

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1447
Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 81 DP 4889, 27 Alan Avenue SEAFORTH NSW 2092
Proposed Development:	Demolition works, Torrens title subdivision of 1 lot into 2 lots and construction of a dwelling house and swimming pool and fencing on each lot
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Lucy Therese Giuliano Darren Sean O'Hanlon Ra El Khouri
Applicant:	Darren Sean O'Hanlon
Application Lodged:	16/12/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	24/08/2020 to 07/09/2020
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	4.4 Floor space ratio: 11.1%
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,431,000.00

EXECUTIVE SUMMARY

The proposal seeks consent for the demolition of the existing dwelling house and associated structures and the Torrens title subdivision of one lot into two lots and construction of a dwelling house on each lot.

The assessment has found that the proposed development is satisfactory in relation to the built form, character, streetscape, and internal and external residential amenity (subject to conditions).

The applicant has lodged a request under Clause 4.6 of the Manly Local Environmental Plan 2013

(MLEP 2013) for a variation to Floor Space Ratio (FSR). The proposal has a total gross floor area of FSR: 0.5:1 (Lot 1: 306.1sqm & Lot 2: 308.9sqm), representing a 11.1% variation to the Floor Space Ratio development standard of 0.45:1 (275.9sqm) under the MLEP.

As the application proposes a variation to the Floor Space Ratio development standards of more than 10%, the application is referred to the Development Determination Panel.

Council received 7 (seven) submissions objecting to the proposal in response to the application. The issues raised in the submissions have been addressed in the "Public Notification" section of this report and in summary they do not warrant refusal or re-design of the proposal subject to suitable conditions have been imposed where required.

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

PROPOSED DEVELOPMENT IN DETAIL

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

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

The dwelling houses consist of:

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

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

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

Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)

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

SITE DESCRIPTION

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

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

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

After initial assessment of the proposal Council raised concerns and the applicant submitted amendments on 18 June 2020 and further details were received on 23 June 2020. The amendments included:

- Reduction in the general ceiling height at ground floor level from 2.98m to 2.70m (-0.28m reduction)
- Reduction in the general ceiling height at first floor level from 2.85m to 2.70m (-0.15m reduction)
- Overall roof levels will therefore be reduced by 0.43m

Addition information in relation to the solar access diagrams and calculations was also submitted by the applicants architect (Nick Bell Architects).

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 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination 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)(iia) – 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. Additional information was requested in relation to addressing the wall height of 27A Alan Avenue. Amended plans were received on 18 June 2020 and further details were received on 23 June 2020.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
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 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 24/08/2020 to 07/09/2020 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 6 submission/s from:

Name:	Address:
Ms Rosa Ferragina Mr Domenico Ferragina	64A Edgecliffe Esplanade SEAFORTH NSW 2092
Mr Shane Henry	31 Alan Avenue SEAFORTH NSW 2092
Mr William Victor Anderson	29 Alan Avenue SEAFORTH NSW 2092
Mrs Sejal Monik Kotecha	25 Alan Avenue SEAFORTH NSW 2092
Outlook Planning & Development	5 Beresford Avenue BERESFIELD NSW 2322
Mrs Kathryn Elizabeth Whiting Mr Adrian Paul Whiting	62 A Edgecliffe Esplanade SEAFORTH NSW 2092

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

- Streetscape and negative impact on the character of the locality*
- Dual occupancy subdivision*
- Building Bulk (visual dominance)*
- Privacy*
- Solar Access*
- Noise*
- Floor Space Ratio (FSR)*
- Amended plans*
- Building setback*
- Height of building (Number of storeys)*
- Excavation and risk of structural damage to adjoining dwellings and structures*
- Landscaping*
- Clause 4.6 Maximum Floor Space Ratio (not sufficient)*
- Project Venture Developments Pty Ltd v Pittwater Council 2005*

The matters raised within the submissions are addressed as follows:

- Streetscape and negative impact on the character of the locality

Issues were raised about the proposed developments appearance to Alan Avenue and inconsistency with adjoining and surrounding development.

Comment: Alan Avenue consists of a mix of single and double storey dwelling houses with landscaped front gardens. It is noted that surrounding development within the vicinity of this site has a mixture of single, double and three storey residential dwelling houses. The proposed dwellings demonstrate sufficient modulation and are well articulated with a selection of materials and colours. The front building setbacks are varied which ensures a good breakup and difference between the dwellings while maintaining a consistent front setback alignment with adjoining dwellings/structures. The dwelling at 27 Alan Avenue will retain the existing Port Jackson Fig Tree within the front setback area. This coupled with the Brush Box Tree within the road reserve at the front of the site and the proposed landscape plan will ensure a good presentation to the street.

Given the above it is considered that the proposal demonstrates sufficient consistency with the streetscape and does not warrant further amendment or refusal of the application.

- Building Bulk

Issues were raised about the proposed building bulk (bulk and scale) of the development.

