

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/1748
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<b>Responsible Officer:</b>	Penny Wood
<b>Land to be developed (Address):</b>	Lot 4 DP 6100, 10 Kangaroo Street MANLY NSW 2095
<b>Proposed Development:</b>	Alterations and additions to a dwelling house
<b>Zoning:</b>	Manly LEP2013 - Land zoned R1 General Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Peter James Littleboy Anna Martine Littleboy
<b>Applicant:</b>	Henke Du Plessis

<b>Application Lodged:</b>	04/01/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	18/01/2021 to 01/02/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 9.5% 4.4 Floor space ratio: 9.1%
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 572,391.00
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### PROPOSED DEVELOPMENT IN DETAIL

The development application seeks approval for alterations and additions to an existing dwelling house and includes the following works:

Amended plans were received by Council on 29 March 2021 which added a vertical passenger lift inside the dwelling to replace the internal staircase along the eastern side of the dwelling. The amended plans also reduced the height of the roof over the first floor balcony at the rear of the dwelling and have reduced the floor area by 13.7sqm.

#### Lower ground floor:

- Reconfigure internal layout to delete internal stair and propose new addition to the southern side

of the lower ground floor to provide an internal vertical passenger lift along the eastern side of the dwelling;

- New bi-fold doors to northern elevation of bedroom to replace window with new stairs accessing the backyard.

### Ground floor

- Reconfigure internal layout to provide three bedrooms, master bedroom with W.I.R and ensuite, bathroom, conservatory and laundry.
- Delete internal stairs along the eastern side of the dwelling, maintain internal stairs located centrally within the site.
- New art store room located beneath the front garden between the two (2) existing garages.
- New external stairs located along the eastern side of the site providing access from the front garden along Kangaroo Street to the new store.
- New spa located along the western side of the site.

### First Floor

- New pedestrian path and entry bridge to dwelling;
- Small addition to front north west corner of the dwelling;
- Internal re-configuration
- New garage doors to street frontage
- New bi-fold door to garage located along the western elevation.

The application does propose the demolition of the existing front boundary fence along the Kangaroo Street frontage, however inadequate details have been provided with no elevations or details of materials shown for the fence. No fencing is therefore approved as part of the application with a condition imposed in the consent to this effect.

## **ASSESSMENT INTRODUCTION**

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

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

## SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)

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

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 4 DP 6100 , 10 Kangaroo Street MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the northern side of Kangaroo Street.</p> <p>The site is regular in shape with a frontage of 12.19m along Kangaroo Street and a depth of 33.91m. The site has a surveyed area of 411m<sup>2</sup>.</p> <p>The site is located within the R1 General Residential zone from MLEP 2013 and accommodates a 2/3 storey dwelling with primary access provided from Kangaroo Street and pedestrian access available from Pine Street via a paved public path. Two (2) detached garages are located within the front setback of the site, with one abutting the eastern boundary and one abutting the western boundary. A raised concrete access path (bridge) provides access to the dwelling with steps provided to the lower ground floor. Stairs are provided within the eastern and western side setbacks towards the rear (northern end) of the site to provide access to the public path located at Pine Street.</p> <p>The site slopes away from Kangaroo Street (southern boundary) to the northern (rear boundary) of the site by approximately 5.7m representing a slope of 9.5 degrees.</p> <p>The site is void of vegetation within the front setback and along the eastern and western side boundaries. The northern portion of the site provides a sloped turfed area with concrete paths.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by dwellings of a similar size and scale.</p>

Map:



## SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- PLM2020/0230 - Notes issued to Applicant on 18 November 2020.

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

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.

Section 4.15 Matters for Consideration'	Comments
<p>Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&amp;A Regulation 2000)</p>	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and</p>



Section 4.15 Matters for Consideration'	Comments
	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 18/01/2021 to 01/02/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Mr Donald Mark Sillar	14 Kangaroo Street MANLY NSW 2095

Two (2) submissions were received during the notification period. A submission from the owner / occupants of 14 Kangaroo Street was received raising concerns regarding the proposed height of the roof within the north western corner of the dwelling. The submission stated that this portion of the roof was increasing in height. The original plans indicate that the roof is being reduced in height by 400mm and reduced by a further 100mm as a result of revised plans being lodged with Council on 29 March 2021. This submission stated that the proposed works along the western side of the existing dwelling would have a significant impact on the existing privacy enjoyed at both 12 Kangaroo Street and 14 Kangaroo Street and request a fixed privacy screen to be installed along the entire western side of the balcony at first floor.

