

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0696
----------------------------	-------------

Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 40 DP 4603, 2 Pacific Parade MANLY NSW 2095
Proposed Development:	Demolition works and construction of two semi-detached dwellings, swimming pools and subdivision of 1 lot into 2
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Melissa Sue Tudhope
Applicant:	Eugene Du Plessis

Application Lodged:	11/05/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	19/05/2022 to 02/06/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.1 Minimum subdivision lot size: 10.8% 4.4 Floor space ratio: 9.4%
Recommendation:	Approval

Estimated Cost of Works:	\$ 3,787,149.00
---------------------------------	-----------------

EXECUTIVE SUMMARY

This development application seeks consent for demolition work and construction of two semi-detached dwellings with Torrens Title subdivision. The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as the proposal seeks a variation of more than 10% to the minimum subdivision standard of 250sqm. The proposed site area for the two lots is 222.8sqm which is a variation of 10.8% or 27.2sqm. There are a number of similar sized lots with semi-detached dwellings in the vicinity of the site. The variation to the minimum lot size is supported.

Amended plans were provided on 28 October 2022, and again on 13 February 2023. Overall, these plans involved reduction in total FSR, reduction in the basement area (to provide for greater deep soil area), greater setbacks and articulation at side boundaries, and an increase to the front setback.

The 4.6 request for the non-compliance with FSR standard arises from an 8.65sqm exceedance with the standard for each site, being 9.4%. The request is well founded and supported.

The 4.6 request for the non-compliance with Minimum lot size standard arises from a 27.2sqm deficit to the requirement for site area for each site, being 10.8%. The lots area and configuration are consistent with nearby and surrounding lots. The request is well founded and supported.

No objections were raised to the proposal from any internal or external referrals and one submission was received from the public. Assessment issues included the subdivision area proposed, Floor Space ratio, building bulk, setbacks, landscape considerations, streetscape and basement parking access.

This report concludes with a recommendation that the NBLPP grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for demolition work and the construction of 2 x semi-detached dwellings, basement car parking and 2 x swimming pools with a Torrens Title subdivision of the land to create two new Lots. The proposal includes the following details:

Demolition Works

- Demolition of the principal dwelling house on the land
- Demolition of associated structures with site preparation works.

Semi-Detached Dwellings

Basement RL3.90 (Same for both proposed 2A and 2B)

- Four car basement garage with turntable, Internal stair access, storage and services space

Ground Floor RL6.70 (Same for both proposed 2A and 2B)

- Entry area, verandah, outdoor living terrace, kitchen / living / dining area, stair access, Laundry, bathroom (2), bedroom.

First Floor RL9.80 (Same for both proposed 2A and 2B)

- Bedrooms (3), bathrooms (2) and balcony.

Proposed Floor Areas

2A Pacific Parade –142.3sqm

2B Pacific Parade – 142.3sqm

Swimming Pools (Same for both proposed 2A and 2B)

Two in-ground swimming pools RL6.30

Ancillary works and landscaping

New landscaping, site preparation, in-ground OSD tanks, drainage, excavation and fencing.

Torrens Title Subdivision

Proposed Lot 1 - 222.8 sqm

Proposed Lot 2 - 222.8 sqm

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning

and Assessment Act 1979 and the associated Regulations. In this regard:

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)

Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size

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

SITE DESCRIPTION

Property Description:	Lot 40 DP 4603 , 2 Pacific Parade MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Pacific Parade.</p> <p>The site is regular in shape with a frontage of 12.19 metres (m) and a depth of 36.57m. The site has a surveyed area of 445.6square metres (sqm). The land contains part 2 storey brick dwelling. The land is generally flat with a minor fall toward Pacific Parade. The surrounding area is a low lying part of Manly and subject to minor drainage issues in some places. The proposed ground floor level is above the 1% annual exceedance probability zone.</p> <p>The site contains lawn areas, garden beds and trees. The site is adjacent / near local heritage items in the street (sandstone kerb and street trees).</p> <p>The streetscape is characterised by its tree lined kerb-side and the historic architecture of many dwellings ranging from federation period to post war and some new houses. Many properties have been substantially renovated and open carports, in the front setback area, are a common feature of the street.</p>

Map:



SITE HISTORY

Pre-lodgement Meeting No.PLM2021/0188 for subdivision and construction of 2 x semi-detached dwellings was held with Council on 12 August 2021. The concluding advice summary included that:

"The proposal is not supported by Council, specifically the variation to the minimum allotment size, is not supported. This is a result of the proposed development consisting of a number of non-compliances relating to:

- *Floor Space Ratio development standard;*
- *Front setback;*
- *Side Setbacks on upper level and basement; and*
- *Driveway access ramp not complying with standards for grades.*

The development will have an adverse visual impact when viewed from Pacific Parade and will be visually prominent when viewed from the adjoining properties at Collingwood Street. A re-design is required to reduce the visual bulk of the building – ensuring the development does not exceed the floor space ratio is critical on allotments that under the minimum allotment size."