Comment: The proposed development is of consistent height, bulk and scale to surrounding development within the area. The proposed development includes a compliant front setbacks which is consistent with the prevailing front building line in the street, and provides an improved landscape treatment to the front setback area. The side setback and wall height non-compliance's do not result in any unreasonable overshadowing or privacy impacts (subject to conditions), as detailed throughout this report. It is noted the overall height of the dwellings are fully compliant.

The proposed development is well articulated and modulated so as to break down the visual appearance of the built form. The subject site allows for a suitable presentation of landscaping and vegetation that is complementary to the area. The proposal will not unreasonably impact upon the streetscape.

The design of the proposal is suitable in that it maintains the character of the site and consistency with surrounding development. The proposed development will sit appropriately within the residential setting in a manner that is consistent with the character and landscape of the area.

Given the above it is considered that the proposal demonstrates sufficient consistency with streetscape and does not warrant further amendment or refusal of the application.

- **Noise**

Issues were raised about the location of the swimming pool filters in the rear yards of the respective properties (27 & 27A Alan Avenue) and possible noise from these filters.

Comment: A review of the plans including a site inspection from 64A Edgecliffe Esplanade (adjoining property to the rear of the subject site) was undertaken on 8 July 2020. It is noted that issues were also raised by 62A Edgecliffe Esplanade about the same issue.

Reviewing the plans it is noted the swimming pool filter for 27 Alan Avenue is located 1.2m away from the rear boundary and the pool filter for 27A Alan Avenue is located 1.7m away from the rear boundary. The swimming pool filters are to be located within timber framed housing to minimise noise to adjoining and surrounding properties/dwellings. It is considered given the distance away from the rear boundary and the proposed filters to be housed within a structure should be adequate to maintain acoustic amenity to adjoining and surrounding properties. Additionally, a condition will be included to ensure this acoustic amenity is maintained to these properties.

Given the above it is considered subject to the addition of condition(s) that the proposal is supportable and does not warrant refusal of the application.

- **Floor Space Ratio (FSR)**

Issues were raised that the proposed development exceeding Clause 4.4 Floor Space Ratio of the Manly Local Environmental Plan 2013 (MLEP 2013) is unreasonable given the overall bulk and scale of the development.

Comment: The variation to this control of the MLEP 2013 (11.1% variation) and the Clause 4.6 Exceptions to development standard are supported as detailed in the Clause 4.6 section of this report.

Given the above it is considered subject to the addition of condition(s) that the proposal is supportable and does not warrant refusal of the application and the overall bulk, scale and presentation of the dwellings is reasonable and consistent with the objectives of the control and zone.

- **Clause 4.6 Maximum Floor Space Ratio (not sufficient)**

Issues were raised that the submitted Clause 4.6 Exception to development standards which is listed as Appendix A - Clause 4.6 Variation FSR with the Statement of Environmental Effects prepared by Nolan Planning Consultants was *"not sufficient."*

Comment: A review of the Objection Pursuant to Clause 4.6 of Manly Local Environmental Plan

2013 (Variation of a development standard regarding the maximum floor space ratio as detailed in Clause 4.4 of the Manly Local Environmental Plan 2013) was undertaken by Council. The request by the consultant planner covered the reasoning including the background, purpose of Clause 4.6, Objectives of Clause 4.6, Onus on the Applicant, Justification of the Proposed Variation, consistency with the zone objectives, consistency with the objectives of the standard, including a consideration via a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and a consideration via a written request that there are sufficient environmental planning grounds to justify contravening the development standard with the consent authority (Council).

It is considered that the written variation to Clause 4.4 Floor Space Ratio of the MLEP 2013 has been adequately addressed within the Clause 4.6 Exception to development standards and does not warrant refusal and/or further amendment of this application.

- Height of building (Number of storeys)

Issues were raised of the number of storeys proposed by the dwellings does not comply with MDCP control 4.1.2.2 Number of Storeys.

Comment: The proposed dwellings are part two/part three storeys in height and a review of the sections demonstrates that the garage for 27 Alan Avenue is mostly compliant. A small portion (2.9m) of this garage/plant area (overall 10.9m in length) is three (3) storeys which is 26.6% of this garage/plant area and overall this translates to 11.2% of the dwelling been three (3) storeys and 88.8% of the dwelling been two (2) storeys. In relation to 27A Alan Avenue the portion is a larger portion 5.9m of this garage/plant area which is 54.1% of this area and overall this translates to 22.3% of the dwelling been three (3) storeys and 77.7% of the dwelling been two storeys.

A detailed variation has been completed under Clause 4.1.2.2 Number of Storeys with the MDCP section of this assessment report and it is considered given that the proposed dwellings are mainly two (2) storeys in height overall with only a small portion of the dwellings been three (3) at the front of the building that this variation can be supported in this instance.

It is considered that this issue has been adequately addressed and does not warrant refusal and/or further amendment via condition(s).

