

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0126
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Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 1 DP 555814, 173 Seaforth Crescent SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to an existing dwelling house
Zoning:	Manly LEP2013 - Land zoned E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Anthony Ng Joan Ng
Applicant:	Jayn Design

Application Lodged:	13/02/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	16/06/2020 to 30/06/2020
Advertised:	Not Advertised
Submissions Received:	8
Clause 4.6 Variation:	4.3 Height of buildings: 11.7%
Recommendation:	Approval

Estimated Cost of Works:	\$ 720,000.00
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EXECUTIVE SUMMARY

The application seeks approval for the alterations and additions to a dwelling house at 173 Seaforth Crescent Seaforth.

The proposal is referred to the Development Determination Panel as the application does not comply with the building height development standard of 8.5m under the Manly Local Environment Plan 2013. The proposal results in a 11.7% variation.

A 'Clause 4.6' Variation to Building Height under the Manly Local Environmental Plan 2013 accompanies the application and has been assessed in detail against the relevant considerations and is

supported. Further, principal environmental impact considerations pursuant to the Manly Development Control Plan 2013 are; storey limit, setbacks, wall height, views, building bulk, landscaping, construction impacts, parking access, privacy, overshadowing, streetscape character and stormwater management.

The seven (7) submissions received as a result of the original proposal have been considered and addressed within this report. One submission (No. 177 - 179a Seaforth Crescent) changed their position from non-support to support during the assessment period. The applicant provided minor amendments to the plans to accommodate/respond to concerns about height, bulk, views, and landscaping works to reduce associated impacts, including deleting the proposed new swimming pool.

Re-notification of the final amendments was not required, however the final amended plans have been publicly viewable on the website. Conditions have been recommended where appropriate to address remaining issues, including, landscaping, views, traffic safety, construction work and dilapidation.

The proposal will not have an unreasonable impact in relation to view sharing, privacy or solar access.

Overall, the non-compliances with the built form controls are supported on the grounds that the proposal will maintain consistency with the relevant objectives, with no unreasonable amenity impacts, subject to a number of conditions.

No issues have arisen that would warrant the refusal of the application and therefore the proposed development (as revised) is recommended for approval.

PROPOSED DEVELOPMENT IN DETAIL

This proposal seeks approval for alterations and additions to the existing dwelling house.

The works as part of the application are as follows:

First Floor - RL 38.00

- New entry
- New foyer
- New double garage

Ground Floor - RL 34.68

- Demolition of existing garage
- New covered entrance porch

Lower Floor - RL31.88

- Two new bedrooms (main with ensuite)
- New bathroom
- New gym
- New storage area

Lower Floor 2 - RL28.68

- New Library/gallery

- New rumpus room,
- New study
- New shower room
- New terrace area

External RL28.68

The existing pool and associated terrace will be demolished and a garden terrace is proposed.

During the assessment period two sets of amended plans were received for the proposal.

The first set of amendments to the design were received in June 2020. The amendments were undertaken in consultation with the applicant prior to visiting all objector sites. This was due to the Department of Health COVID restrictions/recommendations at the time limiting the ability to go to all objector sites. The amended plans included the reduction the building height of the rear extension, and stepping of the rear retaining walls.

These plans were re-notified to all neighbouring and adjoining sites.

After site visits to all adjoining neighbours and objectors, further amendments were required due to specific planning concerns that were not apparent until a site visit was undertaken.

The final amendments to the design were received in August 2020 included the reduction in the overall building height, the removal of the swimming pool, larger rear setbacks to the recreational areas, additional landscaped areas and reconfiguration and lowering of the rear terrace areas. Consistent with Northern Beaches Council Community Participation Plan, the amended plans were not re-notified as the proposed changes resulted in a reduction of environmental and amenity impacts. However, plans were available via the Northern Beaches Council website.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)
 Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area

SITE DESCRIPTION

Property Description:	Lot 1 DP 555814 , 173 Seaforth Crescent SEAFORTH NSW 2092
Detailed Site Description:	<p>The site is legally identified as Lot 1 in DP 555814 and known as 173 Seaforth Crescent, Seaforth. The site is located within the E3 Environmental Management zone as mapped within the Manly Local Environment Plan 2013.</p> <p>The site is an irregular shaped lot, located on the northern side of Seaforth Crescent with a site area of 888.5m². The street frontage to Seaforth Crescent is 16.46m, with a eastern side boundary of 37.795m and 27.43m, a western side boundary of 94.210m and a rear boundary of 37.795m and 3.703m. The site includes an access handle that runs to the Middle Harbour waters edge.</p> <p>The property has a very steep slope of over 12.48m (RL37.83 to RL25.35) from the street frontage to towards Middle Harbour.</p> <p>The subject site has extensive views to Middle Harbour due to the high position on the escarpment and the orientation of the dwelling house to the north.</p> <p>The site does not contain any significant vegetation, or environmental features.</p> <p>The site currently comprises of a three level dwelling with a swimming pool in the rear yard. An inclinor adjacent to the western boundary provides access from street level the waterway.</p> <p>A carport is located towards the front southern corner of the site. This carport is located within a right of way and it is utilised solely by No. 173A and 175 Seaforth Crescent not the subject site.</p> <p>Surrounding site consist of multi level dwelling houses, of varying ages, within a landscaped setting.</p>

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant Development Applications:

- Development Application 10.1998.1333.1 for DA1333/98 for the installation of a inclinor was approved by Council on the 4 February 1999.

A Pre-Lodgement meeting was held on the 14 December 2017, for the alteration and additions to a dwelling house including the construction of a new garage. The notes of the meeting concluded that the proposal required a redesign prior to submission. The proposed rear setbacks were not supported, and it was recommended that a minimum 3m rear setback be provided to the rear boundary to the swimming pool and retaining wall, with 8.0m to the habitable portions of the proposal.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions	Manly Development Control Plan applies to this proposal.

Section 4.15 Matters for Consideration'	Comments
of any development control plan	
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the building height and the built form controls of the Manly Development Control Plan.</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 insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate.</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</p>

Section 4.15 Matters for Consideration'	Comments
	The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 16/06/2020 to 30/06/2020 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 8 submission/s from:

Name:	Address:
Mr Timothy Michael Robinson	171 Seaforth Crescent SEAFORTH NSW 2092
Daisy Li	Address Unknown
Lynne Perkins	Address Unknown
Mr Tancred Fredrick Rowley	94 Seaforth Crescent SEAFORTH NSW 2092
Steven Yu	7 Farrar Street BALGOWLAH HEIGHTS NSW 2093
Mr Ronald James King	40 Ryan Place BEACON HILL NSW 2100
Mr William Jeremy Perkins Mrs Lynne Margaret Mackinnon	90 Seaforth Crescent SEAFORTH NSW 2092
Mr Andrew James Charlton Hill Mrs Caroline Alexandra Jane Hill	PO Box 6763 BAULKHAM HILLS NSW 1755

The following issues were raised in the submissions:

- Building height
- View impacts

- Dilapidation risk including construction works
- Garage structure
- Bulk and Scale/Floor Space Ratio
- Privacy
- Setbacks and pool structure
- Non-compliance with development controls
- Other Manly LEP and DCP matters
- Cost of works
- Illegal works

The matters raised within the submissions are addressed as follows:

- ***Concerns with regard to the building height and streetscape impacts for the foreshore location.***

Comment:

The site is zoned for E3 Environmental Management land use (urban land) and is situated on a ridgeline area close to Middle Harbour foreshore area. The development area of the site is separated from the harbour foreshore by a small access handle and does not have predominant setback with the foreshore area (unlike other properties in Seaforth Crescent such as No.171, 175 & 177 Seaforth Crescent).

With regard to overdevelopment considerations, the building complies with the floor space ratio (FSR) and dwelling density provisions under the Manly LEP and DCP. Considerations of building height (including wall and maximum height controls) are addressed within this report under Manly LEP *Clause 4.6 Exceptions to development standards* and Manly DCP *Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)*. In response to this issue and need to reduce height and bulk, the applicant has accommodated those matters with the current plans. A number of amendments have been incorporated into revised plans, including the deletion of the swimming pool from the proposal, a minor reduction in roof height, and increasing the rear setback to obtain additional landscaped area.

Due to the slope of the land, the proposal has sought to capitalise on positioning the garage area within the First Floor, with 3 levels below, that "step-down" the slope. The non-compliance with the overall height are confined to the lower (leeward) side of the site and are partly influenced by the design maintaining continuity with the existing levels of the building and existing private open space level, with similar building setbacks. A landscape setting is provided for the building, including the use of landscape planters along garden areas with materials and colours that are consistent with *Clause 5.4.1 Foreshore Scenic Protection Areas*.

Landscaping considerations have been addressed in detail by Council's Landscape Officer and subject to conditions, the proposals landscaped area is considered sufficient pursuant to the Manly DCP requirements.

The proposal is consistent with setback requirements for properties pursuant to the Manly DCP and detailed consideration of this issues has been made under *Clause 3.1.1 Streetscape (Residential area)*, *Clause 4.1.4 Setbacks (front , side and rear)* and building separation, within this report.

