

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0509
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Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 1 DP 172127, 52 Lauderdale Avenue FAIRLIGHT NSW 2094
Proposed Development:	Demolition works, subdivision of one lot into two and construction of two semi-detached dwellings
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Constantine Tziomakis Chris Tziomakis Maria Tziomakis
Applicant:	Platform Architects Pty Ltd

Application Lodged:	23/05/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	07/06/2019 to 21/06/2019
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 15.29% 4.4 Floor space ratio: 9.87%
Recommendation:	Approval

Estimated Cost of Works:	\$ 4,196,500.00
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EXECUTIVE SUMMARY

The proposal seeks consent for demolition works, subdivision of one lot into two and the construction of two semi-detached dwelling houses.

(See Proposed Development in Detail within the report)

The development is referred to the Development Determination Panel for determination as the development contravenes the Height of Buildings development standard by more than 10%. It is also

noted that the proposal contravenes the Floor Space Ratio development standard (less than 10%). Two submissions were received relating to solar access, parking and view loss. A detailed assessment has been conducted and found the application to be satisfactory for approval.

Whilst not applicable to this application, consent was granted by Council in 2017 (DA311/2016) for demolition and construction of a dual-occupancy. The current proposal has a lesser building footprint, height and earthworks to that previously approved by Council.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for demolition works, subdivision of one lot into two and the construction of two semi-detached dwelling houses. Specifically consent is sought for:

- Demolition of the existing house and associated structures.
- Torrens title subdivision of the existing single lot into two lots.
- Construction of two semi-detached dwelling houses, comprising;
 - Shared basement level parking with 2 parking spaces per dwelling.
 - 3 bedrooms
 - Outdoor living
- Removal of twenty-one (21) trees.
- Associated landscaping.
- New driveway and crossover.
- Replacement of existing footpath on road reserve over the new driveway.

REVISED PLANS

On 6 September 2019 Council requested a revised set of architectural drawings to include the roof ridge RL. No further changes were requested. The applicant provided revised plans to Council on 17 September 2019.

Re-notification was not required in accordance with Clause 2.6 of the Manly DCP.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

- Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
- Manly Local Environmental Plan 2013 - 6.2 Earthworks
- Manly Development Control Plan - 3.4.3 Maintenance of Views
- Manly Development Control Plan - 3.9 Mechanical Plant Equipment
- Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
- Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
- Manly Development Control Plan - 4.1.5 Open Space and Landscaping
- Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
- Manly Development Control Plan - 4.1.8 Development on Sloping Sites

SITE DESCRIPTION

Property Description:	Lot 1 DP 172127 , 52 Lauderdale Avenue FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Lauderdale Avenue, Fairlight</p> <p>The site is irregular in shape with a frontage of 20m along Lauderdale Avenue and an average depth of 35m. The site has a surveyed area of 531m².</p> <p>The site is located within the R1 General Residential zone and accommodates a two storey dwelling house.</p> <p>The property slopes approximately 16.5m from north to south.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>The adjacent property to the east, at 50 Lauderdale Avenue, is developed with two-storey detached dwelling. The adjacent property to the west, at 54 Lauderdale Avenue, is developed with a five-storey dual occupancy.</p> <p>Adjoining and surrounding development is characterised by detached dwellings, dual occupancies and residential flat buildings.</p>

Map:



SITE HISTORY

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

Prelodgement Meeting PLM2019/0012

On 14 February 2019 Council met with applicant to discuss the preliminary proposal for demolition works, and Subdivision and construction of two semi-detached dwelling houses. Council raised in fundamental objection to this proposal subject to built form modifications and amenity concerns in regards to views.

Development Application 311/2016- Demolition and construction of a dual-occupancy. (Approved 20 April 2017).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been

Section 4.15 Matters for Consideration'	Comments
	<p>addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Symons Goodyer Pty Ltd	PO Box 673 BALGOWLAH NSW 2093
Katherine Chick	48 Lauderdale Avenue FAIRLIGHT NSW 2094

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

- **Sunlight Access and Overshadowing**
- **Parking**
- **Height of Landscaping**

The matters raised within the submissions are addressed as follows:

- **Sunlight Access and Overshadowing**
Comment:
Concerns have been raised in relation to the potential overshadowing created by the proposed development. The proposed development is multi storey, excavated into the natural landform and the site has a north-south orientation. An amended shadow diagram was provided to Council on 18 July 2019, detailing the shadowing impacts upon No. 48 Lauderdale Avenue. It is found that the development does not unreasonably overshadow adjoining properties living room windows and private open space of adjoining properties. The proposal complies with the requisite provisions of CI 3.4.1 of the Manly DCP.
- **Parking**
Comment:
Concern is raised in regards to loss of on street parking for residents. The submission requests that Council provide further parking for neighbouring properties to offset the impact of this development.

The development provided for compliant off-street parking for both proposed new dwellings, being two off-street parking spaces for each dwelling. The driveway proposed is to be utilised for both dwellings for the off-street parking, and is not considered to be onerous or unreasonable. The resultant loss of street parking that will result from the proposed driveway is not unreasonable in this residential setting. The proposed development does not warrant the need for Council to provide additional parking to neighbouring properties.