A second submission was received from the owner/occupants of 12 Kangaroo Street who state that they were misrepresented in the submission lodged by the 14 Kangaroo Street as what was stated in the submission was not of their opinion. The owners of No. 12 raise no objection to the proposed development given the works fall within the footprint of the existing dwelling at 10 Kangaroo Street.

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

- Privacy

The matters raised within the submissions are addressed as follows:

- Privacy  
Comment:

As stated above, the owners of 12 Kangaroo Street raise no objection to the proposed works in particular the request for a privacy screen located along the entire western elevation of the first floor balcony. The residents at 14 Kangaroo Street are concerned with the potential impacts the location of a balcony in that location will have on the privacy of both their property and No. 12 Kangaroo Street. The plans indicate a slatted privacy screen for the entire length of the western elevation where the balcony is located. Whilst 12 Kangaroo Street raises no objection to the proposal, given the elevated nature of the balcony with a depth of 3.5m along the western elevation, the privacy screen proposed with the submitted plans is considered reasonable.

## **REFERRALS**

No referrals were sent in relation to this application

## **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. A402482\_02, 18 December 2020).

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

## SEPP (Infrastructure) 2007

### Ausgrid

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

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

### Comment:

The proposal was not referred to Ausgrid therefore no conditions are recommended.

## Manly Local Environmental Plan 2013

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

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.3m	9.5%	No
Floor Space Ratio	FSR: 0.6:1 (246.6sqm)	FSR: 0.66:1 (274sqm)	9.1%	No

### Compliance Assessment

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



## Detailed Assessment

### **4.6 Exceptions to development standards**

#### **Building Height**

##### Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.3m
Percentage variation to requirement:	9.5%

##### Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

##### Clause 4.6 Exceptions to development standards:

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

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

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

##### Comment:

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

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

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

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

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

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

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*  
*(b) the concurrence of the Secretary has been obtained.*

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

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

- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

- *The proposal provides for additions to an existing dwelling. The proposal provides for a reduction in the existing floor area.*
- *The non-compliance does not result in any unreasonable impacts.*
- *The proposed development will provide for an appropriate level of family accommodation and improved amenity within a built form which is compatible with the streetscape of Kangaroo Street, which also promotes the orderly and economic use of the land.*
- *The proposal is considered to promote good design and amenity to the local built environment as appropriate amenity, solar access and privacy will be maintained for the neighbouring properties.*

#### Planner Comment

The proposal does not comply with the Height of Buildings development standard. The development measures a maximum height of 9.3m above natural ground level, which is the highest part of the building. The proposal reduces the height of the dwelling at the rear by approximately 500mm for a depth of 3.7m which provides a more articulated roof form and is in keeping with the slope of the site. Given the proposed works at the rear are within the existing building envelope, the impact on the amenity of surrounding properties is considered minor and will maintain consistency with the existing surrounding residential development. It is acknowledged the subject site is located within an established residential area comprised of buildings that vary in architectural styles, building forms and landscape treatments.

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

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

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

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

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

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

Comment:

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

**Objectives of development standard**

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

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

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

Comment:

The proposed building height is considered acceptable at the rear of the dwelling given the overall height is being reduced by 500mm. The reduction in height is an improved outcome given the slope of the site at this point and does not alter the existing rear and side setbacks given the proposed works are contained within the existing envelope of the building. The non-compliant portion is contained to a portion of the existing dwelling with the new roof located over an balcony which will maintain the open nature of the dwelling. The proposed alterations and additions will not be visible when viewed from Kangaroo Street. The development is considered to respond appropriately to the constraints of the site.

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

Comment:

The development is considered to maintain the existing bulk and scale of the dwelling given the first floor balcony at the rear will remain in the existing location with the roof over being lowered by 500mm. Whilst the development proposes a full length privacy screen across the western elevation of the dwelling, the screening is considered reasonable in this location given the height of the balcony above natural ground level. The overall bulk and scale is not dramatically altered at the rear of the dwelling and maintains the overall bulk and scale of the existing dwelling. The development is a built form that is likely to be compatible with any future development on surrounding lands.

*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 proposed development does not cause unreasonable view loss to and from public and private open spaces.