In summary, the proposal will alter the existing shadow pattern toward adjacent land, however the proposal is consistent with the objectives of the Manly DCP control to maintain reasonable solar access to adjacent land.

On balance, the proposal is consistent with the objectives of the Manly LEP & DCP controls and does not warrant refusal of the application.

- ***Concern is raised that the proposal will impact views from No. 88 & No. 94 Seaforth Crescent.***

Comment:

The subject site and surrounding lands were inspected during a site visit to consider view sharing, including access to alternate view lines available. Where direct access was not available, a direct view line was considered in best proximity and comparative consideration to view lines (including survey datum) analysis and taking into account particular submissions regarding views as received or identified following the notification of the application.

A detailed consideration of view sharing is provided within this report under *Clause 3.4.3 Maintenance of Views*. In summary, the proposal will not impact No. 94, and will improve the view lines from No. 88 Seaforth Crescent due to the reduction in the roofline from RL41.46 to RL41.331 (reduction of 0.13m).

On balance, the proposal is consistent with the objectives of the Manly DCP control and the Land and Environment Court Planning Principle in relation to views and does not warrant refusal of the application.

- ***Concern that the proposal will affect dilapidation to adjacent properties, including noise, dust and amenity impacts during demolitions and construction work hours.***

Comment:

A geotechnical report has been submitted that has assessed slope, stability and site conditions in the context of the proposed works pursuant to *Clause 4.1.8 Development on sloping sites* of MDCP. Recommendations from the Geotechnical report and standard conditions regarding excavation, construction methods (including OHS and compliance with relevant Australian Standards and the BCA) are imposed to address this issue. A dilapidation report will be required prior to works to ensure appropriate consideration/response to dilapidation risks for adjacent property assets (private and public). Site operational management including standard construction work hours, noise, dust, erosion control and the like are addressed by conditions and also form part of the Construction Certificate stage requirements and operational conditions.

In summary, this objection issue is not considered to warrant refusal of the application.

- ***Concern that the proposals garage structure will creates streetscape impacts.***

Comment:

The site has a road frontage to Seaforth Crescent, with the principle outlook from within the existing dwelling towards Middle Harbour. Due to the existing elevation and setbacks of the dwelling house, it has a strong street presence along the frontages when compared to neighbouring dwellings on the lower side of Seaforth Crescent. The existing carport utilised by No. 173a Seaforth Crescent is to be remain, with the proposed garage to be located adjoining this area at the same level.

The proposed parking solution has been designed with adequate site lines, to maximise pedestrian safety. Furthermore, the structure itself is of a high quality design, finished in materials that will blend with the natural surrounds, resulting in an attractive presentation to the street.

This issue is addressed in further detail under MDCP *Clause 4.1.4 Setbacks (front, side and rear)* within this report.

This issue does not warrant refusal of the application.

- ***Concern has been raised in regards to the bulk and scale and overdevelopment of the proposal.***

Comments:

The development involves alterations and additions to an existing dwelling. The alterations and additions occur predominantly on and within the existing building and swimming pool footprint and, as such, do not add the the built form such that it exacerbates the bulk and scale of the building that it no longer is consistent with the character of the area.

The development includes an additional fourth floor and new garage parking structure. The garage is located in front of the modernised dwelling that thereby relieves the bulk and scale. The additional lower levels are located downwards on the sloping site, and are not visually identifiable from the streetscape. The additional floor levels provide sufficient articulation and the garage and front entry improve the street presence.

The development also involves replacing the pitched roof with a flatter lower roof form which improves visual outlook from surrounding properties.

With regard to overdevelopment considerations, the building complies with the floor space ratio (FSR) provisions under the Manly LEP and DCP. Considerations of building height (including wall and maximum height controls) are addressed within this report under Manly LEP *Clause 4.6 Exceptions to development standards* and Manly DCP *Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)*. In response to this issue and need to reduce height and bulk, the applicant has accommodated those matters with the current plans. A number of amendments have been incorporated into revised plans, including the deletion of the swimming pool from the proposal, a minor reduction in roof height, inclusion of additional landscaped areas.

The upgrading of the detached dwelling is consistent with the scale, design and character of the local area and does not warrant refusal of the application.

- ***Concern that the elevated pool, terrace and garden area exhibit overlooking potential toward adjacent land / property.***

Comment:

This issue has been considered, including terrace areas, window near side boundaries, incorporation of planter boxes and site levels to ensure no unreasonable privacy impacts arise in relation to surrounding land. Mutual screen planting is conditioned to be provided provided and rooms and windows are appropriately located to ensure no unreasonable impact. High use areas such as living and kitchen areas are appropriately designed to maintain privacy to adjacent land with the principal outlook toward the north. Low use rooms (bedrooms) are appropriately located and have been designed to not create unreasonable privacy impacts to adjacent land including acceptable window placement / style along side setback areas.

In response to this issue and need to improve privacy, the applicant has accommodated those matters with the current plans. A number of amendments have been incorporated into revised plans, including the deletion of the swimming pool from the proposal, a increase to the rear setback, reduction in retaining wall heights, planter boxes, and additional screening landscaping and landscaped areas.

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

- **Concern that the proposal is not consistent with listed elements of the Manly DCP and Manly LEP (as detailed in written submissions).**

Comment:

The assessment of the proposal has considered the submission matters in the context of the proposed development. The application information has addressed matters where clarification was sought in context with the relevant planning controls.

The matters raised have been considered in context to the application and addressed collectively with the whole of the LEP and DCP including balancing the proposal with the established pattern of surrounding development.

In further addressing those matters, the applicant has responded and accommodated the submission concerns with a considered approach, including minor amendments to the plans to reduce building bulk, height and improve amenity (privacy, views). In addition, the applicant has deleted the swimming pool from the proposal (demolition of the existing pool remains) to improve amenity considerations by further reducing impacts on surrounding land.

Therefore, concerns have been considered by revisions. On balance the proposal is consistent with the objectives of the MDCP and MLEP and merit consideration has been made of the design in so far that issue is not considered to warrant refusal of the application subject to conditions.

- **Concern has been raised in regards to the cost of works for the proposal.**

Comment:

In order to address this matter the applicant has responded and provided a new cost of works as a result of the amendments to the plans to reduce building bulk, height and improve amenity (privacy, views). The new cost of works, including demolition has been included in the quote. Therefore, this issue does not warrant refusal of the application.

- **Concern is raised that the existing First Floor does not have approval.**

Comments:

Concern is raised that the existing First Floor does not have formal approval. The applicant sort to provide the original plans for the dwelling house, however due to a fire in the Manly Office records held in storage where lost. Plans for the application for the construction of an inclinor from 1997 show the upper level floor.

The submitted application will improve the impact of the upper floor, with the overall building height of the upper floor being lowered from RL41.46 to RL41.331 (reduction of 0.13m). As a result, the proposal improves the existing view lines from properties on the upside of Seaforth Crescent who are at a higher elevation, and from the streetscape.

The whole proposal has been considered in context to the application and addressed collectively with the whole of the MLEP and MDCP including balancing the proposal with the established pattern of surrounding development.

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

REFERRALS

Internal Referral Body	Comments
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Internal Referral Body	Comments
Landscape Officer	<p>The development application is for the construction of alterations and additions to an existing dwelling. A new driveway will provide access from Seaforth Crescent to a new garage.</p> <p>The development application is assessed by Council's Landscape Referral section against the landscape controls of Manly DCP 2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types.</p> <p>A Arboricultural Impact Assessment prepared by RainTree Consulting is submitted with the application in accordance with DA Lodgement Requirements. No significant vegetation occurs within the site which contains Exempt species by height or by species type that do not require Council consent for removal. Street trees of significance with high retention values exist within the road verge, including tree 1 (Jacaranda) tree 2 (Angophora) and tree 3 (Angophora), providing valuable streetscape amenity. All three street trees are to be retained and protected, with the recommendations of the Arboricultural Impact Assessment report to be incorporated to ensure the protection of tree 3. Conditions of consent shall be imposed on the driveway design to permit the retention of tree 3.</p> <p>A Landscape Plan is submitted with the application proposing palm planting and low height groundcovers and accents along the rear boundary, and low height groundcover and accent planting elsewhere. The design is inadequate in the selection of proposed planting that is unable to provide residential privacy amenity to adjoining properties and conditions of consent shall be imposed to replace the selected planting scheme with appropriate species.</p> <p>Subject to the imposition of conditions of consent to satisfy the landscape controls of the Manly DCP, the landscape outcome is supported.</p>
NECC (Development Engineering)	<p>The proposal includes the alteration of the existing parking for the dwelling. The current parking is located at a level of RL 35.22 adjacent to the eastern boundary of the site and is accessed via a driveway which provides access to number 177. This driveway also appears to provide access to a garage located under an existing high level carport on the western corner of the site. A review of various title documents indicates that the parking structure on the western corner of the site is utilised by numbers 173A and 175. The proposed relocation of the garage to RL 37.924 will require a suspended driveway adjacent to the existing driveway accessing the carport on the western corner of the site. There are limited details of the structural elements for this suspended driveway or levels to demonstrate that the grades will be sufficient and that the access to the lower garage will not be compromised as a result.</p> <p>The proposed method of stormwater disposal is acceptable.</p> <p>Development Engineers cannot support the application due to</p>

Internal Referral Body	Comments
	<p>insufficient information to address clause 4.1.6 of Manly DCP 2013.</p> <p>Amended plans received 10/06/2020</p> <p>The amended plans have failed to include any additional information to resolve the previous issue related to the vehicular access for the proposal.</p> <p>Development Engineers cannot support the application due to insufficient information to address clause 4.1.6 of Manly DCP 2013.</p> <p>Additional information submitted 12 and 13.10.2020</p> <p>The submitted additional survey information and notes on the plan to convert the existing garage under the existing carports to 173A and 175 to a storage area is acceptable. The proposed grade of the new driveway to the new garage is acceptable.</p> <p>No objection to approval, subject to conditions as recommended.</p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A393973 and 15 October 2020). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. A393973 and 15 October 2020).

