

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0308
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Responsible Officer:	David Auster
Land to be developed (Address):	Lot 7 DP 5711, 5 A Hilltop Crescent FAIRLIGHT NSW 2094
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Andrew Charles Tompson Monique Angela Tompson
Applicant:	Andrew Charles Tompson Monique Angela Tompson

Application Lodged:	01/04/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	12/04/2019 to 26/04/2019
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of buildings: 8.9%
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,451,435.00
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PROPOSED DEVELOPMENT IN DETAIL

The proposal is to demolish the existing dwelling house and construct a new dwelling house and swimming pool.

The proposed dwelling house will be comprised of the following:

Lower floor

- Two bedrooms, each with en-suite.
- Rumpus room.
- Plant room.

- Store room
- Deck.
- Swimming pool.

Ground floor

- Four bedrooms, two with en-suite.
- Music room.
- Bathroom.
- Laundry.
- Study nook.
- Tandem garage.

Upper floor

- Open plan Living / kitchen / dining room.
- One bedroom with ensuite.
- Toilet.
- Rear Deck and front terrace.

Roof

- Roof terrace.

Amended Plans

The applicant submitted amended plans during the assessment process due to concerns raised by Council in relation to non-compliance with relevant built form controls and environmental impacts. The amendments are detailed as follows:

1. Increase eastern side setback of wall to 1280mm (increase of 350mm)
2. Increase western side setback of wall to 1080mm (increase of 150mm)
3. Lowering of Roof Terrace FFL and Upper Floor roof by 185mm and redistributing this reduction throughout the lower levels, reducing the overall building height
4. Increase width of garden planters on Roof Terrace to increase setbacks from south and east boundaries
5. Reduce width of access structure to Roof Terrace by 1700mm and amend angle of this roof to lower the overall height to be 725mm lower than original
6. Reduce Deck area on Lower Floor to allow for increased landscaping
7. This has had an overall reduction in the proposed floor area and an increase in landscaped and open space areas

The amended plans generally reduced the overall height of the development and increased proposed setbacks. Given that the amended plans reduced the overall size and bulk and scale of the proposal, renotification of the amended plans was not considered warranted. The objections previously received are considered to be maintained, and have been addressed in this report.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.3 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 - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 7 DP 5711 , 5 A Hilltop Crescent FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The site is a generally rectangular shaped lot (but with an angled front boundary), located on the southern side of Hilltop Crescent.</p> <p>The site is generally level in the northern half of the property, and then slopes down to the rear boundary across the southern half of the site.</p> <p>There is an existing detached dwelling on site, located in the southern half of the property where the land falls.</p> <p>Surrounding development consists of varied housing including detached dwellings, semi detached dwellings, dual occupancies and large residential flat buildings. There are residential flat buildings neighbouring the site to each side (east and west), and a dual occupancy to the rear.</p>

Map:



SITE HISTORY

Pre-lodgement Meeting PLM2018/0288 was held on 06/12/2018 for Subdivision of Land, demolition works and construction of two (2) dwellings. The notes from this meeting indicated general support of a proposal similar to the one eventually lodged in the current application, with the applicant to address various issues such as building height, side setbacks, privacy and amenity issues, and view loss. Subdivision of the site was not supported, and has not been included in the current application.

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	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>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</p>

Section 4.15 Matters for Consideration'	Comments
	<p>application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <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	The site is considered suitable for the proposed

Section 4.15 Matters for Consideration'	Comments
for the development	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 3 submission/s from:

Name:	Address:
Mr Brian Shields	14 / 3 Hilltop Crescent FAIRLIGHT NSW 2094
Proprietors of Strata Plan 13394	3 Hilltop Crescent FAIRLIGHT NSW 2094
Mrs Irena Pohla Medwik-Daley	9 / 3 Hilltop Crescent FAIRLIGHT NSW 2094

Although there are three submissions noted above, two of the submissions were sent by the same person (Shields). The second submission states that it is on behalf of the strata body. However, in the absence of meeting minutes confirming that the strata as a whole is making the submission, the two submissions received from Shields are considered to be one submission, in accordance with Council policy. As such, the application will be determined under delegated authority.