- Excavation and risk of structural damage to adjoining dwellings and structures

Issues and concerns were raised by the two (2) adjoining properties - 25 and 29 Alan Avenue

"The Geotechnical Report prepared by White Geotechnical Group identifies that significant excavation work is required to accommodate the two basement garages and the two swimming pools. The report has highlighted that there is considerable sandstone rock on the development site and that the garage excavations will take place approximately 2.5m away from our house. We are greatly concerned that the excavations and vibrations may cause structural damage to our house, inground pool and surrounding paving. We therefore request that the applicant prepare a dilapidation report as a condition of the proposed development and that mutual agreement of such report be required as part of the approval process."

Comment: Council Planner concurs with the adjoining property owners and conditioned pre-dilapidation and post-dilapidation surveys of 25 and 29 Alan Avenue to be undertaken to ensure this outcome.

Given the above it is considered that this issue/concern has been adequately addressed and does not warrant refusal of the application subject to condition(s).

- Dual occupancy subdivision

Issues were raised that this development was a dual occupancy subdivision and out of character of the locality.

Comment: The proposed development is for the subdivision of the existing allotment which is 1226sqm in area. Under the current controls of the MLEP 2013 this area allows for a minimum allotment size of 600sqm. The proposed allotments are 613sqm in area and are of adequate width and length to allow for a dwelling house, associated structures/outbuildings and landscaped gardens.

A review of Council's Spatially Enabled Application (SEA) displays many allotments of a similar size as the lots proposed:-

4 Princes Promenade - 608sqm
9 Alan Avenue - 650.3sqm
11 Alan Avenue - 556.4sqm
11A Alan Avenue - 656sqm
13A Alan Avenue - 603.8sqm
15 Alan Avenue - 575.4sqm
15A Alan Avenue - 635sqm
17 Alan Avenue - 573sq
17A Alan Avenue - 638sqm



Source: SEA

The proposed development is for a Torrens title subdivision of one lot into two lots (not dual occupancy) including the demolition of the existing dwelling, construction of two (2) dwelling houses, swimming pools and landscaped gardens.

Given the above it is considered that the proposed allotment sizes and configurations are consistent with the minimum lot size requirements and consistent with the allotments in Alan Avenue and the surrounding locality.

It is considered that this issue has been adequately addressed and does not warrant refusal and/or further amendment via condition(s).

- Project Venture Developments Pty Ltd v Pittwater Council 2005

"The Principle establishes the following two questions to be answered to determine whether a proposal is compatible with its context:

- *Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*
- *Is the proposal's appearance in harmony with the buildings around it and the character of the street?"*

The planning consultant engaged by the owner of 25 Alan Avenue considers the proposed development to be out of character for the area and is visual dominant with minimal openness and articulation and results in substantial impacts of views.

Comment: As previous stated within this assessment report and in particular this section (Submissions) it is considered that the proposed development demonstrates sufficient modulation and are well articulated with a selection of materials and colours. The front building setbacks are varied which ensures a good breakup and difference between the dwellings while maintaining a consistent front setback alignment with adjoining dwellings/structures. The overall height of the dwellings are fully compliant with Clause 4.3 Height of buildings of MLEP 2013.

This assessment has reviewed privacy, solar access, FSR, Height of Building (number of storeys), streetscape and character, building bulk, building setback, noise, excavation and risk of structural damage to adjoining dwellings and structures and landscaping and considered these physical impacts as acceptable.

Given the above it is considered that this issues does not warrant the refusal of this application and or further amendments via conditions.

- Solar access

Issues were raised by adjoining property to the south (29 Alan Avenue) in particular to the north facing living room window and the private open space.

Comment: A detailed assessment has been completed under Clause 3.4.1 Sunlight Access and Overshadowing of the MDCP. It is noted in the assessment of this clause the irregular allotment sizes and side boundary lengths of 27 Alan Avenue and 29 Alan Avenue, which are notably disproportionate. It was concluded that the solar access to the living room was vulnerable given its location and that was adequate solar access provided to the private open spaces (front and rear) of 27 Alan Avenue.

Given the above it is considered that this issues does not warrant the refusal of this application and or further amendments via conditions.



