



DEVELOPMENT APPLICATION ASSESSMENT REPORT

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| Application Number: | DA2020/0192 |
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|---|---|
| Responsible Officer: | Georgia Quinn |
| Land to be developed (Address): | Lot A DP 344469, 12 Peronne Avenue CLONTARF NSW 2093 |
| Proposed Development: | Demolition works and construction of a dwelling house including swimming pool |
| Zoning: | Manly LEP2013 - Land zoned R2 Low Density Residential |
| Development Permissible: | Yes |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Land and Environment Court Action: | No |
| Owner: | Stuart John Hollman Samantha Dianne Hollman |
| Applicant: | Stuart John Hollman Samantha Dianne Hollman |

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| Application Lodged: | 28/02/2020 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Residential - Single new detached dwelling |
| Notified: | 09/03/2020 to 23/03/2020 |
| Advertised: | Not Advertised |
| Submissions Received: | 1 |
| Clause 4.6 Variation: | 4.3 Height of buildings: 9.76% |
| Recommendation: | Approval |

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| Estimated Cost of Works: | \$ 2,200,000.00 |
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PROPOSED DEVELOPMENT IN DETAIL

This application seeks consent for demolition works and the construction of a dwelling house including a swimming pool.

In particular, the application includes:

- demolition of the existing dwelling;
- construction of a new three-storey dwelling house;
- a swimming pool on the first floor; and
- associated landscaping and retaining walls.

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 Local Environmental Plan 2013 - 6.2 Earthworks

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

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

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

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

Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

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|-----------------------------------|---|
| Property Description: | Lot A DP 344469 , 12 Peronne Avenue CLONTARF NSW 2093 |
| Detailed Site Description: | <p>The subject site consists of one (1) allotment located on the eastern side of Peronne Avenue, where accessed is obtained via a shared right of way.</p> <p>The site is irregular in shape with a frontage of 24.6m along the right of way and depths between 65.7 and 70.3m. The site has a surveyed area of 910.6m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a one storey dwelling house.</p> <p>The site has a cross fall from east to west (ie. rear to front) of approximately 20.6m.</p> <p>The site is densely vegetated within the steeply undulating rear portion.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by relatively large-scale residential dwellings within landscaped settings.</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.

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 | Warringah 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 |
|--|---|
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000) | <p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p> |
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and 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 Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p> |
| Section 4.15 (1) (c) – the suitability of the site for the development | The site is considered suitable for the proposed development. |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs | See discussion on "Notification & Submissions Received" in this report. |
| Section 4.15 (1) (e) – the public interest | No matters have arisen in this assessment that would justify the refusal of the application in the public interest. |

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

| Name: | Address: |
|---|-------------------------------------|
| Sue Connor Architects Mr John David Connor | 14 Peronne Avenue CLONTARF NSW 2093 |

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

- **View loss;**
- **Amenity loss;**
- **Contravention of side and front setback requirement and wall height requirement; and**
- **Contravention of Height of Buildings Development Standard.**

The matters raised within the submissions are addressed as follows:

View loss

Concern is raised that the proposal will result in a loss of views from No. 14 Peronne Avenue, as a result of the northern entrance wall. It was requested templates be erected to assess the impact of this entry wall.

Comment:

This matter is addressed elsewhere within this report (refer to Clause 3.4.3 Maintenance of Views under Manly Development Control Plan).

In summary, the assessment of this application has found that the development, as amended, achieves consistency with the planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC 140* and that the extent of qualitative impact upon view sharing is considered to be negligible and the proposal as amended is reasonable in this instance. In turn, no height poles were requested.

This matter therefore does not warrant the refusal of the application.

Amenity loss

Concern is raised that the northern entrance wall is overbearing and imposing and will block the southern breezes due to its solid masonry material. It is requested that this wall be amended to allow both air flow and maintenance of current views from windows.

Comment:

Following a preliminary assessment of the application, Council wrote to the applicant requesting amendments to this northern entry wall. The applicant subsequently agreed to provide an amendment to its design, such that the top half of the wall (starting from the height of No.14's study window sill) be constructed of angled louvers such that both air flow and maintenance of current views from windows can be retained.

This matter therefore does not warrant the refusal of the application.

Contravention of side and front setback requirement and wall height requirement

Concern is raised that the proposal does not achieve the minimum numeric side or front setback requirements. Non-compliance with the maximum wall height requirement is also raised within the submission.

Comment:

The development is considered to satisfy the front setback requirements, considering the context and siting of adjoining and surrounding properties. Further discussion in regard to this matter is detailed under Clause 4.1.4 of MDCP. The variation to the side setback requirement is also discussed in detail within Clause 4.1.4. In summary, the application is considered to satisfy the underlying objectives of the Control and is therefore supported in this instance. The development furthermore achieves compliance with the maximum wall height requirement, in accordance with Clause 4.1.2 of MDCP.