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

- Privacy
- Height above existing building, and height limits
- Built form controls including side setbacks, number of storeys
- Bulk, desired future character as expressed by built form controls
- Storm water spreader inadequate - geotechnical report
- Solar access
- Amount of excavation and damage from rock excavations
- Existing ground level on site
- Building does not step with topography
- Property values

- Lack of airflow

The matters raised within the submissions are addressed as follows:

- **Privacy**

Concerns were raised by two unit owners to the east regarding privacy impacts from the proposed development, particularly from the rear decks, including the roof deck.

Comment:

The proposal includes planter boxes along the eastern sides of both the upper floor plan rear deck, and the roof terrace. The planter box also extends along the southern side of the roof terrace. There are privacy screens proposed along the outside of the planter boxes on both the eastern and western sides of the upper floor level deck. Windows on each side are generally treated with opaque glazing, including the kitchen on the upper level, or are low use rooms such as bedrooms, with the side boundary fence also helping to provide screening between neighbours at the ground level.

Complete prevention of any views to or from neighbouring decks is not prevented, but this is considered an unreasonable expectation in the zone, particularly given the relatively high density of residential development in the immediate vicinity. Further, on a south facing slope with views to the south, there is a general expectation that decks will be orientated in the direction of the views, and as such, there is always likely to be some level of overlooking between neighbouring decks. The new dwelling is generally orientated to provide casual views from within towards the water views to the south, and the proposed rear decking is screened to a reasonable degree by the proposed planter boxes and privacy screens, and this will prevent the majority of casual views into neighbouring decks and windows.

The proposal is considered to maintain privacy to a reasonable degree, and further amendment or refusal of the application is not warranted.

- **Height above existing building, and height limits**

Concerns were raised that the proposal breached the overall height limit, wall height limit, and will be significantly higher than the existing dwelling on site.

Comment:

The amended plans have significantly reduced the extent of non-compliance with the overall height limit. The non-compliance is now confined to a relatively small 'pop-up' that enables access to the upper level deck, and the balustrade of the roof terrace. The majority of the dwelling will remain below the 8.5m height limit. As discussed under clause 4.6 of the LEP in this report, the non-compliance is considered acceptable in the circumstances of the site.

The proposal is also non-compliant with the wall height control. This issue is discussed in more detail under clause 4.1.2 of the DCP in this report. In summary, the proposal is considered to achieve the objectives of the control, despite the numerical non-compliance, and as such is considered acceptable in this case.

The concerns raised with respect to the proposed height compared to the existing dwelling to be demolished are not a consideration under the relevant planning controls. The proposal is assessed against the requirements and objectives of the built form controls.

Given the above, the submissions are not considered to warrant refusal or further amendment of

the application.

- **Built form controls including side setbacks, number of storeys**

Concerns were raised with other built form controls (height discussed above) including the proposed side setbacks and number of storeys.

Comment:

The amended plans have slightly increased the side setbacks, but they are still non-compliant with the control as discussed in this report. There is also a part of the building near the rear that will be three storeys in height. These non-compliances have been assessed against the objectives of the relevant controls, and found to generally achieve these objectives. As such, the proposal is considered to be acceptable despite the numerical non-compliance. The proposed non-compliances will not cause any unreasonable amenity impacts to neighbours in the context of the site and surrounds.

No further amendment to the plans or refusal of the application is recommended in this regard.

- **Bulk, desired future character as expressed by built form controls**

Concerns were raised regarding the bulk and scale of the development, and inconsistency with the desired future character due to inconsistency with the built form controls.

Comment:

The development overall is of a bulk and scale that will not be inconsistent with existing surrounding development. The site is in the R1 zone, and the immediate neighbours to the east and west are residential flat buildings, which are significantly larger in bulk and scale than the proposed dwelling. As such, the overall bulk and scale of the proposal is considered to be acceptable, despite the numerical non-compliances with the built form controls discussed in this report.

No further amendment or refusal of the application is recommended in this regard.

- **Storm water spreader inadequate - geotechnical report**

Concerns were raised that the geotechnical report submitted with the application states that stormwater should be piped via easement from the rear of the property, and not be disposed of by a level spreader.

Comment:

Council's Engineers have assessed the proposal and are satisfied with the provisions for stormwater. The applicants have submitted a 'Denied easement' letter from the downstream neighbours. As such, Council's Engineers have provided conditions of consent to ensure stormwater is disposed of in accordance with Northern Beaches Council's Manly Specification for on-site stormwater Management policy.