Note: 27 Alan side boundary - 60.96m and 29 Alan Avenue side boundary - 36m

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Landscape Officer	<p>Planners Comments:-</p> <p>Clarifying the proposed development is for a Torrens Title Subdivision of one (1) lot into two (2) lots, the construction of a dwelling house and swimming pool on each new allotment.</p>

Internal Referral Body	Comments		
Landscape Officer	<p>The development application proposes demolition and construction of a detached dual occupancy and Torrens title subdivision. The landscape component of the proposal is acceptable subject to the protection of existing trees and vegetation and the completion of landscaping.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP 2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types.</p> <p>(JT) a project arborist is required on site to supervise excavation for stormwater works within the tpz of the existing Ficus in the front yard. (AP) Conditions added</p>		
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following condition of consent.		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	<p>The proposal has been referred to Heritage as the subject site adjoins a heritage item</p> <p>1264 - Street Trees - Alan Avenue</p>		
	Details of heritage items affected		
	<p>Details of the item as contained in the Manly inventory is as follows:</p> <p><u>Statement of significance:</u> Historic and aesthetic street tree planting and streetscape.</p> <p><u>Physical description:</u> Ficus Rubiginosa trees as centre road planting. Unique layout to Manly.</p>		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
RAIA Register of 20th	No		

Internal Referral Body	Comments		
	Century Buildings of Significance		
	Other	N/A	
	Consideration of Application		
	<p>The proposal seeks consent for the construction of two dwellings and torrens title subdivision of 27 Alan Avenue. The heritage item is located directly outside the subject property and covers the centre median tree plantings of Alan Avenue. The proposal is considered to not impact upon the significance of the heritage item, but Heritage supports Landscape's condition that the trees be protected during construction works.</p> <p>Therefore Heritage raises no objections and requires no additional conditions.</p> <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p>		
	Further Comments		
	COMPLETED BY: Brendan Gavin, Principal Planner		
	DATE: 25 August 2018		

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1053668S dated 13 December 2019 & Certificate No. 1063239S dated 13 December 2019). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0004455663-01 dated 13 December 2019 & Certificate No. 0004455838-01 dated 13 December 2019).

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

Commitment	Required Target	Proposed (27 Alan Ave)	Proposed 27A Alan
Water	40	40	40
Thermal Comfort	Pass	Pass	Pass
Energy	50	79	79

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	600sqm	Lot 1: 613.1sqm Lot 2: 613.1sqm	N/A	Yes
Height of Buildings:	8.5m	Lot 1: 6.5m - 8.5m Lot 2: 6.5m - 8m	N/A	Yes
Floor Space Ratio	FSR: 0.45:1 (275.9sqm)	FSR: 0.5:1 (Lot 1: 306.1sqm) FSR: 0.5:1 (Lot 2: 308.9sqm)	11.1%	No

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Part 2 Permitted or prohibited development	Yes
2.7 Demolition requires development consent	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	No
4.6 Exceptions to development standards	Yes
Part 6 Additional local provisions	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes

Clause	Compliance with Requirements
6.12 Essential services	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.45:1 (239.6sqm)
Proposed:	0.5:1 (Lot 1: 306.1sqm)
	0.5:1 (Lot 2: 308.9sqm)
Percentage variation to requirement:	11.1%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

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

(b) the concurrence of the Secretary has been obtained.

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

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

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

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

(c) to promote the orderly and economic use and development of land,

- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicant's written request argues, in part:

"It is contended that the development meets the objectives of Clause 4.4 and that reduction to comply with the numerical requirements do not serve any benefit.

The proposal is considered acceptable and there are sufficient environmental planning grounds to justify contravening the development standard.

The variation to the development standard will allow for flexibility and the proposal provides for an outcome that is compatible with the surrounding development and does not have a detrimental impact on the surrounding properties. The stated objectives of the R2 General Residential Zone, which are noted as:

- To provide for the housing needs of the community within a low density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

As sought by the zone objectives, the proposal will provide for a detached dual occupancy which is sensitive to the location and the topography of the locality.

The proposal includes modulated wall lines and a consistent palette of materials and finishes in order to provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum floor space ratio, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood."

The above matters are agreed with by the Assessing Officer. The resultant dwellings are well articulated and modulated and demonstrates a high quality development.

Additionally, it is agreed that the proposed development is of consistent height, bulk, and scale of surrounding development within the area. The proposed development includes a compliant front setbacks which is consistent with the prevailing front building line in the street, and provides an improved landscape treatment to the front setback area. The side setback and wall height non-compliance's do not result in any unreasonable overshadowing or privacy impacts (subject to conditions), as detailed throughout this report.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment: The proposed development is well articulated and modulated so as to break down the visual appearance of the built form. The subject site allows for a suitable presentation of landscaping and vegetation that is complementary to the area. The proposal will not unreasonably impact upon the streetscape.

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

Comment: The resultant dwellings provide for a more articulated and modulated development that does not require the removal of any significant vegetation.

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

Comment: The design of the proposal is suitable in that it maintains the character of the site and consistency with surrounding development. The proposed development will sit appropriately within the residential setting in a manner that is consistent with the character and landscape of the area.

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

Comment: The proposed development subject to suitable conditions will maintain the use or enjoyment of the adjoining land and the public domain. A review of the amended shadow diagrams submitted with the application demonstrates that the proposal will demonstrate reasonable solar access to residential properties.

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

Comment: The development is for residential use.

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 development retains the residential use of the site.

It is considered that the development satisfies this objective.

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

Comment: The proposal will still allow for other land uses or services required to meet the day to day needs of residents within the area.