- **View Loss (Height of Landscaping)**

Comment:

Concern was raised from the adjoining property to the rear (No. 37 Upper Clifford Avenue, Fairlight) in regards to the height of proposed landscaping and its impact upon views. The submission recommended the restriction of height of the proposed landscaping to the rear of the property. The condition as proposed is a reasonable compromise to allow for valued views to be maintained throughout the life of the development, and is included as part of this recommendation.

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 objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Landscape Officer	<p>The landscape component of the proposal is acceptable subject to the completion of landscaping.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types, and specifically: 3.3.1 Landscaping Design.</p> <p>A Landscape Plan is provided with the development application, and this satisfies the requirements of Manly DCP2013, subject to conditions.</p> <p>A Arboricultural Impact Assessment is provided with the development application, and this satisfies the requirements of Manly DCP2013.</p>
NECC (Development Engineering)	<p>In general, Development Engineering has no objection to the application.</p> <p>However, there is a few issues shall be commented by Transport & Civil Infrastructure Asset in related to the proposed footpath and stair. Development Engineering cannot provide the adequate conditions prior to the comment of Transport & Civil Infrastructure Asset on:</p> <p>1) the design criteria of the proposed footpath over the new driveway</p>

Internal Referral Body	Comments
	<p>crossing and the related supporting structure 2) the design of the new stair 3) the future maintenance of these footpath and stair (is any lease agreement required?).</p> <p>Please refer the application back to Development Engineering after the comment from Transport & Civil Infrastructure Asset .</p> <p>Further assessment Development Engineering has no objection to the application subject to the following conditions.</p>
Road Reserve	<p>No objection to the proposed stairs subject to development engineers conditioning the requirement for s138 approval.</p> <p>Planners Comment: Upon receiving the above comments, the application was referred back to Council's Development Engineers for comment and the drafting of conditions to form part of the final recommendation.</p>
Traffic Engineer	<p>- the proposal is for construction of two semi-detached dwellings with basement parking providing 2 offstreet car parking spaces for each dwelling</p> <p>Traffic: Traffic generation from the redeveloped site will be minimal and is acceptable</p> <p>Parking: The development is required to provide 2 parking spaces fro each dwelling. This has been provided. the use of a turntable enables vehicles to enter and exit the site in a forwards direction which, given the volume fo traffic on Lauderdale Street is highly desirable. It is noted that the traffic report has included swpt path plots showing access to and from the parking is possible with the 99th percentile vehicle in accordance with AS2890.1 requirements</p> <p>Pedestrian: There are no issues from a pedestrian safety or amenity perspective</p> <p>Access: No access issues</p> <p>Servicing: While concerns are not raised with regard to the servicing of the finished development there are concerns with regard to the servicing arrangements outlined in the Construction Management Plan. This plan will need to be resubmitted for separate consideration prior to release of the construction certificate.</p>

External Referral Body	Comments

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 999396S dated 17 April 2019 and 999403S dated 17 April 2019).

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

Commitment	Required Target	Proposed- House 1	Proposed- House 2
Water	40	42	42
Thermal Comfort	Pass	Pass	Pass
Energy	50	51	51

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	250m ²	Lot 1: 281.3m ²	-	Yes
		Lot 2: 251.8m ²	-	Yes
Height of Buildings:	8.5m	9.8m	15.29%	No
Floor Space Ratio	FSR: 0.6:1 (Lot 1- 168.78m ²)	FSR: 0.59:1 (166m ²)	-	Yes
	FSR: 0.6:1 (Lot 2- 151.08m ²)	FSR: 0.66:1 (166m ²)	9.87%	No