Subject to the above, the issue is not considered to warrant refusal or amendment of the application.

- **Solar access**

Concerns were raised with respect to overshadowing of the neighbouring residential flat building to the east. In particular, the owners of units 9 and 14 provided submissions. A further submission from the owner of unit 14 stating that the submission was on behalf of the strata

raised concerns with shading of unit 7, though no submission was received from the owner of unit 7.

Comment:

The applicant has provided further shadow diagrams with the amended plans, including 'view from the sun' diagrams, which demonstrate that a reasonable level of solar access will be maintained. The plans provided demonstrate that units 9 and 14 will receive solar access generally in accordance with the minimum requirements under clause 3.4.1 Sunlight Access and Overshadowing. Unit 7 will not achieve these minimum requirements. However, this is a south facing unit on the lower level of the flat building, and is highly vulnerable to overshadowing by development of the subject site. The site is in the R1 zone, and the proposal overall is considered to maintain reasonable level of solar access to neighbours in the high density zone. The shadow diagrams provided show that the west facing unit 7 window is currently partially shadowed at 1.35pm on the winter solstice, by the existing development, which is generally well below the height limit on site. The amended plans have reduced the height of the proposal, and though still non-compliant with some built form controls as discussed in this report, are considered to maintain a reasonable level of solar access.

- **Amount of excavation and damage from rock excavations**

Concerns were raised regarding the amount of excavation required and possible damage from vibrations during excavation.

Comment:

The proposal involves up to 2.7m of excavation at the deepest point. This excavation falls generally within the proposed footprint of the building, and the ground level to either side will be generally similar to the existing ground levels, with the exception of the eastern stairs in the side setback, a section of which will be lowered by approximately 1m. The excavation below the externally visible ground levels is not considered to cause any unreasonable impacts in the area (subject to conditions as discussed below), and in this regard is considered acceptable.

The geotechnical report provided states that *"Possible vibrations generated during excavations through fill, sandy soil and sandy clays will be below the threshold limit for building damage"*. However, it goes on to say *"Excavations through rock should be carried out to minimise the potential to cause vibration damage to the neighbouring house to the E and W. The supporting walls of the neighbouring house to the E will be as close as ~4.8m and the W neighbouring house ~3.6m from the proposed excavations. Close controls by the contractor over rock excavation are recommended so excessive vibrations are not generated"*.

Given that the report indicates that the development is unlikely to cause damage to neighbouring properties, but that care will need to be taken during construction to ensure vibrations do not reach a level that would damage neighbouring properties, a condition is recommended requiring a dilapidation report be carried out pre and post construction, to ensure any damage caused is rectified at the expense of the applicant.

Subject to this condition, the submission is considered to be satisfied to a reasonable degree.

- **Building does not step with topography**

Concerns were raised that the proposed building does not step down with the topography.

Comment:

The development does step down to the rear, generally in accordance with the topography. This

has not avoided non-compliances with the relevant built form controls. However, as discussed within this report, these non-compliances are not considered to result in any unreasonable impacts, and in this case are supported in the circumstances of the site.

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

- **Property values**

Concerns were raised the development would impact property values.

Comment:

This is not a matter for consideration under the Environmental Planning and Assessment Act.

- **Lack of airflow**

Concerns were raised that airflow to neighbouring apartments would be impacted by the proposal.

Comment: The space between the proposed building and the windows of the eastern residential flat building is a minimum of 5.2m, with part of this setback at the rear of the new dwelling being made up of privacy screening and decks which allow for airflow. The gap between buildings is not considered to be such that it would unreasonably restrict airflow into the apartments of the neighbouring site to the east.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The landscape component of the proposal is acceptable subject to the protection of existing trees and vegetation, and the completion of landscaping.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types, and specifically: 3.3.1 Landscaping Design; 3.3.2 Preservation of Trees or Bushland Vegetation; and 4.1.5 Open Space and Landscaping.</p> <p>A Landscape Plan is provided in accordance with DA Lodgement Requirements, and satisfies the requirements of Manly DCP2013, subject to conditions.</p> <p>A Arboricultural Impact Assessment report is provided in accordance with DA Lodgement Requirements, and provides tree protection measures for the existing street tree and trees located in close vicinity to development.</p>
NECC (Development Engineering)	<p>2nd Development Engineering referral</p> <p>New information of BAXIC and easement has been submitted.</p> <p>Development Engineering has no objection to the application subject to the following conditions of consent.</p>

