Head) across the front setback.

While some elements of the view space are obstructed, other elements of the view space are opened up which assists to balance the view impact. It is also noted the alternative view line of the Harbour entrance area remains unaffected by the proposal for dwellings opposite the site (north side) on Tabalum Road. Additionally, the design of the proposal is considered reasonable in terms of views across the site from No.3 and No.5 Tabalum Road and views from the living areas / terraces of No.4 to No.6 Tabalum Road, if looking toward the site to the land and water views beyond.

In summary, the overall view impact when considered in terms of the proposed building design approach, landscaping, height, setbacks, and floor to ceiling space is considered satisfactory and does not create an unreasonable view impact for any adjacent or surrounding properties.

The development is further considered against the Objectives of the DCP control as follows:

- *To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

Comment:

The proposal maintains view sharing with a reasonable design response that minimises impacts that are consistent with view sharing principles outlined above. The existing dwelling house and garage will be demolished and the profile or outline of the new development including the house and garage does not create an unreasonable loss of view sharing on balance with the change between quantitative and qualitative overall outlook.

- *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).

Comment:

Views from nearby development along Tabalum Road where dwellings overlook the site will not be unreasonably disrupted. Tabalum Road also has a significant vistas along the road corridor toward the Harbour and toward the west.

Public views along Tabalum Road are directed toward the south, rather than across the subject site due to the pattern of surrounding development and the direction of the street alignment and lookout area at the intersection of Cutler Road and Tabalum Road. The development of the site will present as part single / part two storey to Tabalum Road with the new garage on the low slope (off Cutler Road) with landscape space and planter box elements along the setback area. The density, height and distribution of landscaping is mindful of views and providing a balance to screen planting and privacy for the building required by the DCP. This is consistent with the visual impact of other detached dwellings in the vicinity of the site. Additionally, the setback from Tabalum Road in consideration of the proposed building height, envelope and alignment of the building will not have an unreasonable impact on views from adjacent properties and the applicant has reduced selected elements (balcony, eaves, clerestory) of the proposal to ensure minimal view interruption.

- *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.*

Comment:

The proposal is consistent with the objectives of the Manly DCP to ensure development may take place and the design responds appropriately to the site constraints and opportunities without creating unreasonable view amenity impacts for surrounding development that overlook the site. The demolition of the existing house and garage has sought to maintain a low profile (lower than the existing house) and maintain view sharing as demonstrated. This is also supported in the 'View Sharing Assessment' submitted by the applicant, dated 20 January 2020 (and minor plan amendment dated Sept 2020). On balance, in considering the whole of views available from various positions and relevant properties and view lines in particular over / through the site, the proposal is considered to be consistent with this objective.

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

3.5.5 Landscaping

Specific landscaping requirements and objectives, pursuant to *Clause 3.5.5 Landscaping*, are considered as follows:

Merit Assessment Comments:

- Landscaping has been selected that includes suitable trees and vegetation that is adaptable to the site conditions, including the site of ground level open space, soil / rocky conditions, available solar patterns, slope, proximity to existing vegetation, building services and to provide

amenity to the occupants.

- Detailed landscape referral assessment comments are provided under the heading "internal referrals" within this report. In summary, the landscaping has been amended by conditions to reduce the impact of high retaining walls close to Cutler Road frontage in the vicinity of the proposed swimming pool. This includes consideration by the applicant to exclude / delete the pool structure from the current application and retain this area as landscaping only for the current development application. This reduces the scope of works and lessens the potential impact on surrounding land.
- Landscape planting provided shown on the plans drawn by *Paul Scrivener Landscape Architecture (Sheet 1 to 4)* will assist to provide screening and complement the height and scale of the building by using a mix of small, medium and larger planting. Wide tree spacing has been used to ensure an open / spaced canopy that does not unreasonably impact surrounding views or outlook over the long term. The landscape planting has been considered by Council's landscape architect and conditions provided to address relevant issues identified.
- The use of native trees suitable for the local environment are slow growing and adapted for low water requirements and assist to provide habitat and food sources for insects, birds and arboreal animals. The site is within a bushfire prone area and therefore revisions are required at Construction Certificate stage and prior to Occupation to ensure planting is consistent with the bushfire requirements and recommendations provided within the Bushfire Assessment Report (to comply with NSW RFS *Planning for Bushfire Protection*).
- Landscape elements have been designed to complement the architecture of the building and provide amenity when viewed from public and private land. The proposal has been designed to retain the main landscape elements toward the Tabalum Road and Cutler Street frontages. Additional landscape spaces are provided to maintain a buffer to No.3 Tabalum Road and No.6 Cutler Road on the eastern and southern side of the site and is convenient to the principal living areas of the proposed new dwelling houses for the site.