Compliance Assessment

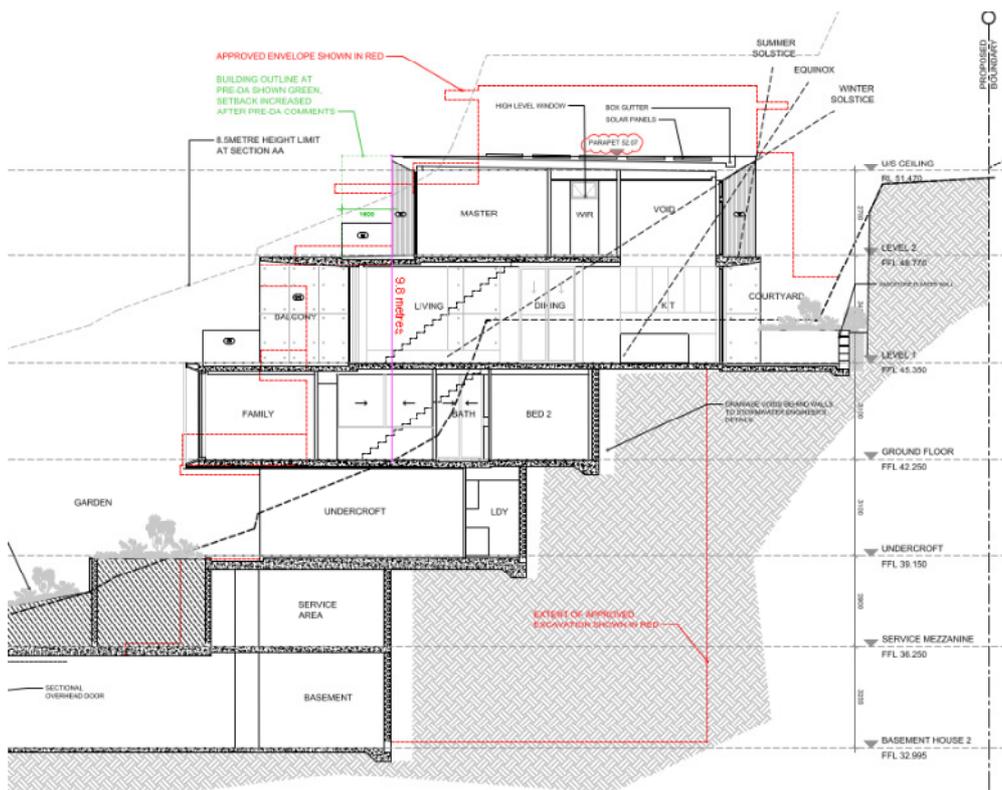
Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes
4.1 Minimum subdivision lot size	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.8m
Percentage variation to requirement:	15.29%



Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *The height, bulk and scale of the development is entirely consistent with the built form characteristics established by the adjoining dual occupancy development at No. 54 Lauderdale Avenue and other residential development within the site's visual catchment*
- *The overall height of the development, and associated extent of height non-compliance, is*

significantly less than that previously approved pursuant to development consent 311/2016 with the deletion of the uppermost storey resulting in a reduction in overall building height of 2.23 metres.

- *The non-compliance is directly attributed to the topography of the land which at a gradient of 1:2.2 makes strict compliance extremely difficult.*
- *The minor breaching elements do not in any quantitative or qualitative manner contribute to unacceptable bulk and scale with the overall height of the development, and associated extent of height non-compliance.*

Planners comment:

The proposal does not comply with the Height of Buildings development standard. An assessment of the plans revealed that roof parapet has a maximum height of 9.8m above natural ground level, which is the highest part of the building. The location of the noted non-compliance with the height is where the site begins to steeply slope away. The above mentioned reasons provided within the Applicant's written request are considered well-founded in that the proposed development will maintain consistency with existing surrounding residential development and does not result in unreasonable amenity impacts for occupants of adjoining and surrounding properties. It is acknowledged the subject site is located within an established residential area comprised of buildings that extend across multiple development eras thus contributing to an array of architectural styles, building forms and landscape treatments.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The proposed building height is deemed appropriate is deemed to be reasonable given the significant fall of the land from the rear to the front of the property. The development is predominantly beneath the maximum permissible height limit as evident on the architectural plans, and overall achieves a building height that is consistent with other residential dwelling on the northern side of Lauderdale Avenue. The proposed development integrates staggered wall planes and a generous front setback to reduce apparent building mass. The development responds appropriately to the constraints of the site.

b) to control the bulk and scale of buildings,

Comment:

The bulk and scale of the development is consistent with nearby development and will not result in any unreasonable impacts within the locality. The proposed bulk and scale is satisfactory in this circumstance. The predominant compliance achieved by the building demonstrates a considered built form that is likely to be compatible with any future development on surroundings lands.

c) to minimise disruption to the following:

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

(iii) views between public spaces (including the harbour and foreshores),

Comment:

The proposal has been assessed against the view loss provisions under Section 3.4.3- Maintenance of Views of the Manly DCP and *Tenacity Consulting v Warringah* [2004] NSWLEC 140 when considering the impacts on the views of adjoining properties in this report. In summary, the proposed development does not cause unreasonable view loss to and from public and private open spaces.

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

Comment:

The solar impacts of this aspect of the development are minimal and acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces.

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

Comment:

Not applicable.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposed development retains the residential use of the site.

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

Comment:

The proposed semi-detached dwellings promote a variety of housing types and variety.

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

Comment:

Not applicable.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation is not greater than 10%. Following the release of PS-003, Council received correspondence from a delegate of the Secretary which granted Council's Development Determination Panel, for a period of 30 months from 24 May 2019, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary the Height of Buildings development standard by more than 10%.

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	FSR: 0.6:1 (Lot 1- 168.78m ²)
	FSR: 0.6:1 (Lot 2- 151.08m ²)

Proposed:	FSR (Lot 1): 0.59:1 (166m ²)
	FSR (Lot 2) : 0.66:1 (166m ²)
Percentage variation to requirement:	-
	Lot 2- 9.87%

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.

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 height, bulk and scale of proposed House 2, as reflected by floor space, are entirely consistent with the built form characteristics established by adjoining development and development generally within the site's visual catchment.*
- *Sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the site's visual catchment.*
- *The developments compliance with the objectives of the FSR standard and the general paucity of adverse environmental impact also give weight to the acceptability of the variation sought.*

Planners comment:

It is agreed that there a varying types of development in the close vicinity of the subject site and that proposed development would be in keeping with the bulk and scale of the majority of development in the locality.