This matter therefore does not warrant the refusal of the application.

Contravention of Height of Buildings Development Standard

Concern is raised that the proposal contravenes the Height of Buildings Development Standard, which is said to increase the height of the northern wall which further adds to the bulk and scale as viewed from the adjoining property to the north (No. 14 Peronne Avenue).

Comment:

This matter has been addressed elsewhere within this report (refer Clause 4.6 under MLEP). In summary, the application is supported with a well-founded Clause 4.6 written request therefore the contravention of the development standard is supported in this instance. It is also noted the northern wall that is the point of concern for the objector remains well within the prescribed 8.5m height control.

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

REFERRALS

| Internal Referral Body | Comments |
|--------------------------------|--|
| Landscape Officer | <p>The application is for the demolition of the existing dwelling and construction of a new dwelling and swimming pool. No landscape issues are raised with the proposal.</p> <p>The development application is assessed by Council's Landscape Referral section against the landscape controls of Manly DCP 2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types.</p> <p>A Landscape Plan is provided in accordance with the DA Lodgement Requirements, and the proposal is acceptable.</p> <p>An Arboricultural Statement is provided with the application confirming that no significant trees are located within the tree protection zone, and those that existing within the tree protection zone of development are Exempt species, able to be removed without consent. All other trees within the site and in particular the rear of the site, not impacted by development works, shall be retained.</p> |
| NECC (Development Engineering) | No objection to approval, subject to conditions as recommended. |

| External Referral Body | Comments |
|-------------------------------|--|
| Ausgrid: (SEPP Infra.) | The proposal was referred to Ausgrid. A standard response has been received that denotes no objection is raised to the proposal. |

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. 1080860S_04, dated 27 March 2020).

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

| Commitment | Required Target | Proposed |
|-----------------|-----------------|----------|
| Water | 40 | 40 |
| Thermal Comfort | Pass | Pass |
| Energy | 50 | 52 |

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid. A standard response was received which raised no objection to the proposal.

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 | 9.33m | 9.76% (0.83m) | No |
| Floor Space Ratio | FSR: 0.4:1 (364.2m ²) | FSR: 0.35:1 (322.1m ²) | N/A | Yes |

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

| | |
|--------------------------------------|---------------------|
| Development standard: | Height of buildings |
| Requirement: | 8.5m |
| Proposed: | 9.33m |
| Percentage variation to requirement: | 9.76% |

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 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 development is justified in this instance for the following reasons:

- *The works will present a minor variation to the building height control which occurs as a result of the site's sloping topography and the vast majority of the building complies with the maximum height control;*
- *The height breach is considered to be negligible in relation to bulk and scale, particularly given it is of a lesser scale than surrounding dwellings and the building presents as a largely compliant residence to Peronne Avenue;*
- *The bulk and scale of the building is consistent with surrounding development;*
- *The resultant dwelling is considered to be compatible with the prevailing height of buildings and streetscape character within the locality, despite the minor non-compliance;*
- *The development will not present an excessive bulk as viewed from the public domain due to the sloping topography of the site and surrounding area and no unreasonable view loss or solar access impediments are likely to occur; and*
- *The proposed development is considered to promote good sustainable design and enhance the residential amenity of the buildings' occupants which is consistent with the objective 1.3(g) of the EPA Act which is a suitable environmental planning ground which justifies the flexible application of the development standard."*

It is agreed that the sloping topography of the allotment partly causes the breach of the height limit. It is also agreed that the development is consistent and comparable with the scale and character of surrounding properties, and that the breach of the height limit (located towards the southwest of the site) will not result in any unreasonable impacts to neighbouring properties.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – '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 proposal seeks a maximum building height of 9.33m for a minor portion of the dwelling house, thereby contravening the numeric control by 9.76%. The minor encroachment of the height of buildings development standard will not be discernible when viewed from the streetscape, particularly due to the private access arrangement of the site. The proposed development will sit comfortably within its context in terms of scale, massing and form and the variation will provide for a well composed, articulated building that provides good amenity for the dwelling occupants whilst respecting the existing identity of the streetscape. It is noted the proposed roof ridge (RL40.71) will remain significantly lower than both adjoining properties (RL 42.52 to the north and RL44.65 to the south). The development will appear compatible with the emerging character and prevailing development pattern within the locality.

b) to control the bulk and scale of buildings,

Comment:

The minor height departure will not contribute to an adverse building bulk and scale, and it is also noted that the proposed roof ridge will remain significantly lower than both adjoining dwellings. The proposal is contemporary in design with a flat parapet roof form which, in conjunction with the complementary external finishes, are considered to suitably reduce the visual bulk of the dwelling. Further, the modulation of the front facade and varying building elevations and design features will ensure the development minimises visual impact as viewed from surrounding public and private spaces.