Internal Referral Body	Comments
	<p>Additional info received to address below - see Trim</p> <p>An easement refusal letter from the downstream property was mentioned in the submitted stormwater management plan. However, it has not been submitted with the application. Please request the easement refusal letter from the applicant.</p> <p>Also, a 10000 L rainwater was designed in the submitted Stormwater management plan as the BAXIC's requirement. However, it is inconsistent with the submitted BAXIC report which only required 5000 L. If the required volume is 5000 L, the consultant must provide a sufficient OSD device to control the discharge from the property.</p> <p>As above, Development Engineering cannot support the application.</p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1000702S_02).

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

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

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.26m	8.9%	No
Floor Space Ratio	FSR:0.6:1	FSR: 0.59:1	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
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:	9.26m
Percentage variation to requirement:	8.9%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

- The proposal sits comfortably within its context, being lower overall than the neighbouring buildings to the east and west.
- The proposal is consistent with the objectives of the Height of Buildings standard, notwithstanding the numerical non-compliance.
- The proposal is consistent with the zone objectives.
- The variation to the development standard does not reduce the amenity of neighbouring dwellings or the public domain.
- The existing streetscape presentation is maintained with no unreasonable streetscape impacts.
- The form of the development, its appearance and its height is entirely consistent with the existing character of the area which generally reflects an eclectic mix of dwelling types including dwelling houses, duplexes, and apartment buildings ranging in height from 2 storeys to 8 storeys.
- The absence of external impacts and the increased internal amenity of the dwelling house constitute sufficient environmental planning grounds to justify the proposed departures from the development standards.

These arguments are considered to be reasonable in the context of the development and the site, and are generally concurred with.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The maximum RL of the proposed dwelling is RL65.525, which is lower than the neighbouring buildings to the east and west, 3 Hilltop Crescent (RL66.25), and 5B Hilltop Crescent (RL65.85). Additionally, this upper most RL is confined to a small 'pop-up' section of the dwelling which will allow access to the roof top deck, with the majority of the building being significantly lower than this overall height. The proposal is therefore considered to be consistent with prevailing building heights. The majority of the building is generally set well back from the front of the property, and will have no unreasonable impacts on the streetscape character. The roof form is varied and the proposal will step down to the rear in accordance with the topography.

The proposal is considered to achieve this objective.

b) to control the bulk and scale of buildings,

Comment:

The general bulk and scale of the proposal is consistent with surrounding buildings. The majority of the building will comply with the 8.5m height limit, with exceptions only caused by the pop-up roof form to give access to the roof top deck, and by the balustrade surrounding this deck. Additionally, the proposal complies with the floor space ratio control, a good indicator of the scale of the development and what is expected in terms of development of the site.

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:

No submissions were received in relation to views, and no unreasonable view impacts were identified as part of a site inspection.

- 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:

Adequate sunlight access will be maintained to neighbouring dwellings, as demonstrated by the shadow diagrams submitted with the application, and the proposal will maintain solar access in accordance with the requirements of the DCP.

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

Comment:

The site is not in a recreation or environmental protection zone.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

To provide for the housing needs of the community.

Comment: The proposal provides for a dwelling on site in accordance with the permissible uses in the zone, and the housing density requirements of the DCP.

To provide for a variety of housing types and densities.

Comment: The proposed single dwelling will sit between residential flat buildings, and be in the vicinity of dual occupancies and other single dwellings. As such it will provide a varied housing stock.

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

Comment: The proposal will not prevent other permissible land uses from taking place within the zone.

Conclusion:

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

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

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 590.9sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 250sqm	1 dwelling	N/A	Yes
	Dwelling Size: 90sqm minimum	347sqm	N/A	Yes
4.1.2.1 Wall Height	E: 7.3m (based on gradient 1:7.5)	9.26m	26.8%	No
	W: 6.9m (based on gradient 1:15)	9.26m	34.2%	No
4.1.2.2 Number of Storeys	2	3	33.3%	No
4.1.2.3 Roof Height	Height: 2.5m	250mm	N/A	Yes
4.1.4.1 Street Front Setbacks	6m - no prevailing building line applicable	4.9m	18.3%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	<u>East (1/3 of wall height)</u> Ground level: 2.7m Upper level: 3m Roof terrace: 3.2m	Ground level: 1.28m Upper level: 1.4m Roof terrace: 2.7	52.6% 53.3% 15.6%	No No No
	<u>West (1/3 of wall height)</u> Ground level: 2.3m Upper level: 2.8m Roof terrace: 3.1m	Ground level: 1.08m Upper level: 1.5m Roof terrace: 6.9m	53% 46.4% N/A	No No Yes
	Windows: 3m	<u>East</u> Lower level: 900mm Ground level: 900mm Upper level: 1.4m	70% 70% 53.3%	No No No
		<u>West</u> Lower level: 900mm Ground level: 900mm Upper level: 1.5m	70% 70% 50%	No No No
	8m	8m	N/A	Yes