Further, it is agreed the proposed development that there is no unreasonable streetscape or residential amenity impacts.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The proposed gross floor area non-compliance for lot 2 is the same as that proposed as lot 1. The non-compliance is a result of a slightly smaller lot size, as a result of the subdivision. As viewed from the street, the building would present as consistent with that of adjoining properties. The bulk and scale of this development is significantly lesser bulk than that of the 2017 dual occupancy approval on the site (DA311/2016).

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

Comment:

The proposed development is well articulated and modulated so as to break down the visual appearance of the built form. The subject site allows for a presentation of landscaping and vegetation that is complementary to the area. The proposal will not unreasonably impact upon the streetscape.

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

Comment:

The development overall is found to enhance the visual continuity of the existing character of the area and improve the aesthetics of the development on site. The two new dwellings are not considered dominant within the streetscape. The proposal is suitable in design such that it maintains the character of the site and consistency with surrounding development.

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

Comment:

The proposed floor space non-compliance for lot 2 does not adversely increase visual and aural privacy impacts on adjoining development, nor is there unreasonable levels of shadowing to the adjoining dwellings to the east and west (Nos. 50 and 54 Lauderdale Avenue). The proposal is consistent with the numeric control under clause 3.4.1 and 3.4.2 of the Manly DCP. The proposal has also been assessed against the view loss provisions under Clause 3.4.3 of the Manly DCP and *Tenacity Consulting v Warringah* [2004] NSWLEC 140, with no unreasonable impact to neighbouring private open space or the public realm.

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

Comment:

The development is for residential use.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposed development retains the residential use of the site.

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

Comment:

The proposed semi-detached dwellings promote a variety of housing types and variety.

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

Comment:

Not applicable.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation is not greater than 10%. Following the release of PS-003, Council received correspondence from a delegate of the Secretary which granted Council's Development Determination Panel, for a period of 30 months from 24 May 2019, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary the Floor Space Ratio development standard by more than 10%.

6.2 Earthworks

The proposal includes significant cut and fill works to the front of the dwelling are necessary due to the natural topography of the site. The proposed earthworks will not unreasonably impact the natural processes or future development of the site, or the amenity of adjoining properties.

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 531m ²	Requirement	Proposed	% Variation*	Complies

4.1.1.1 Residential Density and Dwelling Size	Density: 250sqm per dwelling	251.8sqm (Lot 2) and 281.7sqm (Lot 1)	-	Yes
	Dwelling Size: 95sqm	>90sqm	-	Yes
4.1.2.1 Wall Height	East: 8m (based on gradient >1:4)	8.6m	7.5%	No
	West: 8m (based on gradient >1:4)	9.3m	16.25%	No
4.1.2.2 Number of Storeys	2	4	100%	No
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.5m	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	0m, consistent with prevailing setback	100%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.86m (based on house 1 eastern wall height)	0m-1.1m- 1.95m	33%- 100%	No
	3.1m (based on house 2 western wall height)	0m- 1.1m- 1.95m	37%- 100%	No
	Windows: 3m	House (Lot 1): 1.1m - 2.1m House (Lot 2): 1.9m - 2.1m	30%- 64%	No
4.1.4.4 Rear Setbacks	8m	House (Lot 1): 5.9m House (Lot 2)- 4.4m	26- 55%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Lot 1- Open space 55% (154.7m ²) site area	56.97% (160.5m ²)	-	Yes
	Lot 2- Open space 55% (138.5m ²) of site area	52% (130.98m ²)	5.5%	No
	Lot 1- Open space above ground 25% (40.13m ²) of total open space	23% (38m ²)	-	Yes
	Lot 2- Open space above ground 25% (32.75m ²) of total open space	28% (37.5m ²)	12%	No
4.1.5.2 Landscaped Area	Lot 1- Landscaped area 35% (56.18m ²) of open space	54.4% (87.3m ²)	-	Yes
	Lot 2- Landscaped area 35% (45.84m ²) of open space	51% (66.8m ²)	-	Yes
	3 native trees	0 trees	100%	No
4.1.5.3 Private Open Space	18sqm per dwelling	Lot 1- 46.4sqm	-	Yes
		Lot 2- 49.8sqm	-	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	8.8m	64%	No
Schedule 3 Parking and	Dwelling 2 spaces	Lot 1- 2 spaces	-	Yes

Access		Lot 2- 2 spaces	-	Yes
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***Note:** See comments related to non-compliance's under detailed assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.1.2 Residential Land Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	No	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.8 Subdivision	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

Merit consideration:

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

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

The proposed development will result in a negligible loss of view from No. 37 Upper Clifford to North

Harbour as well as North, South and Dobroyd Head. The loss of view is not unreasonable and will maintain adequate view sharing between properties.

