

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2025/0156
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Responsible Officer:	Lachlan Rose
Land to be developed (Address):	Lot 28F DP 16341, 2 Prince Edward Road SEAFORTH NSW 2092
Proposed Development:	Demolition works and construction of a dwelling house and secondary dwelling including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Applicant:	Hpc Planning

Application Lodged:	20/02/2025
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	28/02/2025 to 14/03/2025
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 16.3%
Recommendation:	Approval

Estimated Cost of Works:	\$ 1,100,000.00
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EXECUTIVE SUMMARY

This development application seeks consent for Demolition works and construction of a dwelling house and secondary dwelling including a swimming pool.

The application is referred to the Development Determination Panel (DDP) due to a Clause 4.6 variation greater than 10% to FSR within the Manly Local Environment Plan 2013.

There were no submissions raised during the assessment process.

Critical assessment issues include floor space ratio, setbacks and total open space.

The 4.6 request for the non-compliance with FSR standard arises from the construction of the proposed dwelling house and secondary dwelling. There are no historical approvals which depict the existing floor space ratio. As such, the proposed development results in a floor space ratio of 0.524:1 and a variation of 16.3% to the required 0.45:1 development standard. The variation to the development standard does not result in unreasonable bulk and scale or environmental impacts from the proposed dwellings.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes:

Demolition of existing site structures

Basement

- double garage
- cellar room
- storage
- laundry

Ground floor

- construction of a dwelling house including
 - living, kitchen, butlers and dining area
 - one bedroom
 - bathroom
 - rumpus room
 - indoor/ outdoor entertaining area
 - swimming pool
- construction of a secondary dwelling including
 - one bedroom
 - living and kitchen

Second floor

- three bedrooms
- two bathrooms
- balcony

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 - Zone R2 Low Density Residential

Manly Local Environmental Plan 2013 - 4.4 Floor space ratio

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 5.4 Controls relating to miscellaneous permissible uses

Manly Local Environmental Plan 2013 - 6.2 Earthworks

Manly Local Environmental Plan 2013 - 6.8 Landslide risk

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

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

SITE DESCRIPTION

Property Description:	Lot 28F DP 16341 , 2 Prince Edward Road SEAFORTH NSW 2092
Detailed Site Description:	<p>The subject site consists of one (1) corner allotment located on the northern side of Lister Avenue and Western side of Prince Edward Road.</p> <p>The site is irregular in shape with a frontage of 10.92m along Prince Edward Road, 3.93m to the corner and 33.68m to Lister Avenue. The site has a depth of 38.375m. The site has an area of 494.1m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a single storey dwelling house with a detached single lock up garage to the rear.</p> <p>The site has an estimate fall of 3m in a eastern direction.</p> <p>The site includes landscaped area of shrubs, grassed area and trees. There are no known threatened species on the</p>

subject site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by residential development including dwelling houses with multiple swimming pools.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

APPLICATION HISTORY

Following a preliminary assessment of the application and site inspection of the subject site and adjoining properties, Council wrote to the applicant on 25/03/2025 outlining concerns that would not allow for Council to support the application in its current form. The concerns related to FSR, building height, open space and landscaping, northern setbacks, pool setback, fencing and other documentation. The applicant lodged amended plans on 02/05/2025 to address the concerns raised.

The amended plans incorporate the following changes:

- reduction in FSR
- reduction in building height
- increase to open space and landscaping
- increase to northern setback
- compliance with the fencing requirement
- additional documentation

Following the assessment of the amended plans, Council's Development Engineer provided a referral response stating that the works are unsupported and the stormwater plan should be re-assessed. Additionally, the floor space ratio calculations were requested to be amended to correctly reflect accurate calculations. An email was sent to the applicant on 12/05/2025 addressing the concerns.

The applicant lodged the below amended plans on 15/05/2025 to attempt to satisfy the Development Engineering Officers referral response and provide correct FSR calculation plans:

- Clause 4.6 Variation Report
- Amended Architectural Plans
- Amended Stormwater Plans

Additionally, Council's Development Engineer provided a second amended referral response on 16/05/2025 stating that the works are unsupported. An email was sent to the applicant on 16/05/2025 addressing the concerns.

The applicant lodged the below amended plans on 13/06/2025 to attempt to satisfy the Development Engineering Officers referral response and provided amended architectural and driveway plans with a Clause 4.6 report:

- Clause 4.6 Variation Report
- Amended Architectural Plans
- Amended Stormwater Plans
- Driveway and access plans

Council's Development Engineer provided a third amended referral response on 23/06/2025 stating that the works are supported with conditions.

The proposed amendments will have a reduced environmental impact on the adjoining properties and public open space than the original proposal. Therefore, re-notification was not required in accordance with Northern Beaches Community Participation Plan.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development	Manly Development Control Plan applies to this proposal.