4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	58.4% (345sqm)	N/A	Yes
	Open space above ground 25% of total open space	21.2% (73sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	61.2% (211sqm)	N/A	Yes
4.1.5.3 Private Open Space	18sqm	Complies	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	4.3m	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0.6m	N/A	Yes
	1m curtilage/1.5m water side/rear setback	Complies side and rear	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	No	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.4.1 Demolition	Yes	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

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

The proposal is generally compliant with the requirements of the control in terms of maintaining adequate solar access to the neighbouring dwellings. However, it does not achieve the requirements for unit 7 of 3-5 Hilltop Crescent (to the east). The control requires that:

- a) for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June);
- b) for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June);
- c) for all adjacent buildings (with either orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.

Merit consideration:

The development is considered against the underlying Objectives of the Control as follows:

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

Comment:

The units to the east facing the subject site have a southerly aspect, with west facing windows also, and so do not fall into the east/west or north/south orientations described in the requirements above. Units 9

and 14 are on the upper levels, and the diagrams provided indicate that the western windows to the living areas will achieve the 2 hour requirement in (a) above. Unit 7 is on the lower level, and will not achieve this requirement. However, this unit is just above the ground level, as the land falls to the south, and is therefore situated generally below the developable area of the subject site. As such, it is considered to be highly vulnerable to overshadowing. The diagrams provided indicate that the western window of unit 7 will continue to receive some sunlight (approximately 1 hour) around midday on the winter solstice, and given the vulnerability of the location of this unit, and the higher density zoning of the site, this is considered to maintain generally equitable solar access in accordance with the objective.

*Objective 2) To allow adequate sunlight to penetrate:
private open spaces within the development site; and
private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

Comment:

As discussed above, the proposal will generally achieve the minimum requirement to neighbouring dwellings, with the exception of unit 7 to the east. However, this unit is in a highly vulnerable location to being shaded by the development of the subject site, and the diagrams show the worst case scenario on the winter solstice. Given these considerations, the proposal will allow adequate solar access to the private open spaces and windows to living spaces/habitable rooms on the site and to the adjoining properties.

*Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:
encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and
maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

The unit being overshadowed is to the east of the subject site, but is on a south facing slope, in a building where the units are primarily orientated to the south to take advantage of the views. As discussed above, given the higher density zoning of the site, and the vulnerability to overshadowing of unit 7, the proposal is considered to maximise solar access to a reasonable degree.

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.

3.4.3 Maintenance of Views

No submissions were received in relation to view loss. A site inspection was undertaken of the surrounding area, and no unreasonable view impacts could be identified.

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

Description of non-compliance

Clause 4.1.2.1 of the Manly Development Control Plan 2013 (MDCP 2013) stipulates that the maximum wall height permitted on each elevation is as follows:

Eastern elevation 7.3m (based on gradient 1:7.5); and
Western elevation 6.9m (based on gradient 1:15).

The application proposes the following walls heights:

Eastern elevation 9.26m; and
Western elevation 9.26m.

Clause 4.1.2.2 states that buildings must not exceed 2 storeys. A relatively small part of the proposed new dwelling will be three storeys in height at the rear.

As a consequence, the proposed development fails to comply with the requirements of this Control.

Merit Assessment

With regard to the consideration for a variation, the proposed development is considered against the underlying objectives of the Control. This control relies upon the objectives specified within Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP 2013). Accordingly, the proposal is considered against the following objectives:

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

Comment:

The proposed development is lower overall than the neighbouring buildings to the east and west, and the proposal will generally steps down to the rear in accordance with the topography. Furthermore, the proposal is consistent with the desired character statement specified within Clause 3.1.1 of the MDCP 2013.

