

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2021/0380
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<b>Responsible Officer:</b>	Thomas Burns
<b>Land to be developed (Address):</b>	Lot 3 DP 12817, 45 Ernest Street BALGOWLAH HEIGHTS NSW 2093
<b>Proposed Development:</b>	Alterations and additions to a dwelling house including a swimming pool
<b>Zoning:</b>	Manly LEP2013 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Daniel William Bell
<b>Applicant:</b>	Rapid Plans Pty Ltd

<b>Application Lodged:</b>	15/04/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	26/04/2021 to 10/05/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 194,000.00
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### PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to the existing dwelling house, including a swimming pool and alterations to the existing front fence. Specifically, the proposal comprises the following works:

- Excavation works under ground floor front balcony to provide additional floor space, which includes an office space, bathroom and access to the proposed pool.
- New in-ground swimming pool in the front yard.
- Retaining walls with garden beds.
- Awning over new lower ground floor window.
- New automatic sliding gate and alterations to front fence to increase height and include timber slats.

## 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 - 6.2 Earthworks

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

Manly Development Control Plan - 3.8 Waste Management

Manly Development Control Plan - 3.9 Mechanical Plant Equipment

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

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

Manly Development Control Plan - 4.1.10 Fencing

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 3 DP 12817 , 45 Ernest Street BALGOWLAH HEIGHTS NSW 2093
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the southern side of Ernest Street, Balgowlah Heights.</p> <p>The site is regular in shape with a frontage of 14.325m along Ernest Street and respective depths of 33.845m and 33.585m along the western and eastern side boundaries. The site has a surveyed area of 482.9sqm.</p> <p>The site is located within the R2 Low Density Residential zone pursuant to the MLEP 2013 and accommodates a two storey dwelling house with a subfloor garage below.</p> <p>The front setback area contains an exposed rock outcrop</p>

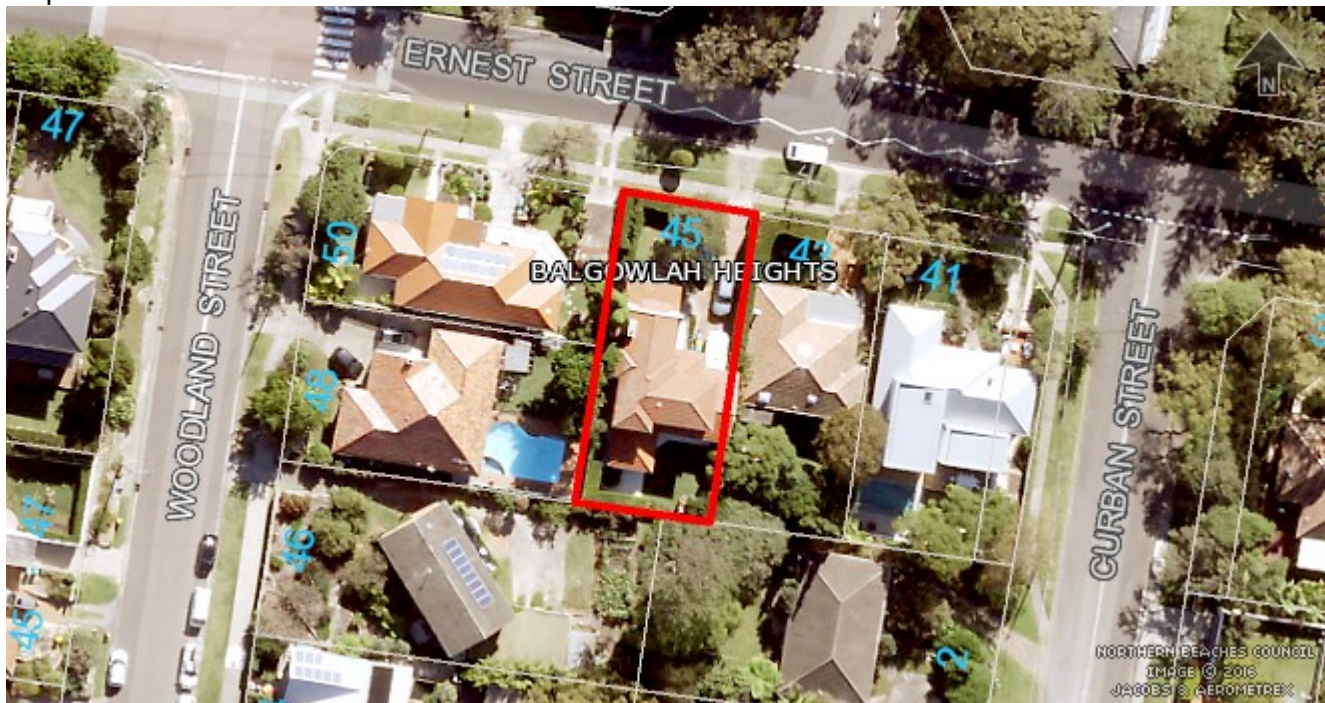
and cheese tree approximately 8m in height. Landscaping within the rear yard consists of a level lawn area and shrubbery.