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, and in accordance with correspondence from the Deputy Secretary on 24 May 2019, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variation to the Floor space ratio Development Standard associated with the two (2) single dwelling houses (Class 1 buildings).

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1226.3sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 2 dwellings	2 dwellings (1 dwelling per new lot)	N/A	Yes
	Dwelling Size: 124sqm (minimum)	(27 Alan) - 306.1sqm (27A Alan) - 308.9sqm	N/A	Yes
4.1.2.1 Wall Height	E: 6.8m (based on gradient 1:20)	6m - 7.7m	13.2%	No
	W: 6.8m (based on gradient 1:20)	5.9m - 7.6m	11.8%	No
4.1.2.2 Number of Storeys	2	2/3*	Nil - 50%	No*
4.1.2.3 Roof Height	Height: 2.5m	1.1m	N/A	Yes
	Parapet Height: 0.6m	0.6m	N/A	Yes
	Pitch: maximum 35 degrees	2 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line 7.85m / 6m (minimum)	(27 Alan) 10.55m - 12.75m	N/A	Yes
		(27A Alan) 10.3m - 13.4m	N/A	Yes
4.1.4.2 Side Setbacks	E: 2.27m (based on wall height)	(27 Alan) 1.509m - 3.559m	Nil - 33.5%	No
		(27A Alan) 0.95m - 2.9m	Nil - 58.1%	No
	W: 2.27m (based on wall height)	(27 Alan) 0.9m - 2.9m	Nil - 60.3%	No
		(27A Alan) 1.559m - 3.509m	Nil - 31.3%	No
	Windows: 3m	1.509m - 1.559m	48% - 49.7%	No
4.1.4.4 Rear Setbacks	8m	(27 Alan) 18.3m	N/A	Yes

		(dwelling) & 9.5m (pool) (27A Alan) 17.2m & 8.7m (pool)	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (674.5sqm) of site area	55% (674.9sqm)	N/A	Yes
	Open space above ground 25% (168.7sqm) of total open	Nil	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% (236.1sqm) of open space	58% (394.6sqm)	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	65.8sqm (min)	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	4.9m	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	-0.1m to -0.3m	N/A	Yes
	1m curtilage/1.5m water side/rear setback	0.7m curtilage/1m water side	N/A	Yes**
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

* Lot 1 (27 Alan) - only 11.2% of the dwelling is 3 storeys & Lot 2 (27A Alan) - only 22.3% of the dwelling is 3 storeys

** Conditioned swimming pools 1m curtilage and 1.5m water side

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part 3	Yes	Yes
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3 Landscaping	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	No	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	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Performance, and Water Sensitive Urban Design)		
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
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
Part 4	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.4 Other Development (all LEP Zones)	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
Schedules	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 3 - Parking and Access	Yes	Yes
Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles	Yes	Yes
Schedule 4 - Trees	Yes	Yes
Schedule 4 - Part A – Removal of Tree Tests	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

The proposed development results in additional overshadowing to 29 Alan Avenue, resulting in less than 4 hours of direct sunlight to the living room window located on the northern side of the dwelling. In

relation to the private open the clause states:-

"New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June)"

Based on the shadow access diagrams and calculations submitted by the applicants architect (Nick Bell Architects) it is considered that the development will be compliant with the above statement.

Additionally it is noted that 29 Alan Avenue has a swimming pool within the front yard which also must be considered private open space.

The development is considered against the underlying objectives of the control as follows:

Objective 1) To provide equitable access to light and sunshine.

Comment: The proposed development is compliant with the overall height of buildings, however variations are noted to the FSR, side setback, wall height and number of storeys. These non-compliance's are considered acceptable for the reasons detailed in the section of this report relating to Clause 4.6 of MLEP 2013 and Clauses 4.1.2, 4.1.3, 4.1.4 of the MDCP 2013. As such, while the proposed development reduces sunlight to 29 Alan Avenue, it is demonstrated to be reasonable in its context, and of bulk and scale anticipated for the subject site and locality. Further, the location of the living room is inherently vulnerable, given its location immediately south of where any development could be expected on the subject site. Additionally, it is noted the unusual lot sizes with 27 Alan Avenue having a side boundary length of 60.96m and 29 Alan Avenue only having a side boundary length of 36m, this irregular lot configuration must be taken in consideration.

Given the above it is considered that adequate access to light sunshine and the proposed impact is considered equitable on merit.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/habitable rooms of both the development and the adjoining properties.*

Comment: As above, the proposed development reduces solar access to the living room window located on the northern side of 29 Alan Avenue which is considered to be in a vulnerable location, additionally it is noted that this living also has a window to the eastern end. As previously state the unusual allotment configuration also must be taken in to account given it would be reasonable expect that a redevelopment of 27 Alan Avenue would happen in the future. In consideration of the reasonableness of the proposed bulk and scale, the retention of solar access to the private open spaces of 29 Alan Avenue the proposed development is acceptable in this regard.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment: The amended proposed development is suitably designed, with compliant overall height of building and open space. As such, the proposed development is demonstrated to be of acceptable bulk and scale, with a suitable building footprint. To increase the southern side setback, further reduce the building height, or increase modulation to the point where overshadowing to 29 Alan Avenue is reduced to a point of compliance would unreasonably restrict the development potential of the subject site.