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

Comment:

The impact on solar access as a result of the alterations and additions to the rear of the dwelling are minimal and acceptable in terms of any impact towards habitable rooms of the adjoining properties and public open spaces.

*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

## **Zone objectives**

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposal retains the existing residential use of the site.

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

Comment:

The proposal will retain the low density residential use of the site.

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

Comment:

N/A

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the

delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

### **Floor Space Ratio**

#### Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1 (246.6sqm)
Proposed:	0.66:1 (274sqm)
Percentage variation to requirement:	9.1%

#### Assessment of request to vary a development standard:

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

#### Clause 4.6 Exceptions to development standards:

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

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

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

#### Comment:

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

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

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

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

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

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



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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

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*The objects of this Act are as follows:*

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

heritage),

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

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

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

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

The applicants written request argues, in part:

- *The proposal provides for additions to an existing dwelling. The proposal provides for a reduction in the existing floor area.*
- *The proposal does not result in any unreasonable impacts.*
- *The proposed development will provide for an appropriate level of family accommodation and improved amenity within a built form which is compatible with the streetscape of Kangaroo Street, which also promotes the orderly and economic use of the land.*
- *The proposal is considered to promote good design and amenity to the local built environment as appropriate amenity, solar access and privacy will be maintained for the neighbouring properties.*

#### Planner Comment

It is agreed that the proposal will not result in any unreasonable impacts. The works will be compatible with the streetscape of Kangaroo Street and will not result in unreasonable amenity impacts to the surrounding residents.

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

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

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

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

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

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

#### Comment:

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

## Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – ‘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:

As viewed from the street, the building would present as consistent with that of adjoining properties

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

Comment:

The proposed development will not significantly add any bulk to the dwelling with the first floor addition to provide a walk in pantry and wc at first floor level maintaining access to the ground floor below. The addition will maintain the 1.4m setback to the eastern boundary and will not be overly visible from the street given the slope of the site. At the rear of the site, the reduced roof height will assist in articulating the visual bulk of the dwelling by stepping down the wall height along both the eastern and western elevations. The articulated roof form will provide visual relief and will create a design that allows the building mass to step down the slope.

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

Comment:

The development overall is found to enhance the visual continuity of the existing character of the area and improve the aesthetics of the development on site. The proposal is a suitable design such that it maintains the character of the site and consistency with surrounding development.

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

Comment:

The proposal is suitable in design such that it maintains the character of the site and consistency with surrounding development.

*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 R1 General Residential zone are:

- To provide for the housing needs of the community*

Comment:

The proposal retains the existing residential use of the site.

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

Comment:

The proposal will retain the low density residential use of the site.

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

Comment:

N/A

Conclusion:

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

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

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

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

## Manly Development Control Plan

### Built Form Controls

Built Form Controls - Site Area: 411sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling	1 dwelling	N/A	Yes

4.1.2.1 Wall Height	W: 7.6m (based on gradient 1:6)	8.9m	N/A	No
	E: 6.8m (based on gradient 1:2)	6.7m (first floor addition)	N/A	Yes
4.1.2.2 Number of Storeys	2/3	2/3	N/A	Existing (no change)
4.1.2.3 Roof Height	Height: 2.5m	0.2m - dwelling	N/A	Yes
	Parapet Height: 0.6m	0.3m - garage along western	N/A	Yes
	Pitch: maximum 35 degrees	0 degrees (flat roof)	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	Consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 2.2m (based on wall height)	E: 950mm (existing dwelling) E: 0.2m (stairs) E: 1.4m (addition to first floor)	56.9% 99.1% 36.4%	No No No
	W: 2.5m (based on wall height)	W: 1.2m (spa) W: nil - 500mm (access stairs at rear) W: 1.3m (dwelling)	52% 100% 48%	No No No
	Windows: 3m	East - 0.9m West - 1.3m	70% 56.7%	No No
4.1.4.4 Rear Setbacks	8m	6.0m (existing - dwelling) 5.3m (stairs leading from dwelling) 0.3m (stairs located along western elevation)	25% 33.75% 96.25%	No (existing) No No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (226sqm)	51% (217.1sqm)	4%	No
	Open space above ground - no more than 25% of total open space (56.5sqm)	18.5% (41.8sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (79.1sqm)	37% 84sqm	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	155.9sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	2 existing single garages measuring a total 6.8m in width equaling 55.7% of frontage (12.19m)	10.4%	No (existing - no change)
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

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

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.7 Building Construction and 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
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
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

#### Detailed Assessment

##### **3.1.1 Streetscape (Residential areas)**

The development proposes to increase the parapet above the single garage located along the western



elevation by 400mm. The proposed height (RL30) will be in keeping with the height of the single garage located along the eastern side of the street also fronting Kangaroo Street. The increased height is not anticipated to alter the presentation of the existing garage when viewed from Kangaroo Street and will have a minimal impact on the amenity currently enjoyed by the occupants of the adjoining properties.