The subsequent DA was submitted to Council with minimal changes to the plans and a request for changes to the plans was made pursuant to the issues raised in the PLM notes. The applicant provided amended plans dated 26.9.2022 seeking to address the concerns raised at the PLM and preliminary DA assessment phase.

Development Application No.2019/0471 for alterations and additions to a dwelling house was approved by Council on 20 August 2019. The consent was not progressed to a construction certificate.

The original dwelling house on the site is to be completely demolished and conditions are recommended to ensure the safe handling and appropriate management / disposal, as per Australian standards / WorkCover, for any asbestos / lead paint materials if present in the building structure during demolition works.

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	There are no current draft environmental planning instruments.
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 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 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 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested on 16.6.2022 in relation to streetscape, subdivision, landscaping, building bulk, floor space, basement access and overshadowing. A range of minor amendments were made to reduce non-compliance and building bulk, pursuant to the DCP. Subsequently, the applicant provided amended plans on 28.10.2022.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 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 62 and/or 64</u> of the EP&A Regulation 2021 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 69</u> of the EP&A Regulation 2021 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 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of</p>

Section 4.15 Matters for Consideration	Comments
	consent.
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 <i>Manly Development Control Plan</i> section in this report. The streetscape is characterised by its tree lined kerb site and the historic architecture of many dwellings ranging from federation period to post war and some new houses. Many properties in Pacific Parade have carports and have been substantially renovated.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development and is situated in a precinct that (within the visual catchment of the surrounding streetscape) is dominated by 1 and 2 storey houses, including semi-detached dwellings.
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, subject to conditions.

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 19/05/2022 to 02/06/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Withheld	MANLY NSW 2095

The above issues are addressed as follows:

- *Concern regarding survey levels.*

Comment:

This issue is addressed by conditions to ensure building height, slab and frame are checked to be at the correct levels during construction. In addition the proposal provides a 0.9m setback to the boundaries for excavated structures and therefore allows for general continuity of ground levels along the boundary areas for normal garden areas, pathway levels, landscaping and drainage. Any changes to dividing fences with regard standard fencing work is subject to the *NSW Dividing Fences Act*, administered through the local Court system.

This submission issue is considered to be resolved in that confirmation was received that a survey was conducted and no other specific issues such as privacy, overshadowing, views, setbacks or the like were raised. This issue is therefore addressed by conditions and in the general assessment of the proposal pursuant to the Manly LEP / DCP and does not warrant refusal of the application.

- *Incorrect reference to neighbouring addresses in some of the documentation submitted by applicant.*

Comment:

These errors are noted and understood. This does not warrant refusal of the application.

- *Swimming Pool/Spa Motor/ Air conditioner Noise*

Comment:

A condition has been imposed to require noise levels shall not exceed 5dBA above the background noise when measured from the nearest property boundary.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p><i><u>Note:</u> The proposed development may not comply with some requirements of the BCA the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</i></p>
Landscape Officer	<p>The development application is for demolition works and the construction of two semi-detached dwellings, swimming pools and subdivision of 1 lot into 2, as described and illustrated in the reports and plans.</p> <p>Council's Landscape Referral section have considered the application against the Manly</p>

Internal Referral Body	Comments
	<p>Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to):</p> <ul style="list-style-type: none"> • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings <p>An Arboricultural Impact Assessment (AIA) and Landscape Plan is included in the application and will be assessed as part of the Landscape Referral. It is noted one tree (t 2) is proposed to be removed to facilitate the works, however this tree is exempt and does not require consent for removal as it is located within 2 metres of the existing dwelling. All other trees are to be retained, and the recommendations for tree protection in the AIA are supported, subject to the imposed conditions. A Project Arborist shall be engaged to supervise all works within the tree protection zone of trees to be retained, subject to the imposed conditions. To offset any canopy loss and to help satisfy the Manly DCP control, one replacement tree will be installed in the rear setback of dwelling 2, which is supported subject to the imposed conditions.</p> <p>Screen planting is shown on the Landscape Plan along the northern boundary, which is supported, and if the existing conifer screen planting is removed during the works it shall be replaced, subject to the imposed conditions. All on slab landscaping shall have appropriate soil depths to ensure sustained plant growth is achieved, as outlined in the conditions of consent.</p>
NECC (Development Engineering)	<p>The application proposed to subdivide the existing lot and erect two dwellings with a basement parking.</p> <p>Development Engineering assessed the proposed stormwater management plan. The proposed OSD systems are acceptable. However, the subsoil drainage from the proposed basement shall not be discharged into the street kerb. A condition has been placed to address the subsoil drainage.</p> <p>And the internal parking and driveway have been assessed and commented by Council's Traffic section.</p> <p>As such, Development Engineering has no objection to the application subject to the following conditions of consent.</p> <p>If the driveway and internal parking needs to be amended, please refer the application to Development Engineering for assess and comment.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The proposed DA generally complies with the flood controls in the LEP and DCP. The site is outside the 1% and PMF extent.</p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>The proposal has been referred to Heritage as it is within proximity to two heritage listed items:</p>