The site experiences a fall of approximately 4.2m that slopes away from the south-western rear corner towards the north-eastern front corner. This represents an approximate slope of 11.5%.

### Description of Surrounding Development

The surrounding built environment is characterised by 1-2 storey detached low density residential development.

Map:



### SITE HISTORY

The site has been used for residential purposes for an extended period of time. A search of Council's records has revealed no recent applications relevant to this particular Development Application.

### APPLICATION HISTORY

The Assessment Officer undertook a site visit at the subject site on 3 May 2021.

Following preliminary assessment of the application, which included the aforementioned site visit, Council wrote to the applicant raising concern that the swimming pool would result in the removal of a canopy tree within the front setback area. Furthermore, Council also noted that the excavation works proposed to accommodate for the lower ground floor addition required a Geotechnical Report.

The applicant subsequently submitted amended plans and indicating that the existing tree would be retained. An Arborist Report was submitted in support of the proposal. Furthermore, the applicant submitted a Geotechnical Report in support of the excavation works.

Noting that the amendment allowed for the retention of an existing canopy tree, the amendments are considered to have a reduced environmental impact and therefore, were not require to be re-notified, in accordance with the Northern Beaches Community Participation Plan.

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

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 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&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on	<p>(i) <b>Environmental Impact</b></p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly</p>

Section 4.15 Matters for Consideration'	Comments
the natural and built environment and social and economic impacts in the locality	<p>Development Control Plan 2013 section in this report.</p> <p><b>(ii) Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p><b>(iii) Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 26/04/2021 to 10/05/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>This application is for the alterations and additions to an existing residential dwelling. Alterations and additions are inclusive of a new ground floor study, as well as a new swimming pool located within the front setback.</p> <p>Councils Landscape Referral section has considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls:</p> <ul style="list-style-type: none"> <li>• 3.3.1 Landscaping Design</li> <li>• 3.3.2 Preservation of Trees or Bushland Vegetation</li> <li>• 4.1.5 Open Space and Landscaping</li> </ul>



Internal Referral Body	Comments
	<p><b><u>Original Comments - 27/04/2021</u></b></p> <p>The Statement of Environmental Effects provided with the application notes that one tree is to be removed as a result of the proposed works. This tree proposed for removal is located within the front setback adjacent to the existing driveway. This tree has been identified as a significant tree, reaching a height of 8m. The removal of this tree would not be supported as it currently provides valuable built form softening and mitigation, as well as landscape amenity that improves the overall streetscape. The retention of this tree, alongside other trees located within the site is necessary to comply with control 3.3.2, as key objectives include "to protect and enhance the urban forest of the Northern Beaches", as well as "to protect and enhance the scenic value and character that trees and/or bushland vegetation provide". It is noted no Arboricultural Impact Assessment has been provided with the application.</p> <p>As the proposed seeks to construct a swimming pool within the front setback of the property, which is against control 4.1.9, specifically 4.1.9.2 a) stating "swimming pools and spas must not be located within the front setback", there is insufficient justification for this tree removal. It is therefore recommended that this existing significant tree be retained, and the proposed swimming pool be relocated to the rear of the property. If the swimming pool is relocated to the rear of the property, it is also recommended that an Arboricultural Impact Assessment be provided in accordance with Council's DA Lodgement Requirements ensuring that trees located on neighbouring property to the east are not negatively impacted by the proposed works. No negative impacts on the ongoing health and vitality of neighbouring trees would be supported.</p> <p>The landscape component of the proposal is therefore not supported as the location of the proposed pool does not justify the removal of the significant tree located within the front setback of the site. It is therefore recommended that the swimming pool be relocated to the rear of the property, and an Arboricultural Impact Assessment be provided ensuring that no detrimental impacts to trees on neighbouring properties is expected. Should amended Architectural Plans and an Arboricultural Impact Assessment be provided, further assessment can be made.</p> <p><b><u>Updated Comments - 01/06/2021</u></b></p> <p>Following original concerns regarding the removal of the existing significant tree located at the front of the site, an amended Arboricultural Impact Assessment and Architectural Plans have been provided with the application. These amended documents indicate a redesigned swimming pool footprint that seeks to minimise the impacts on this tree, and ultimately retain it moving forward.</p> <p>It is noted that although the swimming pool is located in the front yard, the Planning Department are in support of the application subject to the retention and protection of this existing tree.</p>