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

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

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

The site are located within the Coastal Environment Area as identified by State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP), and the provisions of this policy are applicable in relation to the proposal.

Following detailed assessment of the proposed development, the consent authority can be satisfied of the following:

- The proposal is not likely to cause an adverse impact upon the matters listed in clause 13(1) of the CM SEPP
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the

matters listed in clause 13(1) of the CM SEPP

- The proposal is not likely to cause an adverse impact upon the matters listed in clause 14(1) of the CM SEPP
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 14(1) of the CM SEPP
- The proposal is not likely to cause increased risk of coastal hazards on the site or other land.

As such, the proposal is considered to be consistent with the provisions of the CM SEPP, including the matters prescribed by clauses 13, 14 and 15 of this policy.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.8m - 9.2m (Front Section) 5.4m - 9.5m (Rear Section)	8.2% 11.7%	No No
Special height provisions	38.83 RL	RL 41.331	6.4% or 2.5m	No
Floor Space Ratio	FSR: 0.4:1 (355.4sqm)	FSR: 0.39:1 (351sqm)	-	Yes

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.5m
Percentage variation to requirement:	11.7%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

- (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,

- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

The steep slope of the surrounding area provides a situation in which parts of development, in the area have structures which breach the maximum building height, forms a character in the area in which the proposal would be consistent with. Additionally, the proposal would not provide unreasonable amenity impact and the offending element are not visible from the street view.

It is accepted that the context of the area, including steep terrain and the location of the non-compliant dwelling roof line at the rear of the site, behind the built form so it is not visible from the street view (along with lack of unreasonable amenity impact), combined with the reduction in the front building height provides sufficient grounds in this circumstance to vary the standard.

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 E3 Management 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 development at the rear of the dwelling house is for a flat style roof form. This flat style roof design assists to minimise the overall height of the development such that only a minor area of roof form over the balcony area is over the 8.5m building height requirement.

The replacement of the roof form over the existing first floor development also demonstrates a variation to the 8.5m building height standard, however the roof line has been reduced from the existing RL41.46 to RL41.331 (reduction of 0.13m) due to a lowering in the pitch of the roofline. As a result, there are two minor areas of non-compliance with the building height demonstrated in Figure 1 & 2 below.

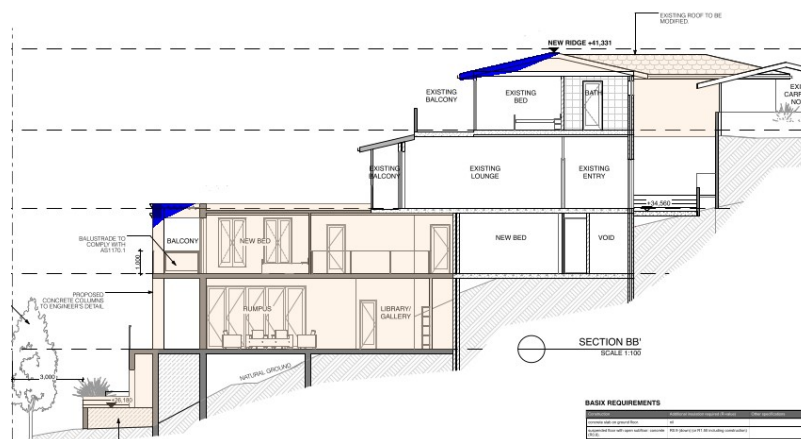


Figure 1: Building height variations shown in blue.

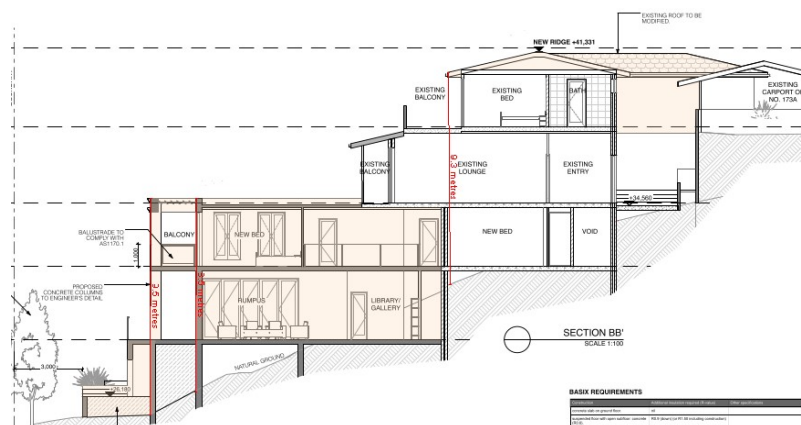


Figure 2: Maximum Building height measurements.

The proposals reduction in the building height closest to Seaforth Crescent and the flat roof design at the rear reflects the established built form character of the immediate Seaforth area where multi-level, and non-complying building heights are prevalent due to the steep topography of the land and difficulty with pedestrian and vehicular access.

As such, despite the non-compliance with the height of building development standard, the proposed development is consistent with, and complementary to existing development in the locality, particularly in relation to height, roof form and character.

The development satisfies this objective.

b) to control the bulk and scale of buildings,

Comment:

The proposed development breaches the maximum roof height control with the MDCP 2013. However, the proposed development is compliant with the floor space ratio set by the MLEP 2013, which controls bulk and scale.

The building height non-compliance is located at the northern edge of the roofline of the First and Lower floor and are relatively minor in size.

The proposed dwelling roofline at the street frontage has been reduced, and the proposal has a compliant setback to the rear of the proposed dwelling and provides an open balcony to the rear of the development where the structure breaches the development standard.

As a result of these factors, the proposal will appropriately minimise the presentation of bulk and scale from the street and would not provide building bulk on site which could have an unreasonable amenity impact on neighbouring dwellings.

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:

It is acknowledged that the non-compliance along the northern edge of the proposed roof do not impact the viewing angle from the properties to the north, No.177 or No. 169 Seaforth Crescent. The sweeping range of views available from the internal areas and terraces of both properties remain intact.

The height non-compliance actually improves the impact upon the existing views from the opposite side of Seaforth Crescent due to a reduction in the roof height from RL41.46 to RL41.331 (reduction of 0.13m), combined with the higher placement/vantage point of these properties.

Therefore, the height non-compliance does not result in any loss of views to, from, or between public or private 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 proposal involves Sunlight Access and Overshadowing that is compliant with the controls under the Manly DCP 2013. Along with open element of the balcony and garden area at the rear of the dwelling, this results in an outcome in which there is reasonable provision of solar access to the proposal.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other

aspect that might conflict with bushland and surrounding land uses.

Comment:

The proposal is designed to maintain the topographical features of the site by not significantly excavating into the site. The proposals design with high quality external finishes and open style garden and balcony areas, provides a more "stepped" look when viewed from neighbouring properties.

The proposal reflects the established built form character of the immediate Seaforth area where multi-level, variable stepped houses are prevalent, due to the steep topography of the land and difficulty with pedestrian and vehicular access.

The extensive landscaping is proposed and has been conditioned as part of this development and will soften and filter the built form. As a result, the built form will be sufficiently softened by the proposed landscaping and the proposal will improve the bushland setting of the site.

The development satisfies this objective.

Zone objectives

The underlying objectives of the E3 Environmental Management zone

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

Comment:

The proposal seeks to undertake alterations and additions on a similar footprint to the existing dwelling-house, with no significant excavation in order to correspond with the steep sloping topography of the site. Additional landscaping as part of the proposal will improve the ecological features on the site. The proposal has reasonable measures to ensure ecological, scientific, cultural and aesthetic protection, subject to conditions.

As such, the development is consistent with this stated objective.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

Comment:

The proposal for alterations and additions to an existing dwelling house is compliant with the numerical requirement for Floor Space Ratio under the Manly LEP 2013. The conditioned landscaping will improve the landscaping features on the site. The landscaping softens and screens the built form when viewed from the neighbouring sites and the Middle Harbour water foreshore.

The conditioned canopy trees will ensure that the proposed dwelling house sits within a natural setting and below the existing tree canopy.

As such, the development is consistent with this stated objective.

- *To ensure that development, by way of its character, design, location and materials of*

construction, is integrated into the site and natural surroundings, complements and enhances the natural environment and has minimal visual impact.