3.4.2 Privacy and Security

Given the proximity of the dwelling proposed Lot 1 (27 Alan Avenue) to the adjoining residence at No. 25 Alan Avenue the following treatments are recommended:-

- W A.4 - Window to be fitted with a minimum 1.5m high sill window or obscured glazing;
- W A.5 - Window to be fitted with a minimum 1.5m high sill window or obscured glazing
- W A.16 - Window to be fitted with a minimum 1.5m high sill window or obscured glazing;
- W A.18 - Window to fitted with obscured glazing; and
- W A.19 - Window to be fitted with a minimum 1.5m high sill window

Given the proximity of the dwelling proposed Lot 2 (27A Alan Avenue) to the adjoining residence at No. 29 Alan Avenue the following treatments are recommended:-

- A 1.65 metre high privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost western edge of the terrace located off the family room. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.
- A 1.65 metre high privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost western edge of the balcony located of bedroom 1 as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.
- W B.13 - Window to be fitted with a minimum 1.5m high sill window or obscured glazing; and
- W B.28 - Window to be fitted with a minimum 1.5m high sill window or obscured glazing;

Subject to the above treatments it is considered that the proposed development will satisfy this clause of the MDCP.

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

Description of non-compliance

4.1.2.1 Wall Height

Based on a gradient of 1:20, the maximum permitted wall height is 6.8m. The proposed dwellings have a maximum wall heights of 7.6m - 7.7m. This represents a 11.8% - 13.2% variation to the control requirement.

4.1.2.2 Number of Storeys

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

Variation to the maximum number of storeys may be considered:

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

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

Merit consideration

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

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

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

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

Comment: The proposed development is well articulated and modulated so as to break down the visual appearance of the built form. The subject site allows for a suitable presentation of landscaping and vegetation that is complementary to the area. The proposal will not unreasonably impact upon the streetscape.

The design of the proposal is suitable in that it maintains the character of the site and consistency with surrounding development. The proposed development will sit appropriately within the residential setting in a manner that is consistent with the character and landscape of the area.

(c) to minimise disruption to the following—

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

Comment: The proposal will not have any unreasonable impact on views, and provide viewing corridors through the site as a result of reasonable setbacks and appropriate modulation.

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

Comment: The proposal provides sufficient modulation and stepping to allow for sufficient sunlight access to the private open spaces and to habitable rooms of adjacent dwellings.

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

Comment: Not applicable.

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

4.1.3 Floor Space Ratio (FSR)

This Clause relies upon the objectives of Clause 4.4 under MLEP 2013. An assessment of the proposal against the objectives of Clause 4.4 has been provided within this report. This assessment has found the proposal to be consistent with the objectives of Clause 4.4.

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

Description of non-compliance

Clause 4.1.4.2 of the Manly DCP requires development be setback at least 2.27m from the eastern boundary and 2.27m from the western boundary. Further, windows facing side boundaries are to be setback at least 3m from the side boundary.

The development proposes the following:

Front setback- 10.3m -13.4m, consistent with prevailing setback of 7.85m (compliant)

East side setback- Existing side boundary - 1.509m - 3.559m (33.5% variation to the numeric control)
- Proposed side boundary - 0.95m - 2.9m (58.1% variation to the numeric control)

West side setback- Existing side boundary - 1.559m - 3.509m (38.6% variation to the numeric control)
- Proposed side boundary - 0.9m - 2.9m (60.3% variation to the numeric control)

Rear setback- 17.2m - 18.3m (compliant).

Windows- 1.509m - 3.559m (49.7% variation to the numeric control).

Front fences - 0.985m - 1.225m in height

Merit consideration:

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

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

Comment:

The development proposes two (2) new detached dwellings with landscaped gardens and with an ample front setback to Alan Avenue. The dwellings are considered to be well articulated with varying setbacks, finishes and with a recessed garage under each dwelling. This proposed development is considered to demonstrate a general consistency with the spatial proportions of the street and the street edge.

The development proposes substantial landscaping elements within the front setback area including planter boxes and substantial plantings to ensure consistency with this merit consideration.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed development allows for adequate visual (subject to conditions) and acoustic privacy to be retained between the subject site and neighbouring properties. In regards to sunlight access, the proposed development is consistent with the numeric requirement for solar access under Clause 3.4.1 of the Manly DCP. There is no significant impact on the streetscape given the location of the proposed dwellings with adequate vertical and horizontal spatial separation to the street which also complemented with landscaping.