Internal Referral Body	Comments																		
	<p>Item I191 - Street trees - Pacific Parade</p> <p>Item I2 - All stone kerbs</p> <p>Details of heritage items affected</p> <p>Details of the item as contained within the Manly heritage inventory is as follows:</p> <p>Item I191 - Street trees <u>Statement of significance:</u> Listed for its aesthetic importance to the streetscape. <u>Physical description:</u> Avenue planting of mixed tree species planted in carriageway. Species include Port Jackson Fig, Brush Box and Camphor Laurel.</p> <p>Item I2 - All stone kerbs <u>Statement of significance:</u> Stone kerbs are heritage listed. <u>Physical description:</u> Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century. Mostly located within Manly Village area and adjacent lower slopes of Eastern and Fairlight.</p> <p>Other relevant heritage listings</p> <table><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>N/A</td><td></td></tr></table> <p>Consideration of Application</p> <p>The proposal seeks consent for the demolition of the existing dwelling on the subject sit and a Torrens Title subdivision of 1 lot into two and the construction of two semi-detach three storey - including a basement parking via a single driveway access point- dwelling with two inground pools and associated landscaping. The site is in a highly distinctive area with predominant streetscape qualities, such as building form, scale, patterns, materials and colours and vegetation such as the heritage listed street trees that contributes the character of the local area.</p> <p>The heritage listed street tree located in the road reserve outside the subject property has been retained and the proposal does not involve any changes to the existing driveway</p>	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of Significance	No		Other	N/A	
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No																		
Australian Heritage Register	No																		
NSW State Heritage Register	No																		
National Trust of Aust (NSW) Register	No																		
RAIA Register of 20th Century Buildings of Significance	No																		
Other	N/A																		

Internal Referral Body	Comments
	<p>crossover, therefore the proposed works are considered to not impact upon the heritage items or their significance and the form and scale is considered to be consistent with the character of the existing streetscape.</p> <p>Therefore, no objections are raised on heritage grounds, subject to two conditions.</p> <p><u>Consider against the provisions of CL5.10 of MLEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p> <p>Further Comments</p> <p>COMPLETED BY: Oya Guner, Heritage Advisor</p> <p>DATE: 19 May 2022</p>
Traffic Engineer	<p>The proposal provides sufficient numbers of offstreet parking to meet DCP requirements and there is no objection to the use of a turntable given the site constraints. The driveway is categorised as a domestic driveway for the purposes of assessment under AS2890.1 and the maximum gradient on the driveway is therefore permitted to be 1 in 4 as proposed by applicant (clause 2.6 of AS2890.1). The gradient of the driveway for the first 6m inside the property is however in excess of the maximum 1 in 20 gradient permitted by clauses 2.6.3.3(a) of AS2890.1). The 1 in 8 gradient as shown on the submitted plans is too steep. As the driveway is on an upgrade for traffic leaving the property the exception listed in clause 3.3(a.i) of AS2890.1 does not apply and the plans will require amendment prior to further consideration</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>The proposal was referred to <i>Ausgrid</i> who provided a response on 17.6.2022 stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards, powerline clearances 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 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 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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.1283040S_02 and 1283042S_02, dated 18 October 2022).

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

Dwelling 1

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	50	58

Dwelling 2

Commitment	Required Target	Proposed
Water	40	42
Thermal Comfort	Pass	Pass
Energy	50	58

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 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 raised no objections, subject to conditions which have been included in the recommendation of this report.

Other Service Infrastructure Authorities

The proposal was not required to be referred to *Transport for NSW* and no other service infrastructure authority issues are raised pursuant to the SEPP. *Sydney Water* asset requirements are addressed by

separate processes administered directly through *Sydney Water*.