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 minor height variation will not be discernible to the casual observer from a streetscape perspective, thus views to nearby residential development from public spaces will not be hindered. The building achieves reasonable view sharing, as discussed under Clause 3.4.3 of MDCP. The modulated built form and appropriate siting of the works ensure minimal disruption of views between public spaces will occur as a result of the development. The variation will be largely subsumed into the overall development, with the point of variation being located centrally within the usable site area.

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 is supported with certified shadow diagrams, which confirm that primary living spaces and external open space areas of the southern adjoining property will continue to receive appropriate solar access. The increased setbacks to the upper floor in conjunction with the flat parapet roof form will furthermore assist in the maximisation of solar accessibility and amenity.

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 as the site is not classified as a recreation or environmental protection zone.

Conclusion:

For the reasons outlined above, the proposal is considered to be consistent with the objectives of Clause 4.3 Height of Buildings of Manly LEP 2013.

Zone objectives

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

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

Comment:

The proposal provides for a new contemporary dwelling house including outdoor recreational improvements therefore retaining a low density residential nature. The proposed development respects the predominant height and scale of surrounding dwellings and will meet the housing needs of the community within a single dwelling house which is a permissible use in this low density residential zone.

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 is residential in nature and does not propose any other land use.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

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

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*
- (b) to allow earthworks of a minor nature without requiring separate development consent.*

In this regard, before granting development consent for earthworks, Council must consider the following matters:

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development*

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

- (b) the effect of the proposed development on the likely future use or redevelopment of the land*

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

- (c) the quality of the fill or the soil to be excavated, or both*

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties*

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

- (e) the source of any fill material and the destination of any excavated material*

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

- (f) the likelihood of disturbing relics*

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

- (g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area*

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment: Conditions are included in the recommendation of this report that will minimise the impacts of the development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of MLEP 2013, 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.

Manly Development Control Plan

Built Form Controls

| Built Form Controls - Site Area: 910.6m² | Requirement | Proposed | % Variation* | Complies |
|---|--|---|-------------------------|-----------------|
| 4.1.2.1 Wall Height | North: 7.6m (based on gradient 1:5.8) | 7.3m | N/A | Yes |
| | South: 7.7m (based on gradient 1:5.1) | 7.3m | N/A | Yes |
| 4.1.2.2 Number of Storeys | 2 | 3 | 50% | No |
| 4.1.2.3 Roof Height | Parapet Height: 0.6m | 0.3-0.6m | N/A | Yes |
| 4.1.4.1 Street Front Setbacks | Prevailing building line | 9.6 - 13.0m, consistent with prevailing setback | N/A | Yes |
| 4.1.4.2 Side Setbacks and Secondary Street Frontages | North: 2.4-3.3m (based on elevational wall height) | 1.5-1.6m | Up to 51.5% | No |
| | South: 1.75-3.4m (based on elevational wall height) | 1.05-3.5m | Up to 61.3% | No |
| | Windows: 3m | 1.3m | 56.7% | No |
| 4.1.4.4 Rear Setbacks | 8m | 39.1m | N/A | Yes |
| 4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4 | Open space 60% (546.4m ²) of site area | 63.9% (581.8m ²) | N/A | Yes |
| | Open space above ground 25% (136.6m ²) of total open space | 19.8% (108.2m ²) | N/A | Yes |
| 4.1.5.2 Landscaped Area | Landscaped area 40% (218.6m ²) of open space | 69.4% (379.5m ²) | N/A | Yes |
| | 4 native trees | >4 trees | N/A | Yes |
| 4.1.5.3 Private Open Space | 18sqm per dwelling | 89.7sqm | 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 | 5.8m | N/A | Yes |
| 4.1.9 Swimming Pools, Spas and Water Features | 1m height above ground | 4.2m | 320% | No |
| | 1m curtilage/1.5m water side/rear setback | 3.5m side setback to water | N/A | Yes |
| Schedule 3 Parking and Access | Dwelling 2 spaces | 2 spaces | N/A | Yes |