Section 4.15 Matters for Consideration	Comments
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 2021 (EP&A Regulation 2021)	<p>Part 4, <u>Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to FSR, building height, TOS and landscaping, swimming pool and spa setback, fencing and other documentation.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Matters for Consideration	Comments
accordance with the EPA Act or EPA Regs	
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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by <>, dated <>) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 28/02/2025 to 14/03/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application as described in reports and as illustrated on plans is assessed by Landscape Referral against the Manly Local Environment Plan (MLEP), and the following Manly DCP 2013 (MDCP) controls (but not limited to): 3.3.1 Landscape Design; 3.3.2 Preservation of Trees or Bushland Vegetation; 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable.</p> <p>A Landscape Plan is submitted and is assessed against 3.3.1 Landscape Design and 4.1.5 Open Space and Landscape, and an Arboricultural Impact Assessment (AIA) is submitted and is assessed against 3.3.2 Preservation of Trees or Bushland Vegetation. The rear approximate third of the property is Bush Fire Prone (Vegetation Buffer) land.</p> <p>As determined in the AIA report, two existing trees (2 and 12) within the property is being retained and six existing exempt species (4, 8,</p>

Internal Referral Body	Comments
	<p>9, 10, 11 and 13), that do not require Council consent for management or removal, are nominated to be removed as they are impacted by excavation associated by the development footprint. All trees and vegetation within adjoining property shall be protected.</p> <p>The submitted Landscape Plan includes replacement tree planting to satisfy 4.1.5.2 (c) and includes other planting. It is considered that the proposed shrub planting along the frontage of Prince Edward Rd should continue across the entire frontage including the corner landscape area along Lister Ave to the start of the boundary walling, to assist in the reduction of the bulk and scale of the development.</p>
NECC (Development Engineering)	<p>The proposed development is in Region 3. Vehicle crossing construction is proposed. On-site detention is required. A geotechnical report has been provided. The proposed crossing width of 5 metres is not supported. Conditions will require the reduction of the crossing width to 3.0 metres. Development engineering raises no further objections to the proposed development, subject to conditions.</p> <p>Engineering Comments 07.05.25 It is noted that the previously supported by Development Engineering Master plans and Stormwater Management plans have been amended to satisfy other Council Officers requirements. The amended design includes a lowered garage slab level and amended location for the on-site detention tank.</p> <ol style="list-style-type: none"> 1. The lowered garage slab level has resulted in the proposed alteration of road reserve levels. This is not supported. Amended Master plans need to maintain road reserve levels. 2. Provide an emergency overflow path with levels for flows from the on-site detention tank to street gutter in the event of pipe blockage. Provide a minimum of 300mm clearance from top of OSD to habitable floor levels. Alternately relocate the OSD tank to front low point of property. <p>Engineering Comments 16.05.25 1. Provide a vehicle crossing design with longitudinal sections showing clearance for the B85 vehicle utilising the following inputs: Council Standard Profiles A4 3330/6 MH, garage floor level of 81.12, boundary level may be lowered by up to 200mm.</p> <ol style="list-style-type: none"> 2. Please note that in accordance with Section 9.9.3 Floor and Ground Levels of the Water Management for Development Policy, All office, storage and habitable floor levels are to be set at a minimum of 300 mm above the maximum design storage water surface or surcharge flow path level, whichever is higher. This requires that the living room, bedroom, kitchen etc habitable levels be set at 300mm above the grate RL of 83.92 for the OSD tank. <p>Engineering Comments 23.06.25 Amended Stormwater Management plans have been submitted. Vehicle crossing longitudinal sections have been provided.</p>

Internal Referral Body	Comments
	Development engineering raises no further objections to the proposed development, subject to conditions.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	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.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. 1774550M_02 dated 26 November 2024).

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

SEPP (Housing) 2021

Part 1 – Secondary Dwellings

Clause 52 – Development may be carried out with consent	
Standard	Compliance/Comment
(2) Development consent must not be granted for development to which this Part applies unless— (a) No dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land, and (b) The total floor area of the principal dwelling	The proposed secondary dwelling is 41.08m ² in area, being 15.8% of the gross floor area of the associated principal dwelling and compliant with the standard.

<p>and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument, and</p> <p>(c) The total floor area of the secondary dwelling is:</p> <ul style="list-style-type: none"> (i) no more than 60m², or (ii) if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument - the greater floor area. 	
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Clause 53 – Non-discretionary development standards—the Act, s 4.15	
Standard	Compliance/Comment
(a) For a detached secondary dwelling - a minimum site area of 450m ² .	The site results in an area of 494.1sqm.
(b) The number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.	The development results in an increase in the parking arrangements to provide 2 spaces from the existing 1 space.

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

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	N/A	Yes
Floor Space Ratio	FSR: 0.45:1 (222.345sqm)	FSR: 0.524:1 (258.73sqm)	16.3% (36.385sqm)	No
Controls relating to miscellaneous permissible uses: Secondary dwellings	Total floor area is not to exceed (whichever is greater): (a) 60 square metres, (b) 30% of the total floor area of the principal dwelling.	41.08sqm	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	No
4.6 Exceptions to development standards	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
5.11 Bush fire hazard reduction	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes
6.22 Development for the purposes of secondary dwellings in certain residential and environment protection zones	Yes

Detailed Assessment

Zone R2 Low Density Residential

Land use definition: MLEP 2013	Permitted or Prohibited
Dwelling house and Secondary dwelling	Permitted with consent

The underlying objectives of the R2 Low Density Residential zone:

- To provide for the housing needs of the community within a low density residential environment.*

Comment:

The proposal will result in an increase to the dwelling density of the subject site with the inclusion of the secondary dwelling. The development will provide for the housing needs of the community within a low density residential environment.

It is considered that the development satisfies this objective.

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

Comment:

The proposal will provide a secondary dwelling to the existing land use of a dwelling house and therefore, will enable the day to day needs of residents.

It is considered that the development satisfies this objective.

4.4 Floor space ratio

Detailed Assessment

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

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

Comment:

The proposed development is for construction of a dwelling house and secondary dwelling with a swimming pool. The proposal will not result in unreasonable bulk and is consistent with the existing and desired streetscape character.

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

Comment:

The development is of a bulk and scale to compliment the building density of the site area and development does not obscure important landscape and townscape features.

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

Comment:

The proposal maintains an appropriate visual relationship between the dwelling house, secondary dwelling and the existing character of the site. There will be no detrimental impact to the landscape of the area.