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:	8.5 metres (m)	8.0m	N/A	Yes
Floor Space Ratio: (Semi-detached dwellings) Site area: 445.6 sqm	FSR: 0.6:1 267.3sqm (133.65sqm per lot)	FSR:0.6:1 2A - 142.3sqm 2B - 142.3sqm (0.638:1)	9.4% 9.4%	No (see comments) No (see comments)
Subdivision:	250sqm	222.8 sqm Lot 1 222.8 sqm Lot 2	10.8% 10.8%	No (see comments) No (see comments)

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes
4.1 Minimum subdivision lot size	No
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	No
5.21 Flood planning	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

MINIMUM SUBDIVISION LOT SIZE

Description of non-compliance:

--	--

Development standard:	Minimum Subdivision Lot Size
Requirement:	250sqm
Proposed:	222.8sqm
Percentage variation to requirement:	10.8%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size 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 4.1 - Minimum subdivision lot size development standard is not expressly excluded from the operation of this clause.

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

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

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

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

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

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

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

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

assessment.

The applicants written request argues, in part:

The proposed lot is consistent in size and shape as the predominant form in the near vicinity. The proposal also provides additional housing to meet the needs of the locality.

It is agreed that the lot is consistent in size and shape as the predominant form of lots in the near vicinity. It is also agreed the proposal will provide additional housing.

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 Minimum subdivision lot size 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 4.1 – 'Minimum subdivision lot size' of the MLEP 2013 are:

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

(a) to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping.

Comment:

The proposed lot sizes and shapes are consistent with the predominant form of lots in the immediate vicinity along Pacific Parade. The lot size and shape also provides suitable dimensions to allow for semi detached dwellings with a usable area for a dwelling, and with

suitable landscaped area given the context of the area.

(b) to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns.

Comment:

The proposed lots complement the existing subdivision pattern by providing lot width and size that is generally consistent with the predominant form in the vicinity.

(c) to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential.

Comment:

The subject site does not have any exceptional environmental characteristics such as significant vegetation, topography, public views or natural features. As such, as is the case for surrounding lots, limitation on lot size due to environmental characteristics of the land is not required.

(d) to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.

Comment:

The subject site is within close proximity to an area of Pittwater Road that contains suitable infrastructure, public transport and pedestrian access to local facilities and services.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposal contributes two semi-detached dwellings to the community. This provides for housing needs.

It is considered that the development satisfies this objective.

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

Comment:

The proposal for two semi-detached dwellings contributes to the variety of housing in the area.

It is considered that the development satisfies this objective.

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

Comment:

The proposal provides for a residential land use. This is suitable for the zone.

It is considered that the development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the 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 PS20-002 dated 5 May 2020, 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 Minimum subdivision lot size Development Standard is assumed by the Local Planning Panel.

FLOOR SPACE RATIO

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1
Proposed:	0.638:1 (each lot)
Percentage variation to requirement:	9.4% (each lot)

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

The Applicant's written request 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 is compatible with surrounding development with regard to bulk and scale. It is noted that dwelling adjoining and opposite have similar gross floor area.
- The proposal will be consistent with the character of the area and will not cause additional impact as a result of the exceedance to FSR.
- The proposal provides additional housing.

It is agreed that that the proposal will be compatible with surrounding development and will complement existing character.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The proposal involves two well articulated semi-detached dwellings that are consistent with the predominant style of housing in the area. The proposal also responds well to the built form controls under the Manly DCP, and this assists in ensuring consistency with desired streetscape character.

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

Comment:

The building bulk and scale is consistent with the pattern of surrounding development and does not create any unreasonable obstruction to landscape and townscape features.

The proposal maintains elements of landscape area in the front and rear setback and does not obscure views of important local features (such as the coastline, St. Patricks Estate or Manly Wharf).

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

Comment:

The proposed semi detached dwelling complement the style of housing in the area. Further, the proposal provides front and rear setbacks that correspond well to surrounding development and allow for suitable open space and landscaping.

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

Comment:

The proposed FSR does not create unreasonable privacy or unreasonable view impacts. The

dwelling is well articulated, has living spaces that are well separated from adjoining living spaces, and is consistent with the numerical requirements for solar access under the Manly DCP.

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

Comment:

The subject site is not a business zone and this objective is not relevant to the house alterations and additions.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposal contributes two semi-detached dwellings to the community. This provides for housing needs.

It is considered that the development satisfies this objective.

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

Comment:

The proposal for two semi-detached dwellings contributes to the variety of housing in the area.

It is considered that the development satisfies this objective.

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

Comment:

The proposal provides for a residential land use. This is suitable for the zone.