(1) (b) To control the bulk and scale of buildings.

Comment:

The proposed development is compliant with the Floor Space Ratio development standard, and the overall height non-compliance is confined to the relatively small pop up roof to access the roof terrace, and the balustrade of the terrace. Furthermore, the neighbouring buildings to the east and west are relatively large residential flat buildings, and the proposed new dwelling will not present as being of a greater bulk and scale than these neighbours. As such, it is considered that the bulk and scale of the development is suitable for the locality.

1(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 harbour and foreshores).*

Comment:

No submissions were received in relation to view loss. A site inspection, including walking along the street, did not identify any likely unreasonable impacts on views. As such, the proposal is considered to achieve this objective.

(1) (d) To provide solar access to public and private open space and maintain adequate sunlight access to private open spaces and to habitable rooms of adjoining dwellings.

Comment:

The application has demonstrated that adequate solar access will be maintained to adjoining neighbours, despite the proposed non-compliance.

(1) (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 any any other aspect that might conflict with bushland and surrounding land uses.

Comment:

The subject site is not located within a recreation or environmental protection zone. Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

Description of non-compliance

This control requires a front setback of 6m or the prevailing building line. There is no readily identifiable prevailing building line, and the proposed garage is 4.9m from the front boundary at the closest point (north west corner), noting that the angled front boundary means the north eastern corner of the garage complies.

The control also requires the following side setbacks, based on 1/3 of the wall height:

East

Ground level: 2.7m

Upper level: 3m

Roof terrace: 3.2m

West

Ground level: 2.3m

Upper level: 2.8m

Roof terrace: 3.1m

The proposal includes the following setbacks:

East

Ground level: 1.28mm

Upper level: 1.4m

Roof terrace: 2.7

West

Ground level: 1.08mm

Upper level: 1.5m

Roof terrace: 6.9m

The control further requires setbacks for windows of 3m. The proposal includes the following minimum window setbacks:

East

Lower level: 900mm
Ground level: 900mm
Upper level: 1.4m

West

Lower level: 900mm
Ground level: 900mm
Upper level: 1.5m

Due to the non-compliances described above, a merit assessment is carried out against the objectives below:

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:

Although there is no prevailing front setback, there are numerous instances of reduced and small front setbacks along both sides of Hilltop Crescent. The non-compliance with the 6m front setback control caused by the front corner of the garage will not negatively impact upon the streetscape. Similarly, the side setback non-compliances, which are based on the wall height, occur towards the rear of the proposed new dwelling, and will not have any negative or unreasonable streetscape impacts.

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 non-compliances with the side setback requirements are caused in large part by the proposed privacy screens and planter boxes, which are intended to maintain privacy and amenity between neighbours to a reasonable level. The windows on the side elevations are generally treated with opaque glazing for the high use rooms such as the kitchen. The lower use bedrooms on the ground level will be screened to a reasonable degree by the side boundary fencing. The application has demonstrated that reasonable solar access will be maintained to neighbours. The separation between neighbours is not such that airflow will be restricted in any unreasonable way. The setbacks provided will not negatively impact the streetscape, and the large front setback area to the west of the garage will provide an ample sense of space between buildings. No unreasonable impacts on views have been identified. As such, the proposal is considered to achieve this objective.

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

Comment:

No unreasonable amenity impacts will arise as a result of the proposed development, as assessed throughout this report. As such, a degree of flexibility is considered appropriate in the circumstances of the site.

*Objective 4) To enhance and maintain natural features by:
accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;
ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and
ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposal will provide landscaped open space in accordance with the minimum requirements. Council's Landscape Officer has assessed the application and is generally satisfied.

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

Comment:

The subject site is not located within bushfire prone land. Therefore this objective is not applicable.

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

4.4.5 Earthworks (Excavation and Filling)

Description of Non-compliance

The Manly DCP 2013 limits excavation to generally 1m below natural ground level. The proposal requires excavation of up to 2.7m.