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

Comment:

The development will not result in adverse environmental impacts on the use or enjoyment of adjoining land and the public domain.

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

Comment:

The proposed development is located in residential zoned area and is not located in a local centre or business zone.

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

4.6 Exceptions to development standards

The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.4 Floor Space Ratio

Requirement: 0.45:1

Proposed: 0.524:1

Percentage of variation: 16.3%

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the MLEP 2013 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

(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.*

Comment:

The objectives of this clause have been considered pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979*.

Subclause (2) of this clause provides that:

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

Comment:

Clause 4.4 Floor Space Ratio is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.4 Floor Space Ratio is unreasonable or unnecessary in the circumstances of this application for the following reasons:

- The development is considered to comply with the objectives of Clause 4.4 despite the non-compliance
- The proposal reflects a built form that is functional and contextually appropriate while maintaining compliance with the building height, landscaping and majority of setbacks.
- The proposal satisfies the objectives of the R2 Low Density Residential zone
- The development will not give rise to adverse environmental or amenity impacts, specifically addressing overshadowing, visual and acoustic privacy, visual impact from bulk and scale, view impacts and amenity.

(b) 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.’

The Clause 4.6 Request argues, in part:

- *The exceedance of 33.73m² is largely attributed to the inclusion of a secondary dwelling, which provides a modest, self-contained living space of 41.08m² (reduced from 45.46m² GFA) that contributes to housing diversity and supports the objectives of the R2 Low Density Residential zone. The overall bulk and scale remain consistent with low-density character.*
- *The additional FSR does not result in any identifiable or adverse planning impacts when compared to a dwelling that complies numerically with the standard. There is no greater overshadowing, privacy loss, or view obstruction resulting from the minor increase in floor area.*
- *The proposal maintains compliant building height, compliant landscaping (154.38m²), and includes increased side setbacks, all of which assist in reducing perceived scale and ensuring adjoining properties amenity is maintained.*
- *The revised built form responds sensitively to the site’s corner configuration, slope, and streetscape context, delivering an outcome that is both practical and visually appropriate.*

The applicant's Clause 4.6 Request is generally supported. It is also acknowledged that the non-compliant GFA/FSR will not result in unacceptable streetscape or any adverse residential amenity impacts in terms of views, privacy or solar access. The applicants Clause 4.6 Request adequately addresses the objectives of this development standard and demonstrates that compliance with the development standard is unreasonable or unnecessary. In summary, it has been demonstrated that the proposed development will compliment the existing and future streetscape while provide additional housing options for the community.

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.4 for the following reasons:

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, thereby satisfying objects 1.3(c) and (g) of the EPA Act.

Public Interest:

Matters relevant to public interest in respect of the development are considered in the relevant sections of this report as per Section 4.15(1)(e) of the EPA Act.

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the MLEP 2013.

It is considered on balance, that having regard to the particular circumstances, the Clause 4.4 Floor Space Ratio variation arising due to the proposed secondary dwelling and its minimal impacts to the bulk and scale of the site, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

5.4 Controls relating to miscellaneous permissible uses

This clause requires that:

*(9) **Secondary dwellings on land other than land in a rural zone** If development for the purposes of a secondary dwelling is permitted under this Plan on land other than land in a rural zone, the total floor area of the dwelling, excluding any area used for parking, must not exceed whichever of the following is the greater—*

- (a) 60 square metres,*
- (b) 30% of the total floor area of the principal dwelling.*

Comment:

The proposed secondary dwelling is 41.7m² in area, being 18.7% of the gross floor area of the associated principal dwelling.

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

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

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

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

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

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

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

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

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

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

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

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

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

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

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

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of MLEP and MDCP, and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

6.8 Landslide risk

The objectives of this clause are to ensure that development on land susceptible to landslide—

- (a) matches the underlying geotechnical conditions of the land, and*
- (b) is restricted on unsuitable land, and*
- (c) does not endanger life or property.*

In this regard, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account the risk of landslide—

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*
- (d) waste water management, stormwater and drainage across the land,*
- (e) the geotechnical constraints of the site,*
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The proposed development is supported by architectural plans, stormwater plans, and a geotechnical report, which demonstrate the proposal is acceptable with respect to the above matters. The proposed development has also been reviewed by Council's Development Engineer, who has raised no objection to the proposal, subject to conditions of consent, which are included in the recommendation of this report.

Development consent must not be granted to development on land to which this clause applies unless

the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and that—

(a) the development is designed, sited and will be managed to avoid any landslide risk or significant adverse impact on the development and the land surrounding the development, or

(b) if that risk or impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that risk or impact, or

(c) if that risk or impact cannot be minimised—the development will be managed to mitigate that risk or impact.

Comment:

Given the above, the proposed development is demonstrated to be designed, sited and managed to avoid landslide risk and significant adverse impact on the subject site and surrounding land.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 494.1sqm	Re
4.1.1.1 Residential Density and Dwelling Size	Density: 50
	Dwellin
4.1.2.1 Wall Height	N: 6.9m (bas
	W: 6.5m (b
4.1.2.2 Number of Storeys	
4.1.2.3 Roof Height	He
	Parape
	Pitch: ma:
4.1.4.1 Street Front Setbacks	Prevailing
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: Pri
	0.37r
	0.77
	1.33m- 1
	2.4m- 2
	Secoi
	(based

	W: Pr
	Secoi
	(based
	Windows: n
	Seconda
	S: Pri
	0.4n
	1.33i
	2.37
	Secoi
4.1.4.4 Rear Setbacks	
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55%
	Open space above grou
4.1.5.2 Landscaped Area	Landscaped area 35%
	2 r
4.1.5.3 Private Open Space	18sq
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of fr
4.1.9 Swimming Pools, Spas and Water Features	1m heig
	1m curtilage/1.5r
Schedule 3 Parking and Access	Dwel

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes

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
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	No	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Description of non-compliance

Given the provision of the new windows and balconies, the proposed development is considered against the objectives of this control as follows.