It is considered that the development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the 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 PS20-002 dated 5 May 2020, 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 Minimum subdivision lot size Development Standard is assumed by the Local

Planning Panel.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area:	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 250sqm (3 bed 3 bath)	R1 Residential Area Dwelling 1 - proposed Lot 1: 222sqm Dwelling 2 - proposed Lot 2:222 sqm	8.4% 8.4%	No (see comments) No (see comments)
	Dwelling Size: Minimum 90sqm (3 bed 3 bath)	Dwelling 1 - 142.3sqm Dwelling 2 - 142.3sqm	N/A N/A	Yes Yes
4.1.2.1 Wall Height	North Elevation: 6.5m (based on site gradient 1:20)	4.8m	N/A	Yes
	South Elevation: 6.5m (based on site gradient 1:20)	6.4m	N/A	Yes
	East Elevation: 6.8m (based on site gradient 1:20)	6.3m	N/A	Yes
	West Elevation: 6.8m (based site gradient 1:20)	6.3m	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	2.0m	N/A	Yes
	Parapet Height: 0.6m	0.0m	N/A	Yes
	Pitch: maximum 35 degrees	25 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Consistent with prevailing	N/A	Yes

	(Pacific Parade)	setback 6.3m to 7.2m		
4.1.4.2 Side Setbacks and Secondary Street Frontages	East (upper storey): 2.1m West (upper storey):2.1m Windows: 3.0m	East 0.9m to 1.5m Ground	N/A	Yes
		1.5m to 2.9m Upper storey	3%	No (see comments)
		1.5m to solid wall plane	50%	No (see comments)
		West 0.9m to 1.5m Ground	N/A	Yes
		1.5m to 2.9m upper storey	3%	No (see comments)
		1.5m to solid wall plane	50%	No (see comments)
				No (see comments)
	Minimum frontage <50% for garage structures	Consistent with prevailing setback	N/A	Yes
		Basement parking (entry 3.0m)	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (Total site area 222.8sqm per Lot) 122.5 sqm	Lot 1 122sqm 55%	N/A	Yes
		Lot 2 122sqm 55%	N/A	Yes
	Open space above ground <40% of total open space (Balcony and elevated veranda)	Lot 1 10.0sqm 15.4%	N/A	Yes
		Lot 2 10.0sqm 15.4%	N/A	Yes

4.1.5.2 Landscaped Area	Landscaped area 35% of open space	Lot 1 125.8sqm	N/A	Yes
		Lot 2 125.8sqm	N/A	Yes
	3 native trees	4 trees	N/A	Yes
4.1.5.3 Private Open Space	18 sqm per dwelling	53 sqm Dwelling 1	N/A	Yes
		53 sqm Dwelling 2	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	Basement access 3.0m driveway <50%	N/A	Yes
Schedule 3 Parking and Access	2 spaces per dwelling	Dwelling 1 2	N/A	Yes
		Dwelling 2 2	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	No	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	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	No	Yes
4.1.1.2 Residential Land Subdivision	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	Yes	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
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.8 Subdivision	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

Merit consideration

Streetscape represents the inter-relationship between buildings, landscape and open spaces in the street scene. Local amenity and identity are closely linked to streetscape character. Development should recognize predominant streetscape qualities, such as building form, scale, patterns, materials and colours and vegetation which contributes to the character of the local area.

The DCP defines streetscape as "*spatial arrangement and appearance of built and natural elements (in the private and public domain) within a street, which create the character of that street. Such elements include the appearance of positively contributing building forms and styles, vistas, road, driveway and footpath surfaces, street trees, other vegetation, fences, walls, street furniture, utility services and traffic devices*"

Comment

- The proposal has a "Hamptons" styling which is stepped in along the side boundaries with a pitched roof and window fenestration with open style balcony elements. The appearance includes open style fencing with landscaping elements and narrow pedestrian and garage entry points. The streetscape is characterised by its tree lined kerb site and the historic architecture of

many dwellings ranging from federation period to post war and some new houses. The use of a basement garage allows landscaping either side of the driveway and conceals the cars or garage from being readily visible.

- The main features and detailing of the house with landscaping, and architectural details of the house break up the building bulk. Open style carports are a feature of the street, with some enclosed garages much less prevalent. The use of turntable inside the basement allows cars to enter and leave in a forward direction using the narrow driveway opening. The built form of the house with a hipped and gable roof, verandah entry, window fenestration and material cladding / details with and landscaping are suitable for the streetscape.



Image: Photomontage of dwelling in the streetscape.

- The colours and materials (external cladding) is suitable for the streetscape and the use of a hipped roof form is suitable with articulation used along the front and side setbacks.

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

4.1.1.1 Residential Density and Dwelling Size

Description of non-compliance

The proposal would result in two dwellings on two new lots, each being 222.8sqm. As such, each dwelling will not comply with the numerical requirement to have 250sqm of site area per dwelling.