Merit Consideration

With regard to the consideration of the variation, the development is considered under the objective of the control below:

Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

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

Comment:

The proposed excavation greater than 1m is generally within the proposed building footprint at the rear of the dwelling as the land falls away. There is some excavation of the existing eastern side setback area to provide new stairs down, but this is less than 1m in depth. The proposed excavation at the rear of the lower level will therefore be in large part invisible from outside the site. The application includes a geotechnical report, the recommendations of which will be required to be followed by conditions of consent. This report states that *"Normal ground water seepage is expected to move over the buried surface of the rock and through the cracks. Due to the slope and elevation of the block, the water table is expected to be many metres below the base of the proposed excavations. No evidence of surface flows were observed on the property during the inspection. As the property encompasses the crest of the hill, the property will not be impacted by upslope runoff. Flows generated on the block will flow away from the property."*

Silt and sediment controls will also be imposed by condition of consent. Another condition of consent (as discussed under the Submissions section of this report) is recommended to require a dilapidation report of surrounding properties.

Subject to these conditions, the proposal is not considered to cause any unreasonable impacts, despite the non-compliance.

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 \$24,514 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,451,435.

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

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

RECOMMENDATION

Accordingly Council as the consent authority grant Development Consent to DA2019/0308 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 7 DP 5711, 5 A Hilltop Crescent, FAIRLIGHT, 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 L	14.08.19	Watershed Design
DA03 Issue L	14.08.19	Watershed Design
DA04 Issue L	14.08.19	Watershed Design
DA05 Issue L	14.08.19	Watershed Design
DA06 Issue L	14.08.19	Watershed Design
DA08 Issue L	14.08.19	Watershed Design
DA09 Issue L	14.08.19	Watershed Design
DA10 Issue L	14.08.19	Watershed Design
DA11 Issue L	14.08.19	Watershed Design
DA12 Issue L	14.08.19	Watershed Design
DA13 Issue L	14.08.19	Watershed Design
DA19 Issue L	14.08.19	Watershed Design
DA20 Issue L	14.08.19	Watershed Design

Engineering Plans		
Drawing No.	Dated	Prepared By
D01 Issue B	29-03-2019	NB Consulting Engineers
D02 Issue B	29-03-2019	NB Consulting Engineers
D03 Issue B	29-03-2019	NB Consulting Engineers
D04 Issue B	29-03-2019	NB Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Investigation J2070	18 March 2019	White Geotechnical Group
Arboricultural Impact Assessment Report Ref: 19/03/29/5AHCF	21 March 2019	Urban Arbor

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
18/2052 Issue F Sheet 1 of 2	28.3.19	Paul Scrivener Landscape Architecture
18/2052 Issue F Sheet 2 of 2	28.3.19	Paul Scrivener Landscape Architecture

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Northern Beaches Council Waste Management Plan	22/3/19	Monique & Andrew Tompson

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) 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) 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.
- (j) 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.
- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$24,514.35 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 \$2,451,435.00.

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. **On Slab landscape works**

- i) Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing to all internal walls and slab, and drainage of the Terrace planter over which soil and planting is being provided,
- ii) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule,
- iii) The following minimum soil depths are required to support landscaping as proposed:
-600mm for shrubs
- iv) Design certification shall be submitted to the Certifying Authority by a structural engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials

and established planting).

Reason: to ensure appropriate and secure waterproofing and drainage is installed to direct water flow into the drainage system.

7. **On-site Stormwater Disposal**

Certification of Drainage plans detailing the provision of On-site Stormwater disposal in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003 and the concept drawing by NB Consulting Engineers, job number 190101 dated March 2019. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

8. **Structural Adequacy and Excavation Work**

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

(a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and

(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

9. **Vehicle Crossings Application**

A Driveway Levels and Formwork Inspections Application shall be made with Council subject to the payment of the fee in accordance with Council's Fees and Charges. The fee includes all Council inspections relating to the driveway construction and must be paid.

Approval of the application by Council is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

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. **Sydney Water "Tap In"**

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

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

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

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

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

12. Pre-commencement Dilapidation Report

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining private properties to the east and west (3 Hilltop Crescent and 5B Hilltop Crescent). A copy of the report must be provided to Council, and the owners of adjoining and affected private properties.

Reason: Protection of Council's and Private Party's Infrastructure during construction.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

13. Public Liability Insurance - Works on Public Land

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

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

14. Tree protection measures

A Project Arborist with AQZ Level 5 qualification in arboriculture/horticulture is to be appointed to supervise and certify tree protection measures for the existing trees nominated for retention and protection in the Arboricultural Impact Assessment report prepared by Urban Arbor, being existing trees identified as 1, 4, and 5 in close proximity to development, including complying with the works outlined in section 11. Tree Protection Requirements and section 12. Construction Hold Points for Tree Protection, and generally in accordance with Detail 2 - Tree protection measure shown on the Landscape Plan.