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 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 development is considered to comply with the setback requirement to the proposed windows on the northern elevation, with the exception of a minor portion to the north-eastern upper wall. The windows to the first floor of the northern elevation are located to an ensuite, walk in robe, staircase, bedrooms and bathroom, which area considered low use areas. Specifically, the windows to the bathrooms are of a high sill design area will not result in privacy impacts. The windows to the ground floor are small in size and scale and will not result in unreasonable privacy impacts to the north.

The development results in adequate setbacks to the secondary dwelling and main dwelling to not lead to privacy and amenity impacts. The southern elevation presents to the street and includes adequately designed windows to the ground floor, primarily behind the boundary fencing. The two large windows to the southern elevation area located to the first floor hallway/ staircase and master bedroom. As mentioned, these areas area low use areas or areas of passageway which area not considered to result in unacceptable loss of privacy to the south. The eastern elevation to the street results in large doors and windows which area considered acceptable to provide for general surveillance and outlook to the street.

The balcony to the ground floor complies with the setback requirement and is low in height from the ground level. Therefore, will not result in unreasonable privacy impacts to the north. The first floor balcony is screened from the northern and southern elevations and will not result in privacy and amenity impacts to the street.

Therefore, the proposal satisfies the setback requirements to the northern, southern and wester boundaries, with the exemption of a minor portion to the north-east, appropriately separating the dwelling house and secondary dwelling, mitigating direct viewing between windows and/or outdoor living areas.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

As mentioned above, the proposal will provide privacy to the adjoining properties while allowing suitable access to light and air. The proposed dwelling has been designed to correspond to the location of the existing dwelling to minimise impacts on outlook and privacy. Thus, the proposal will

sunlight access and amenity from habitable rooms and private open space.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal will encourage awareness of neighbourhood security through the new development and open nature of the dwelling.

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

4.1.1.1 Residential Density and Dwelling Size

The development is located within the residential density area D5 which requires 500sqm of site area per dwelling. The existing site includes a dwelling house, where the proposed development will provide a new single dwelling with a detached secondary dwelling.

The site area is surveyed at 494.1sqm and therefore, the existing development results in a non-compliance of 1.18% (5.9sqm). It should be noted that there are no proposed changes to the residential density of the site under this application and thus, Clause 4.1.1.1 Residential Density and Dwelling Size is not applicable in this instance.

Additionally, this clause states that the control does not apply to Secondary Dwellings which are subject to their own development standard for minimum floor area at LEP clause 5.4(9).

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

Description of non-compliance

The proposal results in a non-compliance to the wall height of the northern wall, varying from the 6.9m requirement based on a gradient of 1:15. The proposed wall height is 7.2m, reflecting a variation of 4.3% (0.3m).

See the image below for a visual depiction of the non-compliance in red:



It should be noted that the proposal complies with the western wall height.

The proposal presents as a part 2-3 storey dwelling, with the primary frontage to the eastern boundary presenting as a 3 storey dwelling. This reflects a 50% variation from the requirement of a maximum 2 storeys. It is noted that the majority of the dwelling presents as a 2 storey dwelling.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This clause instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. An assessment against these objectives is 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 proposal is of a comparable size, height and scale to surrounding development and the proposal is commensurate to surrounding residential development. The flat roof form has been designed to minimise the overall height of the development where possible. The dwelling will be under the 8.5m requirement and the areas of wall non-compliance are minor and will not result in excessive bulk and scale. The building is appropriately articulated using modulated walls to the ground floor and increased setback to the first floor on the northern elevation. The 3 storey primary frontage is presented due to the excavation works for the garage and sub-floor area which will not create an unreasonable impact on the streetscape or bulk and scale. The minor variation to the northern wall height is considered acceptable to reduce the visual impact to the secondary frontage (southern elevation). The proposed development is considered to satisfy this objective.

(b) to control the bulk and scale of buildings,

Comment:

The wall height variation is largely attributed to the natural fall of the land and the minor slope towards the front of the boundary. The building is compliance with the maximum building height and primarily complies with the northern wall height. The dwelling presents as a two storey structure from the

northern elevation and will not result in substantial bulk and scale impacts. As such, the height variation is not considered to generate unreasonable bulk and scale.

(c) to minimise disruption to the following—

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

Comment:

The proposed non-compliance is not anticipated to result in the unreasonable loss of views or vistas from 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 development is not considered to create unreasonable overshadowing on public or private spaces and complies with Clause 3.4.1 *Sunlight Access and Overshadowing*.

(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 proposed development appropriately maintains existing vegetation and maintains the ecological significance of the area.

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 s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.3 Floor Space Ratio (FSR)

The MDCP Clause 4.1.3 Floor Space Ratio (FSR) provides guidance in assessing the floor space ratio of undersized allotments.

The site is located in 'Area I' on the MLEP Lot Size Map zoned in area requiring the minimum lot size of 500sqm. The proposed site has a surveyed area of 494.1sqm. Clause 4.1.3 Floor Space Ratio states:

The extent of any exception to the LEP FSR development standard pursuant to LEP clause 4.6 in this plan is to be no greater than the achievable FSR for the lot size indicated in Figure 30 - Extent of FSR Variation for Undersized Lots.