Internal Referral Body	Comments
	<p>The proposed swimming pool is located to the west of this tree to be retained, within an area that is largely exposed bedrock. This exposed bedrock extends within close proximity to the existing tree, and for this reason the trees roots are expected to be largely restricted within the proposed swimming pool location. Any excavation beyond the swimming pool footprint should be minimised where possible to ensure disturbance and impacts on this tree are reduced. All works within the Tree Protection Zone (TPZ) and Structural Root Zone (SRZ) of this tree are to be supervised by a Project Arborist to ensure all significant roots are avoided, and no detrimental damage to this tree is attained as a result of approved works. It is also necessary to ensure existing hedges, shown as retained on plan, are protected throughout the proposed works as these provide valuable built form softening and mitigation, as well as privacy which is particularly important for the proposed swimming pool. The retention of this tree and vegetation is necessary to satisfy controls 3.3.2 and 4.1.5, as key objectives of these controls include "to effectively manage the risks that come with an established urban forest through professional management of trees", "to protect and enhance the scenic value and character that trees and/or bushland vegetation provide", as well as "to maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area".</p> <p>For this reason, the landscape component of the proposal is supported subject to the protection of existing trees and vegetation, and completion of landscape works as proposed on the amended Landscape Plan.</p>
NECC (Development Engineering)	<p>The proposed development does not require OSD and connection of stormwater to the existing system is satisfactory.</p> <p>No objection to approval, subject to conditions as recommended.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\*

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

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

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

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

### **SEPP 55 - Remediation of Land**

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

### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX Certificate has been submitted with the application (see Certificate No. A401580\_02, dated 4 March 2021).

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 who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

### **Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has



been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

### 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	no change to building height and works under 8.5m	-	Yes
Floor Space Ratio	FSR: 0.45:1 (217.31sqm GFA)	FSR: 0.386:1 (186.5sqm GFA)	-	Yes

**Note:** GFA is gross floor area.

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

### Detailed Assessment

#### 6.2 Earthworks

The proposal involves excavation works up to 2.87m below the natural ground level to accommodate for the in-ground swimming pool. Additionally, the proposal involves excavations works up to 1.3m below the ground level to accommodate the floor space within the lower ground floor subfloor. Therefore, Council must consider the requirements of this clause prior to granting consent.

The objectives of Clause 6.2 of the MLEP 2013 require development:

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

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

matters:

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

Comment:

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

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

Comment:

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

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

Comment:

Conditions have been imposed to ensure excavation material is adequately disposed of.

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

Comment:

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

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

Comment:

Conditions have been imposed to ensure excavation material is adequately disposed of. The proposal does not involve significant fill.

*(f) the likelihood of disturbing relics*

Comment:

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

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

Comment:

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

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

### Comment:

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

### Concluding Remarks

Having regard to the above assessment, it is concluded that the proposed development meets the objectives and requirements Clause 6.2 of the MLEP 2013.

### **Manly Development Control Plan**

#### Built Form Controls

<b>Built Form Controls - Site Area: 482.9sqm</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
4.1.1.1 Residential Density and Dwelling Size	Dwelling Size: at least 112sqm GFA (based off 4 bedrooms and 3 bathrooms)	183.8sqm GFA	-	Yes
4.1.2.1 Wall Height	East: 7.1m (based on gradient 1:10)	1.44m above existing ground level (new office)	-	Yes
	West: 7.1m (based on gradient 1:10)	1.44m above existing ground level (new office)	-	Yes
4.1.2.2 Number of Storeys	2 storeys	2 storeys	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line (7.9m)	8.28m (dwelling) 1.39m (swimming pool area)	82.41% (swimming pool area)	<b>No</b>
4.1.4.2 Side Setbacks and Secondary Street Frontages	East: 2.57m (1/3 of existing max. wall height)	7.54m (dwelling)	-	Yes
	West: 2.57m (1/3 of existing max. wall height)	1.12m (dwelling)	56.42%	<b>No</b>
	Windows: no windows within 3m of side boundaries	window W1 setback 1.12m from western side boundary	62.67%	<b>No</b>
4.1.4.4 Rear Setbacks	8m	no change to existing rear building line and setback further than 8m from rear boundary	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (265.6sqm) of site area	48.17% (232.6sqm)	12.42%	<b>No</b>
	Open space above ground 25% of total open space	nil	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% (81.41sqm) of proposed open space	56.51% (131.45sqm)	-	Yes