The plans submitted with the application indicate a front fence and gate along the front boundary located between the two (2) existing garages. Limited detail has been provided and therefore a condition is imposed that no front boundary fencing is approved as part of the subject development application.

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

##### Description of non-compliance

The proposed works to the western elevation at first floor will reduce the overall height of the dwelling over the balcony by 500mm. The wall height of the dwelling will not be altered however the development proposes a privacy screen along the entire depth of the balcony at first floor which will result in increasing the wall height to a maximum of 8.9m.

The proposed first floor addition along the eastern side of the dwelling measures 6.7m which is compliant with the required wall height of 6.8m. The development will retain the three (3) storey nature of the dwelling which although is non-compliant, it is an existing situation.

##### Merit consideration

With regard to the consideration for a variation, the development is considered against the LEP objectives for Clause 4.3 Height of Buildings:

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

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

##### Comment:

Whilst the proposed dwelling does not achieve compliance with the LEP height of buildings control, the development proposes to reduce the height of the dwelling at the rear over the first floor balcony by 500mm. The reduced height will be more compatible with the slope of the site, and whilst the development proposes a privacy screen along the western elevation, this will provide adequate privacy to adjoining properties given the elevated nature of the dwelling. Given the proposed works at the rear are located predominantly within the existing building footprint, the appearance of the dwelling when viewed from a public place will be maintained.

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

##### Comment:

The dwelling will continue to present as three (3) stories to the rear. The proposed alterations and additions to the dwelling along the eastern elevation are compliant with the non-compliant wall height along the eastern and western elevation at the rear is an existing situation. The reduction in height at the rear will provide some articulation to the roof form which will reduce the bulk and scale of the dwelling when viewed from the rear and adjoining properties.

*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 result in any unreasonable view impacts to from or between residential development and public spaces.

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

Comment:

The overshadowing impacts arising from the development are reasonable and compliance with the solar access controls is maintained.

*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:

N/A

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

Description of non-compliance

The control requires development to be setback at least 1/3 of the wall height from side boundaries. Applying this principle requires a 2.5m setback from the western boundary. The development proposes two (2) sets of external stairs along the western elevation with the stairs adjacent to the dwelling measuring 500mm from the western boundary and the stairs at the rear measuring 0.2m from the western boundary. The dwelling will maintain the existing setback of 1.3m. A spa is located 1.2m from the western boundary.

Along the eastern elevation the required setback is 2.2m. The proposed first floor addition along the eastern elevation maintains the existing non-compliant setback of 1.4m. The new access stairs along the eastern elevation off the new entry bridge are setback 0.2m from the eastern boundary which fails to meet the numeric requirement.

Furthermore, the control prescribes a minimum 8m rear building line. The external steps along the western boundary propose a 0.3m setback to the rear boundary, with the new stairs located off the bedroom closest to the western boundary measuring 5.3m to the rear boundary. This fails to meet the numeric requirement.

Merit consideration:

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

*Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions*

*of the street, the street edge and the landscape character of the street.*

Comment:

The non-compliant steps along the western elevation adjacent to the dwelling and at the rear of the site are purely for access and given they are located below natural ground level and towards the rear of the site, they are adequately setback from the street frontage and will not detract from the visual qualities of the streetscape. The proposed stairs located along the eastern elevation and the first floor addition will not be overly visible from Kangaroo Street given the location of the existing garages along the front elevation. The overall envelope and footprint of the dwelling will remain generally consistent with the existing dwelling subsequent to the proposal. Furthermore, the proposal complies with the MDCP 2013 total open space and improves the landscaped open space area for the site. Therefore, the proposal maintains the desired landscaped character of the street. Overall, the proposal meets this objective.