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

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

The DCP height requirements and objectives, pursuant to *Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys and Roof Height)*, are addressed as follows:

Merit Assessment Comments:

- The non-compliance with the wall height is limited to the east and west elevations toward the southern end of the side wall plane. The property has a moderately steep gradient and the floor to ceiling heights being proposed are consistent and are not unreasonable or excessive such that they create any unreasonable impact on view, amenity, overshadowing or building bulk and scale.
- The building presents as part single storey part two storey when viewed from Tabalum Road and two storeys with a subfloor area when viewed from Cutler Road due to the cross fall of the

site toward the south-eastern corner. The subfloor area (RL72.5) contains a bedroom, bathroom, covered outdoor private open space and stair access and lift. The basement garage area is a non-habitable space and integrated into the excavated zone (below ground) for plant room, utility / workshop storage, and lift /stair access to the garage. The garage entry is at grade and off set from the dwelling house and therefore does not appear as another storey directly below the house when viewed from Cutler Road. The stepping of each level for the house and inclusion of open balcony spaces with landscaping assist to break up wall heights and do not create unreasonable impacts for the building bulk in terms of amenity impacts. In this regard, the principal usable private open space for the terraces width / balcony area are located toward the south-east of the building to direct the outlook toward the public domain of the street.

- The requirements of this clause permit roof parapets to extend up to 0.6m above the actual wall height as a permitted additional element to wall height. The parapet feature is considered to be appropriate to the design of the roof form and satisfies the objectives of this clause under the DCP with minimal impact on views and amenity to adjacent land. The clerestory element has been reduced as part of the assessment consideration by the applicant to assist with view sharing and reduce the extent of the protruding roof elements.
- In summary, the proposal is considered to be of a satisfactory architectural design and built form with regard to wall height considerations pursuant to the Manly DCP. The non-compliance to the wall height controls does not create any unreasonable impacts of overshadowing, views, bulk or general amenity to adjacent land.
Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the MDCP and the objectives specified in section 1.3 (a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

Setback requirements and objectives, pursuant to *Clause 4.1.4 Setbacks (front, side and rear) and Building Separation*, are addressed as follows:

Merit Assessment Comments:

- The proposal has maintained the central position of the existing building footprint with some variations for the new dwelling house, including elements toward the road frontage and a wider landscape presentation for Tabalum Road, to which the property is addressed (front entry door), with a new (relocated) vehicle access (garage) on the the lower side in Cutler Road. The site is oriented to present toward Tabalum Road Cutler Road being treated as the secondary road frontage (side setback) due to the corner location. There is no distinct setback line to Cutler Road until further west of the site due there being only one house further north before the National Park land. Therefore, the proposal is considered to address the desired development pattern of the street, the street edge (nature strip area) and the landscape character of the street (with consideration to not longer include the new pool structure in the south east corner of the site).
- The proposal is consistent with maintaining local amenity by the design response to ensure no unreasonable impact on privacy (by windows, balconies, screens, landscaping and the like) and providing equitable access to natural light, direct sunlight and air circulation for the proposed dwelling and the surrounding environment. In this regard, setbacks of 4.0m to 1.5m at ground level and increasing to 5.0m for the dwelling wall at the upper level. The dwelling design along

all elevations includes recessed elements and breaks in the side walls to reduce impacts of bulk and scale. Building separation is provided for No.3 Tabalum Road and varies from 1.4m to 3.6m along the side setbacks (generally 3m), with the non-compliance to the side boundary envelope limited to the upper corner of the side elevation (screen elements / parapet) at the southern end of the building (low side of these site) and does not have any unreasonable impact on Tabalum Road or adjacent properties.