	2 native trees	1 tree	50%	<b>No</b>
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	below existing ground level	-	Yes
	1m curtilage/1.5m water side/rear setback	curtilage: 1.14m from west side boundary water line: 1.5m from western side boundary	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

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

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	No	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

### Detailed Assessment

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

The proposed development is consistent with the MDCP 2013 amenity provisions for the following reasons:

- The works do not alter the height or envelope of the existing dwelling and therefore, will not give rise to unreasonable view loss.
- The new lower ground floor office and bathroom is located in the subfloor and the swimming pool is an in-ground structure. Therefore, the proposal will not give rise to adverse overshadowing impacts.
- The new works are sited at the front of the property and are located adjacent to a parking structure at the western adjoining site (50 Woodland Street). Therefore, the proposal will not result in an unreasonable privacy outcome.

#### **3.8 Waste Management**

The application has not been accompanied by a Waste Management Plan. To ensure the proper disposal of builders' waste, a suitable condition has been included with this consent requiring a Waste Management Plan to be prepared in accordance with Council's waste management guidelines and submitted to the Certifying Authority prior to the issue of the Construction Certificate. Subject to satisfying the above, the proposal will demonstrate consistency with the requirements and objectives of this control.

#### **3.9 Mechanical Plant Equipment**

A condition has been imposed with this consent to limit noise associated with the pool filter box to no more than 5dB (A) above the background level when measured from any property boundary and/or habitable rooms.

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

##### Description of non-compliance

Clause 4.1.4 of the MDCP 2013 requires development to be setback at least 7.9m (prevailing building line) from front boundaries. The proposed swimming pool is setback 1.39m from the front boundary, which fails to meet the numeric requirement. It is noted that the works to the dwelling are setback 8.28m from the front boundary and therefore, comply with this control.



The policy also requires development to be setback at least 1/3 of the adjacent wall height (2.57m) from side boundaries. The lower ground floor addition is setback 1.12m from the western side boundary, which fails to meet the numeric requirement.

Furthermore, the control further states that windows should be setback at least 3m from side boundaries. Proposed window W1 on the lower ground floor is setback 1.12m from the western side boundary, which fails to meet this requirement.

Merit consideration:

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

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

Comment:

The swimming pool is located below natural ground level and will not be discernible from the street frontage, given the existing screen planting and proposed front fence/gate along the front boundary will act as a visual buffer. Furthermore, the retention of the canopy tree within the front yard will ensure the site maintains an adequate landscape outcome for the site.

*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:

Window W1 contains a 1.8m high window sill (measured from the finished floor level) and will not allow for overlooking into the western adjoining site. A detailed discussion is provided in the section of this report relating to Clause 3.4 of the MDCP 2013, which concludes that the proposal will not give rise to unreasonable amenity impacts, specifically having regard to solar access, views and privacy. It is noted that No's 67 and 69 Ernest Street contain swimming pools within the site frontages and therefore, the location of the pool will not be inconsistent with the established streetscape character.

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

Comment:

Flexibility is afforded in this circumstance as the proposal will not result result in adverse streetscape, environmental or amenity impacts.

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

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

Comment:

The existing tree within the front yard will be retained, which will preserve the landscape character of the streetscape. Furthermore, the proposal complies with the MDCP 2013 landscaped area numeric requirement. As such, it is considered that there will be adequate deep soil landscaping on the site.

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

Comment:

The site is not bushfire prone.

Concluding Remarks

Having regard to the above assessment, it is concluded that the objectives of the control have been achieved. Therefore, the application is supported on merit in this particular circumstance.

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

Description of non-compliance

Clause 4.1.5 of the MDCP 2013 requires at least 55% of the site to consist of total open space. To be included in total open space, open space areas must not pertain to parking (i.e. driveways and hardstands) and must be at least 3m x 3m in dimension. The proposed total open space accounts for 48.17% (232.6sqm) of the site, which fails to meet the numeric requirement.