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| 3.1 Streetscapes and Townscapes | Yes | Yes |
| 3.1.1 Streetscape (Residential areas) | Yes | Yes |
| 3.3.1 Landscaping Design | Yes | Yes |
| 3.3.2 Preservation of Trees or Bushland Vegetation | Yes | Yes |
| 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise) | Yes | Yes |
| 3.4.1 Sunlight Access and Overshadowing | Yes | Yes |
| 3.4.2 Privacy and Security | Yes | Yes |
| 3.4.3 Maintenance of Views | Yes | Yes |
| 3.4.4 Other Nuisance (Odour, Fumes etc.) | Yes | Yes |
| 3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design) | Yes | Yes |
| 3.5.1 Solar Access | Yes | Yes |
| 3.5.3 Ventilation | Yes | Yes |
| 3.5.5 Landscaping | Yes | Yes |
| 3.5.8 Water Sensitive Urban Design | Yes | Yes |
| 3.7 Stormwater Management | Yes | Yes |
| 3.8 Waste Management | Yes | Yes |
| 3.10 Safety and Security | Yes | Yes |
| 4.1 Residential Development Controls | Yes | Yes |
| 4.1.1 Dwelling Density, Dwelling Size and Subdivision | Yes | Yes |
| 4.1.1.1 Residential Density and Dwelling Size | Yes | Yes |
| 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) | No | Yes |
| 4.1.3 Floor Space Ratio (FSR) | Yes | Yes |
| 4.1.4 Setbacks (front, side and rear) and Building Separation | No | Yes |
| 4.1.5 Open Space and Landscaping | Yes | Yes |
| 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) | Yes | Yes |
| 4.1.8 Development on Sloping Sites | Yes | Yes |
| 4.1.9 Swimming Pools, Spas and Water Features | No | Yes |
| 4.4.5 Earthworks (Excavation and Filling) | No | Yes |
| 5 Special Character Areas and Sites | Yes | Yes |
| 5.4.1 Foreshore Scenic Protection Area | Yes | Yes |
| Schedule 1 – Maps accompanying the DCP | Yes | Yes |

Detailed Assessment

3.4.2 Privacy and Security

The proposed development is considered capable of providing reasonable amenity for the dwelling occupants and those of adjoining and surrounding properties as a result of the following design elements. The outdoor living areas are oriented toward the frontage or the rear of the allotment and have been treated to enhance privacy through the provision of opaque window finishes, sufficient spatial separation, fixed privacy screening and additional landscape treatment. The proposal has furthermore reduced the size and number of windows originally proposed, which also contributes to the enhancement of privacy. The windows on the northern and southern elevations of the dwelling are all finished in an opaque glazing, which mitigates opportunities of overlooking into either adjoining property. The northern feature wall as amended comprises an angled louvered design which deflects viewing into the northern adjoining property and subsequently provides visual privacy for the dwelling occupants particularly when utilising the first floor

outdoor lounge and pool area. The provided landscape plan (drawing number DA 001, dated 28.02.2020) denotes the significant increase of on-site vegetation, particularly within the front and side setback areas, which in turn will serve to both soften the built form of the development whilst also enhancing amenity.

In turn, the proposed development is considered to provide reasonable amenity for the dwelling occupants and those of adjoining and surrounding properties.

3.4.3 Maintenance of Views

As a result of the public exhibition of the development application, Council received one (1) submission from the property at No. 14 Peronne Avenue raising view loss as a concern.

The impact on views from Nos. 10 and 14 Peronne Avenue has been considered by the applicant in its documentation submitted with this application (refer to Statement of Environmental Effects, appendix one and various architectural drawings provided by the applicant during the assessment period).

It should also be noted that the assessing officer has undertaken a view loss assessment from No. 14 Peronne Avenue.

The assessment provided below takes into account the impact on views from the property who raised view loss as a concern in their submission (No. 14 Peronne Avenue) as well as the adjoining property to the south (No. 10 Peronne Avenue).

Merit consideration

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

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

Comment:

The proposed development in its original form would result in a minor loss of views from No. 14 Peronne Avenue. In turn, amended plans were sought in regards to the northern wall of the proposal. The amendments have resulted in such wall being constructed of angled louvers from the height of No. 14s study window sill. In turn, the development is considered to achieve a reasonable sharing of views for both existing and proposed development and existing and future Manly residents.

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

Comment:

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

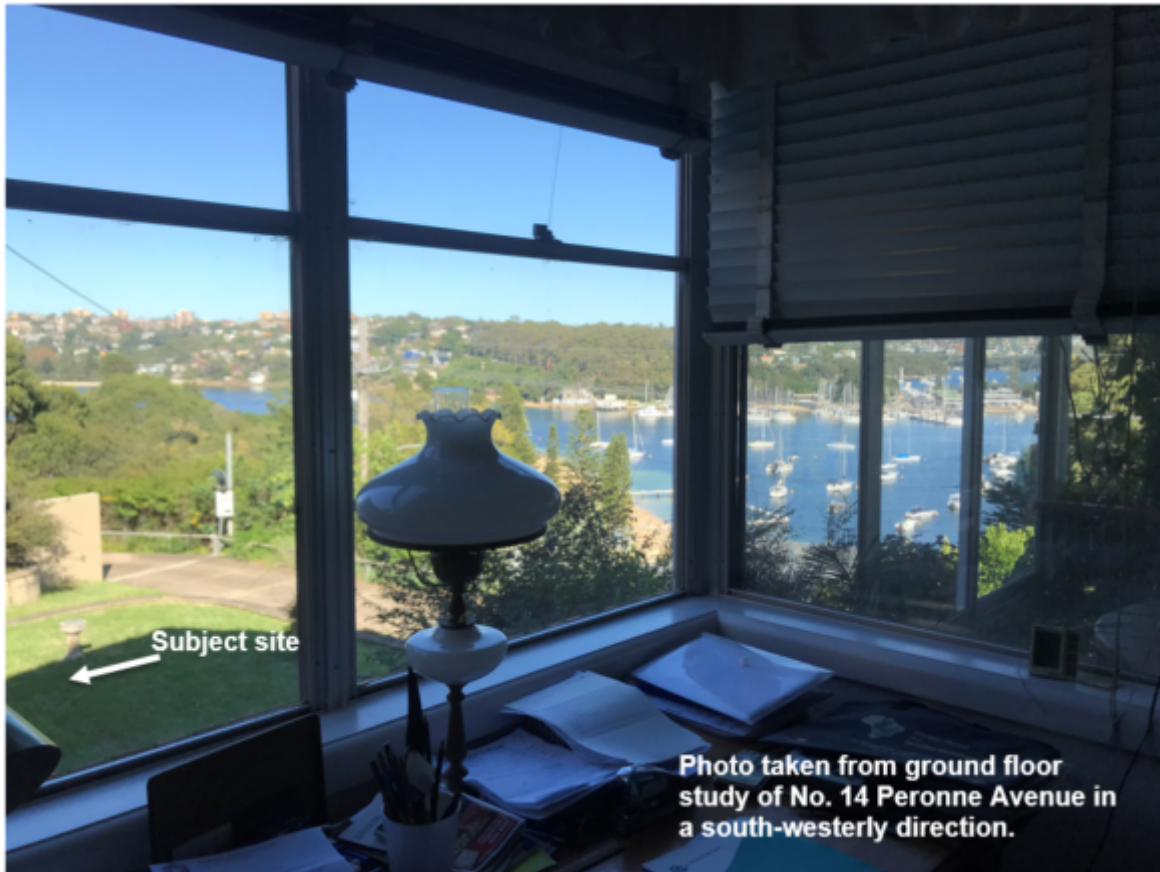
1. Nature of the views affected

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

Comment to Principle 1:

No. 14 Peronne Avenue

The nature of the views to be affected from this property are of land and water interface views in a southwesterly direction of Chinamans Beach/ Cobblers Bay and Clontarf Beach filtered through existing vegetation as shown below.



No. 10 Peronne Avenue

The nature of the views to be affected from this property are of district views of mature vegetation and nearby developments in a northerly direction. It should be noted that access to this property was not obtained. The photo below is taken from the front yard close to the common boundary between Nos. 12 and 10 Peronne Avenue.



2. What part of the affected property are the views obtained

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

Comment to Principle 2:

No. 14 Peronne Avenue

The views from this affected property are obtained over the front and the northern and southern side boundaries from the ground floor living rooms, study and balcony area in a sitting and standing position and from the first floor living rooms, bedroom and balcony in a sitting and standing position. It should be noted that the views obtained in a sitting position are of a lesser quality than those from a standing position.

No. 10 Peronne Avenue

The views from this property are obtained over the front and southern side boundaries. Given the contextual relationship with the adjoining properties to the north (Nos. 12 and 14) which were inspected (and a photo analysis provided as part of this development application) it is reasonably assumed that the views from this property will be in both the sitting and standing position from each of the rooms and balconies on all three floors toward the front of the dwelling house. It should be noted that the views from a sitting position would be of a lesser quality than those obtained from the standing position.

3. Extent of impact

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

or devastating".

Comment to Principle 3:

No. 14 Peronne Avenue

No 14 Peronne Avenue currently enjoys expansive views to the northwest, west, and southwest of Sandy Bay; Clontarf Baths; Clontarf Beach (land and water interfaces), the Spit Bridge, the Spit Waterway (land and water interface), and more distant land and water interface views toward Chinamans Beach/ Cobblers Bay which are currently filtered through existing vegetation.

The dwelling occupants will continue to enjoy, in both sitting and standing positions, expansive and highly valued views to the northwest and west of Sandy Bay; Clontarf Baths; and Clontarf Beach (land and water interfaces), the Spit Bridge and the Spit Waterway (land and water interface). These views will not be impacted by the proposed development. The filtered distant views from a sitting position, over the side boundary toward Chinamans Beach/ Cobblers Bay to the southwest of the site may to a very minor extent, be lost as a result of the proposed development. However, amended plans were requested in this regard of which have resulted in a louvered northern wall whereby the southwestern views will be significantly retained.

Therefore the extent of the impact is considered to be negligible.

No. 10 Peronne Avenue

No. 10 Peronne Avenue currently enjoys expansive views to the westnorthwest, west, southwest and south to Sandy Bay; Clontarf Baths; Clontarf Beach (land and water interfaces), the Spit Bridge, the Spit Waterway (land and water interface) and more distant land and water interface views toward Chinamans Beach/ Cobblers Bay and Wyargine Point.

