

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0950	
Responsible Officer:	Kent Bull	
Land to be developed (Address):	Lot A DP 334786, 68 Birkley Road MANLY NSW 2095	
Proposed Development:	Alterations and additions to a dwelling house including a secondary dwelling and swimming pool	
Zoning:	Manly LEP2013 - Land zoned R1 General Residential	
Development Permissible:	Yes	
Existing Use Rights:	No	
Consent Authority:	Northern Beaches Council	
Land and Environment Court Action:	No	
Owner:	Georgi Anne Bates	
Applicant:	Georgi Anne Bates	
Application Lodged:	02/09/2019	
Integrated Development:	No	
Designated Development:	No	
State Reporting Category:	Residential - New second occupancy	
Notified:	11/09/2019 to 25/09/2019	
Advertised:	Not Advertised	
Submissions Received:	1	
Clause 4.6 Variation:	Nil	
Recommendation:	Approval	
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PROPOSED DEVELOPMENT IN DETAIL

Estimated Cost of Works:

The application seeks consent for the alterations and additions to a dwelling house including a secondary dwelling and swimming pool. In particular the works include:

\$ 289,200.00

- Construction of a garage including a store and laundry with a secondary dwelling above;
- Swimming pool within the rear yard;
- Landscaping works including the removal of native canopy trees; and
- Privacy screen to the southern side of the front dwelling entry porch.

ASSESSMENT INTRODUCTION

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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 - 5.4 Controls relating to miscellaneous permissible uses

Manly Development Control Plan - 3.3.1 Landscaping Design

Manly Development Control Plan - 3.3.2 Preservation of Trees or Bushland Vegetation

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

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

SITE DESCRIPTION

Property Description:	Lot A DP 334786, 68 Birkley Road MANLY NSW 2095
Detailed Site Description:	The subject site is known as 68 Birkley Road, Manly and legally referred to as Lot A DP 334786. The site consists of one allotment located on the eastern side of Birkley Road.
	The site is regular in shape with a frontage of 7.01m along Birkley Road, a second frontage of 7.01m to Lawson Place and a depth of 48.77m. The site has a surveyed area of 341.8m². Pedestrian access is gained via both frontages, and vehicle access is provided via Lawson Place.
	The site is located within the R1 General Residential zone of the Manly LEP 2013 and accommodates a dwelling house towards the front of the site, with a single vehicle garage located towards the rear.

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The slope of the site is measured at 2%, falling approximately 1m from the rear boundary facing Lawson Place to the front boundary facing Birkley Road.

The site contains a number of small garden beds and two large native canopy trees within the rear yard.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by a range of residential development including detached and semi-detached dwellings, dual occupancies and residential flat buildings.





SITE HISTORY

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

23 May 2008

Development Application No. DA0504/2007 - Part 1 - for the alterations and additions to existing dwelling including new first floor addition was granted consent on 23 May 2008.

29 November 2010

DA0504/2007 - Part 2 - Section 96 to modify approved alterations and additions to the existing dwelling was granted consent on 29 November 2010.

14 June 2012

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DA0504/2007 - Part 3 - Section 96 to modify approved alterations and additions to the existing dwelling was granted consent on 14 June 2012.

24 September 2018

Development Application No. DA2018/1079 for the demolition works and construction of a garage and secondary dwelling including swimming pool and fence was granted consent on 24 September 2018.

26 August 2019

Modification Application No. Mod2019/0405 for the modification of DA2018/1079 was withdrawn on 26 August 2019.

APPLICATION HISTORY

2 September 2019

Subject Development Application received by Council.

24 September 2019

Phone conversation between the property owner of 29 Quinton Road and the Development Assessment Officer raising concerns regarding privacy.

29 September 2019

Photo evidence provided to Council confirming the notification sign had been in place during the course of the notification period.

1 October 2019

Site inspection undertaken. Owner's partner present on-site.

4 October 2019

Phone conversation between the Applicant's Architect and the Development Assessment Officer to resolve matters concerns FSR and the secondary dwelling setback to Lawson Place.