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

The proposal results in a disruption of views from neighbouring properties. Council received one (1) submissions on behalf of the adjoining dual occupancy to the north of the subject site (No. 37 Upper Clifford Avenue, Fairlight) in relation to view loss. The Manly DCP refers to the planning principal within *Tenacity Consulting v Warringah* [2004] NSWLEC 140 when considering the impacts on the views of the adjoining properties. This is provided below:

1. Nature of the view affected

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

Comment:

The nature of the view affected from this property would be harbour views and north and south head to the south. The views are filtered through existing development and vegetation.

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

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

Comment:

The views from both of the units of No. 37 Upper Clifford Avenue are obtained over the rear boundary. The views are over the top of the existing subject site dwelling house. Views are obtained from both the lower ground floor common area as well as ground and first floor living rooms and terraces of both units 1 and 2. Views are taken from both a standing and sitting position.

3. Extent of Impact

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

Comment:



Photo 1- Ground floor terrace (looking south)



Photo 2- Ground floor terrace (looking south-east)



Photo 3- Ground floor terrace (looking west)



Photo 4- Outdoor living area



Photo 5- Outdoor living area

No. 37 (Unit 1 and 2) Upper Clifford Avenue, Fairlight currently have substantial views to the harbour and the heads. Panoramic views are available from the living room and terraces and more obscured views are available from the shared outdoor living space (terrace and swimming pool) to the rear of the site that serves both dwellings.

The living rooms and adjoining terraces of both unit 1 and 2 the views to the harbour will be impacted to a negligible extent. Views of the harbour, the land water interface as well as heads would be retained.

In regards to the shared terrace and swimming pool to the rear of the No. 37 Upper Clifford the views to the harbour will, to at worst a minor extent, be lost as a result of the proposed works. However, the majority of harbour views would be retained. Views of the heads (North, South and Dobroyd) would be retained in full. Qualitatively and considering the existing panoramic views available for both units of No. 37 Upper Clifford Avenue, the overall extent of the view loss proposed is negligible.

4. Reasonableness of the proposal causing the impact

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

Comment:

In considering the totality of impact it is noted that proposal is non-compliant with the Height of Buildings and Floor Space Ratio development standards under Manly LEP 2013. The proposal, while

non-compliant with these controls has adopted a more skillful design than the previous approval (DA311/2016), incorporating building articulation with reduced building bulk to the top of the building and a flat roof design that retains the large majority of existing views to the harbour and the heads over the top of the subject site.

Given the above, it is considered that the proposal is acceptable and view sharing is achieved.

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

Comment:

As discussed above, the development is considered to be of a reasonable design that will minimise the loss of views including accumulated view loss 'view creep'. The proposal is consistent with this objective.

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

3.9 Mechanical Plant Equipment

The development proposes two lifts for each dwelling as part of this application. To ensure the lifts are acoustically treated in accordance with this clause a suitable condition of consent has been included as part of this recommendation to ensure the does not result in excessive noise to neighbouring properties.

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

This Clause relies upon the objectives of Clause 4.3 under MLEP 2013. An assessment of the proposal against the objectives of Clause 4.3 has been provided within this report. This assessment has found the proposal to be consistent with the objectives of Clause 4.3.

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

Description of non-compliance

Clause 4.1.4.1 of the Manly DCP requires development be setback 6m from the front boundary.

Clause 4.1.4.2 of the Manly DCP requires development be setback at least 2.86m from the eastern boundary, 3.1m from the western boundary. Further new windows facing side boundaries are to be setback at least 3m from the side boundary.

Clause 4.1.4.4 of the Manly DCP requires development be setback at last 8m from the rear boundary.

The development proposes the following:

Front setback- 0m, consistent with (20-74% variation to the numeric control).

East side setback- 0m-1.1m- 1.95m (33%- 100% variation to the numeric control).

West side setback- 0m- 1.1m- 1.95m (37%- 100% variation to the numeric control).

Rear setback- 4.4m (lot 2)- 5.9m (lot 1) (26- 55% variation to the numeric control).

Windows- 1.1m- 2.1m (lot 1), 1.9m- 2.1m (lot 2) (30% - 64% variation to the numeric control).

Merit consideration:

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

Objective 1) To 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 development proposes a garage on the front boundary and a driveway supporting structure on the Council road reserve. Similar types of parking arrangement are seen along the northern side of Lauderdale Avenue. This proposed development is consistent with the spatial proportions of the street and the street edge.

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 proposed development allows for adequate visual and acoustic privacy to be retained between the subject site and neighbouring properties. In regards to sunlight access, the proposed development is consistent with the numeric requirement for solar access under Clause 3.4.1 of the Manly DCP. The proposed development will ensure view of the harbour and heads will be retained from surrounding properties. There is no significant impact on the streetscape, subject to conditions.

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

Comment:

Flexibility is provided in this circumstance as the proposed dwellings will not result in any unreasonable impacts upon adjoining properties.

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:

Suitable landscaping is provided across the site. Subject to conditions imposed by Council's Landscape Architect the proposal complies with this clause.