- The proposal is consistent with the DCP objective to allow for the flexibility in the siting of buildings while allowing for view sharing and maintaining adequate space between buildings including views and vistas from private and public spaces. The location of the garages fronting Tabalum Road is not regularly on 6.0m with some being close to the boundary line along Cutler Road near the site. The garage entry will maintain safe and adequate traffic conditions, including visibility for car egress and pedestrians.
- Adequate side setbacks have been proposed to maintain natural features of landscaping including deep soil zones and appropriate planting subject to conditions. The proposed setbacks allow for compliance with the *Building Code of Australia* for maintenance, access, drainage work and emergency requirements (fire safety). The nature of development does not unduly detract from the context of the site and particularly in relation to road frontages and front and side setbacks including the context of neighbouring properties and the prevailing building lines in the immediate vicinity.
- Consistency is maintained to the Tabalum Road building line with neighbouring properties, including a minimum 6.0m front setback of the house. For Tabalum Road, a two storey character is dominant (with lower (basement style) level garages a common element at a third lower level on sloping sites). It is noted that some retaining wall features and pools within 6.0m the front setback for Cutler Road detract from the streetscape. Smaller elements of landscaping used to provide visual interest and amenity to the side setback areas and garage entry areas. The location of the site is also within a bushfire area due to the proximity of Sydney Harbour National Park and therefore landscaped open space is subject to the *Bushfire Assessment Report* provided to ensure appropriate planting as per NSW RFS *Planning for Bushfire Protection*.

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

4.1.9 Swimming Pools, Spas and Water Features

Deletion of the swimming pool has been discussed with the applicant as it is an ancillary element to the dwelling house. The works associated with the pool (including potential impact on the streetscape and side setback structures) is abated by deletion of this element from the proposed works. No further assessment is required with the area to remain as landscape area shown with reinstatement of landscaping as indicated on the landscaping plans (Rev C).

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$28,500 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,850,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings 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.

The proposal is considered to be a suitable form of development for the site, in that it maintains the similar context to the existing house and basement garage and pool currently on the site. The new building is lower in overall height, but with a larger footprint and internal areas. The building is consistent in height and scale to the existing pattern of surrounding residential development. Principal environmental impact considerations are views, bulk, landscaping, building height (including walls and envelope), privacy, overshadowing, construction impacts (during works).

The public submissions received have been considered and are addressed within this report, and conditions have been applied where appropriate to address those concerns, including; landscaping, privacy, bulk, overshadowing, views, traffic safety, parking, access and stormwater. In order to reduce impacts, the applicant has deleted the new pool construction from the proposed works and made minor changes to reduce bulk, improve privacy and accommodate further view sharing considerations.

The proposal will not have an unreasonable impact in relation to view sharing from adjacent and nearby properties in Tabalum Road or Cutler Road. General amenity impacts such as may commonly arise during construction works are addressed by standard conditions (including dilapidation, dust, noise, site management and the like). Suitable conditions are recommended to address stormwater engineering, vehicle access and landscape related issues as detailed in this report.

During the assessment period, some minor changes were made by the applicant to reduce the scope of works, accommodate view impact concerns, building bulk, streetscape and the like, including submissions received. These changes could have been addressed by conditions and they reduce the impacts of the development, therefore re-notification of the minor amendments was not required.

The requirements of the Manly LEP and Manly DCP apply and in this regard, matters relating to desired future character, setbacks, building envelope, bulk and scale, external materials, overshadowing, privacy, views, stormwater and traffic have been addressed. In this case, the non-compliances with the built form controls are addressed in accordance with the objectives and requirements of those considerations. The proposed variation to building height is supported pursuant to the request made to vary the development standard under Clause 4.6 of the MLEP and for the reasons outlined in the merit assessment provided.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2020/0077 for Demolition works and construction of a dwelling house on land at Lot 20 DP 758044, 1 Tabalum Road, BALGOWLAH HEIGHTS, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A01 Site Plan Rev B	21.9.2020	Sanctum Design
A04 Excavation Plan Rev B	21.9.2020	Sanctum Design
A05 Garage Rev B	21.9.2020	Sanctum Design
A06 Level 1 Rev B	21.9.2020	Sanctum Design
A07 Level 2 Rev B	21.9.2020	Sanctum Design
A08 Level 3 Rev B	21.9.2020	Sanctum Design
A09 Roof Plan Rev B	21.9.2020	Sanctum Design
A10 Section A Rev B	21.9.2020	Sanctum Design
A11 Section B Rev B	21.9.2020	Sanctum Design
A12 East (Tabalum Streetscape) Elevation	21.9.2020	Sanctum Design
A13 South (Cutler Streetscape) Elevation	21.9.2020	Sanctum Design
A14 West Elevation	21.9.2020	Sanctum Design
A15 North Elevation	21.9.2020	Sanctum Design
A28 External Finishes Schedule	21.9.2020	Sanctum Design
A29 Window Schedule 1	21.9.2020	Sanctum Design
A30 Window Schedule 2	21.9.2020	Sanctum Design
A31 Window Schedule 3	21.9.2020	Sanctum Design
A32 Window Schedule 4	21.9.2020	Sanctum Design
A33 Window Schedule 5	21.9.2020	Sanctum Design