The dwelling occupants will continue to enjoy, in both sitting and standing positions, expensive and highly valued views to the westnorthwest, west, southwest and south to Sandy Bay, Clontarf Baths, Clontarf Beach (land and water interfaces), the Spit Bridge, the Spit Waterway (land and water interface) and more distant land and water interface views toward Chinamans Beach/ Cobblers Bay and Wyargine Point. Due to the siting and orientation of the proposed dwelling being directly north of the subject dwelling, views to the westnorthwest are not expected to be hindered. Minor district views consisting of surrounding development and mature vegetation is the only degree of views expected to be lost as a result of the development.

Therefore the extent of the impact is considered to be negligible.

4. Reasonableness of the proposal that is causing the impacts

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

Comment to Principal 4:

The proposal contravenes the Height of Buildings Development Standard to a minor degree at the western elevation of the second floor, however the northern entrance wall of the proposal (the subject of the view loss concern) remains entirely compliant with the 8.5m height control. The proposal also satisfies the underlying objectives and maintains compliance with the minimum requirements of Clause 4.4 Floor Space Ratio under MLEP 2013 and Clauses 4.1.2.1 Wall height and 4.1.5 Open Space and Landscaping under MDCP.

The development proposes a variation to the minimum requirements of Clause 4.1.4 Setbacks (side setback only) and Clause 4.1.9 Swimming pools, Spas and Water Features under MDCP.

As detailed under the Clause 4.1.4 and Clause 4.1.9 sections of this report, the encroachment of the dwelling into the side setback areas and the height of the swimming pool above ground is not considered to cause a disruption of views and is considered to be reasonable and consistent with adjoining and surrounding development as the proposal satisfies the underlying objectives of each Control.

The proposal responds appropriately to the available views through the provision of appropriate setbacks, building articulation and the amendment in design to allow for a louvered northern entrance wall to ensure highly valued views are retained and the impact on properties in terms of view loss is negligible.

Overall the proposal is considered appropriate for the site, and acceptable in this instance.

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

Comment:

As detailed above, the development is considered to minimise loss of views given the site specific design and articulation of the built form such that highly valued views can be retained.

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.

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

Description of non-compliance

In accordance with Clause 4.1.2.2 of the MDCP, buildings are restricted to a maximum of two storeys. The proposed development comprises three storeys, thereby contravening the Control.

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:

Notwithstanding the minor height departure, the development achieves a consistent and comparable bulk and scale with that of adjoining and surrounding development. The third storey is setback from the below storeys, and is well articulated which breaks down the dominance of the built form. The proposed roof RL (RL40.71) remains significantly lower than both adjoining dwellings (RL 42.52 and RL44.65) which in turn results in a built form below the prevailing building height. The roof form remains compliant with Clause 4.1.2.3 of the MDCP in relation to roof height. Due to the private right-of-way access arrangement of the site, the development will remain largely unseen as viewed from the streetscape. Further, each property along such consists of a similar two and three storey building height nature. The development is therefore considered to provide a building height that is consistent with the topographic landscape, prevailing building height and desired streetscape character in the locality.

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

Comment:

The proposed development achieves compliance with the maximum allowable floor space ratio and wall

height requirements, which in turn results in an appropriate built form which is furthermore visually reduced as a result of the articulation and modulation of the modern design. As above, the proposed roof ridge remains well below that of both adjoining dwellings which contributes to the control of the bulk and scale of the building. The development comprises varying setbacks, materials and architectural features that serve to minimise the visual impact of the development, which is furthermore softened as a result of the proposed landscape treatment.

(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 matter of view sharing has been discussed elsewhere within this report (refer to Clause 3.4.3 Maintenance of Views under the MDCP section of this report). In summary, the proposed development, as amended, is considered to achieve a reasonable sharing of views.

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

Comment:

The proposed development achieves compliance with the solar access requirements as prescribed within Clause 3.4.1 Sunlight Access and Overshadowing of the MDCP.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental , vegetation and topography and any other aspect that might conflict with bushland and surrounding land

Comment:

Not applicable, given the site is zoned R2 Low Density Residential.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of Manly LEP 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

Clause 4.1.4.1 of MDCP stipulates that development must relate to the front building lines of neighbouring properties and the prevailing building lines in the immediate vicinity. The subject site is accessed via a private right-of-way, therefore the frontages of each site that utilise such access are unseen from the Peronne Avenue streetscape. In regard to the prevailing building lines in the immediate vicinity, the property directly north provides a front setback of 9.6m, whilst the property directly south provides a front setback to the dwelling of approximately 12m not including the swimming pool that is situated approximately 5.2m from the frontage. In this respect, the proposed front setback of between 9.8 and 13m to the dwelling is considered to satisfactorily relate to the front building lines of neighbouring properties. It is noted the plans indicate two (2) informal parking spaces can be provided within the front setback area, however no built structures are proposed in order facilitate such. The proposal is therefore considered to satisfy Clause 4.1.4.1.