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 promote a variety of dwelling types, allotment sizes and residential environments in Manly.

Comment:

The proposal would result in two lots with two semi-attached dwellings. The lot sizes and shapes are consistent with the existing subdivision pattern. Further and lack of amenity caused by this proposal, the new dwelling type and allotment sizes ensure an appropriate contribution to the residential environment.

Objective 2) To limit the impact of residential development on existing vegetation, waterways, riparian land and the topography.

Comment:

The proposal provided compliant open space in accordance with the Manly DCP as well as adequate setbacks to limit impact on existing vegetation, waterways, riparian land and the topography. Subject to conditions, Council's Development Engineer and Landscape officer provide no objection to development.

Objective 3) To promote housing diversity and a variety of dwelling sizes to provide an acceptable level of internal amenity for new dwellings.

Comment:

The proposal is compliant with the control for minimum internal areas under Clause 4.1.1.1d). This ensures there would be an acceptable level of amenity.

Objective 4) To maintain the character of the locality and streetscape.

Comment:

The proposed subdivision pattern and setback to development is complementary with the streetscape. This includes a similar subdivision pattern and house type to the predominant typology in the area.

Objective 5) To maximise the use of existing infrastructure.

Comment:

The proposal will maintain the use of existing infrastructure where appropriate, subject to conditions.

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

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

Description of non-compliance

The proposal involves varying setbacks, being from 0.9m-2.9m at the eastern and western boundary, and 0m at middle boundary (for the semi-detached dwellings).

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 proposal involves a compliant front setback with landscaping and articulation of the built form at the front of the site. This sufficiently minimises presentation of bulk and scale so as to maintain and enhance the desirable qualities of the streetscape.

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 proposal involves sufficient physical separation provided between proposed living spaces and neighbouring living spaces. As such, acoustic and visual privacy will be maintained to a reasonable extent. Furthermore, the new windows are also small in scale and are also well positioned to minimise potential for overlooking.

The proposed works provide a compliant height and a compliant front setback. This provides a situation in which sunlight access and air movement to neighbouring properties will be adequately maintained. The proposal also complies with the requirements for Sunlight Access under the Manly DCP.

The proposal would also have no unreasonable impact on views, traffic or streetscape character.

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

Comment:

The proposal provides a semi-detached dwelling that is well separated from neighbouring properties due to stepping and articulation. Further, the development style is consistent with the predominant form in the area. As such, flexibility in the siting of the building is warranted in this circumstance.

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 provides landscaping to the front and rear of the dwellings and the proposal complies with the landscaped area control under the Manly DCP 2013. As a result, the proposal appropriately provides for natural features.

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

Comment:

Not applicable.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly 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 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$37,871 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,787,149.

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 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any

unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.1 Minimum Subdivision Lot Size and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

PLANNING CONCLUSION

This proposal, for the construction of two (2) semi-detached dwelling with subdivision has been referred to the *Development Determination Panel* (DDP) due to seeking consent for a lot size variation of 10.8% less than the minimum 250sqm subdivision standard. Under the circumstances the variation is reasonable and consistent with other semi-detached housing on their on lots in the vicinity (along Pacific Parade / Alexander Street).

One public submission was received which has been addressed by way of conditions. The DA referral responses provided raise no objection to approval subject to conditions to address development engineering, landscaping, and heritage considerations

The critical assessment issues have been considered in detail in terms of floor space ratio, privacy, stormwater / flooding, overshadowing, setbacks, streetscape, heritage, carparking and the proposed subdivision.

Overall, the development is a reasonable design that is satisfactory in terms of the LEP and DCP controls and will not result in unreasonable impacts on the amenity of adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority vary *Clause 4.1 Minimum Subdivision Lot Size* and *Clause 4.4 Floor Space Ratio* development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2022/0696 for Demolition works and construction of two semi-detached dwellings, swimming pools and subdivision of 1 lot into 2 on land at Lot 40 DP 4603, 2 Pacific Parade, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA.01 G Site Plan - Issue G	26.9.2022	Du Plessis Ar
DA.02 G Demolition Plan - Issue G	26.9.2022	Du Plessis Ar
DA.03 G Basement Sub-floor Parking Plan - Issue G	26.9.2022	Du Plessis Ar
DA.04 G Ground Floor Plan - Issue G	26.9.2022	Du Plessis Ar
DA.05 G First Floor Plan - Issue G	26.9.2022	Du Plessis Ar
DA.06 G Roof Plan - Issue G	26.9.2022	Du Plessis Ar
DA.07 G Section X-X Section Y-Y - Issue G	26.9.2022	Du Plessis Ar
DA.09 G North Elevation & West elevation - Issue G	26.9.2022	Du Plessis Ar
DA.08 G South Elevation & East Elevation - Issue G	26.9.2022	Du Plessis Ar
A.101 G NBC Area Calculation Plans - Issue G	26.9.2022	Du Plessis A