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

Comment:

Flexibility is provided in this circumstance as the proposed works will not result in any unreasonable impacts (solar access, privacy - subject to conditions) upon adjoining properties.

Objective 4) To enhance and maintain natural features by:

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

Comment:

Suitable landscaping is proposed across the site. The proposed development is not the close vicinity of any Open Space Lands or National Parks.

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

Comment:

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

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

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

CONCLUSION

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

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

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

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

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

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

Conclusions on the Assessment of the Application

As addressed within this assessment report the proposed development does not comply with the Clause 4.4 Floor Space Ratio and a formal request via Clause 4.6 Exceptions to development standard was lodged by the applicant was assessed and considered acceptable in this instance as the proposed development is of consistent height, bulk, and scale of surrounding development within the area. The proposed development includes a compliant front setbacks which is consistent with the prevailing front building line in the street, and provides an improved landscape treatment to the front setback area. The side setback and wall height non-compliance's do not result in any unreasonable overshadowing or privacy impacts (subject to conditions).

Variations to the MDCP 2013 controls Clause 4.1.2 Height of Buildings (Incorporating Wall Height and Number of Storeys) and Clause 4.1.4 Setbacks (side) have been considered and addressed and supported. The proposed design does not give rise to any unreasonable amenity impact or visual impact, and is consistent with the objectives of the MLEP 2013 and MDCP 2013.

In this case, the proposed development provides a design that involves sufficient modulation and sufficient physical separation from neighbouring dwelling(s). A condition is recommended for a pre-dilapidation and post-dilapidation reports to be completed to ensure the physical condition of the adjoining and surrounding properties are maintained. Additionally, a condition have added to maintain amenity (privacy) to the adjoining properties to the east (25 Alan Avenue) and to the west (29 Alan Avenue). Furthermore, an assessment against the objectives of the development standards and DCP controls has found the proposal to be consistent with those provisions and reasonable.

On balance, the proposal should be approved (subject to standard and specific conditions) as the design is reasonable for the site and locality by virtue of a presentation which is consistent with characteristics of the area and also provides sufficient spacing and modulation to reduce any unreasonable impact caused by building bulk.

Therefore, the application is recommended for approval.

It is considered that all processes and assessments have been satisfactorily addressed and that proposed development constitutes the proper and orderly planning for the site or the locality.

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

RECOMMENDATION

Accordingly Council as the consent authority grant Development Consent to DA2019/1447 for Demolition works, Torrens title subdivision of 1 lot into 2 lots and construction of a dwelling house and swimming pool and fencing on each lot on land at Lot 81 DP 4889, 27 Alan Avenue, SEAFORTH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Alan-DA-100 (Revision C)	17 June 2020	Nick Bell Architects
Alan-DA-101 (Revision C)	17 June 2020	Nick Bell Architects
Alan-DA-200 (Revision C)	17 June 2020	Nick Bell Architects
Alan-DA-201 (Revision C)	17 June 2020	Nick Bell Architects
Alan-DA-202 (Revision C)	17 June 2020	Nick Bell Architects
Alan-DA-910 (Revision C)	17 June 2020	Nick Bell Architects
Alan-DA-911 (Revision A)	12 December 2019	Nick Bell Architects
Alan-DA-930 (Revision A)	6 December 2019	Nick Bell Architects
Alan-DA-960 (Revision B)	6 December 2019	Nick Bell Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment	18 October 2019	Truth About Trees
Geotechnical Investigation	26 September 2019	White Geotechnical Group

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
LSCP 1376 (Landscape Site Plan)	25 October 2019	Traquillity Landscape Design

LSCP ISS A (Front Detail)	25 October 2019	Traquillity Landscape Design
LSCP ISS A (Rear Detail)	25 October 2019	Traquillity Landscape Design
LSCP 1376 (Specifications)	25 October 2019	Traquillity Landscape Design

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Alan-DA-940 (Revision A)	12 December 2019	Nick Bell Architects

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

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

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

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

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

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

5. Security Bond

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

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

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

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

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

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

6. Heritage Listed Trees

- a) The street trees in Alan Avenue are heritage listed trees under Part 6 Schedule 5 of Manly LEP. The heritage listed trees are to be protected from damage during construction.
- b) Details of the method of protection of the trees must be submitted to the Certifying Authority by the Project Arborist for approval prior to the issue of the Construction Certificate.
- c) Annotated photographs of the trees, with particular emphasis on the lower part of the trees, must be submitted to the Certifying Authority prior to the commencement of any building work.