Engineering Plans		
Drawing No.	Dated	Prepared By
D01 B Stormwater Management Drainage Plans	30.9.2019	Northern Beaches Consulting Engineers
D02 B Stormwater Management Drainage Plans	30.9.2019	Northern Beaches Consulting Engineers
D03 B Stormwater Management Drainage Plans	30.9.2019	Northern Beaches Consulting Engineers
D04 A Stormwater Management Drainage Plans and Details	19.9.2019	Northern Beaches Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Assessment Report 191115	21.8.2019	Building Code and Bushfire Hazard Solutions
Geotechnical Investigation J2324A	22.10.2019	White Geotechnical Group
Arboricultural Impact Assessment Report	15.8.2019	Hugh The Arborist
BASIX Certificate 040129S_04	20.1.2020	Efficient Living Pty Ltd

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:

Landscape Plans		
Drawing No.	Dated	Prepared By
Sheet 1 Landscape Site Plan Issue C	17.9.2020	Paul Scrivener Landscape
Sheet 2 Elevations and Detail Plan Issue C	17.9.2020	Paul Scrivener Landscape
Sheet 3 Planting Plan and Details Issue C	17.9.2020	Paul Scrivener Landscape

Waste / Demolition / Sediment Management Plan		
Drawing No/Title.	Dated	Prepared By
A03 Demolition Plan Revision B	21.9.2020	Sanctum Design
Waste Management Plan	4.10.2019	K Mooney

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

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

2. Prescribed Conditions

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

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

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

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

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

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

Reason: Legislative requirement.

3. **General Requirements**

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a

safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

4. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$28,500.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$2,850,000.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount

unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

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

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

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

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

5. **Security Bond**

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

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

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

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

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

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

6. **Stormwater Disposal**

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.

7. Amendments to the approved plans

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

- (i) The external blade wall extensions on either side of the front entry are to be setback 5.0m from Tabalum Road boundary;
- (ii) The entry awning structure and side walls for the pedestrian gate entry to Tabalum Road is to be deleted; and
- (iii) Tree planting within the front setback to Tabalum Road is to be amended to ensure plants have a natural height that is 3.0 metres, or less, in order to minimise view impacts.

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

Reason: To ensure development is consistent with the streetscape and minimises view impacts upon surrounding land.

8. Structural Adequacy and Excavation Work

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

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

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

Reason: To provide public and private safety.

9. Sub-Soil Seepage

The Applicant is to submit plans demonstrating that all sub-soil seepage drainage is discharged via a suitable silt arrester pit, directly to Council's nearest stormwater drainage line being Cutler Road and is to be carried out in accordance with relevant Australian Standards. (Note: At the time of determination the following (but not limited to) Standards applied:

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

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

Reason: To ensure appropriate drainage and Stormwater management on site to protect amenity of residents.

10. Shoring of Council's Road Reserve (Temporary road anchors)

Should the proposal require shoring to support an adjoining property or Council land, the

Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

Written approval from Council under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Council's road reserve. The Owner's approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

11. 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.

12. Required Planting – Screening

Screen planting is to be provided within a 2.0m landscape setback, within the site along along the common boundary with No.6 Cutler Road.

The selected planting are to be maintained as the selected species and density as shown on the approved landscape plans (Issue C dated 17.9.2020) prepared by *Paul Scrivener Landscape Architecture*.

Reason: Privacy amenity.