Merit consideration:

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

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

Comment:

The proposal does not result in the removal of significant landscaped features.

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

Comment:

The proposal is compliant in terms of landscaped area. Therefore, the site is considered to have sufficient landscaping.

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

Comment:

As detailed within the section of this report relating to Clause 3.4 of the MDCP 2013, the proposed development will not result in unacceptable amenity impacts.

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

Comment:

The landscaped dimensions are sufficient and will assist in water infiltration, thereby decreasing stormwater runoff. Additional conditions pertaining to stormwater management have been included as part of this consent.

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

Comment:

The proposal will not lead to a significant spread of weeds.

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

Comment:

The proposal will not compromise potential wildlife habitat within the locality, given no significant vegetation will be removed by the development.

Concluding Remarks

Having regard to the above assessment, it is concluded that the objectives of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

#### **4.1.9 Swimming Pools, Spas and Water Features**

Description of non-compliance

Clause 4.1.9 of the MDCP 2013 states that swimming pools should be located within the rear yard. The proposed swimming pool is located forward of the front building line, which does not comply with this requirement.

Merit consideration

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

The swimming pool complies with the side and rear setback requirements for swimming pools. Furthermore, the proposed landscape treatment located around the curtilage of the pool will provide a visual buffer between the pool and adjoining properties. It is also important to note that a suitable condition has been included with this consent limiting the noise of sound producing plant to no more

than 5dB (A) above the background level, which will minimise the impact of the filter noise on adjoining properties. Overall, the proposal meets this objective.

*Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality.*

Comment:

Whilst the swimming pool is located forward of the front building line, it is noted that there are examples of swimming pools in similar locations within the vicinity of the site. The retention of an existing tree and screen planting along the front and western side boundaries, coupled with the front boundary fencing/gate, will ensure the pool is not discernible from the streetscape.

*Objective 3) To integrate landscaping*

Comment:

Adequate landscaping is incorporated into the development.

*Objective 4) To become an emergency water resource in bush fire prone areas.*

Comment:

The site is not bushfire prone.

Concluding Remarks

Having regard to the above assessment, it is concluded that the objectives of the control have been achieved. Therefore, the application is supported on merit in this particular circumstance.

#### **4.1.10 Fencing**

Description of non-compliance

Clause 4.1.10 of the MDCP 2013 limits the height of solid fences/walls to 1m above natural ground level. Furthermore, the control states that fences can be increased to 1.5m, provided the area above 1m is at least 30% transparent. The proposed fence/gate is 1.8m above existing ground level, which does not satisfy this requirement. It is noted that the area above 1m is at least 30% transparent.

Merit consideration

With regard to the consideration of a variation, the proposal is considered against the underlying objectives of the control. The control relies upon the objectives specified within the MDCP 2013 streetscape provision.

*Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.*

Comment:

The 1.8m fence is inconsistent with the existing streetscape character along Ernest Street and does not satisfy the fencing requirements outlined within the MDCP 2013. To alleviate the visual impacts of the fence, a suitable condition has been included with this consent which requires the fence to be reduced

to 1.65m in height and comprise at least 30% transparent/open materials above 1m in height. The height of this fence is greater than 1.5m permitted by this control, but overall will result in a balanced outcome that will not be to the detriment of the streetscape. Subject to compliance with this condition, the proposal will meet this objective.

*Objective 2) To ensure development generally viewed from the street complements the identified streetscape.*

Comment:

The proposed fence, as amended via condition, will complement the identified streetscape.

*Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.*

Comment:

The existing hedging that runs contiguous to the front boundary will exceed the height of the fence and soften the visual impacts of the proposal.

Concluding Remarks

Having regard to the above assessment, it is concluded that the objectives of the control will be achieved, subject to the condition noted above.

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2019**

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

A monetary contribution of \$ 970 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 194,000.

## **CONCLUSION**

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

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



- Codes and Policies of Council.