7 October 2019

Revised architectural plans and updated BASIX Certificate received addressing concerns raised regarding FSR and the secondary dwelling setback to Lawson Place.

27 September - 8 October 2019

Email correspondence between the Applicant's representative and the Development Assessment Officer.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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Section 4.15 Matters for	Comments
Consideration'	Oca diamanian an "F
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<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.
	Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.
	Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.
	Clause 92 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.
	Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.
	Clause 98 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.
	Clause 98 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.
	<u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of	(i) Environmental Impact

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Section 4.15 Matters for Consideration'	Comments
the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	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.
	(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.
	(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
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 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 1 submission/s from:

Name:	Address:
Mr Robert Michael Fitzpatrick	29 Quinton Road MANLY NSW 2095

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

Privacy

The matters raised within the submissions are addressed as follows:

Privacy

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Comment:

A submission in support was received by the adjacent property owners of 29 Quinton Road. The submission did however raise privacy concerns arising from the east-facing window arrangement facing Lawson Place (marked W.05) for the proposed secondary dwelling. Consideration has been given that the proposal is will not result in direct viewing impacts. See Clause 3.4.2 (Privacy and Security) of the Manly DCP for further discussion.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Landscape Officer	The Arborist's Report and Landscape Plan submitted with the application is noted.
	The plans indicate that 2 existing Eucalyptus trees and one Kentia Palm are to be removed to accommodate the works.
	The Arborist's Report indicates that the Eucalypts are Fair-Poor Condition with a Short Useful Life Expectancy.
	One Eucalypt displays bracket fungi, an indicator of internal decay. The other, <i>Eucalyptus scoparia</i> , is an exempt species under Manly DCP. The Kentia Palm is also an exempt species under Manly DCP.
	The location of the trees within 2m of approved buildings also appear to provide an exemption under MDCP.
	The plans indicate replacement tree planting and general landscape planting to provide a landscaped setting to the proposal.
	In view of the above, no objections are raised to approval subject to conditions as recommended.
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following conditions of consent.

External Referral Body	Comments
,	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is

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External Referral Body	Comments	
	assumed that no objections are raised and no conditions are recommended.	

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

Division 2: Secondary dwellings

Clause 19: Definition

Development for the purposes of a secondary dwelling includes the following:

- (a) the erection of, or alterations or additions to, a secondary dwelling,
- (b) alterations or additions to a principal dwelling for the purposes of a secondary dwelling.

Note: The standard instrument defines secondary dwelling as follows:

"secondary dwelling means a self-contained dwelling that:

- (a) is established in conjunction with another dwelling (the principal dwelling), and
- (b) is on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling, and

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(c) is located within, or is attached to, or is separate from, the principal dwelling."

Comment:

The proposed use is defined under the Manly LEP 2013 as a secondary dwelling.

Clause 20: Land to which this Division applies:

Requirement	Comment	
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones, but <i>only if</i> development for the purposes of a dwelling house is permissible on the land:		
 (a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone R5 Large Lot Residential. 	Consistent. The site is located within the R1 General Residential zone and, as such, the proposed use is permissible with consent under MLEP 2013.	

Clause 21: Development to which this Division applies

Requirement	Comment
which this Division applies, for the purposes of a secondary dwelling.	Consistent. The development involves the construction of a secondary dwelling, as defined by the Standard Instrument. Therefore, this Division applies.

Clause 22: Development may be carried out with consent

Development to which this Division applies may be carried out with consent.

Requirement	Comment
(2) A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.	The proposed secondary dwelling is located on the same land as the principal dwelling.
(3) A consent authority must not consent to development to which this Division applies unless:	The proposed floor space ratio is compliant with MLEP 2013 Clause 4.4.
(a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and	The total floor area of the proposed secondary dwelling is less than 60m^2 .
(b) the total floor area of the secondary dwelling is no more than 60m² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.	
(4) A consent authority must not refuse consent to	The proposed development is not recommended

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development to which this Division applies on either of the following grounds:	for refusal on the grounds of site area.
(a) site area if:	The proposal provides an additional car space on the site.
(i) the secondary dwelling is located within, or is attached to, the principal dwelling, or (ii) the site area is at least 450 square metres.	
(b) parking if no additional parking is to be provided on the site.	