*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 external stairs along both the eastern and western boundaries do not allow for direct to overlooking into private open space of adjoining properties. Adequate separation is afforded from the rear boundary to negate unreasonable levels of overlooking towards adjoining dwellings and given the open nature of the surrounding properties, this will not alter the existing situation. It should be noted that the external stairs are a means of egress and are not areas where occupants would congregate (i.e. pool areas, decking etc.) and therefore, will not represent an unacceptable privacy impact in this case.

The proposed alterations and additions do not increase the building height and are unlikely to result in significant view loss. Furthermore, noting that the stairs are adequately setback from the frontage, the proposal will not impact upon road visibility. Overall, the proposal meets this objective.

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

Comment:

Flexibility is afforded in this circumstance as the non-compliant external staircase will not give rise to unacceptable environmental, streetscape or amenity impacts.

*Objective 4) To enhance and maintain natural features by:*

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

*satisfied.*

Comment:

The proposal falls short of the landscaped open space requirement by 8.9sqm which is considered a minor departure from the control and given the development increases the amount of LOS, the site is considered to accommodate adequate deep soil landscaping.

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

Comment:

The site is not affected by bushfire.

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

The variation to the total open space is largely existing and the proposed works will improve the level of landscaped open space for the site by 31.9sqm and will soften the site within the front and side setbacks. It is noted that despite the variation, the proposal otherwise complies with other open space requirements, noting that private open space and open space above ground level are significantly greater than minimum requirements.

Despite the variation, the objectives of the control will be satisfied. The landscaped character of the site will be improved when viewed from Kangaroo Street as the hard surface area between the existing garages will be replaced by soft landscaping. The variation will not adversely affect surrounding sites with regard to solar access, visual privacy nor views. Changes to the garage located along the western side of the site the western side are minimal and therefore will have no impact on the Kangaroo Street streetscape; works to the dwelling at the rear and along the eastern and western facades of the dwelling are modest in scale and are not expected to adversely affect the existing nor future character of the Pine Street frontage along the public path.

As a result, the proposed variation is considered to be acceptable and supportable.

Description of non-compliance

Part 4.1.5 of the MDCP requires that the minimum total open space requirement for the site be equivalent to 55% of the site area.

The site area of 411sqm requiring a total open space requirement of 226sqm (55%) which the proposal marginally fails to achieve, providing 217.1sqm (51%) which is a 4% variation to the control.

Merit consideration:

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

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

Comment:

The proposed development does not seek to remove or augment any important landscape features, and it is not considered that the site accommodates any remnant populations of flora and or fauna. The proposal will increase the landscaped area for the site by introducing planting along the eastern and western side boundaries and removing the paved area within the front setback between the two (2) garages by introducing a turfed lawn area.

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

Comment:

The proposal increases the level of landscaped open space within the front setback between the existing garages which will assist in softening the appearance of the built form when viewed from Kangaroo Street. The proposed screen planting along the eastern and western side boundaries will

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

Comment:

The conversion of hardstand to lawn within the front setback will increase the landscaped area to a compliant figure for the site. The proposal does increase the turfed area above the proposed store which will soften the hard stand area within the site when viewed from kangaroo Street, however given this area will not in the front garden to a hardstand parking area is not considered to impact on the living conditions of neighbouring properties, particularly noting that both immediately adjoining houses also have hardstand car parking to the front.

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

Comment:

The development proposes to increase the level of landscaped area on the site. The turfed area at the rear will remain with the existing pathways to be removed and the existing stairs located at the rear in the central portion of the site to be demolished and new stairs to be provided along the western side of the site to provide access to the paved pathway. The proposed turfed area within the front setback will assist in maximising water infiltration on the site along with planting within the side setbacks.

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

Comment:

The works are not considered to degrade any private or public open space and will maintain access to the public pathway located along Pine Street to the northern end of the site.

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

Comment:

The site is not within an identified wildlife corridor.

Having regard to the above assessment, it is concluded that the proposed development is consistent

with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

The existing non-compliant off-street parking is not altered by the modified proposal. Therefore, no further consideration of this control is required for the purpose of this assessment.

### **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 \$5,724 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$572,391.