Clause 4.1.4.2 of MDCP stipulates the side setback between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall. Due to the varying side setbacks that result from the articulation and modulation of the built form, the wall height for the purpose of these calculations were taken as one elevational plane. This equates to a northern side setback requirement of between 2.4 and 3.3m (based on heights of between 7.3 and 9.86m) and a southern side setback requirement of between 1.75 and 3.0m (based on heights of between 5.25 and 10.1m). This clause also requires windows to be setback a minimum of 3m from a side boundary, which is subsequently not achieved.

Merit consideration:

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

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

Comment:

Due to the private access arrangement of the site, the development will remain proportionately screened from view from the streetscape. The dwelling is however very well articulated and modulated as a result of varying setbacks, varying structural and design features as well as the overall stepped design of the dwelling in accordance with the east/west cross-fall of the site. The dwelling house achieves compliance with the FSR requirement, open space and landscaped area requirements and wall height requirements which in conjunction with the modulated modern design, provides a development that maintains and enhances the existing streetscape identity and desired spatial proportions.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

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

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

Comment:

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

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 application is supported with a detailed landscape plan (drawing number DA 001, dated 28.02.2020) which denotes a significant increase in the on-site landscape provision. The site will be planted with hedging within the side setback areas and the frontage will also be adorned with new vegetation. The development furthermore surpasses the minimum landscaped area requirement, therefore the proposal adequately enhances natural features within the site.

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

Comment:

The subject site is not classified as bush fire prone land.

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

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

The swimming pool is situated approximately 4.2m above existing ground level, which in accordance with Clause 4.1.9.1 should equate to the minimum side setback (3.3m). The southern side setback being 3.3m (and the minimum side setback) should therefore be the maximum height of the pool above ground level. The proposal thereby contravenes the requirements of 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:

- *To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;*

Comment:

The siting of the swimming pool allows for the maintenance of visual and acoustic privacy for the dwelling occupants and those of adjoining and surrounding properties as a result of the spatial separation provided between buildings, the privacy screening to the north of the first floor and offsetting of such structure from both outdoor living areas of each adjoining dwelling. Further, additional landscape treatment is to be planted within the front and side setback areas which will aid in the containment of acoustics whilst providing a visual buffer to mitigate direct overlooking opportunities. The swimming pool filter will be conditioned to produce noise levels no higher than 5dBA as measured from the nearest property boundary, thereby minimising the impact of noise on neighbouring properties.

- *To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;*

Comment:

The swimming pool will not create contrast within the streetscape, due to the existing prevalence of swimming pools within the front setback area, as is the case with the direct adjoining property to the south. The subject swimming pool does not encroach the front setback area and as above, is appropriately screened to protect amenity. Due to the access arrangement of the site (via a private right-of-way) the swimming pool will remain largely unseen as viewed from the streetscape however it is noted various properties contain swimming pools that are visible from the streetscape. The proposal therefore remains consistent with the established character of the streetscape and locality.

- *To integrate landscaping; and*

Comment:

The proposal involves the addition of significant vegetation, particularly within the front and side setback areas are indicated on the landscape plan (drawing number DA 001, dated 28.02.2020). This will in turn serve to soften the built form of the development as viewed from adjoining and surrounding properties.

- *To become an emergency water resource in bush fire prone areas.*

Comment:

The subject site is not classified as bush fire prone land.

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

4.4.5 Earthworks (Excavation and Filling)

Description of non-compliance

Clause 4.4.5.2 of MDCP permits excavation up to a depth of 1m below the natural ground level. The proposed development involves excavation to a depth of 2.8m to facilitate the ground floor level.

Merit consideration

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

Objective 1) To retain the existing landscape character and limit change to the topography and vegetation

- *Limiting excavation, "cut and fill" and other earthworks;*
- *Discouraging the alteration of the natural flow of ground and surface water;*
- *Ensuring that development does not cause sedimentation to enter drainage lines (natural or other);*
- *Limiting the height of retaining walls and encouraging the planting of native plant species to soften the site.*

Comment:

The proposed excavation is generally confined to the proposed building footprint toward the rear of the dwelling on the site. The proposal also comprises excavation and subsequent retaining walls approximately 0.9m from the northern and southern side boundaries. The proposed excavation is centrally located within the site and will not be significantly discernible as viewed from adjoining properties or the streetscape. The excavation allows for a reduced building height, particularly in comparison to both adjoining dwellings and

offsets the ground floor level which enhances amenity. The required degree of excavation will not result in a dramatic change to the site topography or the existing on-site vegetation. The application is also supported with a detailed landscape plan which further demonstrates how the development will be softened and visually integrated with the site.