The Project Arborist shall attend site during excavation and construction works within the tree protection zone (TPZ) of the existing trees as nominated in the Arboricultural Impact Assessment report.

The tree protection measures specified in this clause must:

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

The Project Arborist shall submit certification during all stages of the works (excavation and construction) and prior to Occupation Certificate to the Certifying Authority that all tree protection measures as recommended by the Project Arborist have been completed prior to the commencement of excavation and construction works, and have been appropriately maintained during the works.

Reason: to ensure tree protection is provided and maintained.

15. **Tree removal**

The following existing trees impacted by development are granted approval for removal following assessment and recommendation in the Arboricultural Impact Assessment report prepared by Urban Arbor:

- tree 2 -Lemon Scented Tea Tree
- tree 3 - Jacaranda
- group 1 - Murraya shrub hedge

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. **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.

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

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

- Work Health and Safety Act
- Work Health and Safety Regulation
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)] and
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)]
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005.
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

18. **Vehicle Crossings**

The provision of one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

19. **Tree and vegetation protection - General**

A) Existing trees and vegetation shall be retained and protected as follows:

- i) all trees and vegetation within the site not impacted by development, excluding exempt trees and vegetation under the relevant planning instruments or legislation,
- ii) all trees and vegetation located on adjoining properties, as identified on the Landscape Plan and the Arboricultural Impact Assessment, including existing trees identified as tree 4, 5, 6, 7 and 8,
- iv) all road reserve trees and vegetation, as identified on the Landscape Plan and the

Arboricultural Impact Assessment, including existing tree identified as tree 1.

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,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
- iii) existing ground levels shall remain under the tree protection zone of trees to be retained, unless authorised by AQF 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 Arborist. Details including photographic evidence of works undertaken shall be submitted by an AQF Level 5 Arborist 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 Project Arborist on site,
- vii) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
- viii) excavation for utility lines is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist, to provide for root protection measures,
- ix) should either or all of vi), vii) and viii) occur during site establishment and construction works, a AQF 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.

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

20. **Maintenance of Sediment**

Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.

Reason: To ensure sediment controls are effective.

21. **Survey**

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. (DACPLE01)

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

22. Landscape works

Landscaping is to be implemented in accordance with the Landscape Planting Plan by Paul Schrivener Landscape Architecture, sheet 1 of 2 and sheet 2 of 2, inclusive of the following requirements:

- i) the proposed *Cupaniopsis anacardoides*, which has become a self seeding species spreading into bushland, shall be replaced with a native tree achieving a similar height and spread as intended by the design,
- ii) all tree planting is to be installed at 75 litre container size,
- iii) all tree planting shall comply with 3.3.1 Landscaping Design, section b) item iii) where trees should be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight as described in the clause, or where the proposed tree locations may otherwise be positioned to minimise any significant loss of views,
- iv) all tree planting shall have a minimum individual area of 3 metres x 3 metres of soil area, and shall be located a minimum of 5 metres from existing and proposed built structures, or minimum of 3 metres where pier and beam footings are used.

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 plan and inclusive of any conditions of consent.

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

23. Condition of retained vegetation

Prior to the issue of an Occupation Certificate, a report prepared by an AQF Level 5 Arborist, shall be submitted to the Certifying Authority, assessing the health and impact of trees and vegetation required to be retained as a result of the proposed development, including the following information:

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

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

24. Stormwater Disposal

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

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

25. **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)

26. **Post-Construction Dilapidation Report**

The applicant must prepare and submit a post-construction dilapidation report. The report must clearly detail the final condition of all property, infrastructure, natural and man-made features that were originally recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties

Reason: To ensure security against possible damage to Council and private property.

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

27. **Landscape maintenance**

Any existing landscaping 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 natural life. Planting that may die or is removed must be replaced.

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

28. **Environmental and priority weed control**

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: preservation of environmental amenity.

29. **Pool Filter**

The pool filter shall be housed to ensure noise does not exceed more than 5dba above ambient background noise.

Reason: Amenity

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

Signed



David Auster, Planner

The application is determined on 04/10/2019, under the delegated authority of:



Rodney Piggott, Manager Development Assessments