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

Comment:

The subject site is not located in bush fire prone land.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5.2 of the Manly DCP requires at least 55% (283.56m²) of the site area be total open space for Lot 2. The proposed total open space for Lot 2 is 52% (130.98m²), non-compliant with the numeric control. This represents a 5.5% variation to the numeric control.

Clause 4.1.5.2 of the Manly DCP requires total open space above ground be no more than 25% of total open space for Lot 2. The proposed total open space above ground for lot 2 is equal 28% (37.5m²), non-compliant with the numeric control. This represents a 12% variation to the numeric control.

Merit consideration:

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

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

Comment:

Subject to conditions imposed by Council's Landscape Architect and recommendation proposed within the arboricultural report the proposal will ensure significant landscaping and vegetation across both lots of the subject site.

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

Comment:

Both new lots for the proposed works propose a suitable level of landscaped open space, compliant with the landscaped open space control under Clause 4.1.5.2 of the Manly DCP.

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

Comment:

Amenity considerations including sunlight access, privacy and views have all been considered as part of this application, with no unreasonable impacts upon the subject site or neighbouring properties. The established streetscape character is not likely to be impacted by the proposed works.

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

Comment:

Significant levels of deep soil areas are proposed around the site to ensure no unreasonable stormwater runoff, subject to conditions.

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

Comment:

The proposed planting on site is suitable for the site, so as not to contribute to the spread of weeds and the degradation of nearby public open space.

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

Comment:

The proposed development does not compromise any wildlife habitats or potential wildlife corridors.

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

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

Description of non-compliance

Clause 4.1.6.1 of the Manly DCP requires that the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m.

The proposed garage has a width of 8.8m, non-compliant with the numeric control. This results in a 64% variation to the numeric control.

Merit consideration:

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

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

Each of the two lots will have the required 2 spaces per dwelling, through the use of the shared basement.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

Adequate on-site parking is provided, consistent with the numeric control.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

The proposed parking spaces for each dwelling are located underground, which will limit the impact upon the streetscape. Sufficient area is provided in the basement to allow for all vehicles to exit the site in a forward direction.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment:

Subject to conditions of consent, imposed by Council's Development Engineer, the proposal is consistent with this control. The parking proposed to the front portion of the site, to limit excavation across the site.

Objective 5) To ensure the width and number of footpath crossings is minimised.

Comment:

The two lots will use a single driveway and cross over to reduce the disruption to the existing footpaths.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

The existing bedrock and surrounding vegetation to the front of the property will be largely retained as part of this proposal. The use of a single vehicular entrance reduces the loss of natural landscape features on site.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

The subject site is not located within an established town centre noted within the Manly DCP.

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

4.1.8 Development on Sloping Sites

A geotechnical report has been submitted with the application, assessing the potential impact of the steep topography of the site and any excavation of the site. The dwelling house responds appropriately to the sloping site, stepping down at each level to reduce the visual bulk and scale of the dwelling house. The recommendations included as part of this report have been included as part of the final conditions of consent.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$41,965 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$4,196,500.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

Council is satisfied that:

- 1) The applicant’s written request under clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of clause 4.3 Height of Buildings development standard and clause 4.4 Floor Space Ratio development standard, has adequately addressed and demonstrated that:
 - a) compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
 - b) there are sufficient environmental planning grounds to justify the contravention.
- 2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2019/0509 for Demolition works, subdivision of one lot into two and construction of two semi-detached dwellings on land at Lot 1 DP 172127, 52 Lauderdale Avenue, FAIRLIGHT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**
The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A0.00/ Site Analysis Plan/ Revision A	1 May 2019	Platform Architects
A0.04/ Excavation and Fill Section/ Revision A	1 May 2019	Platform Architects
A1.00/ Basement Floor Plan/ Revision A	1 May 2019	Platform Architects
A1.01/ Mezzanine Floor Plan/ Revision A	1 May 2019	Platform Architects
A1.02/ Undercroft Floor Plan/ Revision A	1 May 2019	Platform Architects
A1.03/ Ground Floor Plan/ Revision A	1 May 2019	Platform Architects

A1.04/ First Floor Plan/ Revision A	1 May 2019	Platform Architects
A1.05/ Second Floor Plan/ Revision A	1 May 2019	Platform Architects
A1.06/ Roof/Site Plan/ Revision B	6 September 2019	Platform Architects
A2.01/ South Elevation/ Revision B	6 September 2019	Platform Architects
A2.02/ West Elevation/ Revision B	6 September 2019	Platform Architects
A2.03/ North Elevation/ Revision B	6 September 2019	Platform Architects
A2.04/ East Elevation/ Revision B	6 September 2019	Platform Architects
A3.01/ Section AA/ Revision B	6 September 2019	Platform Architects
A5.01/ Driveway Plan/ Revision A	1 May 2019	Platform Architects
A5.02/ Driveway Section 1 and 2/ Revision A	1 May 2019	Platform Architects
A5.03/ Driveway Elevation/ Revision A	1 May 2019	Platform Architects
Sheet 1 of 1/ Plan of Proposed Subdivision Of Lot 1 in D.P. 172127	4 March 2019	Platform Architects

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment of Existing Public Stairway	26 April 2019	Crozier Geotechnical Engineers
Report of Geotechnical Site Investigation	February 2019	Crozier Geotechnical Engineers
Construction Management Plan	16 April 2018	Grace Osunneye
BASIX Certificate No. 999396S	17 April 2019	Eco Certificates
BASIX Certificate No. 999403S	17 April 2019	Eco Certificates
Arboricultural Impact Report	15 June 2015	Guy Paroissien

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Site Pan/ Landscape Calculations	30 April 2019	Paul Scrivener
Landscape Planting Plan	30 April 2019	Paul Scrivener

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	February 2019	Platform Architects

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

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

approved plans.