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.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$22,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,200,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2020/0192 for Demolition works and construction of a dwelling house including swimming pool on land at Lot A DP 344469, 12 Peronne Avenue, CLONTARF, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

| Architectural Plans - Endorsed with Council's stamp | | |
|---|------------|------------------|
| Drawing No. | Dated | Prepared By |
| DA02, Issue I - Site & Roof Plan | 4 May 2020 | Watershed Design |
| DA03, Issue I - Ground Floor Plan | 4 May 2020 | Watershed Design |
| DA04, Issue I - First Floor Plan | 4 May 2020 | Watershed Design |
| DA05, Issue I - Second Floor Plan | 4 May 2020 | Watershed Design |
| DA06, Issue I - Section A-A | 4 May 2020 | Watershed Design |
| DA07, Issue I - Section B-B | 4 May 2020 | Watershed Design |
| DA08, Issue I - Section C-C | 4 May 2020 | Watershed Design |
| DA09, Issue I - Section D-D | 4 May 2020 | Watershed Design |
| DA10, Issue I - Elevation-West | 4 May 2020 | Watershed Design |
| DA11, Issue I - Elevation-North | 4 May 2020 | Watershed Design |
| DA12, Issue I - Elevation-East | 4 May 2020 | Watershed Design |
| DA13, Issue I - Elevation-South | 4 May 2020 | Watershed Design |
| DA16, Issue I - Demolition Plan | 4 May 2020 | Watershed Design |

| Engineering Plans | | |
|--|------------|------------------|
| Drawing No. | Dated | Prepared By |
| DA17, Issue I - Excavation and Fill Plan | 4 May 2020 | Watershed Design |

| Reports / Documentation – All recommendations and requirements contained within: | | |
|---|------------------|--------------------------|
| Report No. / Page No. / Section No. | Dated | Prepared By |
| Geotechnical Report (Ref: J2563) | 28 February 2020 | White Geotechnical Group |
| Arboricultural Impact Assessment | 17 February 2020 | Blues Bros Arboriculture |
| BASIX Certificate (Cert. No. 1080860S_04) | 27 March 2020 | Efficient Living Pty Ltd |

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

| Landscape Plans | | |
|----------------------------------|------------------|--------------------------------------|
| Drawing No. | Dated | Prepared By |
| DA 001, Ref # B - Landscape Plan | 28 February 2020 | Sticks & Stones Designing Landscapes |

| Waste Management Plan | | |
|------------------------------|------------------|---------------------------|
| Drawing No/Title. | Dated | Prepared By |
| Waste Management Plan | 28 February 2020 | Stuart & Samantha Hollman |

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 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 \$22,000.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$2,200,000.00.

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

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

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

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

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

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

6. **Vehicle Driveway Gradients**

Driveway gradients within the private property are to comply with AS/NZS 2890.1:2004. Driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. The gradients for the parking facility are not to exceed 1 in 20 (5%).

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

Reason: To ensure suitable vehicular access to private property.

7. **Structural Adequacy and Excavation Work**

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

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

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

Reason: To provide public and private safety.

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 Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention 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 Stellen Consulting, Drawing number DR-001, DR-002 and DR-003, Rev 0, dated 27 February 2020.

Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, 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. 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.

11. Northern Wall Privacy Screen

The privacy screen in the northern wall is to be constructed of fixed louvers that are angled at least 40 degrees to the southwest, to allow for the retention of views from the adjoining property to the north.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**12. Maintenance of Road Reserve**

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

Reason: Public Safety.

13. 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.

14. 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.

15. 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.

16. Tree and vegetation protection

a) Existing trees and vegetation as identified in the Survey Plan and Site Plan shall be retained, including:

- i) all trees and vegetation within the site, excluding exempt vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be generally undertaken as follows:

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

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

d) note: any future request for tree removal is subject to a Section 4.55 modification application, or an or an assessment by AQF level 5 Arborist that determines that the tree presents an imminent risk to life or property.

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

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

17. **Landscape works completion**

Landscape works are to be implemented in accordance with the landscape plan DA001 prepared by Sticks & Stones Designers & Landscapers, inclusive of the following requirement.

- i) all tree planting within the site shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree locations may otherwise be positioned to minimise any significant loss of views, and shall be planted at least 4-5 metres from buildings, and at least 4-5 metres from all other trees.

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 with any

conditions of consent.

Reason: to ensure that the landscape treatments are installed to provide landscape amenity and soften the built form.

18. Positive Covenant and Restriction as to User for On -site Stormwater Detention

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures 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 and restriction.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user 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 the on-site stormwater disposal system is maintained to an appropriate operational standard.

19. 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

20. **Landscape maintenance**

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

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

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

21. **Swimming Pool Filter**

The swimming pool filter shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure acoustic amenity is maintained for adjoining properties.

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

Signed



Georgia Quinn, Planner

The application is determined on 07/05/2020, under the delegated authority of:



Matthew Edmonds, Manager Development Assessments