Note: A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (4).

Clause 24: No subdivision

Requirement	Comment
development application that would result in any	Consistent. This application does not propose any subdivision of the existing allotment.

Conclusion

The proposed secondary dwelling is consistent with the above clauses of SEPP AHR. In this regard, the development is supported.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 893041S_03, dated 7 October 2019).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	54

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:

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

Comment:

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.1m	N/A	Yes
Floor Space Ratio	FSR: 0.6:1 (205.08m ²)	FSR: 0.6:1 (205m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

5.4 Controls relating to miscellaneous permissible uses

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The total floor area of the proposed secondary dwelling is 37.8m².

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 341.8m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	North: 6.5m	5m	N/A	Yes
	South: 6.5m	5m	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.66m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line - 1m to Lawson Place	Garage Level - Nil	100%	No
		Secondary Dwelling - 900mm	10%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 1.6m (based on wall height)	0.9m	44%	No
	South: 1.6m (based on wall height)	0m	100%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (188m²)	31.2% 106.8m ²	43.3%	No
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (37.4m ²)	44.7% (47.7m ²)	N/A	Yes
	1 native trees	1 tree	N/A	Yes
4.1.5.3 Private Open Space	12sqm per dwelling	>24sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.9m (84% of frontage)	68.6%	No
4.1.9 Swimming Pools, Spas and	1m height above ground	0m	N/A	Yes
Water Features	1m curtilage	0.85m	15%	No
	1.5m water side/rear setback	0.97m	35.4%	No
Schedule 3 Parking and Access	4 Spaces	2 spaces	2 spaces	No

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

Compliance Assessment

	_	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes

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Clause	Compliance with Requirements	Consistency Aims/Objectives
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	No	Yes
3.4.2 Privacy and Security	No	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
3.5.8 Water Sensitive Urban 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
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.3.1 Landscaping Design

The proposal includes a detailed landscape plan, including replacement tree planting. Council's Landscape Officer raised no objection to the proposal, subject to conditions.

3.3.2 Preservation of Trees or Bushland Vegetation

The Arboricultural Assessment submitted with the application supported the proposed tree removal. Council's Landscape Officer raised no objection to this tree removal.

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3.4.1 Sunlight Access and Overshadowing

The proposed development will result in additional overshadowing of the adjoining property to the south. The additional overshadowing is to the rear yard of No. 66 Birkley Road during 9am to 12pm. It should be noted that no additional overshadowing will occur at 3pm. Consideration has been given that the proposal retains sufficient sunlight access to the subject site and the adjoining properties from late morning and throughout the afternoon through an appropriate built form that is consistent with neighbouring examples of first floor secondary dwellings and studios above garages facing Lawson Place.

Based on the above, the proposal in this particular instance, is considered to satisfy the objectives of this clause and is supported on merit.

3.4.2 Privacy and Security

The proposed development indicates a east facing window arrangement facing Lawson Place (marked W.05) for the secondary dwelling (First Floor). Concerns of overlooking were raised by the adjacent property owners of 29 Quinton Road. While the sill height of this window is technically higher than the window previously approved under DA2018/1079, it is noted that floor level of the secondary dwelling is likewise higher. This window has also been setback 900mm from the rear boundary and a planter is proposed forward of the window to provide a setback that is consistent with similar examples neighbouring. The proposed window arrangement is not considered to result in direct viewing impacts between the subject site and adjoining properties. The remaining windows are appropriately treated for privacy and the swimming pool is screened from the adjoining property by the existing boundary fence and proposed screen planting. It should also be noted that the proposal provides sufficient privacy and sunlight access to the subject site and adjoining properties as well as additional opportunities for passive surveillance to Lawson Place.