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

7. Amendments to the approved plans

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

Dwelling proposed on Lot 1 (27 Alan Avenue) the following treatments:-

- WA.4 - Window to be fitted with a minimum 1.5m high sill window or obscured glazing;
- WA.5 - Window to be fitted with a minimum 1.5m high sill window or obscured glazing
- WA.16 - Window to be fitted with a minimum 1.5m high sill window or obscured glazing;
- WA.18 - Window to fitted with obscured glazing; and
- WA.19 - Window to be fitted with a minimum 1.5m high sill window

Dwelling proposed on Lot 2 (27A Alan Avenue) the following treatments:-

- A 1.65 metre high privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost western edge of the terrace located off the family room. The privacy screen shall be of fixed panels or louvre style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.
- A 1.65 metre high privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost western edge of the balcony located of bedroom 1 as shown on the approved plans. The privacy screen shall be of fixed panels or louvre style

construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

- WB.13 - Window to be fitted with a minimum 1.5m high sill window or obscured glazing; and
- WB.28 - Window to be fitted with a minimum 1.5m high sill window or obscured glazing

Swimming Pools

- Swimming pools are to be located from their respective eastern side boundaries 1m to the curtilage and 1.5m to the water side in accordance with the provisions Clause 4.1.9 Swimming Pools, Spas and Water Features of the MDCP2013.

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

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

8. Boundary Identification Survey

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

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

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

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

9. On-site Stormwater Details

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

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

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

10. 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.

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. Waste Management Plan

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

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

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

13. 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.

14. External Finishes to Roof

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

15. Sydney Water "Tap In"

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or

easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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 and other similar items.

Property / Properties: 25 and 29 Alan Avenue, Seaforth

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

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

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

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

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

17. Public Liability Insurance - Works on Public Land

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

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

18. Tree trunk, branch and root protection

- (a) Existing trees which must be retained
 - i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
 - ii) Trees located on adjoining land
- (b) Tree protection
 - i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by the Project Arborist on site.
 - ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by the Project Arborist on site.
 - iii) All tree protection to be in accordance with the Arboricultural Impact Assessment dated October 18 2019 prepared by Truth About Trees and AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
 - iv) All tree pruning within the subject site is to be in accordance with relevant local planning controls and AS 4373 Pruning of amenity trees
 - v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

19. **Project Arborist**

- i) A Project Arborist with minimum qualification AQF Level 5 is to be appointed prior to commencement of works.
- ii) The Project Arborist is to oversee all tree protection measures, inspection hold points, removals and works adjacent to protected trees as outlined in the Arboricultural Impact Assessment dated October 18 2019 prepared by Truth About Trees, the Heritage Trees protection plan and AS4970-2009 Protection of trees on development sites.
- iii) The Project Arborist is to ensure compliance as relevant with any other environmental requirements conditioned under this consent.

Reason: to ensure protection of vegetation proposed for retention on the site.

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

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

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)];
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and

- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

22. Demolition Works - Asbestos

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

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

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

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

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

23. Survey Certificate

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

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

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

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

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

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

24. Vehicle Crossings

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

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

Reason: To facilitate suitable vehicular access to private property.

25. Waste Management During Development

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

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

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

26. Protection of rock and sites of significance

- a) All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction work
- b) Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features

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

27. Landscape completion certification

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

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

28. Condition of retained vegetation

Prior to the issue of an Occupation Certificate, a report prepared by the Project Arborist shall be submitted to the Certifying Authority, assessing the health and impact of trees and vegetation required to be retained as a result of the proposed development, including the following information:

- a) Compliance with conditions of consent for tree protection and excavation works.
- b) Extent of damage sustained by vegetation as a result of the construction works.
- c) Any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: To ensure compliance with the requirement to retain and protect significant planting on development sites, and protect the existing amenity that trees and/or bushland vegetation provide.

29. Stormwater Disposal

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

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

30. 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.

31. 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.

32. Garbage and Recycling Facilities

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

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

Reason: To prevent pollution of the environment and to protect the amenity of the area.
(DACPLF03)

33. House / Building Number

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

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

Reason: Proper identification of buildings.

34. **Swimming Pool Requirements**

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

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

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

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

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life (DACPLF09)

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

35. **Undesirable Trees**

Leighton Green Cypress Cupressocyparis leylandii or any of its cultivars, must not be planted on the site for the life of the development. In the event of any inconsistency between this condition and the development application documents, this condition will prevail to the extent of the inconsistency.

Reason: To reduce the potential for adverse amenity effects such as overshadowing, loss of views, and loss of plant diversity.

36. **Landscape maintenance**

- i) 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.

ii) 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.

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

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

Reason: Ensure reasonable acoustic amenity.

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

38. Provision of Services for Subdivision

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

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

39. Services

The Applicant shall ensure all utilities/services and street lighting is installed. The Applicant is to submit a Certification stating the above requirement has been complied with by the relevant authority(s) and/or authorised contractor.

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

Reason: To ensure services have been provided in accordance with the relevant authorities requirements.

40. Sydney Water Compliance Certification

The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of their web site or telephone for assistance.

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

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

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

41. Subdivision Certificate Application

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

Reason: Statutory requirement of the Conveyancing Act 1919.

42. Title Encumbrances

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

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

Reason: To ensure proper management of land.