In this instance, the exception is to be no greater than the calculation of FSR based on 500sqm lot size/ site area. This would result in a FSR of 225sqm or 0.45:1 based on the 500sqm lot size.

Using this calculation, the FSR of the proposed development is 0.517:1 or 258.73sqm, which results in

a variation of 14.99% (33.73sqm).

A detailed assessment of the FSR variation has been undertaken within the section of this report relating to Clause 4.6 of the MLEP. In summary, the applicant has adequately justified that compliance with the Clause 4.4 Floor Space Ratio Development Standard is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to contravene the development standard.

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

Description of non-compliance

Clause 4.1.4.1 *Street Front setbacks* of the Manly DCP requires development be setback to the prevailing building line or if no prevailing building line, be located at 6m from the property boundary. The proposed development results in the below setbacks:

- Garage: 4.2- 8.7m setback- Max 33% (1.8m) variation.
- GF: 2.36m setback- 60% (3.64m) variation.
- SF: 3.87m- 35% (2.13m) variation.

It should be noted that these measurements are made to the shortest length to the boundary and does not accurately reflect the distance of the proposed dwelling to the splayed front boundary. Considering the primary setback as a whole, the proposal will not detrimentally impact the prevailing building lines of Prince Edward Road and the stepping of the ground floor to the first floor will compliment the existing and future character of the street.

Clause 4.1.4.2 *Side Setbacks and Secondary Street Frontages* stipulates that the setbacks between any part of a building and the side boundary must not be less than one third of the wall height.

The following setbacks are required and exhibited:

Dwelling house

N:

- 0.37m required (basement)- 1.335m exhibited- complies
- 0.77m required (balcony)- 1.3m exhibited- complies
- 1.33m- 1.06m- 0.83m required (GF)- 1.56m- 2.4m-2.74m exhibited- complies
- 2.4m- 2.1m- 1.86m required (SF)- 2.1m exhibited- max variation of 12.5% (0.3m)

W:

- 1.8m required- 11.4m exhibited- complies

First floor:

Secondary Dwelling

N:

- 1 required (GF)- 1.74m exhibited- complies

W:

- 1.1m required- 1.3m exhibited- complies

The control also states:

All new windows from habitable dwellings of dwellings that face the side boundary are to be setback at least 3m from side boundaries.

The proposal results in a total 14 windows on the northern, southern and western elevations and are setback less than 3m from the side boundaries. Although, the proposal provides windows that are of a reasonable size and design which are considered acceptable under Clause 3.4.2 *Privacy and Security*. Specifically, the non-compliant windows to the first floor are located to the bedrooms, ensuite and bathroom which are low use rooms and not considered to be highly occupied. The windows of the ground floor are considered to be an acceptable design and will not result in detrimental overlooking from a ground floor. As discussed under Clause 3.4.2 *Privacy and Security* the windows are acceptable and will not result in unreasonable privacy impacts. Although not compliant with the north-eastern portion of the first floor dwelling, the first floor is stepped back from the ground floor and is adequately setback at 2.1m from the boundary.

Clause 4.1.4.4 Rear Setbacks does not apply in this instance as the property results in a secondary frontage and thus, Clause 4.1.4.2 *Side Setbacks and Secondary Street Frontages* does not apply.

Subject to the below merit assessment, it is considered that these variation is reasonable in this circumstance.

Merit consideration:

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

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

Comment:

The proposal will compliment the existing prevailing building line along Prince Edward Road and not impact the desired spatial proportions of the street, the street edge and the landscape character of the street. Specifically, the proposal adequately steps back from the front boundary considering the splaying corner allotment. As mentioned above, the front setback measurements have been measured from the shortest distance and thus, does not reflect the total outcome of the proposal to the front boundary. The areas of non-compliance are presented to the north-eastern portion of the first floor setback and primary front setback requirements. It should be noted that the proposal primarily complies with the southern, eastern and northern setbacks.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*

- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The windows which breach into the 3m requirement are of a adequate design and are not considered to result in additional privacy issues. The rear addition of a pool enclosure is located to a maximum 1.8m high and is considered to compliment the proposed 1.8m high pool fencing that surrounds. The development does not result in unreasonable privacy impacts to each side elevation with the implementation of high use areas to the ground floor and low use areas to the first floor. The windows to the bathroom areas of the first floor are generally high sill designs with adequate setbacks and privacy screening to the first floor balcony. The proposed development is compliant with the solar access and view sharing requirements of *Clauses 3.4.1 Sunlight Access and Overshadowing* and *3.4.3 Maintenance of Views* of the Manly Development Control Plan 2013. The proposed development provides suitable separation between the dwellings on adjoining sites, allowing suitable rhythm and pattern of buildings. The proposed additions do not impact upon traffic conditions

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

Comment:

The proposed development allows for flexibility in the siting of the proposed demolition works and construction of a dwelling house and secondary dwellings, without resulting in any unreasonable amenity impacts, as detailed above. The northern setback to the first floor is stepped back with the front setback gradually increasing to the corner of the allotment.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed works provide adequate landscaped areas and deep soil areas to comply with the requirements of *Clause 4.1.5.2 Landscaped Area*. The subject site does not adjoin or impact upon open space lands, National Parks or urban bushland.

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

Comment:

A Bushfire Assessment Report by Building Code & Bushfire Hazard Solutions Pty Limited has been provided with this application with recommendations to be included in the conditions of consent. Thus, the development will assist in appropriate bush fire asset protection zones.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The subject site is located within Residential Open Space Area OS3, which requires at least 55% (271.755sqm) of the site to be open space. In addition, at least 35% (81.585sqm) of proposed total open space (TOS) is to be landscaped area and no more than 25% (58.275sqm) of proposed total open space that can be provided above ground level.