Engineering Plans		
Drawing No.	Dated	Prepared By
D2 Stormwater Management Basement Plan	4.3.2022	NY Civil Engineering
D3 Stormwater Management Ground Floor plan	4.3.2022	NY Civil Engineering
D4 Stormwater Management First Floor/Roof Plan	4.3.2022	NY Civil Engineering
D5 Stormwater Details	4.3.2022	NY Civil Engineering
D6 OSD Details	4.3.2022	NY Civil Engineering

D8 Sediment Control Plan	4.3.2022	NY Civil Engineering
D9 Sediment Control Details	4.3.2022	NY Civil Engineering

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate Unit 1	31.3.2022	Certified Energy 1
BASIX Certificate Unit 2	31.3.2022	Certified Energy 1
Geotechnical Report	25.2.2022	White Geotechnical Group

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
L-01 Rev B Landscape Plan	2.3.2022	SPACE Landscape Designs
L-02 Rev A Details & Specifications	16.3.2022	SPACE Landscape Designs

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
DA Construction & Waste Management Plan	14.4.2022	DU Plessis Architects

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

2. **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:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	17.6.2022

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website 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 Certifier 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 Certifier 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 Certifier 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 an 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 Section 7.12 Contributions Plan 2022

A monetary contribution of \$37,871.49 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 (as amended).

The monetary contribution is based on a development cost of \$3,787,149.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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

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

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

7. **On Slab Landscape Works**

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over

slab, over which soil and planting is being provided.

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.

The following soil depths are required to support landscaping as proposed:

- i) 300mm for lawn, native grasses, and groundcovers,
- ii) 600mm for shrubs.

Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

8. **Amendments to the approved plans**

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

- The "services" room in the basement for both dwellings shall have a maximum finished floor to ceiling height of 2.1m to be maintained as a non-habitable space.
- The pool pump / filter equipment for each proposed swimming pool shall be located within the "services" basement room for the associated dwelling.

Details demonstrating compliance are to be shown on the plan and section drawings to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure development minimised impacts on adjacent land and consistency with Manly Local Environmental Plan and associated development controls.

9. **Building Classification**

The new buildings that are proposed to be constructed will result in a classification of a Class 2 building and are required to comply with Parts C, D, E & F of the Building Code of Australia.

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

Reason: To ensure adequate provision is made for fire safety and for building occupant safety.

10. **On-site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's WATER MANAGEMENT FOR DEVELOPMENT, and generally in accordance with the concept drainage plans prepared by NY Civil Engineering, job Number E220054, drawing number D1- D8, dated 4/3/2022.

Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer. The drainage plans must address the following:

- i. any subsoil drainage shall not be discharged to the street kerb

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying

Authority for approval prior to the issue of the Construction Certificate.

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

11. **Tanking of Basement Level**

The basement area is to be permanently tanked. The Applicant is to submit structural details of the tanking, prepared by a suitably qualified Engineer. Where temporary dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Office of Environment and Heritage. The bore license must be obtained prior to commencement of dewatering works. All requirements of the NSW Office of Water are to be complied with and a copy of the approval must be submitted to the Certifying Authority. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements.

12. **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.

13. **Protection of heritage listed street tree**

The heritage listed mature tree located in the road reserve in front of the property is to be protected at all times during the demolition and construction works.

Reason: To protect the heritage listed tree from damage, during the demolition and construction works.

14. **Protection of heritage listed stone kerb**

The existing sandstone kerb is to be protected from damage during the demolition and construction works.

Reason: Protection and preservation of cultural resources within the Manly municipal area.

15. **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 Principal Certifier prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. **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, and the recommendations of the Arboricultural Impact Assessment.

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

- i) tree protection measures under section 12 Recommendations, section 13 Arboricultural Work Method Statement and Tree Protection Requirements, and Appendix 1B Tree Protection Plan,
- ii) works under section 14 Hold Points,
- iii) additionally, the Project Arborist shall be in attendance and supervise any landscaping works within the TPZ of all existing trees to be retained.

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

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.

17. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property / Properties:

- No.4 Pacific Parade, Manly
- No.15 Alexander Street, Manly
- No.17 Alexander Street, Manly
- No.15 Collingwood Street, Manly

- No.17 Collingwood Street, Manly
- No.19 Collingwood Street, Manly
- Any other adjacent private or public assets that may be at risk of damage during site works.