13. Amended Landscape Plans

An Amended Landscape Plan, based on the Landscape Plans (Issue C sheets 1, 2, 3, and 4) prepared by *Paul Scrivener Landscape Architecture*, shall be issued to the Certifying Authority prior to the issue of a Construction Certificate, to include the following details:

- i) the swimming pool demolished area maintained as soft landscaping, either lawn or gardens,
- ii) street trees shall be located at least 1.5 metres (m) from the back of kerb,
- iii) the proposed planting within the road verge from the new driveway eastward to Tabalum Rd is not permitted and shall be deleted,
- iv) the existing planting and walling within the road verge westward of the new driveway shall be retained, and planting shall be enhanced as documented in the Amended Landscape Plan,
- v) all tree planting shall be located within a 9square metres (sqm) deep soil area and be located a minimum of 3 metres from existing and proposed buildings,
- vi) all tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree location may impact upon significant views.

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

Reason: landscape amenity.

14. Transplanting Methodology Plan

A Transplanting Methodology Plan, prepared by an Arborist with AQF minimum Level 5

qualifications in arboriculture, shall be documented to demonstrate the requirement for transplanting the proposed Cabbage Tree Palms as shown on the Landscape Plans and as recommended for transplanting in the Arboricultural Impact Assessment, and identified as T6 and T7, including:

- i) transportation to site, site delivery and access provisions,
- ii) Preparation of the transplantation site,
- iii) Preparation of the trees/palms to be transplanted,
- iv) transplanting methodology and installation works,
- v) post-transplanting care and duration,
- vi) ongoing maintenance program,
- vii) replacement strategy if transplanting fails in the long term.

The Transplanting Methodology is to be submitted to the Certifying Authority for approval prior to issue of a Construction Certificate

Reason: tree protection.

15. Compliance with Standards

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. 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, retaining walls and other similar items.

- No.6 Cutler Road, Balgowlah Heights
- No.3 Tabalum Road, Balgowlah Heights

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 arising 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.

17. **Tree removal within the property**

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

- T2 - Lillypilly
- T4 - Weeping Lillypilly
- T16 - Backhousia

The following Exempt Species do not require Council consent for removal:

- T8 - Yucca
- T9 - Yucca
- T15 - Kentia Palm

The following species are proposed for transplanting:

- T5 and T6 - Cabbage Tree Palms

Reason: to enable authorised building works

Note: Any request to remove a tree approved for retention under the development application is subject to a Section 4.55 modification application, or an assessment by an Arborist with minimum AQF Level 5 in arboriculture that determines that the tree presents an imminent risk to life or property.

18. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites.

The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection.

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

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

- i) section 11. Arboricultural Work Method Statement and Tree Protection Requirements, and
- ii) section 12. Hold Points

All tree protection measures specified must:

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

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

Note: 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: tree protection.

19. **Tree removal within the road reserve**

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

- T1 - Native Frangipani

Removal of the approved tree in the road reserve shall only be undertaken by a Council approved tree contractor.

Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services Section prior to removal.

Reason: public liability.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

20. **Road Reserve**

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

Reason: Public safety.

21. **Survey Certificate**

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

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

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

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

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

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

22. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3 metres wide at kerb and 5.0 metres at boundary in accordance with Northern Beaches Council Drawing No A4-3330/1 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. The two 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.

23. Tree and vegetation protection

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

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

b) Tree protection shall be undertaken as follows:

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

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment prepared by Hugh The Arborist, as listed in the following sections:

- i) section 7. Assessment of Construction Impacts,
- ii) section 8. Conclusions,
- iii) section 10. Recommendations,
- iv) section 11. Arboricultural Work methods Statement and Tree Protection Requirements,
- v) section 12. Hold Points.

The Certifying Authority must ensure that:

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

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

Reason: tree and vegetation protection.

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

24. **Landscape completion**

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

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 any conditions of consent.

Reason: environmental amenity.

25. **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.

26. **Reinstatement of Kerb**

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

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

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

27. **Retaining wall**

The retaining wall works shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any final Occupation Certificate.

Reason: Public and Private Safety

28. **House / Building Number**

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

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

Reason: Proper identification of buildings.

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

29. **Landscape maintenance**

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

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

Reason: to maintain local environmental amenity.