Comment:

The proposed dwelling has no unreasonable impact on existing tree canopies, with additional canopy trees and landscaping to be included as part of the proposal.

Therefore, the size and scale of the proposal and addition of significant trees and vegetation will ensure the proposal will not not dominate scenic qualities of the foreshore.

As such, the development is consistent with this stated objective.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

Comment:

The proposal alterations have been designed to respond to the steep topography. The dwelling house will provide the occupants an increased level of amenity without causing unreasonable impacts to adjoining neighbours or to the site itself.

The development does not result in any adverse impact on native trees, in addition to the proposal requiring minimal excavation for the supporting posts and foundations.

There is no works proposed in the foreshore area, or below the high water mark of Middle Harbour, therefore there is no negative impact as a result of the proposal.

As such, the development is consistent with this stated objective.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Comment:

The proposal involves appropriate landscaped open space which satisfies the objectives of the MDCP 2013. Subject to conditions, the proposal will be consistent with this objective.

As such, the development is consistent with this stated objective.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment:

Whilst larger in size, the proposal will step down the steep topography to ensure the similar bulk and scale is minimised and consistent with the Seaforth area and surrounding dwellings.

Landscaping is to be retained and conditioned as part of the proposal. The landscaping will screen and soften the proposed built form. The design has a more open feel with high quality natural finishes responding to the natural natural vegetated context in which the site is located. The development will retain the existing foreshore vegetation and continue to maintain the existing trees for the wildlife corridors.

Privacy, amenity and solar access are provided for within the proposed development. Therefore, the proposed development will have a negligible impact on surrounding residences.

As such, the development is consistent with this stated objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E3 Environmental Management zone.

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 24 May 2019, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building Development Standard associated with a single dwelling house (Class 1 building).

Special height provisions

Description of non-compliance:

Development standard:	Special height provisions
Requirement:	RL38.83
Proposed:	RL41.331
Percentage variation to requirement:	6.4%

Assessment of request to vary a development standard

The following assessment of the variation to Clause 4.3A – Special Height Provisions 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 4.3A – Special height provisions development standard is not expressly excluded from the operation of this clause.

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

The applicants written submission states the development is justified in this instance for the following reasons:

- *Compliance with the height control is constrained by the siting of the building and sloping topography of the site.*
- *The proposed development is designed to respect the sloping topography of the site. The development does not result in a significant bulk when viewed from either the street or the neighbouring properties, and will not exceed the existing maximum ridge height of the dwelling.*
- *The development will maintain a compatible scale relationship with the existing residential development in the area. Development in the vicinity has a wide range of architectural styles and the given the variety in the scale of development, this proposal will reflect a positive contribution to its streetscape.*
- *The proposed additions will reduce the existing overall building height of the dwelling currently on site. As such the additions will not obstruct any public views of Sydney Harbour from the road which is the objective of the height control.*

It is accepted that the design will have an improvement on views from the public domain by a lower roof of RL41.331 and that there will be an improvement in safety by reducing the length and steepness of the driveway for greater visibility to the street.

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 Special Height Provisions development standard and the objectives of the E3 Environmental Management zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3A– 'Special height provisions' of the MLEP 2013 are:

(1) The objective of this clause is to maintain public views to Sydney Harbour from street level on local roads above steeply sloping sites on certain land.

Comment:

The proposal involves a replacement of the existing roof that does not comply with the requirement to "*not exceed the height of the highest point of the road adjoining the centre point of the lot boundary that adjoins the road that is the frontage to that lot.*" The proposed roof replacement will reduce the existing overall building height of the dwelling currently on site from RL41.46 to RL41.331 (reduction of 0.13m). As such the new roofline will allow greater public views of Middle Harbour from Seaforth Crescent.

The proposal complies with this objective.

Zone objectives

The underlying objectives of the E3 Environmental Management zone are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

Comment:

The proposal seeks to undertake alterations and additions on a similar footprint to the existing dwelling house, with no significant excavation in order to correspond with the steep sloping topography of the site. The proposal will retain the existing street trees within Councils reserve and additional landscaping as part of the proposal will improve the ecological feature as on the site. The proposal has reasonable measures to ensure ecological, scientific, cultural and aesthetic protection, subject to conditions.

As such, the development is consistent with this stated objective.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

Comment:

The proposal for alterations and additions to an existing dwelling house is compliant with the numerical requirement for Floor Space Ratio under the Manly LEP 2013. The proposed roof replacement will reduce the existing overall building height of the dwelling adjoining Seaforth Crescent street view from RL41.46 to RL41.331 (reduction of 0.13m). As such the new roofline will allow greater public views of Middle Harbour from Seaforth Crescent a adjoining houses on the upside of the escarpment. The conditioned landscaping will improve the landscaping features on the site. The landscaping softens and screens the built form when viewed from the neighbouring sites and the Middle Harbour water foreshore.

The conditioned canopy trees will ensure that the proposed dwelling house sits within a natural setting and below the existing tree canopy.

As such, the development is consistent with this stated objective.

- *To ensure that development, by way of its character, design, location and materials of construction, is integrated into the site and natural surroundings, complements and enhances the natural environment and has minimal visual impact.*

Comment:

The proposed dwelling has no unreasonable impact on existing tree canopies, with additional canopy trees and landscaping to be included as part of the proposal.

The reduction in the building height of the dwelling from RL41.46 to RL41.331 (reduction of 0.13m), combined with variety of high quality natural finishes and building materials will complement and enhance the natural environment and minimise bulk and scale.

Therefore, the size and scale of the proposal and addition of significant trees and vegetation will ensure the proposal will not not dominate scenic qualities of the foreshore.

As such, the development is consistent with this stated objective.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

Comment:

The proposal alterations have been designed to respond to the steep topography. The proposed

roof replacement will reduce the existing overall building height of the dwelling adjoining Seaforth Crescent street view from RL41.46 to RL41.331 (reduction of 0.13m). As such the new roofline will allow greater public views of Middle Harbour from Seaforth Crescent a adjoining houses on the upside of the escarpment.

The development does not result in any adverse impact on native trees, in addition to the proposal requiring minimal excavation for the supporting posts and foundations.

There is no works proposed in the foreshore area, or below the high water mark of Middle Harbour, therefore there is no negative impact as a result of the proposal.

As such, the development is consistent with this stated objective.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Comment:

The proposal involves appropriate landscaped open space which satisfies the objectives of the Many DCP 2013. Subject to conditions, the proposal will be consistent with this objective.

As such, the development is consistent with this stated objective.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment:

Whilst larger in size, the reduction in the overall building height of the dwelling adjoining Seaforth Crescent street view from RL41.46 to RL41.331 (reduction of 0.13m) will allow greater public views of Middle Harbour from Seaforth Crescent a adjoining houses on the upside of the escarpment.

Landscaping is to be retained and conditioned as part of the proposal. The landscaping will screen and soften the proposed built form. The design has a more open feel with high quality natural finishes responding to the natural natural vegetated context in which the site is located. The development will retain the existing foreshore vegetation and continue to maintain the existing trees for the wildlife corridors.

Privacy, amenity and solar access are provided for within the proposed development. Therefore, the proposed development will have a negligible impact on surrounding residences.

As such, the development is consistent with this stated objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E3 Environmental Management zone.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 24 May 2019, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building / Floor space ratio Development Standard associated with a single dwelling house (Class 1 building).

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 888.5sqm (includes access handle for the inclinator)	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	E: 8m	5.8m - 8.0m	-	Yes
	W: 8m	2.8m - 7.7m	-	Yes
4.1.2.2 Number of Storeys	2	4	-	No
4.1.2.3 Roof Height	Height: 2.5m	0.7m	-	Yes
4.1.4.1 Street Front Setbacks	6m	4.3m garage 3.4m - 3.7m Entry	28% up to 43%	No No
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.67m (based on wall height 8m)	East 7m Garage 3.1m - 3.3m Dwelling 4.0m Garden 2.5m External Stairs West 1.927m Entry 1.927 Terrace 1.0m External Stair 8.164m Dwelling 1.2m Garden Retaining Wall	- - - 6.36% 27% 27% 50% - 55%	Yes Yes Yes No No No No Yes No
	Windows: 3m	>3m	-	Yes
4.1.4.4 Rear Setbacks	8m	8m - 13.4m Dwelling 5m Terrace 3m Garden retaining wall	- 37.5% 62.5%	Yes No No
4.1.5.1 Minimum Residential Total Open Space Requirements	Open space 60% of site area (533.1sqm)	62% (553.87)	-	Yes

Residential Open Space Area: OS4	Open space above ground 25% of total open space (138sqm)	30% (166sqm)	-	No
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	39% (213.5sqm) *excludes sqm access handle for inclinator	2.5%	No
4.1.5.3 Private Open Space	18sqm per dwelling	> 18sqm	-	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	6m	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Compliance Assessment

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
Facilities)		
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The MDCP requirements and objectives, pursuant to *Clause 3.1.1 Streetscape (Residential area)*, including sections 3.1.1.1 to 3.1.1.5, are addressed as follows:

Merit Assessment Comments:

The proposal is required to be consistent with Complementary Design and Visual Improvement design outcomes including streetscape considerations for setbacks, materials and built form.