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

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

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

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

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

18. **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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

19. **Protection of Existing Street Trees**

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

All street trees within the road verge 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.

No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: Street tree protection.

20. **Tree and Vegetation Protection**

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

- i) all trees and vegetation within the site, 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) or vi) 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) 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, and should additional pruning be required an application to Council's Tree Services shall be submitted for approval or otherwise.

The Certifying Authority must ensure that:

- c) 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.

Reason: Tree and vegetation protection.

21. **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.

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

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

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

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

23. **Vehicle Crossings**

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

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

Reason: To facilitate suitable vehicular access to private property.

24. **Survey Certificate**

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

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

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

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

Details demonstrating compliance are to be submitted to the Principal Certifier.

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

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

25. **Required Screen Planting**

Should the existing conifer screen planting along the northern boundary be removed during works replacement screen planting shall be installed. Furthermore, if the existing conifer screen planting is removed during works the proposed Cupressocyparis 'Leighton Green' shall be replaced with a suitable alternative and installed in accordance with the following:

- i) create a continuous screen adjacent to the pool's along the northern boundary, from the eastern boundary junction to the western boundary junction,
- ii) be a suitable pot size so that plant height is at least 1.5 metres at installation,
- iii) selected planting shall comply with the requirement of Australian Standard AS 1926.1 for a Non Climbable Zone.

The selected planting is to comprise of species capable of attaining a height of 2.4 metres at maturity.

Plants are to be installed at intervals, appropriate to the selected species, so that individual plants knit together to form a continuous screen. Plants are to be installed in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch.

Reason: To maintain environmental amenity.

26. Landscape Completion

Landscaping is to be implemented in accordance with the approved Landscape Plan, and inclusive of the following conditions:

- i) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
- ii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings, 2.0 metres from structures, and at least 1.5 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn,
- iii) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for grasses/groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
- iv) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

Prior to the issue of an Occupation Certificate, details from a landscape architect or landscape designer 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.

27. 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:

- i) compliance to any Arborist recommendations for tree protection generally and during 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: Tree protection.

28. 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.

29. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

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

30. **Swimming Pool Requirements**

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

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

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

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

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life (DACPLF09)

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

31. **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.

32. **Swimming Pool/Spa Motor/ Air conditioner Noise**

The swimming pool / air conditioner/ spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Mechanical pool plant should also be centrally located on site.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

33. **Pool Outbuilding**

The pool outbuilding associated with each semi-detached dwelling must not be used for habitable / occupancy purposes as a separate dwelling.

Reason: Regulatory.

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

34. **Positive Covenant for On-site Stormwater Detention**

A positive covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the final plan of subdivision and accompanying 88B instrument, requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements, which are available from Northern Beaches Council. Northern Beaches Council shall be nominated as the sole authority empowered to release, vary or modify such covenant. Details demonstrating compliance are to be submitted to the Principal Certifying

Authority prior to the issue of the Subdivision Certificate

Reason: To ensure ongoing maintenance of the on-site detention system.

35. **Right of Carriageway**

The Applicant shall create a right of carriageway (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument, to include all vehicular access and manoeuvring areas. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

36. **Restriction as to User (On-site Stormwater Detention)**

The Applicant shall create a restriction as to user (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument for the on-site stormwater detention system, restricting any alteration or additions to the system. The terms of such restriction are to be prepared to Council's standard requirements. Council shall be nominated as the party to release, vary or modify such restriction.

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

Reason: To ensure no modification to the on-site stormwater detention structure without Council's approval.

37. **Certification of On-site Detention System (New Subdivision)**

A Certificate is to be submitted by a qualified experienced practicing Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a Corporate member and has appropriate experience and competence in the related field confirming to the satisfaction of the Principal Certifying Authority that the on-site stormwater detention has been constructed in accordance with the plans nominated on the Development Consent and relevant conditions of Development Consent. The Subdivision Certificate will not be released until this certification has been submitted and the Principal Certifying Authority has confirmed that this condition has been satisfied.

Reason: To ensure the On-site Detention System has been built to the appropriate standard

38. **Sydney Water Compliance Certification**

The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

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

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

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

39. **Easement for Services**

The Applicant shall create an easement for services (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all utility services are located within the appropriate easement(s).

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

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

40. **Release of Subdivision Certificate**

The final plan of subdivision will not be issued by Council until the development has been completed in accordance with terms and conditions of the development consent.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

41. **Subdivision Certificate Application**

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

Reason: Statutory requirement of the Conveyancing Act 1919.

42. **Title Encumbrances**

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

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

Reason: To ensure proper management of land.