Based on the above, the proposal in this particular instance, is considered to satisfy the objectives of this clause and is supported on merit.

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

The proposed development is technically non-complaint with the 1m prevailing building line along Lawson Place, being 0m from the garage level and 900mm for the secondary dwelling level. Further, the proposal is also non-complaint with the 1.6m side setback requirements, being 0.9m from the northern boundary and 0m from the southern boundary. In considering variations to this clause, it should be recognised that there are a number of examples of secondary dwellings and studios above garages along Lawson Place that are located in close proximity to the lane way and side boundaries. There is a level of consistency for first floor additions facing Lawson Place to include additional setbacks, which has been incorporated as part of this proposal. As such, the proposal development is consistent with the existing streetscape of Lawson Place. The proposed development will not result in unreasonable impacts on the amenity of the surrounding properties. The landscaped area and required plantings on-site are also compliant. As previously discussed within this report, consideration has also been given that the proposal maintains sufficient sunlight access and privacy for the subject site and adjoining and adjacent properties.

Based on the above, the proposal in this particular instance, is considered to satisfy the objectives of this clause and is supported on merit.

4.1.5 Open Space and Landscaping

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The proposed open space being 31.2% is technically non-compliant with the control that requires 55% of the site area to be dedicated towards open space. In considering a variation to this requirement, it should be noted that DA2018/1079 was granted with a larger building footprint than that proposed as part of this subject application. Further, the proposal indicates a compliant landscaped area being 44.7% of the total open space, with the submitted landscape plan demonstrating the planting of native screen hedging and a canopy tree within the rear yard to maintain the amenity of the site and minimise storwater runoff.

Based on the above, the proposal in this particular instance, is considered to satisfy the objectives of this clause and is supported on merit.

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

The proposed development is technically non-compliant with the vehicle parking requirement of 4 spaces. It should be noted however that the subject site currently consist of one (1) existing car parking space and the proposal will result in two (2) spaces being accommodated on the site. Further, the constrains of the site should also be recognised in considering this variation, as the double garage proposed also results in a non-compliance with the maximum frontage for garages being 50% of the lot width. While the streetscape impacts of the proposal has been considered as acceptable within this report, any additional increase to accommodate off-street parking will likely result in negative amenity impacts or excessive excavation. Further, SEPP (Affordable Rental Housing) 2009 states that a consent authority must not refuse consent to development to which [Division 2 Secondary dwellings] applies on the basis of car parking if no additional parking is to be provided on the site. As such, the two (2) spaces provided on the resultant development is considered acceptable.

Based on the above, the proposal in this particular instance, is considered to satisfy the objectives of this clause and is supported on merit.

4.1.9 Swimming Pools, Spas and Water Features

The proposed swimming pool is technically non-complaint with the relevant curtilage and setback requirements as identified in this clause. Consideration is given that existing side boundary fencing and the proposed native landscape plantings within the side setback areas will provide adequate screening and privacy for adjoining properties. Further, it should be noted that DA2018/1079 granted consent for the swimming pool in the generally the same location as that in the subject application.

Based on the above, the proposal in this particular instance, is considered to satisfy the objectives of this clause and is supported on merit.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

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A monetary contribution of \$2,892 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$289,200.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2019/0950 for Alterations and additions to a dwelling house including a secondary dwelling and swimming pool on land at Lot A DP 334786, 68 Birkley Road, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (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 E			

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DA03, Revision B (Prop Site & Roof Plan)	7 October 2019	Alice Cutcliffe
DA04, Revision B (Prop Ground Floor Plan)	7 October 2019	Alice Cutcliffe
DA05, Revision B (Prop Level 1 Plan)	7 October 2019	Alice Cutcliffe
DA06, Revision A (Prop West Elevation - Yard)	28 August 2019	Alice Cutcliffe
DA07, Revision A (Prop West Elevation - Street)	28 August 2019	Alice Cutcliffe
DA08, Revision B (Prop East Elevation)	7 October 2019	Alice Cutcliffe
DA09, Revision B (Prop South Elevation)	7 October 2019	Alice Cutcliffe
DA10, Revision B (Prop North Elevation)	7 October 2019	Alice Cutcliffe
DA12, Revision B (Section AA)	7 October 2019	Alice Cutcliffe