The proposed development exhibits a non-compliant level of total open space at 47% (233.1sqm) of site area, representing a variation of 13.8% (38.655sqm) to the requirement.

It is noted that the subject site achieves compliance with landscaped area, proposing 59% (137.6sqm) landscaped area, and 11.9% (27.8sqm) of open space is provided above ground level.

Furthermore, the calculated TOS is restricted to areas 3x3m with all areas that do not meet these calculation being excluded. The ability to provide full compliance with the TOS requirements for the proposed dwelling and secondary dwelling is unreasonable for this minor undersized allotment. The corner allotment width and limited ability to situate a desirable dwelling and secondary dwelling reflects the constraints in providing a compliant TOS on the site without resulting in potential impacts on the streetscape or neighbouring properties.

If the northern open space area to the dwellings and area to the north-western portion of the secondary dwelling are included in the TOS calculations, this would result in a TOS of 59% (292.1sqm). It is noted that these areas are not included in the proposed TOS calculations as it is measures to areas less than the 3x3m requirement. Although, if included, the proposal would result in compliance with this Clause.

Subject to the merit assessment below, this variation to TOS is supported in this instance.

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 proposed development will not result in the removal of any significant topographical or landscape features. The proposal will result in the removal of some trees but, also provides provide additional landscaped areas and will not impact any existing remnant populations of native flora and fauna. Additionally, the proposal is supported by Councils Landscape Officer with conditions of consent.

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 landscaped area of the subject site will comply with the requirement and maximise soft landscaped areas. The proposal will maintain key landscaped areas to the north and western portion of the site. As mentioned above, the proposal provides for new soft landscaped areas and is supported with conditions by Councils Landscape Officer.

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

Comment:

The development will not result in unreasonable overshadowing impacts and is considered to comply with Clause 3.4.1 Sunlight Access and Overshadowing. The privacy and views are maintained with this development. Thus, the proposal will have no unreasonable impact on the amenity of the site, streetscape and surrounding area with additional prevention through side boundary landscaping.

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

Comment:

An acceptable amount of soft landscaping is provided on site to minimise stormwater runoff and maximise water infiltration. The proposal complies with landscaped area. The proposal has been reviewed Council's Development Engineer and is supported, subject to conditions.

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

Comment:

The proposed development is not likely to increase the spread of any weeds, or degradation of private or public open space.

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

Comment:

The proposed works are not expected to significantly affect wildlife habitat. Existing potential wildlife corridors will be retained.

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

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

Control 4.1.9.2 *Location and Setbacks* requires the setback of the outer edge of the pool/spa concourse from the side and rear boundaries to be at least 1m, with the water line being at least 1.5m

from the boundary. The development proposes a southern setback to the pool water course of 1.3m, resulting in a 13.3% variation of (0.2m).

The development can be considered reasonable in this circumstance, subject to the below merit assessment.

Merit Consideration

The underlying objectives of Clause 4.1.9 of the Manly Development Control Plan are as follows:

Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;

Comment:

The swimming pool has been designed and located to maintain the visual and acoustic privacy of neighbouring properties. The swimming pool is adequately setback from the southern boundary with regards to the cartilage and results in the non-compliance to the water from the low use/ non traffic-able concrete area of 0.2m. Adequate screening is provided with the southern portion of the pool with the 1.5m boundary fence provided at 1.3m from the water edge. The pool filter is located in a soundproof enclosure which has also been conditioned. It is considered that the development is consistent with the objective.

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

Comment:

The development is located to the southern portion of the site, 1.2m from the secondary street frontage. Multiple sites within the immediate locality have swimming pools within the rear setbacks and secondary frontage. It is considered that the development will be consistent with the established character of the locality.

Objective 3) To integrate landscaping; and

Comment:

The site is compliant with the minimum landscaped area requirement. It is considered that reasonable landscaping is integrated on site addressed under Clause 4.1.5 *Open Space and Landscaping*.

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

Comment:

The site is located in a bushfire prone zone and there are no unreasonable limiting factors stopping the development from becoming a water resource in the event of an emergency.

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

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 2024

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2024.

A monetary contribution of \$11,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,100,000.

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

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Manly Local Environment Plan 2013 seeking to justify variation of the development standard contained within Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and

- There are sufficient environmental planning grounds to justify the variation.

PLANNING CONCLUSION

This proposal, for Demolition works and construction of a dwelling house and secondary dwelling including a swimming pool has been referred to the Development Determination Panel (DDP) due to a Clause 4.6 variation greater than 10% to FSR within the Manly Local Environment Plan 2013.

There have been no concerns raised during the assessment period.

The critical assessment issues floor space ratio, setbacks and total open space.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

REASON FOR DETERMINATION

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 the development standard contained within Clause 4.4 Floor Space Ratio, pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013 because the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2025/0156 for Demolition works and construction of a dwelling house and secondary dwelling including a swimming pool on land at Lot 28F DP 16341, 2 Prince Edward Road, SEAFORTH, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans

Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
5	Q	DEMOLITION SITE PLAN	New Paradigm Design	5/6/2025
6	R	PROPOSED SITE PLAN	New Paradigm Design	12/6/2025
10	R	BASEMENT FLOOR PLAN	New Paradigm Design	12/6/2025
11	Q	GROUND FLOOR PLAN	New Paradigm Design	5/6/2025
12	Q	FIRST FLOOR PLAN	New Paradigm Design	5/6/2025
13	Q	ELEVATION 1	New Paradigm Design	5/6/2025
14	Q	ELEVATION 2	New Paradigm Design	5/6/2025
15	Q	ELEVATION 3	New Paradigm Design	5/6/2025
16	Q	ELEVATION 4	New Paradigm Design	5/6/2025
17	R	SECTION A-A	New Paradigm Design	12/6/2025
18	Q	SECTION B-B	New Paradigm Design	5/6/2025
19	Q	SECTION C-C (POOL)	New Paradigm Design	5/6/2025
20	R	SECTION VXO 1	New Paradigm Design	12/6/2025
21	R	SECTION VXO 2	New Paradigm Design	12/6/2025
25	Q	ROOF PLAN	New Paradigm Design	5/6/2025
32	Q	DOOR SCHEDULE	New Paradigm Design	5/6/2025
33	Q	WINDOW SCHEDULE	New Paradigm Design	5/6/2025

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate (1774550M_03)	-	Max Brightwell	02 May 2025
Stormwater plans (DWG No: SW01, SW02, SW03, SW04, SW05, SW06)	D	National Engineering Consultants PTY LTD	12.06.2025
Driveway Plan (DWG No: CIV01, CIV02, CIV03, CIV04)	A	National Engineering Consultants PTY LTD	11.06.2025
Bushfire Assessment Report	-	Building Code & Bushfire Hazard Solutions Pty Limited	25 November 2024
Arboricultural Impact Assessment	-	Temporal Tree Management Pty Ltd.	10/10/2024
Geotechnical Investigation Report	-	Geotechnical Consultants Australia Pty Ltd	14 February 2025
Landscape Plan	-	Studio Plum	30/01/2025
Waste Management Plan	-	Applicant	17.01.2025

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	26/02/2025

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

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

3. Approved Land Use

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a *Dwelling House and Secondary Dwelling*, in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

dwelling house means a building containing only one dwelling.

Note—

Dwelling houses are a type of residential accommodation—see the definition of that term in this Dictionary.

And:

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 as the principal dwelling, and

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

Note—

See clauses 5.4 and 5.5 for controls relating to the total floor area of secondary dwellings.

Secondary dwellings are a type of residential accommodation—see the definition of that term in this Dictionary.

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

4. Prescribed Conditions

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

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

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

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

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

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

Reason: Legislative requirement.

5. **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) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) 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.
- (d) At all times after the submission of the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (e) 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.
- (f) 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.
- (g) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% 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.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that

applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.

- iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (h) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (i) 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.
- (j) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (l) 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.
- (m) 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.
- (n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (o) Should any construction cranes be utilised on site, they are to be fitted with bird deterrents along the counterweight to discourage raptor (bird) nesting activity. Deterrents are to remain in place until cranes are dismantled. Selection of deterrent methods is to be undertaken in accordance with the recommendations of a suitably qualified ecologist.
- (p) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

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

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$11,000.00 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 (as amended).

The monetary contribution is based on a development cost of \$1,100,000.00.

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

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

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

Reason: To provide for contributions in accordance with the Contribution Plan to fund the

provision of new or augmented local infrastructure and services.

7. Security Bond

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

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

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

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

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

8. Construction, Excavation and Associated Works Security Bond(s)

The applicant is to lodge a bond with Council for the following:

Crossing / Kerb & Gutter / Footpath Works

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 a bond of \$5,000.00.

Details confirming payment of the bond(s) are to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

9. On-Site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by National Engineering Consultants, job number 24-1086, dated 12.06.2025. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- Provision of a minimum of 12 cubic metres of on-site detention storage.

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

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

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

10. Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

11. Vehicle Crossings Application

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3.0 metres wide in accordance with Northern Beaches Council Standard Drawing A4 3330/4 EH in accordance with Section 138 of the Roads Act 1993. The redundant vehicle crossing on the Lister Avenue frontage of the site shall be replaced by kerb & gutter to Council Engineers satisfaction.

Note, driveways are to be in plain concrete only.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

A Council approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

12. Off Street Parking Design

The Applicant shall submit a design for the parking facility in accordance with the relevant 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 and Section 2.6 Design of Domestic Driveways.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Compliance with this consent.

13. Boundary Identification Survey

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on a boundary identification survey, prepared by a Registered Surveyor, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

14. 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 Certifier prior to the issue of the Construction Certificate.

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

15. External Finishes to Roof

The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.43 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a reflective finish is not permitted.

Green roofs and areas where solar panels (PV) are installed are excluded from conforming to the SA range.

Details demonstrating compliance are to be submitted to the Certifier 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.

16. 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 Certifier 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

17. Sediment and Erosion Controls

For developments that include more than 2500sqm of disturbance:

A Soil and Water Management plan (SWMP), in accordance with section 2.3 of the Blue Book, must be prepared and certified by a suitably qualified professional.

For sites larger than 250sqm and less than 2500sqm of disturbance:

An Erosion and Sediment Control Plan (ESCP) must be prepared by a suitably qualified person

in accordance with the following considerations and documents:

- Sites that have slopes exceeding 20% (measured in any direction across the site), and/or where works are within the high-water mark or adjacent to a waterway or watercourses are considered environmentally sensitive areas. These sites require a site-specific ESCP which must be prepared and certified by a suitably qualified professional,
- The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate – Volume 1, 4th Edition (2004)' (the Blue Book), and
- The 'Guidelines for Erosion and Sediment Control on Building Sites' (Department of Planning, Housing and Infrastructure).

The ESCP must include the following as a minimum:

- Site Boundaries and contours,
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application),
- Location of site access, proposed roads and other impervious areas (e.g. parking area and site facilities),
- Existing and proposed drainage patterns with stormwater discharge points,
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected,
- North point and scale,
- Type of erosion control measures to divert and slow run-off around and within the site.