As outlined in the built form controls table, the new garage, while non-compliant with the front setback control, is consistent with the MDCP requirements and has acceptable articulation and materials along front wall planes to address visual impact on the street and adjacent land.

Wall heights have been varied due to the sloping site, with the use of landscaping, window fenestration and other elements (such as openings, terraces and new entry areas) assisting to ensure no unreasonable impacts of bulk.

The building does include ancillary elements that extend / protrude into the setback areas. However, the setbacks are inline with existing non-compliant setbacks and consistent with objectives of the control.

Due to the sloping nature of the site, and the difficulty of vehicle access the applicant has selected to incorporate a suspended concrete driveway to access a double garage. This improves vehicle access, and the siting of the garage in front of the existing dwelling house minimises the bulk and scale of the garage structure to Seaforth Crescent.

In consideration of the Seaforth Crescent frontage, the building has a lower roof profile and continues to present as 1/2 storey. The reduction the roof profile from RL41.46 to RL41.331 (reduction of 0.13m) to reduce roof bulk also improves view sharing. The dwelling profile when viewed from Seaforth Crescent is consistent with adjacent houses on the same side of the road as the subject site such as No.169 Seaforth Crescent which is RL41.43.

The Seaforth Crescent streetscape is also characterised sloping the natural topography either side of the road in that dwellings on the lower side have a lower rear elevation / setting with two, three and four storey built form. Those on the high (northern) side of the road, being positioned at a higher natural ground level, are in an elevated position with two to three storeys overlooking the street. The variation to the two storey control does not create an unreasonable impact on surrounding land and is consistent with the pattern of surrounding development on similar sloping positions.

No issue is raised with respect to Clause 3.1.1.5 for the bin storage area as this is concealed from view as part of the garage.

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

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

General Amenity considerations pursuant to *Clause 3.4 Designing for Amenity* are considered as follows:

Merit Assessment Comments:

Design considerations have been made to minimise loss of sunlight, privacy, views, and noise impacts for neighbouring properties and also to the proposed dwelling house. Relevance of the density and pattern of development adjacent (commonly two to four storey dwellings) and local prevailing amenity, including privacy and solar access have been accommodated in the design. This also includes windows, wall setbacks, the removal of the swimming pool and landscaping. A number of selected changes to the plans have been made to accommodate issues raised by neighbouring properties to improve views, reduce bulk, improve privacy and address those concerns.

The design of the proposal is of a contemporary architecture and does not detract from the scenic amenity of the area. In particular, the visual pattern of bulk and design of a development is consistent with adjacent and nearby dwellings and has been considered from surrounding public and private viewpoints. In this regard, the applicant has reduced the extent of various elements of height, roofline, bulk, including deleting the pool element thereby reducing rear setback impacts.

Adequate space on site is retained for open space to provide a landscape setting to meet the recreational needs of the occupier whilst providing appropriate areas for landscaped privacy screening.

The materials and finishes selected are conditioned to be suitable for the surrounding urban environment in terms of reflectivity including the roof material and style and window glazing extent for walls. The use of natural materials and colours are appropriate for the residential nature of the building and do not detract from the existing streetscape and surrounding amenity.

In summary, the proposal has been designed to ensure no unreasonable amenity of existing and future residents and including privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts, subject to conditions.

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

3.4.2 Privacy and Security

Specific privacy requirements and objectives, pursuant to *Clause 3.4.2 Privacy and Security*, are considered as follows.

Merit Consideration:

*To minimise loss of privacy to adjacent and nearby development by:
appropriate design for privacy (both acoustical and visual) including screening between closely
spaced buildings;
and mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

The proposal has been designed to ensure no unreasonable loss of privacy to adjacent and nearby development by the use of design responses including window size, use of translucent glass and window design (width, position and sill heights) to maintain reasonable privacy for the urban environment, including by the configuration of ground level spaces and landscaping (at ground level or planter boxes).

Where existing and new walls are close to the adjacent boundaries of No.177 and No.169 Seaforth Crescent windows are off-set where practicable or designed to ensure no unreasonable impact on the adjacent dwellings with regard to viewing across private open space.

The proposed dwelling has been designed with appropriate response to ensure no unreasonable impacts on privacy (both acoustical and visual) including the consideration of the floor plan elements (bathrooms, bedrooms, living area, landscaping) so that direct viewing is limited or consistent with the surrounding residential environment.

Generally, the orientation of the dwelling is toward the north similar to the existing dwelling outlook. The proposal does not create direct additional unreasonable viewing toward properties adjacent to the site.

The building separation and landscaping is also provided to mitigate impacts on privacy appropriate to residential living in the surrounding residential environment.

Landscaping (including planter boxes) have been incorporated and conditioned to mitigate direct viewing between the subject site and outdoor living areas of adjacent buildings.

Overall the proposal provides an appropriate level of privacy in the context of the surrounding density of the residential living environment without unreasonably compromising access to light and air. Bedrooms areas, being normally occupied less during the day and used for sleeping at night will not be unreasonably impacted.

To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

The proposed amendments includes windows and doors to allow for greater access to light and air without resulting in unreasonable privacy outcomes, and while retaining suitable outlooks and views.

To encourage awareness of neighbourhood security.

Comment:

The development proposes sufficient windows and open balcony areas to allow passive surveillance and encouraging awareness of neighbourhood security.

Having regard to the above assessment, and site inspection made to assess the privacy context in the local surroundings, 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.

3.4.3 Maintenance of Views

Two submissions were received from the following properties which included concerns regarding view loss:

- 88 Seaforth Crescent
- 94 Seaforth Crescent

It was determined that there is no view loss from No. 94 Seaforth Crescent.

The view loss assessment below is undertaken from No. 88 Seaforth Crescent.

Specific view considerations and objectives, pursuant to Clause 3.4.3 Maintenance of Views, are addressed as follows:

Merit consideration:

The development is considered against the Objectives of the Control:

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

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

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.

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

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:

Seaforth Crescent is on a ridgeline position with the street and dwelling houses separating the No. 88 Seaforth Crescent from the harbour foreshore area. Generally No. 88 Seaforth Crescent and surrounding residences have broad vistas with some views extending across 180 degrees from upper balconies or windows. Views at ground level are more interrupted by landscaping, buildings and associated structures.

The views from No. 88 Seaforth Crescent include water views towards Middle Harbour, and the district views to the North Shore.

At present the view is already affected by the roof profile of the existing house on the subject land at a ridge line of RL41.46. Impacts in the view also include power line structures, trees and other

surrounding development that interrupt views at various points or angles / directions.

In the context of the application the potential view loss is the Middle Harbour water views.

The existing water and land views are not significantly obscured buy built form elements, see figure 3 below.



Figure 3: View lines from the lower level front setback of Seaforth Crescent over the subject site.

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:

Views are obtained from the front boundary across the subject site from No.88 Seaforth Crescent are in a sitting and standing position. The views are from the ground and first floor level where the height advantage gives a more favorable view that is less affected since the subject site is substantially lower and falls away steeply from Seaforth Crescent.

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:

The affected property is on the opposite side of Seaforth Crescent that overlooks the subject site in a northerly direction.

Number 88 Seaforth Crescent is a multi-storey dwellings with terraces, glazing and windows that

overlook the street from the front and include front windows at first floor level with significant vistas of Middle Harbour area. View lines are at various angles in relation to distance from the subject site and floor levels from a particular viewing point.

As part of the proposal the roof design and profile of the subject site is to be changed and lowered from RL41.46 to RL41.331 (reduction of 0.13m) to reduce roof bulk and improve view sharing. In this regards No. 88 Seaforth Crescent will actually gain additional water views of Middle Harbour.

On balance, considering the whole of the view, pattern of surrounding development, district outlooks and the improved roof profile of the proposed dwelling in comparison to the existing roof, the view loss is qualitatively considered to be negligible.

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:

An assessment of the non-compliance with the planning controls has been made and in summary the proposed roof form and height does create any unreasonable impact due to reducing the roof profile. The reduction of the roof elements have improved the view lines from No. 88 Seaforth Crescent, with the view impacts having been refined by the applicant reduction in roof elements.

In summary, the overall view impact when considered in terms of the proposed building design approach, landscaping, height, and setbacks is considered satisfactory and does not create an unreasonable view impact for any adjacent or surrounding properties.

The development is further considered against the Objectives of the DCP control as follows:

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

Comment:

The proposal maintains view sharing with a reasonable design response that minimises impacts that are consistent with view sharing principles outlined above. The proposed dwelling house improves view sharing on balance with the change between quantitative and qualitative overall outlook.

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

Comment:

Views from nearby development along Seaforth Crescent where dwellings overlook the site will not be unreasonably disrupted. Seaforth Crescent also has a significant vistas along the road corridor toward Middle Harbour.

Public views along Seaforth Crescent are directed toward the north, and across the subject site due to the pattern of surrounding development and the direction of the street alignment. The alignment of the

building will not have an unreasonable impact on views from adjacent properties and the applicant has reduced selected elements (roofline) of the proposal to ensure minimal view interruption.