Engineering Plans			
Drawing No.	Dated	Prepared By	
DA17, Revision A (Driveway Cross Over Sections)	28 August 2019	Alice Cutcliffe	
DA18, Revision A (Stormwater & Waste Management Plan)	28 August 2019	Alice Cutcliffe	

Reports / Documentation – All recommendations and requirements contained within:				
Report No. / Page No. / Section No. Dated Prepared By				
Aboricultural Impact Assessment Report, Revision A	22 May 2017	Joanne Leigh		
BASIX Certificate, Ref. 893041S_03	7 October 2019	Alice Cutcliffe		

- b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.
- c) The development is to be undertaken generally in accordance with the following:

Landscape Plans			
Drawing No.	Dated	Prepared By	
LP01, Revision D (Landscape Plan)	11 February 2018	Alice Cutcliffe	
LP02, Revision D (Landscape Plan)	11 February 2018	Alice Cutcliffe	

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

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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.

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3. General Requirements

- (a) Unless authorised by Council:

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

Demolition and excavation works are restricted to:

8.00 am to 5.00 pm Monday to Friday only.

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

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

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dangerous to persons or property on or in the public place

- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

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

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$2,892.00 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 \$289,200.00.

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

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

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

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

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

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

6. Stormwater Disposal

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the

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Construction Certificate.

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

7. Fire Separation - External Walls

The external walls of the proposed secondary dwelling where less than 900mm from an allotment boundary or less than 1.8m from another building on the same allotment other than an appurtenant Class 10 building or a detached part of the same Class 1 building shall have a FRL 60/60/60. Any openings within these walls are to be protected in accordance with Part 3.7 of the Building Code of Australia –'Fire Safety'.

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

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

8. Secondary Dwelling above a 'non-appurtenant private garage'

Where building works involve a Class 1a Secondary Dwelling above a non-appurtenant private garage, fire separation works are to be carried out in accordance with Part 3.7.4 of the Building Code of Australia –'Fire separation of garage top dwellings' and NSW 1.1 Additions.

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

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

9. Vehicle Driveway Gradients

The Applicant is to ensure driveway gradients within the private property are complied with Australian Standard AS2890.1. 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.

10. Vehicle Crossings Application

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. 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 facilitate suitable vehicular access to private property.

11. 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

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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.

12. 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.

13. Sydney Water "Tap In"

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

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

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

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

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

14. **Boundary Survey**

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

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

15. On slab landscape planting and associated works

- a) Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing to all internal walls and slab, and drainage of the concrete slab over which soil and planting is being provided.
- b) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil volume, soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

Reason: To ensure appropriate and secure waterproofing and drainage is installed to direct water flow into the drainage system, and away from habitable areas.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. Public Liability Insurance - Works on Public Land

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

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

17. Tree protection

- (a)Existing trees which must be retained
- i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
 - ii) Trees located on adjoining land

(b) Tree protection

- i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause
- E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

18. 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.

19. Vehicle Crossings

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

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

Reason: To facilitate suitable vehicular access to private property.

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20. Waste Management During Development

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

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

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

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

21. Landscape completion certification

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

Reason: To ensure that the landscape treatments are installed to provide landscape amenity.

22. Stormwater Disposal

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

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

23. Required Planting

Trees shall be planted in accordance with the following schedule:

Minimum No. of Trees Required.	Species	Location	Minimum Pot Size
1	Tristaniopsis laurina	Rear yard, as indicated on the Landscape Plan	25 litre

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To maintain environmental amenity.

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

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24. Pool Filter Noise

The maximum noise level associated with the pool filter does not exceed 5dB(A) above ambient background level when measured from any adjoining premises.

Reason: To protect the amenity for adjoining properties.

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

Signed

Kent Bull, Planner

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

Matthew Edmonds, Manager Development Assessments

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