2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the

allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

3. **General Requirements**

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(j) Prior to the commencement of any development onsite for:

- i) Building/s that are to be erected
- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

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

(k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$41,965.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$4,196,500.00.

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

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

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

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

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

5. **Security Bond**

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

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

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

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

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

6. **Construction, Excavation and Associated Works Bond (Crossing / Kerb)**

A Bond of \$20000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter and any footpath works required as part of this consent.

Reason: Biodiversity/Vegetation Conservation and Management.

Reason: Protection of Council's Infrastructure.

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

7. **Fire Separation – Separating Walls**

The new building that is proposed to be constructed is required to comply with Part 3.7.1.8 of the Building Code of Australia – 'Fire Separation-Separating Walls'. 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.

8. **On-site Stormwater Detention Compliance**

Certification of Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003 and the concept drawing by RTS Civil Consulting, Job number 181204, drawing SW 100-104 dated 23/04/2019. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

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

9. **Submission Roads Act Application for Civil Works in the Public Road**

An Application for Works to be approved within Council Roadway, including engineering plans is to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of the retaining walls through the nature strip, driveway crossing and footpath which are to be generally in accordance with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and/ or Council's Minor Works Policy. The plan shall be prepared by a qualified structural engineer.

The design must include the following information:

- The proposed retaining wall shall be designed in complies with Australian Standard: Earth-retaining Structure AS 4678-2002
- An appropriate drainage system for the retaining wall shall be design and included on the drawing
- All Public and private utility services are to be located on the plan and cross-section plan. All costs related to any relocation of utility service shall be borne by the applicant.
- The proposed footpath must be designed with Council's standard and satisfaction

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges. An approval is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

10. **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.

11. **Shoring of Adjoining Property**

Should the proposal require shoring to support an adjoining property or Council land, owner's consent for the encroachment onto the affected property owner shall be provided with the engineering drawings.

Council approval is required if temporary ground anchors are to be used within Council land. A Temporary Ground Anchors (Road Reserve) Application is to be submitted with Council for assessment and approval subject to Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

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

12. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

13. **Sydney Water "Tap In"**

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

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

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

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

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

14. **Boundary Survey**

A boundary survey, prepared by a Registered Surveyor, shall be provided as evidence that all buildings/works are within the appropriate property, easement boundaries and rights of carriageway. Details demonstrating compliance are to be submitted to the Principal Certifying

Authority prior to the issue of any construction certificate.

Reason: To ensure the accurate location of buildings in relation to boundaries, easements and rights of way.

15. **Boundary Fencing**

No approval is provided for any boundary fence. No consent has been provided by the owners of the common boundary.

Reason: To ensure compliance with the Dividing Fences Act 1991.

16. **Road Occupancy Licence (ROL) from Roads & Maritime Services**

Lauderdale Avenue is a Regional Road and the developer shall therefore require a Road Occupancy Licence (ROL) from the RMS Transport Management Centre (TMC) prior to commencing work within the road reserve. The application will require a Construction Traffic Management Plan (CTMP) to be prepared by a person who is certified with 'Prepare a Work Zone Traffic Management' accreditation or equivalent. The CTMP will require separate approval by Council prior to issue of the construction certificate. Should the CTMP require a reduction of the speed limit, a Direction to Restrict will also be required from the TMC.

Reason: To inform the relevant roads authority of traffic impacts and obtain required approvals (DACTRCPC1)

17. **Construction Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Certifying Authority prior to issue of any Construction Certificate.

The CTMP must address following:-

- The proposed phases of construction works on the site, and the expected duration of each construction phase;
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- Make provision for all construction materials to be stored on site, at all times;
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property

owners prior to the implementation of any temporary traffic control measure.

- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent;
- Proposed protection for Council and adjoining properties;
- The location and operation of any on site crane; and

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. Confirming appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner’s property rights and protects amenity in the locality, without unreasonable inconvenience to the community. The CTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site. (DACTRCPC2)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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.

19. Tree removal

Tree removal as recommended in the Arboricultural Impact Report prepared by Landscape

Matrix is granted approval. The majority of existing vegetation are Exempt Species and Environmental Weeds.

20. **Works Zone**

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road reserve for the parking of vehicles associated with a construction site. Separate application is required with a Traffic Control Plan for standing of construction vehicles in a trafficable lane. Applications for a Works Zone must be submitted to Council no less than 28 days in advance of the commencement date

Reason: To allow sufficient time for assessment, processing and implementation of Works Zone. (DACTRDPC1)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

21. **Road Reserve**

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

Reason: Public safety.

22. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

23. **Vehicle Crossings**

The provision of one vehicle crossing 6 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

24. **Maintenance of Sediment**

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

Reason: To ensure sediment controls are effective.

25. **Protection of Adjoining Property - Excavation**

Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.

Reason: To ensure private and public safety

26. **Tree and vegetation protection**

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

- i) all trees and vegetation located on adjoining properties,
- ii) all road reserve trees and vegetation,

b) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
- iii) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an Arborist. Details including photographic evidence of works undertaken shall be submitted by an AQF Level 5 Arborist to the Certifying Authority,
- iv) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
- v) excavation for utility lines is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist, to provide for root protection measures,
- vi) should either or all of ii), iii), iv) and v) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- vii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009,
- viii) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

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

27. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council officers for approval . A copy of the approved CTMP is to be kept onsite at all times and made available to

the accredited certifier or Council on request.

Reason: to ensure compliance of the developer/builder in adhering to the agreed Construction Traffic Management procedures and that they are held liable to the conditions of consent (DACTREDW1)

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

28. Landscape works

Landscaping is to be implemented in accordance with the Landscape Plans sheet 1 of 2 and sheet 2 of 2, prepared by Paul Scrivener Landscape, inclusive of the following requirements:

- i) all tree planting is to be installed at 75 litre container size,
- ii) all tree planting shall comply with 3.3.1 Landscaping Design, section b) item iii) where trees should be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight as described in the clause, or where the proposed tree locations may otherwise be positioned to minimise any significant loss of views,
- iii) all tree planting shall have a minimum individual area of 3 metres x 3 metres of soil area, and shall be located a minimum of 5 metres from existing and proposed built structures, or minimum of 3 metres where pier and beam footings are used.

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the approved plan and inclusive of any conditions of consent.

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

29. Authorisation of Legal Documentation Required for Onsite Detention

The original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and Compliance Certificate issued by an Accredited Certifier in Civil Works. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To create encumbrances on the land.

30. Registration of Encumbrances for On-site Stormwater Detention

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To identify encumbrances on land.

31. On-Site Stormwater Detention Compliance Certification

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council.

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 stormwater disposal is constructed to Council's satisfaction.

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

A positive covenant shall be created on the title of the land 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 at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches 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 any interim / final Occupation Certificate.

Reason: To ensure the on-site detention and/or pump system is maintained to an appropriate operational standard.

33. **Acoustic Privacy**

The proposed lifts are to be acoustically treated so that they do not emit any noise of 5dba above background noise at the nearest residential receiver.

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

Reason: To ensure the acoustic amenity of the neighbouring residents. (DACPLFPOC1)

34. **Height Survey**

A survey prepared by a Registered Surveyor shall be provided as evidence that all buildings are constructed in accordance with the approved RL's for each of the floor levels and roof ridge levels of the building. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any occupation certificate.

Reason: To ensure the dwelling and associated structures are constructed in accordance with the approved levels.

35. **Footpath & Steps Construction**

The footpath and steps, in accordance with Council's standard specifications, shall be reconstructed along the property frontage to Council's satisfaction. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To provide pedestrian access to and from the property (DACTRFPOC1)

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

36. **Landscape maintenance**

All landscape components are to be maintained for the life of the development. A 12 month establishment period shall apply for all new landscaping. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components and species to maintain the landscape theme of the landscape plan.

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

37. **Environmental and priority weed control**

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

Reason: preservation of environmental amenity.

38. **View Sharing**

All vegetation within the rear setback area is to be maintained at a height of no more than 4.0 metres above existing ground level for the life of the development.

Reason: To maintain views over the property.

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

39. **Provision of Services for Subdivision**

The applicant is to ensure all services including, water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure that utility services have been provided to the newly created lots

40. **Survey Plan - Construction Identification**

A declaration by a registered surveyor shall be provided to Council as evidence that all construction has been effected within the appropriate property, easement boundaries and rights of carriageway. This shall be in the form of a copy of the final subdivision or easement plan, with the distances from the boundaries to the edges of these structures endorsed in red thereon and signed by the surveyor. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure accurate location of buildings, access and services.

41. **Sydney Water Compliance Certification**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from 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 charges to be paid. Please make early contact with the Co-ordinator, 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

42. **Release of Subdivision Certificate**

To enable the lodgement of the final plan at the NSW Land and Property Information Department the Subdivision Certificate shall not be issued until the Final Occupation Certificate for the approved development has been issued.

Reason: To ensure that the plans relate to approved development.

43. **Subdivision Certificate Application**

Prior to the issue of the Subdivision Certificate, a completed Subdivision Certificate form, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919 are to be submitted to Council. Nine copies of the final plan of subdivision are to be submitted. 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

44. **Title Encumbrances**

All easements, rights of carriageway, positive covenants and restrictions as to user as indicated on the plans and required by this consent are to be created on the title naming Northern Beaches 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.