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:

The proposal is consistent with the objectives of the Manly DCP to ensure development may take place and the design responds appropriately to the site constraints and opportunities without creating unreasonable view amenity impacts for surrounding development that overlook the site.

The proposal has sought to maintain a lower roof profile (lower than the existing house) and improves view sharing as demonstrated. On balance, in considering the whole of views available from various positions and relevant properties and view lines in particular over / through the site, the proposal is considered to be consistent with this objective.

Having regard to the above assessment, and site inspection made to assess the view context in the local surroundings, 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.

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

Description of non-compliance

Clause 4.1.2.1 stipulates maximum allowable wall heights for development based on a calculation of the slope of land under a wall.

The east and west new elevations complies with the 8m control.

However, in accordance with Clause 4.1.2.2 of the MDCP, buildings are restricted to a maximum of two storeys. The proposed development would result in four storeys, thereby contravening the control. Multi-level housing of three and four storeys is a characteristic of the area and streetscape. For example in the immediate area No. 155 and No. 157 Seaforth Crescent demonstrate as four storey dwelling houses and No. 169b, No. 114 and No. 112 Seaforth Crescent demonstrate as being three storey dwelling houses.

Merit consideration

Clause 4.1.2 Height of Buildings of the MDCP 2013 relies on the objectives of Clause 4.3 Height of Buildings of MLEP 2013. With regard to the consideration for a variation, the development is considered against the relevant objectives of Clause 4.3 as follows:

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 development, although modern in design, will not appear dissimilar to that of surrounding existing and recently approved development. The portion of the dwelling that exceeds beyond the allowable storey limit are not distinctly discernible from the public domain. The property has a steep gradient and the floor to ceiling heights being proposed are consistent are not unreasonable or excessive such that they create any unreasonable impact on view, amenity, overshadowing or building

bulk and scale. In turn, the development is considered consistent with the existing and desired future character of the streetscape and wider locale.

The development satisfies this objective.

To control the bulk and scale of buildings.

Comment:

The building presents as single storey when viewed from Seaforth Crescent and four storeys when viewed from neighbouring sites. The stepping of each level for the house and inclusion of open balcony spaces with landscaping assist to break up wall heights and do not create unreasonable impacts for the building bulk in terms of amenity impacts. In this regard, the principal usable private open space for the terraces width / balcony area are located toward the north and north-east of the building to direct the outlook toward the views of middle harbour.

The proposed development is well articulated and modulated such that the visual dominance of the built form is broken up as a result. The development comprises a new flat roof style at the rear, and changes in colours and finished finishes which modernises and breaks up the bulk and scale. The proposal will also maintain sufficient landscape treatment, which in turn will contribute to the softening and screening of the development.

The development satisfies this objective.

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 four levels will not result in the unreasonable loss of views or vistas from public or private spaces, particularly as the developed is stepped down the escarpment, and only visible to the neighbouring sites.

The development satisfies this objective.

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

The development satisfies this objective.

In summary, the proposal is considered to be of a satisfactory architectural design and built form with regard to non-compliance with the storeys considerations pursuant to the Manly DCP. The non-compliance to the number of storeys does not create any unreasonable impacts of overshadowing, views, bulk or general amenity to adjacent land.

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

proposal is supported, in this particular circumstance.

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

Description of non-compliance

Clause 4.1.4.1 - Street Front Setbacks

Clause 4.1.4.1 requires development to provide a setback of 6.5m to the front boundary. In this respect, the development provides the following front setbacks:

- 4.3m Garage
- 3.4m - 3.7m Entry

Clause 4.1.4.2 - Side Setbacks

Clause 4.1.4.2 requires development to provide variable side setbacks based on the proposed wall height. In this respect, the development provides the following side setbacks to the west and east:

East (side) Setback

- 7m Garage
- 3.1m - 3.3m Dwelling
- 4.0m Garden

West (side) Setback

- 1.927m Entry
- 1.927m Terrace
- 1.0m External Stair
- 8.164m Dwelling
- 1.2m Garden Retaining Wall

The proposal also does comply with the control for setback to windows facing the boundary (3.0m). In this regard, there are windows which face the boundary which are 3.1m - 3.3m from the boundary.

Clause 4.1.4.4 - Rear Setback

Clause 4.1.4.4 requires development to provide an 8.0m rear setback. In this respect, the development provides the following rear setbacks:

North (Rear) Setback

- 8m - 13.4m Dwelling
- 5m Terrace
- 3m Garden retaining wall

The proposed swimming pool was removed from the proposal via amended plans.

Merit Consideration

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

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

Comment:

The proposal has maintained the existing position of the building footprint with the variations following the existing side setbacks. Consistency is maintained to the Seaforth Crescent building line with neighbouring properties, including a front setback of the garage consistent with the adjoining carport. For the lower side of Seaforth Crescent, a multi-storey character is dominant with level garages/carports a common element at an upper level on sloping sites.

Similarly, the front setback provides desired spatial proportions and is reflective of the difficulty in parking access on sloping sites, and setbacks of other parking structures close to the street, i.e No. 104 & No. 105 Seaforth Crescent and No.165A & No. 167 Seaforth Crescent. As a result the non-compliance with the parking structure is consistent with the streetscape and and to respond to the character of the locality.

Overall, it is considered that the proposed side setbacks are consistent with that of the existing site and surrounding developments within the immediate vicinity. As such, the proposed development maintains the existing desired spatial proportions of the street, the street edge (including nature strip area) and the landscape character of the street.

The development satisfies this objective.

To ensure and enhance local amenity by:

- *providing privacy.*
- *providing equitable access to light, sunshine and air movement.*
- *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.*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The separation of the built form enables the development to satisfactorily respond to this objective as follows:

As detailed within *Clause 3.4.2 Privacy* of this report, the proposed building windows and building design is reasonably offset from the property boundaries such that direct overlooking is avoided into private open space areas thereby providing reasonable levels of privacy.

As detailed within *Clause 3.4.1 Sunlight Access and Overshadowing* of this report, the proposal is considered to maintain equitable access to light.

As detailed within *Clause 3.4.1 Maintenance of Views* of this report, no unreasonable view loss is expected to arise as a result of the proposal.

The proposal is consistent with maintaining local amenity by the design response to ensure no

unreasonable impact on privacy (by windows, balconies, screens, landscaping and the like) and providing equitable access to natural light, direct sunlight and air circulation for the proposed dwelling and the surrounding environment.

In this regard, varied western setbacks of 3.1m to 3.3m and the existing eastern setback of 1.9m includes recessed elements and breaks in the side walls to reduce impacts of bulk and scale. Building separation is provided for the western adjoining sites via varied setbacks and the access handle for the inclinator and to the eastern adjoining sites for the varied setbacks and incorporation of open garden areas. As a result the proposal does not have any unreasonable impact on Seaforth Crescent or adjacent properties.

As above, the additional non-complaint elements of the proposal would not be readily evident from the street and hence, it is not considered to impact upon the streetscape

The proposed development would not impact upon traffic conditions

The development satisfies this objective.

To promote flexibility in the siting of buildings.

Comment:

The proposed setbacks are reflective of the existing format of the dwelling house development and its attempt to respond to the existing structures on the site. In this way, the development adopts a similar siting of the buildings to preserve the landscaped areas of the site and its relationship to its surrounds.

The proposal is consistent with the MDCP objective to allow for the flexibility in the siting of buildings while allowing for view sharing and maintaining adequate space between buildings including views and vistas from private and public spaces. The location of parking structures fronting Seaforth Crescent are not regularly on 6.5m with some being close to the boundary line along Seaforth Crescent near the site. The garage entry will maintain safe and adequate traffic conditions, including visibility for car egress and pedestrians.

The retaining wall features within 8.0m rear setback allow level and stepped recreational areas to be incorporated into the sloping site to provide greater amenity to the occupants. Elements of landscaping used to provide visual interest and amenity to the rear setback areas whilst still providing areas for landscaping for screening purposes.

The development satisfies this objective.

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:

No significant vegetation is required to be removed in order to facilitate the proposed works. Adequate side and rear setbacks have been proposed to maintain natural features of landscaping including deep soil zones and appropriate planting subject to conditions.

The nature of development does not unduly detract from the context of the site and particularly in relation to road frontages and front and side setbacks including the context of neighbouring properties

and the prevailing building lines in the immediate vicinity.

The development satisfies this objective.

To assist in appropriate bush fire asset protection zones.

Comment:

The 'Northern Beaches Bush Fire Prone Land Map (NBBFPLM) was certified by the Commissioner of the NSW Rural Fire Service on 7 August 2020. The NBBFPLM is in force from 7 August 2020. As a result, the former Pittwater, Manly and Warringah Bush Fire Prone Land Maps (BFPLMs) have been superseded by the NBBFPLM.

The subject site is affected by these changes to the Bushfire mapping, as the property is no longer bush fire prone.

Consequently, the Bushfire Hazard Assessment written by Bushfire Planning and Design, dated 14 August 2018, that was lodged with the application is no longer required to be included within the conditions of consent.