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

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

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

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

## RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/0380 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 3 DP 12817, 45 Ernest Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. **Approved Plans and Supporting Documentation**

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

##### a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA1003 - Site Plan	27/05/2021	Rapid Plans
DA1011 - Landscape Plan	27/05/2021	Rapid Plans
DA1012 - Excavation & Fill Plan	27/05/2021	Rapid Plans
DA1013 - Sediment & Erosion Plan	27/05/2021	Rapid Plans
DA2001 - Lower Ground Floor	27/05/2021	Rapid Plans
DA2002 - Ground Floor	27/05/2021	Rapid Plans
DA2003 - First Floor	27/05/2021	Rapid Plans
DA2004 - Roof	27/05/2021	Rapid Plans
DA3000 - Section 1	27/05/2021	Rapid Plans
DA3001 - Section 2	27/05/2021	Rapid Plans

DA3002 - Section Pool	27/05/2021	Rapid Plans
DA4000 - Elevations 1	27/05/2021	Rapid Plans
DA4001 - Elevations 2	27/05/2021	Rapid Plans
DA4002 - Elevation Front Fence	27/05/2021	Rapid Plans

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
BASIX Certificate No. A401580_02	04/03/2021	Rapid Plans
Geotechnical Assessment Ref. AG21149	21/05/2021	Ascent Geotechnical Consulting
Arboricultural Impact Assessment	23/05/2021	Temporal Tree Management

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

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. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

<b>Other Department, Authority or Service</b>	<b>EDMS Reference</b>	<b>Dated</b>
Ausgrid	Ausgrid Referral Response	not dated

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

## 3. **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.

#### 4. **General Requirements**

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:
  - 7.00 am to 5.00 pm inclusive Monday to Friday,
  - 8.00 am to 1.00 pm inclusive on Saturday,
  - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

The person responsible for the development site is to erect or install on or around the

development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

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

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

    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 2018
    - (iv) Australian Standard AS1926 Swimming Pool Safety
    - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
    - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
  - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 5. Policy Controls

#### Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$970.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$194,000.00.



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

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

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

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

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

## **6. Security Bond**

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

### **7. Amendments to the approved plans**

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

- The front fence, vehicular gate and masonry pillars is to measure no more than 1.65 metres above the existing ground level.
- At least 30 percent of the fence must be open/transparent for at least that part of the

fence higher than 1.0 metre above the existing ground level.

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

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

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

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

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

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

10. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with Council's Waste Management Guidelines.

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

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

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](http://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.

## **CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

### **12. Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection.

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

Existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist.

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

- i) all demolition, excavation and construction works within the TPZ's and SRZ's of trees to be retained.

All tree protection measures specified must:

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

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

Note:

- i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.
- ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

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

### **13. Protection of Rock and Sites of Significance**

All rock outcrops outside of the area of approved works are to be preserved and protected at all

times during demolition excavation and construction works.

Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

#### 14. **Tree and Vegetation Protection**

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

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

b) Tree protection shall be undertaken as follows:

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

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

- i) Section 5 - Summary and Recommendations,
- ii) Section 6 - Tree Protection Plan.

The Certifying Authority must ensure that:

- d) The arboricultural works listed in c) are undertaken and certified by an Arborist as compliant to the recommendations of the Arboricultural Impact Assessment.
- e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: Tree and vegetation protection.

15. **Road Reserve**

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

Reason: Public safety.

16. **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:

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

17. **Survey Certificate**

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

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

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

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

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

19. **Waste Management During Development**

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

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

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

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

20. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved amended Landscape Plan.

Prior to the issue of an Occupation Certificate, details shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

21. **Condition of Retained Vegetation - Project Arborist**

Prior to the issue of an Occupation Certificate, a report prepared by the project arborist shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

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

Reason: Tree protection.

22. **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 the Occupation Certificate.

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

23. **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.

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

### 24. **Landscape Maintenance**

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

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

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

Reason: To maintain local environmental amenity.

### 25. **Undesirable Trees**

Leighton Green Cypress *Cupressocyparis leylandii* or any of its cultivars, or any other Undesirable Trees identified by Council, must not be planted on the site for the life of the development.

In the event of any inconsistency between this condition and the development application documents, this condition will prevail to the extent of the inconsistency.

Reason: To reduce the potential for adverse amenity effects such as overshadowing, loss of

views and loss of plant diversity.

26. **Pool Filter Noise**

All sound producing plant, equipment, machinery or fittings and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room(s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

Reason: To ensure an appropriate level of residential amenity.

27. **Lower Ground Floor Office/Bathroom not to be used for Separate Habitation**

The approved office space and bathroom is not permitted to be used, or adapted to be used, for separate occupancy.

Reason: Nothing in this consent authorises the use of the site or any onsite structures as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house.

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

**Signed**



**Thomas Burns, Planner**

The application is determined on 01/06/2021, under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**