Environmentally sensitive areas (i.e. Sites that have slopes exceeding 20% and/or where works are within the high-water mark or adjacent to a waterway or watercourses) must also consider:

- Identify and mark any environmentally sensitive areas on and immediately next to the site and how you will protect these, including any appropriate buffer zones (for example, marking them out as 'no-go' areas),
- Details on vegetation you will clear, as well as areas of vegetation you will keep (mark no go areas),
- Detail on soil information and location(s) of problem soil types, especially dispersive soils and potential or actual acid sulfate soils,
- Location of any natural waterways that could receive run-off and how these will be protected these from run-off.

For sites smaller than 250sqm or where the disturbance is less than 50sqm:

Run-off and erosion controls must be implemented to prevent soil erosion, water pollution or the discharge of loose sediment on the surrounding land by:

- Diverting uncontaminated run-off around cleared or disturbed areas, and
- Erecting a silt fence and providing any other necessary sediment control measures that will prevent debris escaping into drainage systems, waterways or adjoining properties, and
- Preventing the tracking of sediment by vehicles onto roads, and
- Stockpiling top soil, excavated materials, construction and landscaping supplies and debris within the lot.

- Identifying any environmentally sensitive areas on and immediately next to the site, and demonstrating how these will be protected (for example, by designation as no-go areas).

Details demonstrating compliance with the relevant requirements above are to be submitted to the Certifier, and the measures implemented, prior to the commencement of works.

Reason: To ensure no substance other than rainwater enters the stormwater system and waterways.

DURING BUILDING WORK

18. **Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all prescribed trees within the site, including trees and vegetation nominated for retention on the approved Plans,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all trees and vegetation within the road reserve.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project 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/Project 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/Project 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/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project 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/Project Arborist to the Principal Certifier,
 - 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 AS4970-2009 Protection of trees on development sites,
 - ix) the activities listed in section 4.2 of AS4970-2009 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 AS4373-2007 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.

The Principal Certifier must ensure that:

- c) The arboricultural works listed in a) and b) are undertaken as compliant to AS4970-2009

Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment and/or Project Arborist as applicable.

Reason: Tree and vegetation protection.

19. 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.

20. Removing, Handling and Disposing of Asbestos

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

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

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

21. Geotechnical Requirements

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

22. Survey Certificate

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

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

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

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

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

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

23. Maintenance of Sediment and Erosion Controls

Erosion and sediment controls must be adequately maintained and monitored at all times, particularly surrounding periods of rain, and shall remain in proper operation until all development activities have been completed and the site is in a state where no substance

other than rainwater can enter the stormwater system and waterways.

All sediment control measures must be maintained at, or above, their design capacity.

Where more than 2500 square metres of land are disturbed or if the site has a slope of more than 20%, a self-auditing program must be developed for the site. A site inspection using a log book or inspection test plan (ITP) must be undertaken by the site supervisor:

- at least each week
- immediately before site closure
- immediately following rainfall events that cause runoff.

Details demonstrating compliance must be provided to the Certifier during demolition and building works.

Reason: Protection of the receiving environment and to ensure no substance other than rainwater enters the stormwater system and waterways.

24. Property Boundary Levels

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development other than at the location of the proposed vehicle crossing where levels may be altered by a maximum of 200mm. The footpath area near the vehicle crossing shall be graded and re-turfed to maintain pedestrian access, to Council Engineers satisfaction.

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

Reason: To maintain the existing profile of the nature strip/road reserve.

25. 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 Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

26. Landscape Completion

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

- a) landscape works are to be contained within the legal property boundaries,
- b) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan, unless otherwise imposed by conditions,
- c) all tree planting shall be a minimum pre-ordered planting size of 75 litres; meet the requirements of Australian Standard AS2303 - Tree Stock for Landscape Use; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- d) the proposed shrub planting of Acmena 'cherry surprise' along the frontage of Prince Edward Rd shall continue across the entire frontage including the corner landscape area along Lister

Ave to the start of the boundary walling,

- e) mass planting shall be installed at minimum 900mm intervals for shrubs of a minimum 200mm container size at planting; and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- f) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
- g) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone,
- h) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

Prior to the issue of an Occupation Certificate, details (from a landscape architect, landscape designer or qualified horticulturalist) shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

27. 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 Certifier prior to the issue of an Occupation Certificate.

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

28. Waste Disposal Verification Statement

On completion of demolition work:

- a signed statement must be submitted to the Certifier verifying that demolition work, and any recycling of materials, was undertaken in accordance with the waste management plan approved under this consent, and
- if the demolition work involved the removal of asbestos, an asbestos clearance certificate issued by a suitably qualified person, must be submitted to the Certifier within 14 days of completion of the demolition work.

Reason: To provide for the submission of a statement verifying that demolition waste management and recycling has been undertaken in accordance with the approved waste management plan.

29. Reinstatement of Kerb

The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

Reason: To facilitate the preservation of on street parking spaces.

30. Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures

The Applicant shall lodge the Legal Documents Authorisation Application with the original

completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan by a Registered Surveyor), and Civil Engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

31. Certification of Off Street Parking Works

The Applicant shall submit a certificate from a suitably qualified person certifying that the parking facility was constructed in accordance within this development consent and the relevant 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 and Section 2.6 Design of Domestic Driveways.

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

Reason: Compliance with this consent.

32. Swimming Pool Requirements

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

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

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

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

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

artificial resuscitation methods.

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life.

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

33. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

The approved landscape area shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

34. **Geotechnical Recommendations**

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

35. **Swimming Pool/Spa Motor Noise**

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

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