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

The control requires a minimum of 60% of the site area to be provided as total open space, with a maximum of 25% provided above ground and a minimum of 40% of the open space to be provided as landscaped area. The control also requires a minimum of three (3) native trees to be provided on the site.

The proposed development provides 62% or 553.8sqm of the site area as total open space, of which 30% or 166sqm is above ground and 39% or 213.5sqm is landscaped area (excluding the access handle to the waterfront).

As a result there is a minor non-compliance with the total open space area above the ground and with the landscaped area when the access handle is excluded.

Merit consideration:

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

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

Comment:

The development proposes additional landscaping and canopy trees, with conditions also applied to ensure this requirement is met. Landscaping is to be incorporated and enhanced within the side setbacks, and rear of the site through additional planting at ground level, and within the proposed

planter boxes within the garden courtyard. The landscaped areas do not involve any significant excavation of the landform, therefore allowing for additional vegetation on the 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:

The proposed development generally retains the existing amount of soft landscaped area on the site, which despite being non-compliant, is considered to be maximised based on the footprint of the existing dwelling house and the associated ancillary development.

Although the proportion of the total open space provided above ground exceeds the limit under the control, the natural topography of the land at the rear of the site makes it difficult to provide open space at natural ground level and any such space would likely not be as usable as the open space currently provided. As a result the provision of a greater amount of elevated open space is considered to be appropriate in this instance.

The proposed development provides for conditioned additional tree planting, which is acceptable based on the site constraints, including the limited amount of soft landscaped areas on the site.

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

Comment:

The proposed development maintains and enhances the amenity of the site, the streetscape and the surrounding area in relation to sunlight, privacy and views by lowering the roof line at the front of the site, removing the existing and proposed swimming pool, and incorporating areas orientated towards the view lines to middle harbour and not the private open space of neighbouring sites. Planter boxes are incorporated on the lower ground floor elevated garden area to ensure a direct line of sight is not directly towards neighbouring private open spaces areas but to also screen direct viewing.

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

Comment:

Council's Development Engineer has reviewed the proposed development and has recommended conditions to ensure that the stormwater generated by the proposed development is disposed of in an appropriate manner.

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

Comment:

The proposed development does not include the planting of any noxious or invasive weeds and generally retains the existing amount of soft landscaped areas, which are easy to maintain and keep weed-free.

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

Comment:

The proposed development maximises wildlife habitat and the potential for wildlife corridors by providing additional vegetation and canopy trees within the site, including the native tree within the front yard.

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

4.4.5 Earthworks (Excavation and Filling)

Description of non compliance

The Manly DCP 2013 permits a maximum fill of 1m. The proposal includes a fill of up to 3.6m for the landscaping at the rear of the site. See Figure 4 below.

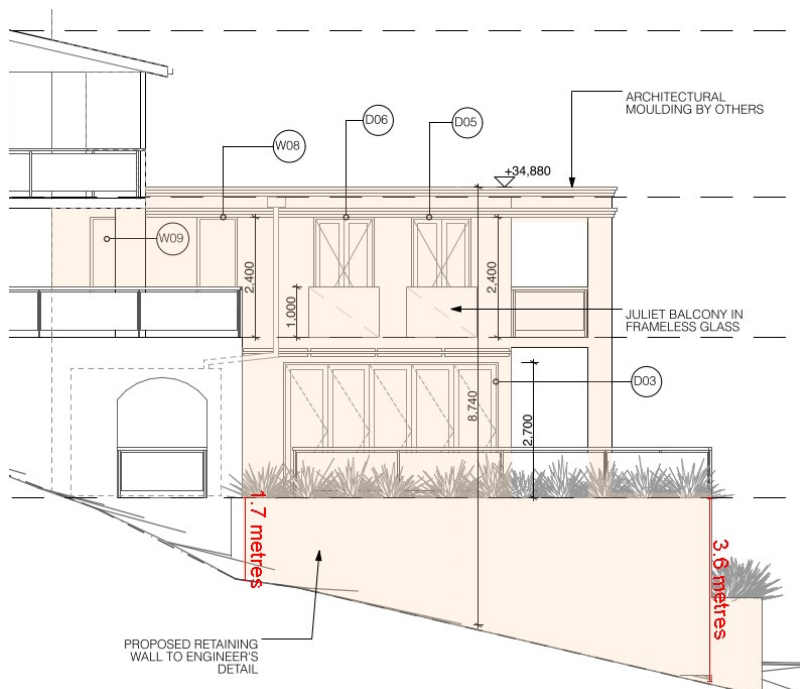


Figure 4. Area of fill to create a level garden area at the rear of the site.

The DCP requires that excavation be generally limited to an area of 1.0m below natural ground level. Excavation is proposed to a depth of 2.5m at the rear of the lower floor plan. The subterranean area contains library/gallery area. The excavation is not within side boundary setback areas.

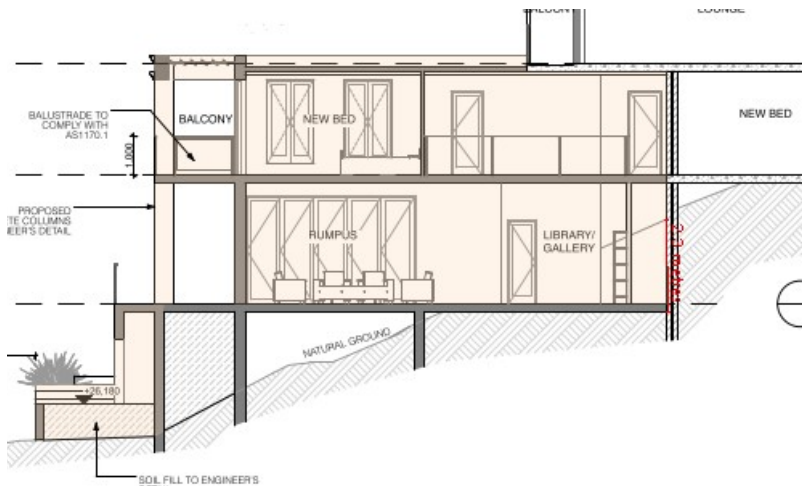


Figure 5: Area of excavation for the library/gallery area.

A Geotechnical Report has been submitted in support of the proposal. In the event of an approval, a condition of consent will require compliance with the recommendations contained in the Geotechnical Report.

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 the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

Limiting excavation, "cut and fill" and other earthworks;

Discouraging the alteration of the natural flow of ground and surface water;

Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and

Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.

The application seeks consent for excavation beneath the footprint of the existing dwelling, with a maximum proposed depth of 2.3m, inconsistent with the 1m maximum prescribed by this control. Whilst the extent of excavation is not insignificant, it is appreciated that the proposed excavation is generally limited to the footprint of the development, and does not result in any additional impacts upon existing vegetation or rock outcrops. As such, the proposed development is considered to be consistent with the relevant objectives of this development control.

The proposal includes fill in the rear of the site to allow for a more gradual stepped recreational area. The non-compliance is up to 2.6m above the permitted level of fill. The proposed non-compliance will not result in any unreasonable impacts on the neighbouring sites or landscape character of the locality. The subject site has a very steep slope with the infill garden area creating the only level garden area on the site. This creates a great improvement to the recreational areas and amenity for the occupants. The remainder of the development has been designed to follow the topography of the land, provide complying side setback, with additional garden areas also stepped down the site. The proposal will retain the existing landscape character of the locality.

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

5.4.1 Foreshore Scenic Protection Area

The proposed development presents as four storeys when viewed from the Middle Harbour. However, the proposed design is more articulated than the existing dwelling house, with depth variation between the levels and within each level. The articulation and stepping in the rear facade will ensure the proposed development will not appear out of scale with surrounding dwellings.

The visual impact of the proposed works will be lessened over time with the growth of the proposed landscaping, and ultimately, there will be a significant improvement in the presentation to Middle Harbour.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$7,200 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$720,000.

CONCLUSION

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

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

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

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP

- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 4.3A Special Height Provisions 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.

The proposal is considered to be a suitable form of development for the site, in that it maintains the similar context to the existing house and swimming pool currently on the site. The new roof line at the Seaforth Crescent street frontage is lower in overall height, with the building height of the rear proposed development demonstrating a minor variation over the balcony area. The building is consistent in height and scale to the existing pattern of surrounding residential development.

The public submissions received have been considered and are addressed within this report, and conditions have been applied where appropriate to address those concerns, including; landscaping, privacy, traffic safety, parking, access and stormwater. In order to reduce impacts, the applicant has deleted the new swimming pool construction from the proposed works and made minor changes to reduce bulk, improve privacy and accommodate further view sharing considerations.

The requirements of the Manly LEP and Manly DCP apply and in this regard, matters relating to desired future character, setbacks, building envelope, bulk and scale, external materials, overshadowing, privacy, views, stormwater and traffic have been addressed. In this case, the non-compliances with the built form controls are addressed in accordance with the objectives and requirements of those considerations. The proposed variation to building height is supported pursuant to the request made to vary the development standard under Clause 4.6 of the MLEP and for the reasons outlined in the merit assessment provided.