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

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

## RECOMMENDATION

Council is satisfied that:

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

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

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

Accordingly Council as the consent authority grant Development Consent to DA2020/1748 for Alterations and additions to a dwelling house on land at Lot 4 DP 6100, 10 Kangaroo Street, MANLY, 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
Roof & Site Plan - A.00 - DA Issue 2	17 March 2021	Du Plessis + Du Plessis Architects
Proposed Lower Floor - A.01 - DA Issue 2	17 March 2021	Du Plessis + Du Plessis Architects
Proposed Middle Floor - A.02 - DA Issue 2	17 March 2021	Du Plessis + Du Plessis Architects
Proposed Upper Floor - A.03 - DA Issue 2	17 March 2021	Du Plessis + Du Plessis Architects

East Elevation - A.04 - DA Issue 2	17 March 2021	Du Plessis + Du Plessis Architects
South Elevation - A.05 - DA Issue 2	17 March 2021	Du Plessis + Du Plessis Architects
West Elevation - A.06 - DA Issue 2	17 March 2021	Du Plessis + Du Plessis Architects
South Elevation - A.07 - DA Issue 2	17 March 2021	Du Plessis + Du Plessis Architects
Garage East Elevation - A.08 - DA Issue 2	17 March 2021	Du Plessis + Du Plessis Architects
Garage South Elevation - A.09 - DA Issue 2	17 March 2021	Du Plessis + Du Plessis Architects
Garage West Elevation - A.10 - DA Issue 2	17 March 2021	Du Plessis + Du Plessis Architects
Garage North Elevation - A.11 - DA Issue 2	17 March 2021	Du Plessis + Du Plessis Architects
Roof Plan - Proposed - A.12 - DA Issue 2	17 March 2021	Du Plessis + Du Plessis Architects
Section AA - A.13 - DA Issue 2	17 March 2021	Du Plessis + Du Plessis Architects
Section BB - A.14 - DA Issue 2	17 March 2021	Du Plessis + Du Plessis Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
DA01 Issue A	December 2020	NB Consulting Engineers
DA02 Issue A	December 2020	NB Consulting Engineers
DA03 Issue A	December 2020	NB Consulting Engineers
DA04 Issue A	December 2020	NB Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A402482_02	18 December 2020	Du Plessis + Du Plessis Architects
Preliminary Landslip Assessment	30 November 2020	Crozier Geotechnical Consultants

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan L-01 Rev C	17 December 2020	Space Landscape Designs

Planting Plan L-02 Rev B	17 December 2020	Space Landscape Designs
Details and Specifications L-03 Rev A	17 December 2020	Space Landscape Designs

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
DA Waste Management Plan	December 2020	Du Plessis + Du Plessis 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) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009

- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 4. **Policy Controls**

#### Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$5,723.91 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 \$572,391.00.

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

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

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

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

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



## 5. **Security Bond**

A bond (determined from cost of works) of \$2,000 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](http://www.northernbeaches.nsw.gov.au)).

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

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

## 6. **Stormwater Drainage Disposal**

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

## 7. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

**8. 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.

**9. 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.

**10. Vertical Passenger Lift - Acoustic Report**

Prior to the issue of a Construction Certificate, certification by a suitably qualified person shall be provided to the Principle Certifying Authority demonstrating that the noise level from the vertical passenger lift will not exceed 5dBA above background noise when measured from the nearest property boundary.

Reason: To ensure an appropriate level of residential amenity is maintained.

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

**11. Survey Certificate**

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

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

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

**12. Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be

adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

**13. Waste Management During Development**

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

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

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

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

**14. Stormwater Drainage Disposal Certification**

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Certifying Authority prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

Reason: To ensure satisfactory management of stormwater.

**15. Geotechnical Certification Prior to Occupation Certificate**

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

16. **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)

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

17. **Geotechnical Recommendations**

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

**Reason:** To ensure geotechnical risk is mitigated appropriately.

18. **Front Fence**

This consent does not authorise the construction of a front fence along Kangaroo Street.

**Reason:** To ensure no adverse impacts upon the character of the existing streetscape.

19. **Art Store**

The Art Store is to be used solely for the purpose of storage.

**Reason:** To ensure the storeroom is not used for habitable purposes and to maintain the low density residential nature of the locality.

20. **Use of Premises**

The provided plans indicate the potential for the ground floor and first floor levels to operate as separate dwellings independent from one another. As such, the dwelling is to be solely used as a single dwelling. No cooking facilities are permitted to be installed on the ground floor level.

**Reason:** To ensure the low-density residential nature of the locality.

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

**Signed**



**Penny Wood, Planner**

The application is determined on 05/05/2021, under the delegated authority of:

*REnglund.*

**Rebecca Englund, Acting Development Assessment Manager**