The proposal will not have an unreasonable impact in relation to view sharing from adjacent and nearby properties in Seaforth Crescent. General amenity impacts such as may commonly arise during construction works are addressed by standard conditions (including dilapidation, dust, noise, site management and the like). Suitable conditions are recommended to address stormwater engineering, vehicle access and landscape related issues as detailed in this report.

The proposal displays reasonable scale and density compatible with the surrounding development of Seaforth Crescent.

Accordingly, the application is referred to the DDP with a recommendation for approval.

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2020/0126 for Alterations and additions to an existing dwelling house on land at Lot 1 DP 555814, 173 Seaforth Crescent, SEAFORTH, 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
Site Plan 05 Issue L	20/08/2020	Jayn Design
Demolition Plan 03 Issue L	20/08/2020	Jayn Design
Excavation and Fill Plan 04 Issue L	20/08/2020	Jayn Design
Lower Floor 2 Plan 06 Issue L	20/08/2020	Jayn Design
Lower Floor Plan 07 Issue L	20/08/2020	Jayn Design
Ground Floor Plan 08 Issue L	20/08/2020	Jayn Design
First Floor Plan 09 Issue L	20/08/2020	Jayn Design
South Elevation Plan 10 Issue L	20/08/2020	Jayn Design
East Elevation Plan 11 Issue L	20/08/2020	Jayn Design
North Elevation Plan 12 Issue L	20/08/2020	Jayn Design
West Elevation Plan 13 Issue L	20/08/2020	Jayn Design
Section Plan AA 14 Issue L	20/08/2020	Jayn Design
Section Plan BB 15 Issue L	20/08/2020	Jayn Design
Section Plan CC 16 Issue L	20/08/2020	Jayn Design
Section Plan DD 17 Issue L	20/08/2020	Jayn Design
Roof Plan 18 Issue L	20/08/2020	Jayn Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Preliminary Risk Investigation	17/08/2018	Envirotech Consulting Group

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

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

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

2. **Prescribed Conditions**

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such

damage.

- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

3. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa

area.

- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$7,200.00 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 \$720,000.00.

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

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

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

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

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

5. Security Bond

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the 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 Security Bond (Crossing / Kerb)

The applicant is to lodge a Bond of \$10,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

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

7. Stormwater Disposal

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the existing inter-allotment drainage line benefiting the property.

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

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

8. Traffic Management and Control

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

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

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are 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 suspended driveway crossing and any retaining walls which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified Consulting Engineer. The design must include the following information.

1. The suspended structure is to be structurally independent to any existing structures in Council's road reserve.
2. Barriers in accordance with the requirements of AS/NZS2890.1:2004 are to be provided along any elevated portions of the driveway.
3. Approval from the relevant authority for any services that need to be modified for the proposed works.

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 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.

10. **Vehicle Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

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

Reason: To ensure suitable vehicular access to private property.

11. **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.

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

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

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

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

13. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

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

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

14. **Tree Root Investigation and Tree Root Map**

Prior to the issue of a Construction Certificate, a tree root mapping investigation within the tree protection zone of the existing Angophora identified as tree 3 in the Arboricultural Impact Assessment, shall be undertaken and a Tree Root Map shall be documented that will be the basis for determining construction methodology to be utilised for the proposed suspended driveway.

An Arborist with minimum AQF Level 5 in arboriculture shall supervise the investigation works to verify tree root locations. A non-destructive root investigation shall be conducted complying with clause 3.3.4 of AS 4970-2009 Protection of Trees on Development Sites.

The root investigation shall map existing roots of significance that must not be impacted by construction works. The tree root investigation shall be conducted to confirm the following data to be used for the location/alignment of the proposed suspended driveway:

- i) confirmation of the location of any tree roots at or >25mm (Ø) diameter to areas that require excavation for proposed works. Alternative alignment of proposed works shall be provided as necessary to avoid major roots, and
- ii) mapping of the suitable location/alignment of pier footings to support the proposed suspended driveway.

The Tree Root Map shall be issued to the qualified Structural Engineer as a basis for structural design, and for determining the final location/alignment and construction methodology of proposed works within the tree protection zone (TPZ).

Reason: ensure protection of existing trees.

15. **Suspended pier footing design for driveway near existing Angophora**

a) The Pier Footing Structural Layout and Design Plan for the proposed suspended driveway shall be developed in co-ordination with an Arborist with AQF minimum Level 5 qualifications in arboriculture, and a qualified Structural Engineer.

b) The Arborist shall review, comment, recommend design revision as required and approve the pier footing layout, to ensure the locations of piers will be manageable in terms of tree protection measures to preserve the tree roots of the existing Angophora identified as tree 3 in the Arboricultural Impact Assessment.

c) The Arborist shall submit certification to the Certifying Authority, that the locations of the pier

footings are accepted.

d) The agreed Pier Footing Structural Layout and Design Plan shall be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate.

Reason: tree protection.

16. Compliance with Standards

The development is required to be carried out in accordance with all relevant Australian Standards.

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

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

17. Finishes to the External Walls and Roof

The finish to the external walls and external roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are 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. (DACPLC03)

18. 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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

19. Pre-Construction Dilapidation Report

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

- 169 Seaforth Crescent
- 173 Seaforth Crescent
- 177 Seaforth Crescent

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

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

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

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

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

20. **Tree removal within the property**

This consent approves the removal of the following trees within the property (as recommended in the Arboricultural Impact Assessment):

- tree 8 (Coopers Tree Fern)
- tree 9 (Coopers Tree Fern)

The following Exempt Species do not require Council consent for removal:

- tree 7 (Traveller's Palm), tree 10 (Lemon), tree 11 and 13 (Evergreen Elder), tree 12 (Golden Cane Palm), tree 14 and 18 (Cocus Palm), tree 15 and 16 (Alexander Palm), and tree 17 (Kentia Palm)

Reason: to enable authorised building works

Note: Any request to remove a tree approved for retention under the development application is subject to a Section 4.55 modification application, or an assessment by an Arborist with minimum AQF Level 5 in arboriculture that determines that the tree presents an imminent risk to life or property.

21. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites.

The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, ground protection, as well as the pier footing locations for the suspended driveway.

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

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment or as imposed by conditions of consent, including:

- i) excavation and construction works near tree 3 Angophora in accordance with the approved

Pier Footing Structural Layout and Design Plan,
ii) section 2.2 Recommended tree management & protection principles, listed in the Arboricultural Impact Assessment, clauses 2.2.1 and 2.2.2.

All tree protection measures specified must:

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

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

Note: A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.

Reason: tree protection.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

22. Road Reserve

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

Reason: Public safety.

23. Removing, Handling and Disposing of Asbestos

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

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

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

24. Survey Certificate

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

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

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

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with

levels indicated on the approved plans.

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

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

25. Installation and Maintenance of Sediment Control

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

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

26. Structural Works Supervision in Road Reserve

The Applicant shall ensure all structural works approved in the Infrastructure Works on Council Roadway application are supervised by an appropriately qualified and practicing Structural Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works.

27. Traffic Control During Road Works

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

28. Vehicle Crossings

The Applicant is to construct one vehicle crossing 3.5 metres wide at the kerb to 7 metres wide at the boundary in accordance with Northern Beaches Council Drawing No A4-3330/5 EL and the Infrastructure on Council's Roadway application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

29. Waste Management During Development

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

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

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

30. **Tree and vegetation protection**

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

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

b) Tree protection shall be undertaken as follows:

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

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment prepared by Rain Tree Consulting.

The Certifying Authority must ensure that:

d) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection

measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: tree and vegetation protection.

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

31. **Landscape completion**

Landscaping is to be implemented in accordance with the following conditions:

- i) the rear boundary shall contain 5 small trees (*Elaeocarpus reticulatus* or any other selected native tree(s) listed in the Tree Guide on Council's website), evenly spaced within a garden bed along the boundary, and planted at a minimum 75 litre container size,
- ii) along the rear boundary, in between the small tree planting, screen planting of selected shrub species capable of attaining a height of 3 metres at maturity, shall be installed at minimum 1 metre intervals and be of a minimum container size of 200mm at planting in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
- iii) planting as shown on Plan 07 along the boundary as screening trees shall be selected shrub species capable of attaining a height of 3 metres at maturity, shall be installed at minimum 1 metre intervals and be of a minimum container size of 200mm at planting in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
- iv) all planters shall consist of low height shrub, accent and groundcover planting,
- v) all other landscape areas shall be either lawn or prepared garden beds containing a range of shrubs, accents and groundcovers.

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 any conditions of consent.

Reason: environmental amenity.

32. **Condition of retained vegetation - Project Arborist**

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

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

Reason: tree protection.

33. **Stormwater Disposal**

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

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

development.

34. Post-Construction Dilapidation Report

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works for the following properties:

- 169 Seaforth Crescent
- 173 Seaforth Crescent
- 177 Seaforth Crescent

The report must:

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

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

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

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

35. Certification Elevated Parking Facility Work

The Applicant shall submit a Structural Engineers' certificate certifying that the elevated parking facility was constructed in accordance within this development consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical controls. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Safety and Compliance with this consent.

36. Waste Management Confirmation

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

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

37. Landscape maintenance

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

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

Reason: to maintain local environmental amenity.